

THE AUTHORITY ANALYSIS OF NON-LEGAL ENTITY ORGANIZATION AND OPPORTUNITIES FOR DISPUTE RESOLUTION THROUGH LITIGATION

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Abstract

Article 28 of the Indonesian Constitution is formulated to guarantee the freedom of associations and assembly, including the formation of community organizations (*ormas*). *Ormas* holding legal entity status are accommodated under associations, while non-legal entity *ormas* can still register but do not have the same status. The distinction between *ormas* and associations lies in their legal recognition. Associations possess legal entity status, while *ormas* are considered non-legal entities. According to Article 20 of Law No. 17 of 2013, *ormas* have the right to cooperate with other entities to develop and sustain their organizations. However, such cooperation may give rise to conflict, which cannot always be avoided. This raises important questions, such as "Do *ormas* administrators possess full authority to undertake all legal actions?" and "What avenues are available for *ormas* to resolve disputes through litigation?" To address these questions, doctrinal research is conducted using both

legislative and conceptual methods. The results shows that the authority of *ormas* administrators is strictly limited by legal provisions. Since *ormas* lacks the legal standing required of legal entity, they are unable to resolve conflicts through litigation. In light of such challenges, it is recommended that *ormas* registration system include a comprehensive list of members authorized to act on behalf of the organizations in civil actions with third parties. This measure would enable *ormas* to explore non-litigation channels for resolving civil disputes, offering a practical alternative to formal court proceedings.

Keywords: Associations, Community organizations, Dispute resolution.

Introduction

In Indonesia, the constitution guarantees freedom of association, assembly, and expression, both verbally and in writing.¹ This guarantee is referred to in Article 28E, paragraph (3), of the 1945 Constitution of Indonesia, stating "Everyone has the right to freedom of association, assembly, and expression of opinion". The right to assemble is closely tied to the human need for social interaction. As social beings, individuals naturally seek to join community groups and gather with others sharing similar interests or goals. Ensuring this freedom of association and assembly is a fundamental aspect of the legal protection provided by the state to all citizens.²

One way individuals exercise such a right is by forming community organizations, commonly referred to as *ormas*. Assembly, in this context, refers to the act of bringing individuals together. The term *perhimpunan* in the Indonesian Dictionary is defined as a noun that signifies a gathering place or associations.³

Ormas can be established by group of individuals with shared activities, professions, functions, religions, educational backgrounds, cultures, or economic levels. They may also be formed by individuals

¹ Article 28 of the 1945 Constitution of Indonesia

² R Giatmiko, "Pengaturan Organisasi Kemasyarakatan Yang Terdaftar Di Kesbangpol Kabupaten Boyolali:(Berdasarkan Undang-Undang Nomor 16 ...," *Dinamika Hukum* (2020).

³ Editorial Team, Indonesian Language Dictionary, Language Center, Department of National Education, Jakarta, 2008, p 546

united as law enforcers, environmentalists, or members of other specialized groups. *Ormas*, often called Non-Governmental Organizations (NGOs),⁴ are typically formed, registered, officially regulated, and operate on a non-profit basis.⁵

The establishment of *ormas* requires a notarial deed and the engagement of three Indonesian citizens. According to Article 10 of Law No. 17 of 2013⁶ (hereinafter referred to as the *Ormas Law*), *ormas* can take the form of legal entities or non-legal entities. In both cases, the establishment process includes the assistance of a notary, particularly in drafting the deed of establishment.

Ormas acquiring legal entity status become associations upon obtaining the ratification of their articles of association from the Ministry of Law and Human Rights (Kemenkumham).⁷ Meanwhile, non-legal entity *ormas* can register to obtain a Registered Certificate, serving as formal recognition of their establishment.

Legally incorporated *ormas* are governed by the provisions applicable to "associations,"⁸ which are groups of individuals established and recognized by an authority such as religious institutions, or formed for specific purposes that do not conflict with the law, public order, and good morals.⁹ The legal status of such organizations is established through a formal process, including the ratification of their deed of

⁴ Rira Nuradhwati, "Pemberdayaan Ormas Pemuda Pancasila Dalam Upaya Menjaga Kekondusifan Dan Ketertiban Masyarakat Di Wilayah Kecamatan Cinambo Kota Bandung," *Jurnal Abdimas Kartika Wijayakusuma* 3, no. 2 (2022).

⁵ Norhasni Zainal Abiddin, Irmohizam Ibrahim, and Shahrul Azuwar Abdul Aziz, "Non-Governmental Organisations (NGOs) and Their Part towards Sustainable Community Development," *Sustainability (Switzerland)*, 2022.

⁶ Law No. 17 of 2013 concerning Community Organizations which has been amended by Law No. 16 of 2017 concerning the Determination of Government Regulation in Lieu of Law No. 2 of 2017 concerning Amendments to Law No. 17 of 2013 concerning Community Organizations into Law.

⁷ Stela Firman (et all), "Akibat Hukum Terhadap Pembatalan Surat Keputusan Pengesahan Badan Hukum Perkumpulan", in *Repertorium: Scientific Journal of Notary Law*, Vol.11 No.1 (Palembang, Unsri, 2022), <http://journal.fh.unsri.ac.id/index.php/repertorium/article/view/1858/493>, accessed June 9, 2024

⁸ Detania Sukarja, Mahmul Siregar, and Tri Lubis, "Telaah Kritis Status Badan Hukum Dan Konsep Dasar Badan Usaha Milik Desa," *Arena Hukum* 13, no. 3 (2020).

