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Freedom of Association as a Pillar of The Democratic Rule of Law: A Normative Study of The ICCPR 1966 and Indonesian Law

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Article Info	Abstract
Keywords: <i>Freedom of Association; Human Rights; Democratic Rule of Law; ICCPR; Indonesian Law.</i> Received : 10 May 2026 Revised : 16 July 2026 Accepted : 22 July 2026 *Corresponding author: fatma.faisal@unkhair.ac.id  10.63288/jlc.v2i2.23	<i>Freedom of association is a fundamental civil and political right that constitutes an essential component of a democratic state governed by the rule of law. This article examines the legal status of freedom of association within the framework of the International Covenant on Civil and Political Rights (ICCPR) 1966 and evaluates the extent to which Indonesian law complies with international human rights standards. The study employs normative legal research using statutory and conceptual approaches, supported by an analysis of relevant international human rights instruments and Indonesian constitutional and legislative provisions. The findings indicate that Article 22 of the ICCPR recognizes freedom of association as a fundamental right whose restriction is permissible only when it satisfies the cumulative requirements of legality, legitimate aim, necessity, and proportionality in a democratic society. Although Indonesia has constitutionally protected this right through Article 28E (3) of the 1945 Constitution and ratified the ICCPR through Law No. 12 of 2005, several regulatory and administrative practices continue to create inconsistencies with international standards. The originality of this study lies in developing an integrated normative framework that positions freedom of association not only as an individual human right but also as a constitutional principle supporting democratic governance under the rule of law. By systematically connecting Article 22 of the ICCPR with Indonesia's constitutional structure, this research offers a new analytical perspective on the harmonization of international human rights obligations and domestic constitutional law, while providing normative guidance for future legal reform aimed at strengthening democratic constitutionalism in Indonesia.</i>

A. Introduction

The right to associate is one of the fundamental civil and political rights in a democratic state system governed by the rule of law. This right enables individuals to form, join, and participate in organizations as a means of peacefully expressing collective interests, aspirations, and views.¹ Within a democratic framework, freedom of association functions not only as a guarantee of individual liberty but also as a vital instrument in maintaining the balance of power and encouraging state accountability.² Internationally, the right to associate is recognized as an integral part of the human rights regime protected through various international legal instruments, particularly the 1966 International Covenant on Civil and Political Rights (ICCPR). Article 22 of the ICCPR explicitly guarantees everyone's freedom of association, including the right to form and join trade unions, with restrictions that can only be

¹ Manfred Nowak, *U.N. Covenant on Civil and Political Rights: CCPR Commentary*, 2nd, rev. ed ed. (Engel, 2005).

² T. R. S. Allan, "Human Rights And Judicial Review: A Critique Of 'Due Deference,'" *The Cambridge Law Journal* 65, no. 3 (2006): 671–95, <https://doi.org/10.1017/S0008197306007264>.



imposed based on law and solely for specific purposes in a democratic society, such as national security, public order, public health or morals, and the protection of the rights and freedoms of others.³ This norm emphasizes that the right to associate is a fundamental right⁴ that can only be restricted in a strict, proportional, and non-discriminatory manner.⁵

In Indonesia, the guarantee of the right to associate has a strong constitutional basis. The 1945 Constitution of the Republic of Indonesia guarantees freedom of association and assembly as part of the constitutional rights of citizens (1945 Constitution, Article 28E paragraph (3)). Furthermore, Indonesia has ratified the ICCPR through Law Number 12 of 2005, which makes the provisions of the covenant legally binding and part of the national legal system. This ratification demands adjustments between national laws and regulations⁶ and international human rights standards, specifically regarding freedom of association.⁷ Although protection for the right to associate has been normatively recognized in the national legal system, its implementation still faces various challenges, particularly concerning civil restrictions and the oversight of community organizations.⁸ Therefore, strengthening the protection of the right to associate becomes important as part of the effort to realize a democratic state governed by the rule of law that upholds human rights principles and public participation.

Several recent studies indicate that the right to associate in Indonesia is not only relevant in a political context but also in the fields of constitutional law, social organizations, and the broader space of civil liberties. Research by Al Uyun, Buryahika, and Siagian⁹ emphasizes that workers' freedom of association is a crucial element in protecting labor rights and fair industrial relations. Meanwhile, Huda and Mulyanto¹⁰ highlight that the normative guarantee of the right to associate is often not yet fully implemented effectively in national legal practice. Hadiansyah's study¹¹ also reveals challenges in the regulation of community organizations that have the potential to disproportionately restrict freedom of association. Despite the growing body of literature, existing studies have primarily examined freedom of association from sectoral perspectives, such as labour rights, civil society organizations, or the implementation of constitutional guarantees. Although these studies provide valuable insights into specific legal issues, they have not comprehensively explored the relationship between freedom of association, the principles of the democratic rule of law, and the normative

³ United Nations, *International Covenant On Civil And Political Rights* (United Nations, 1967), https://treaties.un.org/doc/treaties/1976/03/19760323%2006-17%20am/ch_iv_04.pdf.

