

INDONESIA¹



Rationale and Research Objectives

There is no consensus regarding the standard definition of *civil society organization/CSO* (Muukkonen, 2009). Smismans (2008) defines CSOs as important actors who can realize participatory and responsive research dedicated to the real world. While Malena (2010) mentions CSOs, in a broader context, are defined as all non-profit organizations that are not related to government.

In Indonesia, the term CSO is generally associated with Non-Governmental Organizations (NGOs). As mentioned in Standard Norms and Regulations Number 3 concerning the Right to Freedom of Association and Organization of National Commission of Human Rights, from the legal entity aspect, CSOs can include associations, unions, clubs, cooperatives, NGOs, foundations, associations, including organizations that have no legal entities.

CSOs are generally value-based organizations that rely, in whole or in part, on charitable donations and voluntary services. CSOs represent a wide range of interests and relationships.

CSOs are an important pillar of democracy. CSOs participate in development, both in cities and in villages, especially in terms of community empowerment. There are at least three aspects of empowerment: (a) *enabling* (creating an atmosphere that develops community potential), (b) *empowering* (strengthening potential through concrete steps), and (c) *protecting* (protecting the weak) (Noor, 2021). In addition, CSOs play a role in securing independence and become a highly important national asset in the journey as a nation and State.

The existence of CSOs in Indonesia can be traced back to the colonial period of the Dutch East Indies. (One of the CSOs that took part in the dynamics of the national movement at that time was the *Sarekat Islam*. Until entering the gate of independence, various CSOs participated in realizing the ideals of national independence as enshrined in the 1945 Constitution).

¹Harja, I.T. (2022). *CSO Assessment Study on Legal and Political Environment for Developmental NGOs in Indonesia*. The said paper was prepared for the project, "Study on Legal and Political Environment for CSOs in Asia," implemented by the Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC) and supported by the Fair Finance Asia (FFA) through the Initiatives for Dialogue and Empowerment through Alternative Legal Services (IDEALS)].

At least three approaches can be implemented to understand the position of NGOs in Indonesia's socio-political formation. The first approach looks at NGOs from a vertical perspective. The vertical approach defines NGOs as independent, autonomous entities, not co-opted by the State; instead they tend to play a role as a means of controlling power outside the *trias politica*² institution. The vertical approach frames NGOs as organizations that contribute to the agenda of democracy, democratization, and democratic struggle.

The second approach views NGOs from a horizontal perspective. This approach defines NGOs as components of civil society that contribute to social harmony, such as aspects of tolerance and pluralism. According to Madjid, civil society means a just, open, and democratic society based on piety to God Almighty.³ This approach means that NGOs are supplements to the State, with the main agenda being to build a harmonious national culture through community work.

The third approach comes from Sujatmiko (2001). Applying Sujatmiko's approach means that to observe NGOs from two sides, vertically, and horizontally. The vertical side represents the relationship with the State, while the horizontal side looks at the relationship between NGOs and the democratization process in society. Sujatmiko's opinion is contextual with the contemporary era. In a democracy, public involvement in policy making and State oversight is necessary, and NGOs can play a role as a connector between the interests of civil society and the political community.

The collapse of the New Order (*Orba*) marked a new chapter in the dynamics of NGOs. The New Order regime co-opted almost all political and social institutions, including NGOs. Only a few NGOs were able to accommodate public aspirations during the New Order era. After such period, the space for NGOs has been expanding, along with political liberalization with the theme of "good governance" (good governance). The theme of good governance is based on the principles of participation, accountability and transparency. The political nature of good governance also supports a more dynamic NGO movement.

The presence of NGOs is increasingly relevant in the reform era. The relevance of the existence of NGOs is also supported by their capabilities in empowering and advocating for the community. NGO activists tend to be in direct contact with grassroots communities intensively.

² Further information concerning this matter, see: Sujatmiko, I. G. (2001). Wacana "Civil Society" di Indonesia. *Jurnal Masyarakat*, 9.

³ Further information concerning Civil Society, see: Bakti, A. F. (2005). Islam and Modernity: Nurcholish Madjid's Interpretation of Civil Society, Pluralism, Secularization, and Democracy. *Asian Journal of Social Science*, 33(3), 486-505. <http://www.jstor.org/stable/23654384>

In its development, the work carried out by NGOs was not without obstacles. Indeed, good governance requires a participatory policy-making process. However, there are many cases where NGO inputs are not heard in the policy-making process. On the other hand, some parties feel that the political and legal environment has not supported the contribution of CSOs in development.

There have been many studies that describe the history and development of NGOs in Indonesia. However, there are still few studies assessing the legal and political environment for developmental NGOs in the country. Therefore, this research aims to:

- provide a brief description of civil society organizations in Indonesia;
- assess the legal and political environment for developmental NGOs; and,
- present recommendations to empower and increase NGO participation in development in the country.

Methodology

This study was conducted to provide an overview and assess the legal and political environment for developmental NGOs in Indonesia. It employed descriptive research using the following data collection methods.