⁹ M. Yahya Harahap, *Hukum Perseroan Terbatas*, (Jakarta, Sinar Grafika, 2021) p

establishment and articles of association by the Ministry of Law and Human Rights. Therefore, legally incorporated *ormas*¹⁰ gain legal standing as entities and are subject to the provisions applicable to associations. In legal research, a legal entity is considered an artificial legal subject whose existence is recognized by law. Rahmi Jened stated that a legal entity obtains the status of *persona standi in judicio*, despite being an artificial subject.¹¹

Peter Mahmud Marzuki,¹² in his book "Pengantar Ilmu Hukum", explains the defining characteristics of a legal entity. These include being founded by individuals, possessing assets, having administrators, and maintaining rights and obligations distinct from those of the founders or administrators. The legal actions of *ormas*, as a legal entity, are carried out by its administrators and are intended to serve the interests of the organizations. M. Yahya Harahap,¹³ in his book "Hukum Perseroan Terbatas," outlines the characteristics of a legal entity as follows.

- a. Approval of the articles of association by the Ministry of Law and Human Rights;
- b. Authorization to carry out legal actions and represent the association;
- c. Administrators are empowered to act on behalf of the association in legal matters, both in litigation and non litigation way, based on statutory authority.

The regulations governing the formation and establishment of *ormas* in Indonesia are relatively open and flexible. The flexibility has resulted in the proliferation of *ormas* formed on various bases, such as profession, region, youth, education, religion, and others. Basically, the establishment of *ormas* is permissible as long as their objectives and

¹⁰ Derita Prapti Rahayu et al., "Urgensi Badan Hukum Pada Organisasi Kemasyarakatan (Ormas) Berbentuk Perkumpulan (Studi Pokdarwis Desa Kota Kapur, Kecamatan Mendo Barat, Kabupaten Bangka)," *Perspektif Hukum* (2021).

¹¹Rahmi Jened, "Doktrin Corporate Opportunity dalam Rangka Good Corporate Governance" *Proceeding APHK IV*, (Surabaya, Asosiasi Pengajar Hukum Keperdataan, 2018) p 41

¹² Peter Mahmud Marzuki, *Pengantar Ilmu Hukum*, (Jakarta, Kencana Prenada Media Grup, 2009) p 243.

¹³ M. Yahya Harahap, *Hukum Perseroan Terbatas*, (Jakarta, Sinar Grafika, 2021) p 6.

activities do not conflict with Pancasila and the Indonesian Constitution.¹⁴

Article 16 of Law No. 17 of 2013 stipulates that “non-legal entity *ormas* can register to obtain a registered certificate”. This registration applies to non-legal entity *ormas*, particularly organizations that lack deed ratification from the Ministry of Law and Human Rights. The act of registering such organizations does not give them the status of legal entities. Despite, Article 20(f) of the *Ormas* Law authorizes non-legal entity *ormas* to cooperate with other parties. This provision permits such organizations to act as a party in agreements, provided they have legal standing comparable to a legal entity.

Cooperation is a legal act creating rights and obligations but its application is not always carried out as intended. Conflicts may arise during cooperation, leading to disputes when one party feels dissatisfied or disappointed. This raises two critical questions, "Do the administrators of non-legal entity *ormas* possess full authority to represent their organizations in all legal actions?" And "What opportunities exist for these organizations to resolve disputes through litigation"?

This research draws on the thesis of Rizki Utami entitled "The Position and Accountability of Ormas in the Form of Associations that are Not Legal Entities (An Analysis on the Manahan Generation Association Domiciled in Medan City)."¹⁵ The thesis examines the Manahan Generation Ormas, functioning as a non-legal entity. While its position is recognized by existing laws and regulations, the organizations cannot independently engage in legal actions due to the status of being non-legal entity. Consequently, the Manahan Generation Ormas lacks the legal capacity to act independently and is limited in legal accountability, establishing the organizations unable to freely perform legal actions under its name.

The publication by Amirullah, Umar Aris, and Papang Sapari, entitled "Resolving Disputes over the Use of the Same Ormas Name

¹⁴Article 2 of Law No. 17 of 2013 concerning Community Organizations.

¹⁵ Rizki Utami, *Kedudukan Dan Pertanggungjawaban Organisasi Kemasyarakatan (Ormas) Berbentuk Perkumpulan Yang Tidak Berbadan Hukum (Studi Pada Perkumpulan Generasi Manahan Berkedudukan Di Kota Medan)*, Tesis, 2020.

Through a Legal Approach"¹⁶ explores the resolution of disputes between registered legal ormas (associations) through litigation. Furthermore, the content of this research is fundamentally different from the two publications, as it focuses specifically on the limitations and legal challenges faced by non-legal entity ormas in cooperation and dispute resolution processes.

Research Method

This research adopts doctrinal analysis to address the identified issues. Since the issues pertained to the principles embedded in regulations and legislative provisions, legislative and conceptual methods, as well as the application of legal principles are utilized. The legislative method focused on examining provisions related to associations in the Civil Code and *ormas* regulations, including Government Regulation No. 58 of 2016, Regulation of the Minister of Home Affairs No. 57 of 2017, and Regulation of the Minister of Law and Human Rights No. 3 of 2016.

The conceptual method is directed at understanding the distinction between *ormas* which are non-legal entities and associations. Legal principles are applied to provide clarity and legal certainty, particularly when inconsistencies are present in the regulations. An in-depth analysis is conducted to evaluate the authority of non-legal entity *ormas* and their capacity to resolve disputes through both litigation and non-litigation channels.