⁴ Sarah Joseph dan Melissa Castan, *The International Covenant on Civil and Political Rights: Cases, Materials, and Commentary*, Third edition (Oxford University Press, 2013), <https://doi.org/10.1093/law/9780199641949.001.0001>.

⁵ Mochammad Farisi dkk., "ICCPR and the Future of Political Rights: A Critical Analysis of Existing International Legal Norms," *Uti Possidetis: Journal of International Law* 6, no. 2 (2025): 291–313, <https://doi.org/10.22437/up.v6i2.43388>.

⁶ Simon Butt dan Timothy Lindsey, *Indonesian Law* (Oxford university press, 2018).

⁷ Jimly Asshiddiqie, *Konstitusi dan konstitusionalisme Indonesia*, Ed. 1 Cet. 2 (Sinar Grafika, 2011).

⁸ Fatma Faisal dan Sri Indriyani Umra, "Tanggung Jawab Negara Terhadap Pelanggaran Hak Asasi Manusia Berdasarkan Undang-Undang Nomor 26 Tahun 2000," *Nomos: Jurnal Penelitian Ilmu Hukum* 5, no. 3 (2025): 601–9, <https://doi.org/10.56393/nomos.v5i3.3218>.

⁹ Dhia Al Uyun dkk., "Legal Protection of Labour's Freedom of Union Againsts Union Busting," *Jurnal Suara Hukum* 6, no. 2 (2025): 279–97, <https://doi.org/10.26740/jsh.v6n2.p279-297>.

¹⁰ Miftahul Huda dan Mulyanto Mulyanto, "Analisis Yuridis Hak Berserikat Pekerja Berdasarkan Undang-undang Nomor 13 Tahun 2003 tentang Ketenagakerjaan," *Nuansa Akademik: Jurnal Pembangunan Masyarakat* 10, no. 2 (2025): 391–406, <https://doi.org/10.47200/jnajpm.v10i2.3121>.

¹¹ Fx. Hastowo Broto Laksito dkk., "Legal Review and Democratic Challenges of Community Organizations in Indonesia," *Indonesian Journal of Law and Justice* 3, no. 1 (2025): 8, <https://doi.org/10.47134/ijli.v3i1.4774>.

obligations arising from Article 22 of the ICCPR within the Indonesian constitutional framework.¹² Consequently, an important gap remains regarding how international human rights standards should be systematically integrated into Indonesia's constitutional and legislative system to strengthen the protection of associational rights.¹³

This study seeks to address that gap by offering a normative legal analysis that conceptualizes freedom of association not merely as an individual civil and political right but also as a constitutional pillar of a democratic state governed by the rule of law.¹⁴ Unlike previous studies that focus on particular sectors or implementation issues, this research integrates international human rights law, constitutional law, and Indonesian legislation into a unified analytical framework.¹⁵ By examining the compatibility between Article 22 of the ICCPR and the Indonesian legal system, this article contributes to the contemporary discourse on constitutional democracy and proposes a normative framework for harmonizing domestic legislation with international human rights obligations.¹⁶

On the other hand, recent study reports show that there are still tensions between state policy and international human rights standards in the implementation of the right to associate. The CCPR Center report highlights that administrative restrictions and licensing procedures potentially conflict with ICCPR principles if they are not based on urgent and proportional needs. A similar point was made by Universitas Islam Jakarta, which emphasized the importance of protecting freedom of association as part of the constitutional guarantee of the civil and political rights of citizens.¹⁷ From the perspective of democratic rule of law theory, the right to associate cannot be separated from the principles of the supremacy of law,¹⁸ protection of human rights, and the limitation of state power.¹⁹ A democratic legal state demands that every restriction on the basic rights of citizens must be based on law, carried out rationally and proportionally, and must be constitutionally and morally accountable. Therefore, the existence of the right to associate is not only an individual right,²⁰ but also functions as an institutional

¹² Fatma Faisal dan Nasrah Hasmiati Attas, "Implementation of Village Autonomy: A Normative Study of Law Number 6 of 2014 Concerning Villages," *Journal of Legal Contemplation* 1, no. 2 (2025): 105–12, <https://doi.org/10.63288/jlc.v1i2.10>.

¹³ Abdul Munif Ashri dan Heribertus Jaka Triyana, "Menimbang Prospek Komunikasi Individual HAM: Politik Hukum dan Implikasi Potensial Bagi Indonesia," *Jurnal HAM* 15, no. 3 (2024): 169, <https://doi.org/10.30641/ham.2024.15.169-186>.