- *Desktop Research*. Researchers undertook literature review by utilizing all available channels (online and offline) to obtain legal documents, regulations, policies, and other relevant information related to the legal and political environment for NGOs in Indonesia.
- *In-depth Interview (IDI)*. The researcher conducted an IDI with the Ministry of National Development Planning/National Development Planning Agency (PPN/Bappenas) as well as with three NGO leaders and an academic. Unfortunately, the intended IDI with the Ministry of Home Affairs (Kemendagri) and the Ministry of Law and Human Rights (Kemenkumham) did not materialize.
- *Focus Group Discussions (FGDs)*. FGDs with first (age 40 years and above) and second (39 years and below) generation of CSO workers were conducted to identify the challenges that emerged and were faced by the sector. Each FGD was attended by eight participants with CSO activist backgrounds.
- *Weighting*. The weighting was carried out as a way to assess the opinion of the 16 NGO activists on the legal and political environment for developmental NGOs in Indonesia. The said instrument employed a questionnaire⁴ containing inquiries that represent all dimensions along with the assessment indicators. Respondents were asked to give a score for each of the existing assessment indicators. All scores on the indicators were then calculated on average as the final result that represented the general opinion of all respondents. The average

⁴ Refer to the full paper at https://angoc.org/wp-content/uploads/2022/11/Legal_and_-_political_Indonesia_final_upload.pdf

score of all indicators was then added up to determine the weight of each dimension and theme. For the efficiency of the data collection process, the weighting was carried out after the completion of each FGD process. Thus, an assessment of the legal and political environment for developmental NGOs in Indonesia was carried out constructively.

The weighting consisted two domains: the legal framework and the political environment. Within the legal framework domain, there were three dimensions: (a) registration, (b) funding, and (c) accountability mechanisms. On the other hand, the domain of the political environment had four dimensions: (a) freedom, (b) information, (c) partnership, and (d) participation. Each domain had a maximum score of 100. To assess whether the domain of the legal environment and the domain of the political environment were supportive, regulatory, or closed, the researchers divided the rankings as follows:

- Score >70-100: supportive/open
- Score >40-70: regulative
- Score <40: restrictive/closed

Research Scope and Limitation

This research focused on describing the legal and political environment for developmental NGOs in Indonesia using selected indicators.

This study had limitation in terms of the number of in-depth interview sources: only one government representative, an academician, and three NGO leaders, all of which were conducted in DKI Jakarta. In addition, the respondents involved in the weighting were sixteen NGO activists, not involving other stakeholders such as government officials, academics and beneficiaries of social services.

History and evolution of civil society in Indonesia

In Indonesia, the development of NGOs began at least in the late 1960s and early 1970s when the New Order began its reign. Although the New Order was able to maintain the stability of economic growth, the general condition of the community was shackled by poverty and restricted participation – which made the NGOs in the country to take part in the process of social and economic development.

In the 1970s, NGOs focused on problematic development programs. According to Fakih (1996), in the 1970s, NGOs were considered unable to offer alternative development paradigms but tended only to try to “update” and propose reactions to development methodologies and practices, without questioning the basic assumptions of modernization (Fakih, 1996).

Groups from the academe (students and intellectuals who understood the then socio-economic problems) were the first to drive the formation of NGOs. In the 1980s, NGOs began to grow and carried out empowerment and advocacy work – which brought transformative ideas for alternative development from developmentalism implemented by the New Order (Fakih, 1996). This was considered an initial milestone for the independence of NGOs as non-State actors.

Entering the 1990s, NGOs in Indonesia began to face the issue of human rights – as a consequence of the advocacy work carried out both for the addressing of environmental issues and agrarian conflicts. The emergence of human rights issues is in line with the increasingly authoritarian and repressive character of the New Order regime. This then contributed to the birth of the pro-democracy movement.

In the 1990s, NGOs started working on the defense and protection of socio-economic rights such as land rights, the right to decent work, gender equality, among others. NGOs have emerged as one of the actors fighting for the reform agenda.

In 1997, Indonesia was hit by economic and political crises that triggered massive student demonstrations in major cities in the country. Majority of NGOs supported student demonstrations and the ongoing reform agenda. Eventually, President Suharto of the New Order resigned in May 1998, after 32 years in power.

The fall of the New Order has fostered the freedom of association, assembly, and expression among citizens, marking the emergence of new NGOs in Indonesia.

In order to ensure the success of the reform agenda, NGOs have reaffirmed their alignment with civil society. NGOs realized that the interests of the people cannot be accommodated in an authoritarian State order. Hence, NGOs went beyond the work of a casuistic nature. NGOs played the role of guarding the interests of the civil society in the process of policy formulation and implementation.

In the post-New Order development, NGOs have developed rapidly, both in terms of number and variety of issues that became the focus of their work. In addition, the NGO work has extended to other various interventions – i.e. among others capacity building of communities, participation in policy-making and evaluation, defending civil rights, social and economic empowerment for the communities, and educating the public regarding public issues through campaigns.

Definitions and characteristics of NGOs in Indonesia

In Indonesia, NGOs are known by various names. However, they are generally known as *Organisasi Non-Pemerintah (Ornop)* or *Lembaga Swadaya Masyarakat (LSM)*. NGO is defined as a group or organization in which the individuals in it have a common interest that is non-profit, voluntary, and works with a variety of scopes of work at the local, national, or international levels.

For the government, NGOs are defined as community organizations (*Ormas*) in general. Through Law Number 16 of 2017 (UU 16/17), Community Organizations, hereinafter referred to as *Ormas*, are organizations established and voluntarily formed by the community based on common aspirations, desires, needs, interests, activities, and goals to participate in development for the sake of achieving the goals of the Unitary State of the Republic of Indonesia based on *Pancasila* and the 1945 Constitution of the Republic of Indonesia (Article 1 of Law 16/17).

The various definitions of NGOs make the identification of characteristics and categorization of NGOs in Indonesia increasingly diverse. To understand the characteristics of NGOs in relation to the relationship between NGOs and the government and society, Philip Eldridge (1995) divides NGOs into three categories: (a) CSOs that are oriented towards high-level cooperation [high level partnership: grassroots development], (b) CSOs that are oriented to high-level politics: high level politics [grassroots mobilization], and (c) CSOs that are oriented to strengthening grassroots [empowerment at the grassroots].