Discussion

Authority of Non-Legal Entity Ormas Management

In addition to individuals bearing rights and obligations, groups or entities recognized by law can also hold person status. These entities, referred to as legal entities, are granted rights and obligations similar to those of individuals. Only entities with legal status are acknowledged as legal subjects, known as *rechtspersoon*, and are thereby authorized to

¹⁶ Amirullah, Umar Aris, and Papang Sapari, "Penyelesaian Sengketa Penggunaan Nama Ormas Yang Sama Melalui Pendekatan Yuridis," *Syntax Literate; Jurnal Ilmiah Indonesia* 8, no. 9 (2023).

act independently and engage in legal transactions.¹⁷ As legal subjects, they hold rights and responsibilities within the context of property law.

Several theories explore the concept of legal entities, including von Savigny's fictional theory, Brinz's property-with-a-purpose theory, Otto von Gierke's organ theory, and Planiol's collective property theory.¹⁸ These theories generally posited that organizations or institutions can achieve legal subject status equivalent to that of individuals when certain criteria are met.¹⁹ These criteria may include compliance with formal requirements prescribed by positive law or statutory provisions, as outlined in Article 1653 of the Civil Code.²⁰ For organizations to acquire legal status, they are required to follow established legal procedures. This included obtaining ratification of the deed of establishment from the Ministry of Law and Human Rights for entities such as Limited Liability Companies, Foundations, and Associations. Similarly, cooperatives are required to secure approval from the minister overseeing cooperatives for their deed of establishment.

There are various types of organizations that operated within three key areas of communal life, including the state, society (civil society), and the business world (market).²¹ One such organization that functions within the context of civil society is *ormas*. The establishment of *ormas* is

¹⁷ CST Kansil, *Pengantar Ilmu Hukum*, Balai Pustaka Cetakan kesembilan, 1992, Jakarta, p 85

¹⁸ Ali Rido, *Badan Hukum dan Kedudukan Badan Hukum Perseroan, Perkumpulan, Koperasi, Yayasan, Waqaf*, Alumni Bandung, 2004, p 15-18

¹⁹ Rahayu Hartini, *BUMN Persero, Konsep Keuangan Negara dan Hukum Kepailitan Indonesia*, Setara Press, Malang 2017, p 24

²⁰ Article 1653 of the Civil Code states: "In addition to true corporations, associations of people are also recognized by law as associations, whether the association is established or recognized as such by a public authority, or whether the association is accepted as permitted, or has been established for a specific purpose that does not conflict with the law or good morals."

²¹ Bahar Elfudlatsani, , Isharyanto, and Agus Riwanto, "Kajian Mengenai Kebebasan Berkumpul Dan Berserikat Pasal 28e Ayat (3) Undang-Undang Dasar 1945 Melalui Organisasi Kemasyarakatan Kaitannya Dengan Teori Kedaulatan Rakyat Dan Hak Asasi Manusia," *Jurnal Hukum dan Pembangunan Ekonomi* 7, no. 1 (2019).

seen from a constitutional perspective, serving as an extension of the freedom of association and assembly.²²

Ormas is established by at least three Indonesian citizens²³ who agreed to unite, formalizing their agreement through a notarial deed. This deed included the organizations' articles of association and bylaws, which served as the foundational rules for their collective actions. Through the bond of association, members of *ormas* are able to express their opinions and build reciprocal relationships in order to achieve the goals of the organizations.

According to R. Ali Rido,²⁴ general provisions regarding associations are detailed in Chapter Nine of Book Three of the Civil Code (KUHPdata), specifically under "*Zedelijke lichmen*." The Civil Code treated associations and gatherings as agreements, with the relevant regulations found in Book III, which focused on Contracts. The association of individuals as an "Association" is governed by Chapter VIII, Articles 1618 to 1652, while the association of individuals as an "Organization" is addressed in Chapter IX, Articles 1653 to 1665. These regulations are placed in different chapters due to the distinct characteristics of associations and organizations.

"Associations" are generally defined as agreements to undertake joint business activities (market), with the aim of obtaining and sharing profits among its members. In contrast, "Organizations" are agreements focused on community gathering activities (civil society), with the aim of realizing common goals in the social, religious, and humanitarian spheres, without distributing profits to its members.²⁵

M. Yahya Harahap,²⁶ in his book "Hukum Perseroan Terbatas", characterized associations as gatherings within a community that is not

²² Imam Sukadi, "ASAS CONTRARIUS ACTUS SEBAGAI KONTROL PEMERINTAH TERHADAP KEBEBASAN BERSERIKAT DAN BERKUMPUL DI INDONESIA," *Mimbar Keadilan* 12, no. 2 (2019).

²³ Bayu Marfiando, "Pembubaran Hizbut Tahrir Indonesia (HTI) Ditinjau Dari Kebebasan Berserikat," *Jurnal Ilmu Kepolisian* 14, no. 2 (2020).

²⁴ Ali Rido, *Badan Hukum Dan Kedudukan Badan Hukum Perseroan, Perkumpulan, Koperasi, Yayasan, Wakaf, Cetakan Ke IV*, 1986.

²⁵ Article 1 number 1 of the Regulation of the Minister of Law and Human Rights, No. 3 of 2016 concerning Procedures for Submitting Applications for Legal Entity Approval and Approval of Changes to the Articles of Association of Associations.

²⁶ M. Yahya Harahap, *Hukum Perseroan Terbatas*, (Jakarta, Sinar Grafika 2021) p

business entities and does not aim to generate profit. Similarly, Ahmadi Miru,²⁷ a Professor of Law at Hasanudin University, in his book "Hukum Perjanjian," shared this view by stating, "Associations are groups of individuals who are legal entities, but their activities are not aimed at carrying out business to obtain profit."