¹⁴ Mark V. Tushnet, *Advanced Introduction to Comparative Constitutional Law*, Second edition, Elgar Advanced Introductions (Edward Elgar Publishing, 2018).

¹⁵ Jimly Asshiddiqie, *Konstitusi dan konstitusionalisme Indonesia*, 1 (Sinar Grafika, 2010).

¹⁶ Andika Adhyaksa dan Fathurrahim Fathurrahim, "Kondisi Materiil Peraturan Perundang-Undangan Dalam Aspek Pembentukannya Dengan Penggunaan Artificial Intelligence," *Nomos: Jurnal Penelitian Ilmu Hukum* 5, no. 3 (2025), <https://doi.org/10.56393/nomos.v5i3.2943>.

¹⁷ Abustan, "Menjaga Kemerdekaan Berserikat dan Kebebasan Berpendapat Sebagai Hak Warga Negara Dalam Konstitusi," *Jurnal Pendidikan, Hukum, Komunikasi* 1, no. 2 (2025): 104–12, <https://doi.org/10.69623/j-dikumsi.v1i2.138>.

¹⁸ Albert Venn Dicey, *Introduction to the Study of the Law of the Constitution*, 10. ed., reprinted (Macmillan, 1985).

¹⁹ Suwiryo Prawira dan Dion Nupianto, "Reviewing The Legal Status of the Joint Ministerial Decrees in Indonesian State Administrative Law," *Journal of Legal Contemplation* 2, no. 1 (2026): 63–77, <https://doi.org/10.63288/jlc.v2i1.20>.

²⁰ Dyah Rosiana Puspitasari dan Fakhry Muhammad Ibrahim, "Political Asylum as a Geopolitical Instrument: A Study of Defection and Its Implications for Foreign Policy," *Journal of Legal Contemplation* 1, no. 2 (2025): 96–104, <https://doi.org/10.63288/jlc.v1i2.9>.

pillar that supports democracy, strengthens civil society, and ensures a free and equal space for public participation.²¹

Although the national and international normative frameworks have provided sufficiently strong guarantees, the gap between norms and practice remains a significant issue. Several national regulations still contain provisions that potentially restrict the right to associate broadly,²² whether through licensing mechanisms, administrative oversight, or sanctions for organizational dissolution.²³ This condition indicates the need for a critical evaluation of the compatibility between national law and ICCPR standards, as well as the strengthening of state commitment in guaranteeing freedom of association substantively, not just formally. Although previous studies have substantially contributed to the discussion of freedom of association in Indonesia, most of them examine the issue from sectoral perspectives, such as labour rights, community organizations, or the implementation of specific statutory regulations. Existing scholarship generally focuses on the practical protection of associational rights or evaluates particular legislative frameworks without comprehensively examining the constitutional relationship between Indonesia's domestic legal system and the normative standards established under Article 22 of the International Covenant on Civil and Political Rights (ICCPR). Consequently, the extent to which Indonesian legislation satisfies the principles of legality, necessity, and proportionality required by international human rights law remains insufficiently explored. Furthermore, limited attention has been given to conceptualizing freedom of association as a constitutional pillar of the democratic rule of law rather than merely as an individual civil liberty.

Building upon these limitations, this article offers a different analytical perspective by integrating constitutional law and international human rights law within a single normative framework. Rather than examining freedom of association from a sector-specific standpoint, this study evaluates its constitutional position through a systematic analysis of Article 22 of the ICCPR and its harmonization with Indonesian constitutional and statutory law. The originality of this research lies in demonstrating that freedom of association should be understood not only as a protected individual right but also as an institutional guarantee essential to democratic constitutionalism and the realization of the rule of law in Indonesia. Based on this background, this article aims to analyze the position of the right to associate as a pillar of the democratic state governed by the rule of law through a normative study of the 1966 ICCPR provisions and Indonesian law. This study focuses on the compatibility of norms, permissible limitations, and the juridical implications of applying the right to associate within the national legal system. With this approach, it is expected that this research can provide theoretical and practical contributions to strengthening human rights protection and encouraging the consolidation of constitutional democracy in Indonesia.

B. Methodology

This study adopts a normative legal research design to examine the legal norms, constitutional principles, and legal doctrines governing the protection of freedom of association

²¹ Ardi Hajuan dkk., "Legal Analysis of the Authority of the Supervisory Board in Law Number 19 of 2019 concerning the Corruption Eradication Commission," *Journal of Legal Contemplation* 1, no. 1 (2025): 27–36, <https://doi.org/10.63288/jlc.v1i1.3>.

²² Butt dan Lindsey, *Indonesian Law*.