- *High Level Partnership: Grassroots Development.* NGOs in this category are organizations that have a tendency to implement a collaborative agenda on government development programs and policies to ensure that these programs and policies run in a participatory manner.
- *High Level Politics: Grassroots Mobilization.* In this category, NGOs are seen as organizations that are active in political activities. This type of NGO restricts itself from being directly involved in the implementation of development policy programs carried out by the government. The cooperation with the government is usually only in the form of research, training, and community empowerment.
- *Grassroots Strengthening: Empowerment at the Grassroots.* This type of NGO usually focuses on raising awareness and empowering grassroots communities, which is a combination of the previous two types. Such group of NGOs is not always interested in collaborating with the government.

Developmental NGOs

As of January 2022, the number of registered CSOs in Indonesia is 512,997 (Ministry of Home Affairs, 2022) – of which, 202,903 are associations; 307,434 are foundations; and, 56 are foreign CSOs. Meanwhile, the number of non-legal organizations⁵ registered with the Ministry of Home Affairs as of 2 June 2022 is 2,322.

In general, the Ministry of Home Affairs divides CSOs into two categories, namely Legal Entity Organizations and Non-Legal Organizations. In contrast to the Ministry of Home Affairs, to be more specific, through Standard Norms and Regulation No. 3 concerning the Right to Freedom of Association and Organization, the National Human Rights Commission divides CSOs into several types, namely:

- Religious organizations function as channels to manifest the fundamental right to freedom of religion or belief.
- Political parties are associations whose one purpose is to participate in the management of public affairs, including through the presentation of candidates for free and democratic elections.
- Labor union is an organization in which workers seek to promote and defend their common interests.
- Human rights defenders are people who act individually or in association with others to promote and seek the protection and realization of human rights and fundamental freedoms at the local, national and international levels.
- Non-governmental organizations are established to achieve certain goals, especially social, with various types and forms, including various legal entities.

Legal environment for the registration and operation of developmental NGOs

Registration and reporting

Article 28 of the 1945 Constitution states that freedom of association, assembly, and expression is part of human rights in the life of the nation and State. The formation of NGOs is allowed as long as it does not conflict with *Pancasila* and the 1945 Constitution of the Republic of Indonesia. In its implementation, NGOs, which are then called CSOs, are regulated by Law Number 16 of 2017 (UU 16/17), Law Number 2 of 2017 (PERPPU 2/17), and Law Number 17 of 2013 (UU 17/13).

CSOs can take the form of legal entities and can be member based or non-member based (Article 10 of Law 17/13). CSOs with legal entities can take the form of

⁵Non-legal organization is an unregistered organization in the Ministry of Home Affairs and Ministry of Justice and Human Rights.

associations or foundations. Associations are established on a member basis, while foundations are established on a non-member basis (Article 11 of Law 17/13). The legal entity of an association is established by fulfilling the requirements as stipulated in Article 12 of Law 17/13 as follows:

- Deed of establishment issued by a notary containing AD and ART (Memorandum of Association and Articles of Association);
- Work program;
- Sources of funding;
- Certificate of domicile;
- Taxpayer identification number on behalf of the association; and,
- A letter stating that the organization is not facing a management dispute or having a case in court.

In contrast to associations, legal foundation entities are regulated in Law Number 28 of 2004, amending Law Number 16 of 2001.

In relation to registration, CSOs are declared registered after obtaining legal entity approval. After obtaining legal entity status, CSOs do not require a Registration Certificate or SKT (Article 15 of Law 17/13).

If CSOs are not registered as legal entities, they may be given an SKT which is given by the Minister for CSOs that have a national scope, by the Governor for CSOs that have a provincial scope, or by the Regent/Mayor for CSOs that have district/city scope (Article 16 Paragraph (3) of Law 17/13).

For foreign CSOs, they are required to have a principle permit and an operational permit. Principle permits are granted by the Minister of Foreign Affairs, while operational permits are granted by the Government and Regional Governments.

Local NGOs that are not registered still have the right to exist as long as their activities do not conflict with *Pancasila*, the 1945 Constitution, laws and regulations, do not interfere with security; do not disturb public order; do not violate the rights of freedom of others; and, do not conflict with moral and religious values. This is in accordance with the *a quo* law.

Article 40 of Law 17/13 mandates that government must empower CSOs to improve performance and maintain the survival of CSOs. Empowerment of CSOs is carried out through policy facilitation; strengthening institutional capacity; and, improving the quality of human resources.

Financing NGO operations

There are several sources of funds for CSOs:

- *Grants* are project funds or core funds, sourced from domestic and international institutions, for example: international NGOs, international donor agencies, domestic donor agencies, and the government;
- *Donations*, which are endowments, given once or regularly, and can come from fundraising (usually from individuals, companies, or foundations);
- *Voluntary funds*, which are funds from service activities carried out by NGOs, including sales of products and training services; as well as sales and technical assistance from the government, community, and interest groups both domestically and internationally; and,
- *In-kind (non-monetary) contributions*, such as free work and office space.

Referring to *The 2016 CSO Sustainability Index for Asia*, almost all CSOs in Indonesia rely on international donor funding. Domestic sources of funding account for only about 20 percent of the overall budget for CSOs in Indonesia (USAID, n.d.).

Funding from foreign institutions must be managed transparently and accountably using accounts at national banks. Foreign assistance can also be in the form of money, goods, expert services, grants, and/or loans that are not binding. To be able to access foreign aid, NGOs must be registered with the Ministry of Home Affairs.