According to Article 1654 of the Civil Code, "All legitimate associations are similar to entities authorized to carry out civil actions without prejudice to general regulations, which may be modified, limited, or subjected to specific circumstances." The general regulations currently governing associations in Indonesia include the following laws and regulations.

1. Law No. 17 of 2013 on *Ormas* Law: This law, amended by Law No. 16 of 2017, established the framework for the operation of *ormas*. Law No. 16 of 2017 replaced several articles in Law No. 17 of 2013, specifically revising general provisions, modifying Articles 59 to 62, repealing Articles 63 to 81, and inserting Article 80A between Articles 80 and 81.
2. Government Regulation No. 58 of 2016: This regulation detailed the implementation of Law No. 17 of 2013 concerning *ormas*.
3. Regulation of the Minister of Law and Human Rights No. 3 of 2016: This regulation outlined the procedures for submitting applications for legal entity approval and amendments to articles of associations.
4. Regulation of the Minister of Home Affairs No. 57 of 2017: This regulation governed the registration and management of *Ormas* Information System.

Article 10 of Law No. 17 of 2013 provided *ormas* with the option to operate as legal entities or non-legal entities. The term legal entity is widely used in community legal relations. A legal entity serve as an independent legal subject, distinct from an individual person. In Dutch, the term for a legal entity is *rechtspersoon*, while a natural person as a legal subject is referred to as *natuurlijke persoon*. Similarly, in English, a legal entity is termed a "legal person," whereas a natural person referred to as an individual human being as a legal subject.²⁸ Legal entities, therefore,

²⁷ Ahmadi Miru, Sakka Pati, *Hukum Perjanjian (Edisi Revisi)*, (Jakarta Sinar, Grafika, 2022) p 131

²⁸ A.A. Gede D. H. Santosa, "Perbedaan Badan Hukum Publik Dan Badan Hukum Privat," *Jurnal Komunikasi Hukum (JKH)* 5, no. 2 (2019).

are non-individual legal subjects recognized as possessing certain rights and responsibilities under the law.

According to Rahmi Jened, "Legal entity status grants *persona standi in judicio* status, even though it represented an artificial legal subject.²⁹ To obtain legal entity status, the management of *ormas* must submit a deed of establishment for ratification to the Ministry of Law and Human Rights, as stipulated in Permenkumham No. 3 of 2016. Once the Minister of Law and Human Rights ratified the articles of associations, the organizations officially achieve legal entity status, formalized within the framework of associations. Yahya Harahap³⁰ outlines the characteristics of associations as follows.

- a. Ratification of the articles of associations are obtained from the Ministry of Law and Human Rights;
- b. Associations are authorized to perform legal acts and become represented in legal matters;
- c. The administrators are empowered to act on behalf of the associations in both judicial and non-judicial capacities, based on statutory authority.

Associations serves as legal frameworks for accommodating *ormas* with legal entity status, enabling them to independently participate in legal activities. These legal frameworks possessed assets, and the management had the authority to represent them in and outside the courtroom. This distinction is expressed by Yahya Harahap, who asserted that associations, as independent legal entities, operated separately from the actions of their individual founders or members.

Ormas that are not legal entities can not engage in legal activities independently. These non-legal entity *ormas* may register with the Ministry of Home Affairs (Kemdagri) to obtain a Registered Certificate (SKT). However, the Registered Certificate is issued solely as an administrative measure and does not signify the ratification of the organizations' deed of establishment or articles of associations. Consequently, *ormas* with a Registered Certificate retain their non-legal entity status.

²⁹Rahmi Jened, "Doktrin Corporate Opportunity dalam Rangka Good Corporate Governance" *Proceeding APHK IV*, (Surabaya, Asosiasi Pengajar Hukum Keperdataan, 2018) p 41

³⁰ M. Yahya Harahap, *Hukum Perseroan Terbatas*, (Jakarta, Sinar Grafika, 2021) p 6.

Law No. 17 of 2013, particularly letter "f," grants non-corporate *ormas* the authority to act legally with third parties. This provision appears contradictory to the theory of legal entities (*rechts persoon*), as non-corporate organizations, by definition, should lack the capacity to act independently in legal matters. However, Article 20 of Law No. 17 of 2013 provided *ormas* with the following authorities.

- a. Organizing and managing their internal affairs independently and transparently.
- b. Securing intellectual property rights for their name and symbol.
- c. Advocating for the organizations' ideals and objectives.
- d. Conducting activities aimed at achieving the goals of the organizations.
- e. Receiving legal protection for their existence and activities.
- f. Collaborating with the government, local authorities, private entities, and other stakeholders to develop and sustain the organizations.

These provisions effectively empowers non-corporate *ormas* to engage in legal actions with third parties. However, their primary authority is based on organizing and managing internal affairs independently and transparently. The internal governance included determining the organizational structure, appointing administrators, and establishing mechanisms for selecting administrators, as outlined in their articles of associations. This particular autonomy reflects constitutional guarantees of freedom of assembly.

In addition to internal governance, non-corporate *ormas* may obtain intellectual property rights for their name and symbol. However, their control over intellectual property is limited to safeguarding these identifiers, ensuring the distinct identity of the organizations.

Non-corporate *ormas* are authorized to carry out activities that are in line with their stated goals and ideals. These organizations typically strive to achieve objectives in areas such as religion, society, and humanity, as explicitly outlined in their articles of associations. The activities of Non-corporate *ormas* are legally protected, provided they adhered to the principles of Pancasila.

Ormas conducted activities as part of their organizational agenda, whether on a routine or temporary basis. These activities are designed to help organizations achieve their objectives. The existence and

operations of *ormas* are constitutionally guaranteed, providing them with legal protection.