Presidential Regulation No. 18 of 2017 states that NGOs are required to identify the terms of donations received from countries that are declared inadequate in implementing international standards in the field of prevention and eradication of money laundering and terrorism funding. In *Perpres* (Presidential Regulation) 18/17, it is stated that CSOs must refuse to accept donations and cooperate if the donor, Individual or corporation refuses to provide information, or if their identity is included in the person or corporation included in the list of suspected terrorists issued by the National Police of the Republic of Indonesia.

NGOs may also be recipients of Official Development Assistance (ODA), often not directly, but through government intermediaries, international organizations, or the private sector.

Article 37 of Law 17/13 states that finances of CSOs can come from one of the sources of the State budget and/or regional revenue expenditure budget. This means that NGOs have the opportunity to access APBN/APBD (State budget/regional budget) funds.

CSOs may also receive funds from government in implementing certain services. Presidential Regulation 16/18 concerning Government Procurement of Goods/

Services regulates the existence of a new type of self-management between the government and CSOs and special procurement in the field of research. CSOs are selected based on their competitive advantage in the self-managed field.

In addition, the State through the Supreme Court includes civil society organizations providing legal advocacy as the *Posbakum Court Posbakum* (Legal Aid Post) Service Provider.

Tax exemptions

In Indonesia, regulations governing the provision of tax incentives for philanthropic activities are regulated in Law No. 7 of 2021. This law mentions that “donated assets received by blood relatives in a straight line of one-degree, religious bodies, educational bodies, social institutions including foundations, cooperatives, or private individuals who run micro and small businesses, are excluded from the object of income tax as long as there is no relationship with the business, occupation, ownership, or control between the parties concerned.” This means that grants received by NGOs functioning as research or educational bodies, social institutions, including foundations and cooperatives, are free from income tax.

For NGOs incorporated as cooperatives, partnerships, and associations, the share of profits or the remainder of the operating results received or obtained by members from cooperatives, limited partnerships whose capital is not divided into shares, partnerships, associations, firms, and shares, including unit holders of collective investment contracts, are exempt from income tax objects.

Any excess received or obtained by a registered non-profit agency or institution engaged in education and/or research is exempt from income tax, as long as it is reinvested in the form of facilities and infrastructure for education or research within a maximum period of four years from the acquisition of the excess. Similarly, excesses received by registered social and/or religious entities are exempt from income tax so long as the excess is reinvested in social and religious facilities and infrastructure within four years since the excess is obtained, or placed as an endowment fund.

NGO accountability

NGO accountability in general can be seen from two sides. The internal side (how the NGO is able to fulfil the mission and goals of the organization) and the external side (the need to meet certain standards such as donors).

The government requires NGOs to make financial accountability reports in accordance with general accounting standards based on AD/ART. This is intended for NGOs that collect and manage funds from member fees (Article 38 of Law 17/13). Article 38 of Law 17/13 also states that CSOs are required to periodically publish financial reports to the public. For NGOs established by foreigners, they are required to make periodic reports to the Government or Regional Government, and to publish to the public through the Indonesian language mass media (Article 51 of Law 17/13).

Baswir (2004) assesses that transparency and accountability are not solely focused on financial issues, what is more important is program transparency and accountability as an integral part of the mission of the organization or NGO itself. For this reason, in addition to financial audits, performance audits also need to be emphasized.

Nurbatin (2015) mentions several parameters that are used as a reference in measuring the degree of accountability and transparency of NGOs:

- There is evidence of reporting to the public regarding information related to organizational performance (financial and performance reports, organizational activities) in an accurate, measurable, timely, clear, and consistent manner through the national mass media.
- In accessing this information, the public is given convenience.
- The application of accounting principles and internal and external audits as commonly used widely.
- There is clarity of functions, rights, obligations, authorities, and responsibilities in the basic agreement between the organs of the institution.
- Have guidelines and systems to ensure implementation, including the obligation to obey the law.
- There is a system of upholding honesty (integrity) in discipline, sanctions, and personal performance appraisals.
- There is a standard setting and due diligence mechanism in staff recruitment and fundraising that ensures the independence of the organization in relation to the government and the private sector.

Assessment of the legal framework

Of the 16 NGO activists who conducted the assessment, it was found that the average score for the legal framework theme was 54 – “regulative” (See Table 1).

Table 1. Results of the legal framework assessment

Indicator	Score
Tax exemption for donors and recipients	64
Accountability to the public	60
Requirements and registration process	59
Access to foreign funding	58
Average score	54
Participation in the use of ODA	53
Accountability to the government	52
Registration obligations and the right to organize	48
Access to government funding	38

Source: processed in research

The highest score was obtained by the tax exemption indicator for donors and grantees (64), followed by public accountability (60), and requirements and the registration process (59).

Indicators with scores below the average legal framework index are participation in the use of ODA (53), accountability to the government (52), registration obligations and organizational rights (48), and access to government funds (38).

The only indicator within the legal framework that is *restrictive/closed* is the indicator of access to government funds (38). It is known that some NGOs have obstacles in relation to organizational finance. The presence of the government in providing programmatic-based funding support to NGOs is actually fundamental, especially for NGOs that have good performance in social development, but are hampered by funding problems.

The current NGO legal framework index is predicted to be regulative in the next five years. NGO activists assess that there are aspects of the legal framework that tend to support the development of NGOs, on the other hand there are also aspects that tend to limit the work of NGOs.

There are also NGO activists who think there are too many regulations in the legal framework for NGOs in Indonesia. An example is when accessing foreign funds requires a verification and "screening" process by a Ministry/Institution before NGOs can carry out activities funded by foreign NGOs.

While the regulation of access to foreign funding is strict, NGOs feel that the government does not provide funding support for the progress of NGOs. In addition to Self-Management Procurement Type III which has not been implemented by all K/L and OPD, and the close bidding mechanism in government technocratic projects, NGOs have observed that Law No. 16 of 2011 concerning

Legal Aid has not been implemented effectively by the government to support the operational needs of legal aid organization in conducting litigation and non-litigation activities.

Government-CSO relations

The right to expression, assembly, and expressing opinion

The 1945 Constitution Article 28E paragraph (3) states, "Everyone has the right to freedom of association, assembly, and expressing opinions." This democratic right is also in line with Article 9 of the Universal Declaration of Human Rights, "Everyone has the right to freedom of opinion and expression, in this case including freedom to hold opinions without interference and to seek, receive and impart information and opinions through anything and regardless of frontiers."

In addition, Indonesia has ratified the International Covenant on Civil and Political Rights (ICCPR) through Law No. 12 of 2005. The ICCPR stipulates the right of people to hold opinions without interference from other parties and the right to freedom of expression (Article 19). Furthermore, the Covenant also stipulates the recognition of the right to peaceful assembly (Article 21); and, the right of everyone to freedom of association (Article 22).

Law No. 9 of 1998 concerning Freedom of Expressing Opinions in Public lays down five principles that form the basis for expressing opinions in public, namely:

- The principle of balance between rights and obligations;
- The principle of deliberation and consensus;
- The principle of certainty of rights and obligations;
- The principle of proportionality; and,
- The principle of consensus.

In practice, the ways of conveying expressions in public are quite diverse. As something universal, freedom of expression can include the expression of political or cultural ideas through oral, print, audio, visual, audio-visual media, including painting or literary works. Through Law No. 9/1998, freedom of speech in public is the delivery of opinions which may include speeches, dialogues, discussions, written petitions, pictures, pamphlets, posters, brochures, leaflets, banners, silent act, or hunger strikes.

While people can now use the social media to express their criticisms about the government, the State regulates the online social platforms through the Law No. 19 of 2016 concerning Amendments to Law No. 11 of 2008 regarding Information and Electronic Transactions or the ITE Law.

The ITE Law strictly controls the circulation of information in cyberspace by "everyone intentionally and without rights distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents that have insulting and/or defamatory content" (Article 27, paragraph 3) and by those who "intentionally and without rights disseminates information aimed at causing hatred or hostility to certain individuals and/or community groups based on ethnicity, religion, race, and intergroup" (Article 28, paragraph 2).

The Head of the Freedom of Expression Division of the Southeast Asia Freedom of Expression Network (SAFEnet) interprets Article 27, paragraph 3 as most often used to ensnare legitimate freedom of expression and repress citizens, activists, journalists, or the media. Meanwhile, Article 28, paragraph 2 can repress the minority of citizens who criticize the police and the government (Katadata.co.id, 2021).

The right to information

The right to information (*right to know*) is one of the fundamental rights recognized by the world. In Indonesia, the right to information is regulated under Law No. of 2008 concerning Public Information Disclosure (UU KIP). The UU KIP aims that every citizen has the right to obtain public information in accordance with the applicable legal basis.

The definition of information can be referred to in Article 1, paragraph 1 of the UU KIP which states, "information is description, statements, ideas, and signs that contain values, meanings, and messages, both data, facts, and explanations that can be heard and read presented in various packaging and formats according to the times, both electronic and non-electronic."

Meanwhile, Article 1, paragraph 2 of the same Law states that public information is information that is produced, stored, managed, sent, and/or received by a public agency related to administration and State administration and/or other public agency administrators and administration according to the law as well as other information relating to the public interest.

In general, UU KIP contains: (a) the right of everyone to obtain information, (b) public bodies are obliged to provide and serve requests for information in a fast, punctual, low/proportional cost, and simple way, (c) exceptions are strict and limited, and, (d) public bodies are obliged to fix the system of documentation and information services (Fauzin, 2011).

In addition to the UU KIP, there are a number of regulations that normatively guarantee the right to public information in certain sectors, such as in Spatial

Planning (Law No. 24 of 1992), Environmental Management (Law No. 23 of 1997), Implementation of a State that is Clean and Free from Corruption, Collusion, and Nepotism (Law No. 28 of 1999), Eradication of Criminal Acts of Corruption (Law No. 31 of 1999), Human Rights (Law No. 39 of 1999), and the Press (Law No. 40 of 1999).

On the other hand, there is public information that is excluded. Based on Article 17 of UU KIP, information that is exempted from being disclosed in public should meet the following provisions: (a) hindering the law enforcement process; (b) interfering with the interests of protecting intellectual property rights and protection from unfair business competition; (c) may endanger the defense and security of the State; (d) disclose Indonesia's natural wealth; detrimental to national economic resilience; (e) detrimental to the interests of foreign relations; (f) disclosing the contents of the authentic deed which is personal and the final will or will of a person; and, (g) disclosing personal secrets.

Government-NGO partnership

In the dynamic development of NGOs in Indonesia, many NGOs have demonstrated their skills in providing social services, which can contribute to social and national development. Especially after the reform, many NGOs are able to work professionally together with government agencies and international institutions. Therefore, opening the door to a wider partnership between the government and NGOs has the opportunity to maximize national development work in a participatory and inclusive manner.

One form of Government-NGO partnership is the existence of Self-Management Procurement Type III. Such partnership is planned and supervised by the Ministry/Institution/Regional Apparatus (K/L/PD) responsible for the budget and is implemented by the CSO. Self-Management Procurement Type III is considered a new dimension of partnership between the government and NGOs for development innovation in the procurement of government goods/services (Efendi et al, 2019). Self-Management Procurement Type III is implemented to meet the needs of government goods/services whose competence is demonstrated by NGOs, such as community assistance programs, education and health services, to research in encouraging policy strengthening.