To achieve their goals, non-legal entity *ormas* are permitted to collaborate with various entities, including government agencies, ministries, local governments, private sectors, and others. The collaborations are required to be in line with the organizations' objectives. For instance, religious *ormas* may partner with the Ministry of Religion, while organizations focuss on empowering women and children may work with the Ministry of Women and Child Protection. Similarly, organizations promoting sports can collaborate with the Ministry of Youth and Sports or the Indonesian National Sports Committee (KONI) at both central and regional levels. This flexibility allows non-legal entity *ormas* to play an active role in societal development and contribute to building a better Indonesia.

The authority grants to *ormas* under Article 20 of *Ormas Law* is understood as optional. This means organizations can choose to act as permitted by the law, conducting their actions which do not conflict with other legal regulations.³¹

The authority of non-legal entity *ormas* is confined to what is explicitly stated in Article 20. Beyond the scope of this article, such organizations lack the authority to act. This principle is in line with the provisions of *Staatblad* 1870 Number 64, particularly Article 8, stipulating that "associations without legal entity status cannot independently engage in civil actions against the state or third parties. Instead, such actions are considered to be carried out by individuals acting as representatives or managers of the organization."

The provisions regarding "associations that are not established as legal entities" clearly referred to *ormas* without legal entity status. According to Article 10 of *Ormas Law*, "*ormas* with legal entities are accommodated in associations." This implies that associations serve as

³¹ Kristianus Jimmy Pratama, "Mengoptimalkan Mekanisme Pengaisan Dalam Jaringan Terhadap Organisasi Kemasyarakatan Berbadan Hukum Perkumpulan Di Indonesia", in *National Law Magazine Volume 51 Number 2 Year 2021* P-ISSN: 0126-0227; E-ISSN: 2772-0664, DOI : 10.33331/mbn.v51i2.142 <https://mhn.bphn.go.id>, <https://mhn.bphn.go.id/index.php/MHN/article/view/142/77> accessed June 8, 2024

forums exclusively for individuals or groups with legal entity status. Applying the legal principle *lex posteriori derogat legi priori* (new laws override older ones), it is evident that associations are limited to *ormas* with legal entity capacity. Consequently, non-legal entity organizations cannot be classified as associations and are not subject to the legal regulations governing associations.

A closer analysis of Article 20 of Law No. 17 of 2013 depicts that the authority grants to the management of non-legal entity *ormas* to collaborate with third parties is a special privilege provided by the legislators. Although these organizations lack legal entity status, the law grants them the authority to act within a legal framework. This principle is in line with the legal doctrine *lex specialis derogat legi generali* (special laws override general laws). Under this principle, *Ormas* Law serves as a specific provision taking precedence over the general regulations governing associations, as both are equivalent in legal hierarchy.

The Minister of Law and Human Rights Regulation No. 3 of 2016 referenced *Staatsblad* 1870 No. 64 concerning Legal Entity Associations. Article 8 of this *Staatsblad* stipulates, "Associations that are not established as legal entities according to general regulations or are not recognized by these regulations cannot carry out civil actions in their name against the state or third parties. Instead, such actions are attributed to the individuals concluding agreements or receiving goods on behalf of the associations, even though such individuals act merely as representatives or attorneys of the associations."

In light of Article 8 of *Staatsblad* 1870 No. 64, only *ormas* with legal entity status (associations) can undertake civil actions that legally bind the organizations. However, Article 20 of *Ormas* Law grants non-legal entity organizations limited authority. In addition to managing internal affairs, the organizations are authorized to hold intellectual property rights for their symbols and names and to cooperate with other parties.

Ownership of intellectual property and entering into agreements through cooperation are classified as civil actions. The provisions of Article 20 of *Ormas* Law grants non-legal entity *ormas* a privilege to participate in legal matters to a limited extent. This reflects the recognition and acceptance of their existence within the legal framework.

By granting non-legal entity ormas the authority to independently regulate their internal affairs, administrators are empowered to act autonomously within the organizations. However, this authority is strictly limited to the scope outlined in Article 20 of *Ormas Law*. Differences exists between the regulatory norms in Article 20 of *Ormas Law* and Article 8 of *Staatsblad* 1870 No. 64. Since both regulations are considered legally equivalent, the principle of *lex specialis derogat legi generalis* (special laws override general laws) applied. This principle ensures legal certainty by resolving conflicts between specific and general provisions.

The management of legal *ormas* is explicitly limited to organizing and managing their internal affairs independently and transparently. Specifically, the management of non-legal entity *ormas* lacks the authority to represent the organizations in civil actions. Exceptions are made in specific cases, such as obtaining intellectual property rights for the organizations' name and symbol. Beyond these exceptions, non-legal entity *ormas* do not have the legal capacity for broader civil actions. Another significant exception is the ability to cooperate with other parties, which allowed them to engage in partnerships under certain conditions.

Legal Standing of Non-Legal Ormas in Dispute Resolution Through Litigation

According to Satjipto Raharjo, law is essential for addressing human interests.³² It evolved and thrived within human communities, facilitating interactions both within and outside groups and reflecting the characteristics of humans as social beings (*zoon politicon*).

The legal framework is constructed as a network of relationships that define rights and obligations. These relationships often covered two aspects, including the demand for rights and the fulfillment of obligations.³³ However, conflicts may arise when rights are violated or obligations are neglected.³⁴ In such cases, the law ensured protection by enabling individuals to demand the fulfillment of their rights, thereby enforcing justice.

³² Satjipto Rahardjo, *Ilmu Hukum*, Sixth Printing, (Bandung, Citra Aditya Bakti, 2006) p 68

³³ Satjipto Rahardjo, *Ilmu Hukum*, (Bandung, Citra Aditya Bakti, 2006) p 67

³⁴ Satjipto Rahardjo, *Ilmu Hukum*, (Bandung, Citra Aditya Bakti, 2006) p 66

The principle of equality before the law ensured that everyone had an equal standing and the right to defend their rights when violated. When a party failed to fulfill obligations under an agreement, it is considered a breach of contract. The aggrieved party can request the fulfillment of their rights. When the other party does not comply voluntarily, disputes may arise. Disputes resulting from a breach of contract should ideally be resolved through mutual deliberation or as specified in the agreement. Resolving conflicts through negotiation often leads to a win-win solution, preserving relationships between the parties. However, when deliberation failed to produce a satisfactory outcome, litigation became the ultimate recourse (*ultimum remedium*).

Resolving disputes through the court process is required to adhere strictly to the provisions of procedural law, which served as formal law. Civil procedural law operated as a mechanism to ensure compliance with substantive civil law and is both mandatory and binding in nature.³⁵ The law possessed a public character, making its provisions non-negotiable, and deviations or alterations by the parties or the panel examining the dispute are not permitted.

In contentious civil cases, there are typically two parties, including the plaintiff, enforcing their legal rights, and the defendant, who defended against such claims. A plaintiff initiates a claim when they believe that the defendant has violated the legal rights or interests, resulting in harm or loss.³⁶ Contentious lawsuits inherently included disputes, with the defendant being held accountable as the opposing party. The term "contentious" originated from Latin and conveyed the notion of being full of conflict or a fighting spirit. The decision to file a claim is entirely the prerogative of the aggrieved party, making the plaintiff and defendant the primary participants in such disputes.

Civil disputes involving claims for compensation fell into two main categories, including those arising from a breach of contract, which are rooted in an agreement, and those arising from unlawful acts.³⁷ Civil liability is addressed through a structured mechanism of rights claims,

³⁵ Efa Laela Fakhriah, *Perbandingan HIR dan RBG Sebagai Hukum Acara Perdata Positif di Indonesia*, (Bandung, Keni Media, 2015) p 3-4.

³⁶ Maria Rosalina, Danialsyah, and AR Zulkifli, "Tahapan Pengajuan Gugatan Di Pengadilan Negeri," *Jurnal Hukum dan Masyarakat* 3, no. 3 (September 2022).

³⁷ Muzakkir Abubakar, "Hak Mengajukan Gugatan Dalam Sengketa Lingkungan Hidup," *Kanun Jurnal Ilmu Hukum* 12, no. 1 (April 2019).

formalized in the form of lawsuits. In such cases, the plaintiff, who have a legal interest, filed a lawsuit against a defendant alleged to have violated their legal rights. The litigation process in court represented the formal resolution of these disputes.

The parties to the case needed to have legal standing to demand the fulfillment of their rights in court.³⁸ The process of asserting or defending rights in legal proceedings is required to comply with established procedural laws. Failure to observe these legal requirements may result in the lawsuit being declared inadmissible (*niet ootvankelijke verklaard*), thereby preventing further consideration of the claim.

In his book “Hukum Acara Perdata” (Civil Procedure Law), M. Yahya Harahap³⁹ explained that an error made by a party in a lawsuit can lead to an error in persona, which referred to an incorrect identification of the participated party. The error occurred when the wrong party is designated as the plaintiff or the defendant in the lawsuit. These inaccuracies in identifying the engaged parties resulted in formal defects, and as a consequence, the lawsuit may be considered unacceptable (*niet ootvankelijke verklaard*).

The party acting as the plaintiff needs to have a legal interest and the capacity to engage in the lawsuit. Similarly, the defendant is required to be properly identified. For instance, the plaintiff maybe the owner of a property acquired through sale but have not received the property from the seller, or may be an heir seeking the distribution of inheritance. When any party is incorrectly positioned as plaintiff or defendant, the defendant may raise an exception, claiming that the plaintiff is not the proper party to bring the claim. These mistakes in positioning can render the lawsuit invalid. When the plaintiff is incorrectly identified, the case may be dismissed, making the lawsuit futile. The plaintiff have to be a legal subject with a vested interest in asserting their rights, whether as an individual or as a legal entity.

Non-legal entity *ormas* can obtain a registered certificate, which provided them with a recognized identity. These organizations are identified by their names and symbols. According to Article 20 of the

³⁸ Muhammad Zulhidayat, “Anomali Kewenangan Lpksm Dalam Mengajukan Gugatan Perlindungan Konsumen Di Indonesia,” *Jurnal Hukum Ekonomi Syariah LAIN Metro* 2, no. 1 (June 28, 2023).

³⁹M. Yahya Harahap, *Hukum Acara Perdata, Tentang Gugatan, Persidangan, Penyitaan, Pembuktian, Dan Putusan Pengadilan*, (Jakarta, Sinar Grafika, 2017) p 111

Ormas Law, such organizations are granted the authority to cooperate with other parties. The cooperation typically began with an agreement, which subsequently formed the basis of a contract. A contract established a legal relationship between the parties, granting certain rights to one party and imposing obligations on the other.⁴⁰ These rights and obligations arose from the legal relationship governed by law.

Granting authority to non-legal entity *ormas*, as outlined in letter "f" of Article 20 of *Ormas* Law, constituted a legal act with significant legal implications. This authority enabled cooperation, which created rights and obligations for the engaged parties. The rights that are not fulfilled may be subjected to legal action, and when voluntary fulfillment is not achieved, coercive measures tended to be pursued through litigation, particularly when a resolution is not reached through mutual agreement.