Self-Management Procurement Type III is a derivative of Presidential Regulation No. 12 of 2021 concerning Amendments to Presidential Regulation No. 16 of 2018 concerning Procurement of Government Goods/Services. The Presidential Regulation was drafted to accelerate and facilitate the implementation of government procurement of goods/services, simplify, provide value, to ease in controlling and supervising hence as to improve the quality of public services, as well as, to increase national development and economic equity.

The significance of Presidential Regulation 16/18 is as a legal umbrella to involve NGOs in providing goods/services needed by the government through Self-Management Procurement Type III. This modality is planned and supervised by the K/L/PD responsible for the budget and is implemented by an NGO, which is referred to as the Self-Management Implementing CSO.

The involvement of NGOs in Self-Management Procurement Type III provides an opportunity for the community to not only be the object of development, but also to be involved in the procurement process that supports development. The main objectives of Self-Management Procurement Type III are: (a) assisting the government in improving the quality and range of services, (b) increasing community participation in the development process, (c) increasing the effectiveness and efficiency of CSO performance, and, (d) improving the technical capabilities of human resources.

Wibawa (2020) states the existence and dynamics of the development of community organizations and changes in the government system have created a new paradigm for regulating CSOs in the life of society, nation and State, especially in terms of procurement of goods/services. This policy is the legal basis for the government to provide space for the community and for the NGOs to be actively involved in the national development (Wibawa, 2020).

Policy participation

In the midst of decentralized development, NGOs can position themselves as a forum for civil society participation in development. This has even been acknowledged in writing since the New Order through the Instruction of the Minister of Home Affairs (Inmendagri) No. 8 of 1990 concerning the Development of Non-Governmental Organizations. The said policy states that NGOs are a forum for community participation in development to improve the standard of living and welfare of the community.

Participatory development can be interpreted as having space for the community to provide input and participate in deciding a policy, regulation, product, and the budget allocation.

In the era of regional autonomy, the opportunities for community participation in development are also influenced by the role of a local government. In Law No. 32 of 2004 concerning Regional Government, it is stated that local governments have the right to regulate and manage their own government affairs according to the principles of autonomy and co-administration. Local governments are directed to accelerate the realization of community welfare through improvement, service, empowerment, and community participation.

In the context of the formation of laws and regulations, community participation is mentioned in Law No. 13 of 2022 concerning Amendments to Law No. 12 of 2011 concerning the Establishment of Legislative Regulation (UU PPP). In the elucidation of the UU PPP, it is stated that "Strengthening meaningful community involvement and participation is carried out in an orderly and responsible manner by fulfilling three prerequisites: the right to be heard; the right to be considered; and, the right to obtain an explanation or answer to the opinion given (right to be explained)."

Engagement in public consultation

Environmental policies such as the Law No. 32 of 2009 concerning Environmental Protection and Management Law (UU PPLH) require public consultation. Article 1 of the Law mandates for the conduct of *"a study of the significant impact on the environment from a planned business and/or activity, to be used as a prerequisite for making decisions regarding the implementation of a business and/or activity and contained in a business permit or approval from the central government or the regional government."*

Furthermore, the involvement of environmental NGO activists in the Environmental Impact Assessment (EIA) can be referred to in Article 26, paragraph 3 of the UU PPLH which states that the EIA document is prepared by the community who have a direct impact, environmentalists, and/or who are affected by all forms of decisions in the EIA process."

However, the Job Creation Law makes the involvement of NGO activists in the environmental sector as a representation of "environmental observers" in the UU PPLH unclear. Article 26, paragraph 2 of the Job Creation Law only states, "The preparation of the EIA document is carried out by involving the community who are directly affected by the planned business and/or activity." In the article, the phrase "environmental observer" is not found as stated in the UU PPLH.

In addition, through the Minister of Home Affairs Regulation No. 80 of 2015 concerning the Establishment of Regional Legal Products, NGOs have the opportunity to be involved in the preparation of academic texts as the basis for the Regional Regulation Draft.

Another form of democratic participation that can be carried out by NGOs in the context of monitoring local governments is the supervision of Provincial/Regional Legislative Council members. The Minister of Home Affairs Regulation 80/2015 Article 50 states that any person, group, or organization may submit a complaint to the honorary body of the Provincial Legislative Council if there is sufficient evidence that there is a member of the Provincial Legislative Council who does not

carry out one or more obligations and/or violates the provisions of prohibitions and sanctions in accordance with the provisions of the legislation.

More broadly, the monitoring of the State is conducted by NGOs through the media.

Engagement in budgeting

In the last two decades, Indonesia has attempted to implement budget reforms. Budget reform is a government policy that is linear with efforts to eradicate corruption in Indonesia. The budget decentralization carried out through fiscal decentralization has been implemented since 1999, diverting approximately 40 percent of the State budget to the regional level through balancing funds. Sourced from the problem of autocracy, there is a need for reform through budget democratization. Pratiwi (2012) stated that democratization in the budget sector includes participation of the people, accountability and transparency by the people, and responsiveness to the people.

Participatory budgeting consists of a series of planning processes through the Development Planning Conference (*Musrenbang*). Based on the budget cycle contained in each district/city budget, NGOs can participate in four stages of the process (Pratiwi, 2012, p. 30):

- ***Budgeting***. The determination of the budget ceiling starts from the five-year plan in the form of the Regional Medium-Term Development Plan (RPJMD) and the Regional Government Work Units Strategic Plan, as well as the annual plan in the form of the Regional Government Work Plan (RKPD) and the Regional Government Work Unit (SKPD) Work Plan.
- ***Analysis***. It begins when the budget is presented in front of the council which allows for an in-depth review of the budget by the Provincial/Regional Legislative Council. This stage is highly dependent on the political situation and institutional environment. Here, NGOs can play a role in analyzing the Regional Budget.
- ***Identifying whether the allocation of funds is really effective, efficient, punctual, and on target*** after the council approves the Regional Budget.
- The final stage in the budget cycle involves *reviewing the indicators of success*. Indicators should already be contained in the planning document, be it RPJMD, RKPD, or SKPD Work Plan.