The principle of *pacta sunt servanda*, as established in Article 1338 of the Civil Code, dictated that any legally made agreement binds its terms. Additionally, the principle of *privity of contract* asserted that only the parties who made the agreement are bound by its clauses.⁴¹ Since non-legal entity *ormas* are granted authority to enter into agreements, their management served as a representative of the organizations in these cooperative endeavors.

Organizations that are not legal entities lack the capacity to hold rights and obligations. However, the authority granted by Article 20, letter "f" of *Ormas* Law to non-legal entity *ormas* can be seen as a way to implement the recognition of the freedom of associations and assembly, as guaranteed by Article 28 of the Constitution. This freedom is realized through the formation and activities of *ormas*.⁴²

The legal foundation for *ormas* is established by relevant laws and regulations, along with their articles of association and bylaws. The establishment process is formalized through an authentic deed that included these documents. Typically, the articles of associations and bylaws outlined the procedures for forming the management and specifying their authority. The management is responsible for

⁴⁰ Riduan Syahrani, "Seluk Beluk Dan Asas-Asas Hukum Perdata," *Seluk Beluk Dan Asas-Asas Hukum Perdata*, 2013.

⁴¹ Agus Yudha Hernoko, *Hukum Perjanjian Asas Proporsionalitas dalam Kontrak Komersil*, Fourth printing, (Jakarta, Kencana Prenada Media, 2014).

⁴² Ukilah Supriyatin and Nina Herlina, "Tanggung Jawab Perdata Perseroan Terbatas (PT) Sebagai Badan Hukum," *Jurnal Ilmiah Galuh Justisi* 8, no. 1 (2020).

developing and implementing work programs, striving to achieve organizational goals, leading and overseeing meetings, and making decisions during such meetings. The roles within the management are usually titled chairman, secretary, treasurer, or other similar designations.⁴³ The authority of the management in non-legal entity *ormas* is limited to internal organizations and management, as well as fostering the organizations' growth through cooperation, as stipulated by Article 20 of *Ormas Law*.

In the context of cooperation, the management of non-legal entity *ormas* acted as the representative of the organizations. When any part of the rights and *obligations* outlined in the agreement is not fulfilled as originally agreed, it may result in a default by one of the parties.

Achievement, or the fulfillment of obligations, is referred to as *schuld*, while the guarantee for fulfilling these obligations is called *haftung*.⁴⁴ According to Article 1131 of the Civil Code, *schuld* represented the obligation to fulfill a commitment, while *haftung* ensured that the obligation would be met, and it is enforceable through assets. When a default can not be resolved through mutual deliberation and consensus, the dispute needed to be addressed through litigation in court.

Ormas that have a Registered Certificate, are recognized by their name and symbol. This is because non-legal entity *ormas* lacks a deed of establishment ratification from the Ministry of Law and Human Rights. Consequently, when non-legal entity organizations file a claim for rights in court as *plaintiffs*, the lawsuit contained formal defects. Since they do not have the capacity to act as independent legal entities, these organizations cannot be considered legal associations. Additionally, non-legal entity *ormas* are not positioned as defendants in dispute resolution through litigation. Not all *ormas* have legal standing in court,⁴⁵ and only those with legal status (associations) are recognized as having the right to pursue legal action. Furthermore, only *ormas* that have

⁴³ Article 29 paragraph (2) of Law No. 17 of 2013 concerning Community Organizations

⁴⁴ Mariam Darus Badruzaman, *Kompilasi Hukum Perikatan*, (Bandung, Citra Aditya Bakti, 2001) p 8

⁴⁵Sutan Sorik, Laely Nurhidayah, "The Role of NGOs in Environmental Governance in Indonesia Peran Ornop dalam Tata Kelola Lingkungan Hidup di Indonesia" *Constitutional Journal* Volume 21 (3) p. 12 2024, September 2024, <https://jurnalkonstitusi.mkri.id/index.php/jk/article/view/2013/683>, accessed November 10, 2024,

achieved legal status, by having their articles of association approved by the Ministry of Law and Human Rights, can independently assert their interests through litigation. These organizations are legally recognized as independent legal entities.

Ormas with legal status, in the form of associations, are recognized by law as having legal standing and the ability to act according to the law. The actions of the associations are carried out through legal acts by *their* management. These actions are binding on them, giving rise to rights and obligations. As such, the management of the associations can act as a party in resolving disputes through litigation.

To meet the requirements for legal standing, *ormas* with legal status (associations)⁴⁶ must have their deed of establishment approved by the Ministry of Law and Human Rights. This process grants the associations legal entity status, providing them with independent legal standing. The associations also possess their assets, allowing the participation in legal proceedings both litigation and non litigation process

Non-legal entity *ormas*, do not have the standing of a legal entity and can not litigate in court. While these organizations may be recognized as forums for associations based on their registered certificate, the recognition does not grant them the standing to act as plaintiffs or defendants in court. As a result, non-legal entity *ormas* cannot resolve disputes through litigation. Their dispute resolution opportunities are limited to non-litigation channels outside the court, in the form of non-adjudication.