The participation of NGOs in budgeting is necessary because the preparation of the Regional Budget is not enough just to be carried out by formal institutions from the executive or legislative elements. According to Pratiwi (2012), NGO participation in

the budgeting process can encourage the use of a budget that is more in line with the interests of the community.

A study conducted by Pratiwi (2012) related to the experience of NGO “participatory budgeting” advocacy in Yogyakarta found that development success can be realized by involving community members from the beginning of the activity process in the preparation of development plans. The involvement of community members in Development Planning Conference in their respective regions cannot be separated from the assistance provided by NGOs.

Assessment of the political environment

The political environment of developmental NGOs in Indonesia had an average score of 47, which means it was regulative. The indicator with the highest score was freedom of assembly (71), which meant that the political environment was open to freedom of assembly or organization. The indicator with the second highest score was freedom of expression (63), followed by freedom of opinion (61), involvement as an expert (53), and involvement in public consultations (50), all of which showed a regulatory nature.

Regarding freedom of assembly (71), NGO activists considered the political environment to be quite supportive. The legal framework of NGOs (CSOs) also did not limit citizens to establish organizations and/or be involved in an organization, as long as the organization did not conflict with *Pancasila* and the 1945 Constitution. Thus, it can be understood why this indicator had the highest score and was deemed as supportive in the political environment index.

The next indicators that achieved the second and third highest scores were freedom of expression (63) and freedom of opinion (61), both of which were considered as regulative. NGO activists assessed that the overall political environment for freedom of expression and opinion was regulative, on the one hand, there were few of the many policies that seemed to limit freedom of expression and opinion; there were cases of violations of the right to freedom of expression and opinion that can be categorized on a minor scale, which occurred in certain cases. Strict policies governing freedom of expression and opinion that were of concern to NGO activists included the ITE Law.

Another challenge for NGO activists in enjoying freedom of expression and opinion no longer only comes from State actors, but also from non-State actors, who are familiarly known as “buzzers” who support the government.

“Now it is not only the State that monitors it, but the State buzzer is also carrying out what is called restrictions on freedom of expression, (and) assembly.” (Iwan Nurdin, Director of the LOKATARU Foundation)

Apart from monitoring the freedom of expression and opinion in the digital world, another challenge in the right to freedom of expression and opinion lies in the area of conflict advocacy, especially agrarian conflicts. It is experienced by Dwi Astuti, Director of the Bina Desa Foundation, that freedom of expression and opinion in Indonesia is not constant.

"The main problem is agrarian injustice in the countryside. Now, when they move, they often experience repression from the police and even use "organization of violence" in quotation marks in the regions. In my opinion, this is not in line with the freedom promoted by the government itself, which is said to be committed and respects it." (Dwi Astuti, Director of the Bina Desa Foundation)

Despite frequent buzzer attacks and repression by security forces in advocating for conflict, in general, freedom of expression and opinion in Indonesia has not yet been categorized as an "emergency." Ah Maftuchan, the Executive Director of PRAKARSA Association, said that although there are problems in the ITE Law, at a macro level, freedom of expression in Indonesia is maintained. When compared to the New Order era, freedom of expression and opinion is now much better. Moreover, when compared to several other developing and neighboring countries, democracy in Indonesia is relatively better.

Two other indicators that fall into the regulatory category were the indicator for involvement as an expert (53) and the indicator for involvement in public consultations (50). Even though they were in the regulatory category, both indicators were close to the restrictive/closed category. Several NGO activists admitted that they had been involved as experts in a Ministry/Institution (K/L), and their institutions were involved in public consultations. However, not all K/L had engaged NGO activists as experts. Among the ministries/agencies that were rated to be quite good at regularly involving NGO activists was the Ministry of National Development Planning.

The observation for indicators of involvement in public consultations (50) was that these activities had not been carried out by K/L and local governments in a meaningful way, or in other words, more of a mere "formality."

"Actually, participation in Indonesia is not what many CSOs idealize. Participation carried out by the government is simply aborting obligations. As basically what should be called participation is not socialization, and often the government does what is called public participation when plans and drafts of the plan have entered a phase called 'final', not far from the definition of socialization, but using the 'term' "participation." (Iwan Nurdin, Director of the LOKATARU Foundation)

Table 2. Political Environment Assessment Results

Indicator	Score
Freedom of expression	63
Freedom of assembly	71
Freedom of opinion	61
Information: Data Disclosure	33
Information: Access to Data	34
Partnership: Involvement in the provision of public services	35
Partnership: Involvement as an expert	53
Participation: Involvement in public consultation	50
Participation: Involvement in public budgeting	26
Average score	47

Source: processed in research

In the political environment index, there are four indicators that score below the average political environment index score, which is also considered by NGO activists to be restrictive/closed. These indicators are: involvement in the provision of public services (35), access to data (34), data disclosure (33), and involvement in budgeting (26).

The low score on the indicator on public services correlates with the indicator on access to government funding (38) in the legal framework domain. Weak government funding to NGOs has resulted to limited space for NGOs to partner with the government in providing public services. The existence of a Government-NGO partnership scheme through Type III Self-Management is also not optimal, because not many ministries/agencies and Regional Apparatus Organizations have implemented Type III Self-Management. On the other hand, the technocratic projects offered by ministries/agencies to NGOs, in practice, are mostly still through a close-bidding scheme. From the point of view of NS, an official at the Ministry of National Development Planning, in order to increase NGO participation in the provision of public services, NGOs also need to improve their ability to provide public services and increase their accountability to the public. It is recognized that progress has been made in the involvement of NGO activists as experts and the involvement of NGOs in public consultations in several K/L or OPD in certain areas, but this has not been carried out simultaneously and regularly in all K/L and in all local governments.

The next indicators that are closed are access to data (34) and data disclosure (33). NGO activists assess the difficulty of finding the data needed for NGO work such as research and advocacy, while accessing it is often not provided by certain government agencies.

"We have never asked for a chronology of Indonesian State Forest Company land. The case (agrarian conflict) in West Java, the agricultural land owned by farmers was taken over by Indonesian State Forest Company. When farmers tried to claim it, the land was not returned (Indonesian State Forest Company)." (Dwi Astuti, Director of the Bina Desa Foundation)

Difficult access to unpublished data is exacerbated by the government's lack of transparency in providing public information. For example, if there are international trade negotiations conducted by the government, the public rarely obtains information about the course of the negotiations and suddenly an international trade negotiation has been agreed without any consultation to the public, (Dwi Astuti, Director of the Bina Desa Foundation). Even though there is a UU KIP, in practice the government is considered less transparent.

The indicator of the political environment index with the lowest score is the indicator of involvement in budgeting (26) which is closed. Ideally, good governance contains elements of participatory budgeting. However, NGO activists assess that such process in Indonesia is still far from ideal.

The current NGO political environment in Indonesia is generally regulative with a score of 47. However, the score is near to 40, which means that the political environment is closed and restricts the dynamics of NGOs. Based on the opinion analysis of the NGO activists involved in this research, the political environment for Developmental NGOs in Indonesia in the future has a closed/restrictive tendency if there is no improvement in the area of participatory public policy, increased transparency in governance and, guarantees for other civil freedom.

The main thing that needs to be strengthened by the government is to recognize the role of NGOs in development by opening wider doors for NGOs to engage in budgeting, engage in more qualified and meaningful public consultations, and engage in public service delivery.

In order to build a political environment that strengthens the contribution of NGOs in development, both NGOs and the government must understand each other that the two sectors are development actors. Thus, the government together with NGOs can work together to maximize national development programs and social development.

WS, an official within the Ministry of National Development Planning admitted that the public services provided by NGOs were outstanding. Therefore, if it is increased, the participation of NGOs in the provision of public services by partnering with the government can be more open.

"In the field of 'public services', community empowerment, I believe my friends (NGOs) have a lot of creativity, for instance in the world of agriculture, etc. I see many (NGOs) building communities, mobilizing community potential, driving production from regions and I applaud that." (WS, Official within the Ministry of National Planning Development)

Conclusions and recommendations

The legal and political environment for developmental NGOs in Indonesia as a whole is *regulative*.

An assessment of the legal framework and political environment has provided an overview of the main challenges faced by developmental NGOs in carrying out national/social development work. Within the legal framework, the main challenge for NGOs is access to government funds to support social service activities of NGOs.

Another major challenge stems from the theme of the political environment. The government, both central and local, is considered to have almost never or rarely involved NGOs in the provision of public services.

Second, in relation to transparency, NGOs consider that the government is restricting public information. NGOs observe, overall, that it is very difficult to access data that is not published by the government. In addition, public information issued by the government is still very far from being open, because there is still a lot of information that is excluded.

Another challenge is the issue of budgetary involvement. Participatory budgeting as an element of democratic participation is considered far from ideal.

Based on the findings that have been put forward, this study recommends:

- The President of the Republic of Indonesia must establish an NGO Endowment Fund. Such facility is intended for NGOs to support social development work such as community empowerment, advocacy and research, and many more.
- State Ministries and Institutions should implement Self-Management Procurement Type III in their internal agencies. In addition, the Ministry of Home Affairs must issue regulations regarding the obligation to implement Self-Management Procurement Type III in local government circles.
- State Ministries and Institutions, and Regional Government Organizations should make it easier for NGOs to access the data and/or information needed. As long as the data and/or information are needed for the purposes of empowerment, advocacy, research, and other productive matters and do not interfere with national security, the government must provide the requested data and/or information.
- The President of the Republic of Indonesia, the House of Representatives, State

Ministries and Institutions, and Regional Government Organizations must increase the transparency of public information disclosure.

- The President of the Republic of Indonesia, the House of Representatives, State Ministries and Institutions, Regional Government Organizations, and Village Governments should improve the quality of participatory budgeting. Such condition can be achieved through the involvement of NGOs in Development Planning Conference at every level of State administration to ensure the accuracy of development programs and budget allocations are on target, while ensuring that the aspirations of civil society are accommodated in development programs.
- The President of the Republic of Indonesia, the House of Representatives, State Ministries and Institutions, Regional Government Organizations, and Village Governments should build a tradition of social dialogue with relevant civil society representatives. Social dialogue is needed as a common forum to formulate a solution to a developing public problem.
- The Indonesian National Police must be reformed. It is hoped that there will be no more repression from the police in regulating the course of demonstrations as a form of civil society's freedom of expression and opinion.
- NGOs should strengthen their capacity to produce evidence-based policy recommendations in policy advocacy work to strengthen the position of NGOs in lobbying with policymakers and support public opinion building.
- NGOs must establish social enterprises as a source of organizational financing. The existence of a social enterprise unit can reduce dependence of NGOs on external financing sources while at the same time strengthen the autonomous position of NGOs.
- NGO activists should build strategic communication forums to discuss matters related to the work of NGOs, open up opportunities for collaboration, and to build political power in terms of influencing public policies for social change. ■

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