Article 83 of *Ormas* Law still accommodated the validity of *Staatsblad* 1870 No. 64 concerning Legal Entity Associations. In line with the principles outlined in Article 8 of *Staatsblad* 1874 No. 64: "... non-legal entity *ormas* cannot take civil actions, against the state or third

⁴⁶ D Haryono, "Metode Tafsir Putusan Mahkamah Konstitusi Dalam Pengujian Konstitusional Undang-Undang Cipta Kerja", in *Constitutional Journal* 18, No. 4 (2022): 7 74, https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://jurnalkonstitusi.mkri.id/index.php/jk/article/view/1843&ved=2ahUKEwisuZTU7PiGAxU8yZgGHQ61DgEQFnoECBEQAQ&usq=AOvVaw3cs28SZ2mUe5k8M7Ek8HuL_, accessed June 2, 2024

parties unless they are directly engaged in the agreement and have received the goods...” Since *ormas* with no legal status are not legal entities, their administrators lack the authority to bind such organizations to obligations with third parties beyond those specified in Article 20 of the Ormas Law. When non-legal entity *ormas* are involved in a dispute, they do not have legal standing to defend or assert rights in court. Ormas Law grants only limited authority to non-legal entity *ormas*, which is in line with the continued relevance of *Staatsblad* 1870 No. 64 as reflected in Article 83 of the law.

Aside from the authority granted in Article 20 of Ormas Law, administrators of non-legal entity *ormas* are not authorized to engage in civil actions. When administrators acted outside the provisions of Article 20, the action would only bind the individual who carried it out.

In cases of a breach of contract including non-legal entity *ormas* and a third party, the only party that can be sued and have legal standing in litigation is the participated individual (natural person), as specified in Article 8 of *Staatsblad* 1870 No. 64. Consequently, the individual administrator, rather than the *ormas*, held legal standing. When seeking fulfillment of an agreement, the legal standing relied solely on the natural person. Additionally, when non-legal entity *ormas* are designated as the defendant, it constituted an error in persona, which may result in the disqualification of the defendant and render the lawsuit inadmissible. When the organizations are responsible for fulfilling the performance obligations, the natural person remained the defendant, and their personal assets were held accountable for fulfilling the agreement.

The discussion above is in line with the provisions on granting power of attorney to litigate in court under civil procedural law.⁴⁷ Those who can act as the attorney or representative of a plaintiff, defendant, or applicant in court included the following:

- a. Advocates: As outlined in Article 32 of Law Number 18 of 2003 concerning Advocates, legal advisors, practicing lawyers, and legal consultants who are appointed when the Advocate Law took effect are considered advocates.

⁴⁷Buku Pedoman Pelaksanaan Tugas dan Administrasi Pengadilan Dalam Empat Lingkungan Peradilan Buku II Edisi 2007 p 53 - 54,

- b. Prosecutors: With special powers as attorneys/representatives of the State or Government, as stated in Article 30, paragraph (2) of Law Number 16 of 2004 concerning the Indonesian Attorney General's Office.
- c. Government and Indonesian National Army (TNI)/Indonesian Attorney General's Office Legal Bureau.
- d. Directors/Managers or employees appointed by a legal entity.
- e. Individuals with incidental power of attorney: Appointed by the Chief Justice, including legal aid institutions (LBH), Family Relations, and the TNI/Polri Legal Bureau for cases involving TNI/Polri members or their families.
- f. Incidental power of attorney: Grants based on blood or marriage relationships, up to the third degree, as evidenced by a certificate from the village or sub-district head.⁴⁸

Non-legal entity *ormas* can not appoint an advocate to represent them in court proceedings. Administrators do not have the authority to represent the organizations in litigation. According to *Staatsblad* 1870 No. 64, this indicated administrators are personally bound by agreements made on behalf of non-legal entity *ormas*.

Non-legal entity *ormas* do not grant their administrators the authority to represent them, particularly in civil matters. When administrators took civil action on behalf of the organizations, such as becoming a party in a civil lawsuit, it constituted an error in legal standing, specifically an error in persona. This is because, the administrators lacks the authority to represent the organization in civil matters, either in or outside the court.

The management of non-legal entity *ormas* is not authorized to perform civil actions as representatives of the organization. Any civil actions taken by the management are only binding on the individual involved, not the *ormas*.

The mass gathering is permitted and recognized as a form of constitutional guarantee. However, when the articles of associations are not approved by the Ministry of Law and Human Rights, the gathering

⁴⁸ Mastorat, "Perspektif Pembentukan Peraturan Dan Perundang-Undangan Di Indonesia," *Fundamental: Jurnal Ilmiah Hukum* 9, no. 2 (2020).

does not result in the formation of a legal entity. To make civil actions binding on all members of non-legal entity *ormas*, the management can circumvent this limitation by granting and receiving power of attorney. In this case, all members of such organizations grants power of attorney to one or more individuals among them.

Conclusions and Suggestions

Conclusions

In conclusion, the management of non-legal entity *ormas* donot possess full authority to carry out civil actions on behalf of the organizations, except for the limited authority grants in Article 20 of *Ormas* Law. This limited authority is essentially a reflection of the constitutional guarantee of freedom of associations and assembly. Actions taken by the administrators outside the provisions of Article 20 are not representative of *ormas* and would bind only the individual administrators.

Non-legal entity *ormas* lacks legal standing to engage in litigation. To participate in dispute resolution through litigation, the collective members of the organizations needed to grant power of attorney to one or several individuals within the group.

Suggestions

- a. Administrators of non-legal entity *ormas* should exercise caution when entering into cooperation with other parties. This cooperation needed to be confined to the scope of the organizations' objectives.
- b. It is recommended that non-legal entity *ormas* prioritized non-litigation dispute resolution methods, seeking to resolve conflicts outside of court. Furthermore, the Ministry of Home Affairs should complete the requirements for registering non-legal entity *ormas* by including a list of members, which is required to contain the names and identities of the individuals forming the gathering.

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The Authority Analysis of Non-Legal Entity Organization and Opportunities for Dispute Resolution Through Litigation