²³ Fx. Hastowo Broto Laksito dkk., "Legal Review and Democratic Challenges of Community Organizations in Indonesia."

within Indonesia's legal system and the International Covenant on Civil and Political Rights (ICCPR) 1966. Normative legal research is appropriate because the study is directed toward analysing the coherence of legal rules, constitutional values, and international human rights standards through doctrinal legal reasoning rather than empirical observation.²⁴ The research employs two complementary approaches, namely the statutory approach and the conceptual approach. The statutory approach is used to analyse the constitutional and legislative framework governing freedom of association, including the 1945 Constitution of the Republic of Indonesia, Law No. 12 of 2005 concerning the Ratification of the ICCPR, and other relevant legislation regulating civil and political rights. The conceptual approach is applied to examine the theoretical foundations of the democratic rule of law, constitutionalism, and freedom of association by referring to legal doctrines and internationally recognised human rights principles. The integration of these approaches enables a systematic evaluation of whether Indonesian law reflects the normative standards established under Article 22 of the ICCPR.²⁵

The legal materials used in this research consist of primary, secondary, and tertiary sources. Primary legal materials include constitutional provisions, statutory regulations, and international legal instruments relevant to freedom of association, particularly the ICCPR 1966. Secondary legal materials comprise scholarly books, peer-reviewed journal articles, and publications issued by international human rights institutions. Tertiary legal materials, including legal dictionaries and encyclopaedias, are consulted to ensure conceptual clarity and terminological consistency.²⁶ Legal materials were collected through library research by systematically identifying, classifying, and reviewing authoritative legal sources relevant to the research problem. The collected materials were subsequently analysed using qualitative legal analysis based on descriptive and prescriptive reasoning. The descriptive analysis explains the existing legal framework governing freedom of association in Indonesia and under international human rights law, while the prescriptive analysis evaluates the conformity of Indonesian legislation with the principles of legality, legitimate aim, necessity, and proportionality embodied in Article 22 of the ICCPR. Through this analytical framework, the study seeks to formulate normative recommendations for strengthening the protection of freedom of association as an essential element of democratic constitutionalism and the rule of law in Indonesia.²⁷

C. Results and Discussion

The right to associate is one of the essential civil and political rights in a democratic legal state system. This right allows citizens to organize, convey aspirations, and participate in public life freely and equally.²⁸ In modern democratic theory, freedom of association is viewed

²⁴ Tunggal Ansari Setia Negara, "Normative Legal Research in Indonesia: Its Origins and Approaches," *Audito Comparative Law Journal (ACLJ)* 4, no. 1 (2023): 1–9, <https://doi.org/10.22219/aclj.v4i1.24855>.

²⁵ Alfred De Zayas, "W.A. Schabas, Nowak's CCPR Commentary: U.N. Covenant on Civil and Political Rights, 3rd Rev. Edn.: N. P. Engel Publisher, Kehl 2019, Lxxvi + 1171 Pp. ISBN 978-3-88357-159-1," *Netherlands International Law Review* 67, no. 3 (2020): 553–65, <https://doi.org/10.1007/s40802-020-00179-y>.

²⁶ Moh. Mujibur Rohman dkk., "Methodological Reasoning Finds Law Using Normative Studies (Theory, Approach and Analysis of Legal Materials)," *MAQASIDI: Jurnal Syariah dan Hukum*, 27 Desember 2024, 204–21, <https://doi.org/10.47498/magasidi.v4i2.3379>.

²⁷ Yulia Audina Sukmawan dan Dwi Damayanti, "Metode Penelitian Hukum Normatif dan Empiris sebagai Strategi Penguatan Perspektif Kajian Ilmu Hukum," *Notary Law Journal* 4, no. 3 (2025), <https://doi.org/https://doi.org/10.32801/nolaj.v4i3.116>.

²⁸ Robert Alan Dahl dan Ian Shapiro, *On Democracy*, Second edition (Yale University Press, 2015).

as a primary prerequisite for the formation of an inclusive and participatory public sphere.²⁹ Without the guarantee of freedom of association, democracy risks being reduced to mere proceduralism, devoid of meaningful participatory substance.

In the context of international law, the 1966 ICCPR affirms that everyone has the right to associate freely, including the right to form and join trade unions to protect their interests.³⁰ This right is understood not only as a negative liberty (freedom from state interference) but also as a positive obligation of the state to create the legal, social, and institutional conditions that allow for the effective exercise of said right.³¹ Therefore, any restriction on the right to associate must be conducted based on law and in accordance with human rights principles. Violations of this right can give rise to state responsibility, not only through law enforcement against the perpetrators but also through the provision of effective protection and recovery for the aggrieved parties.³²

The legal materials used in this research are classified into primary, secondary, and tertiary legal materials. Primary legal materials consist of constitutional provisions, statutory regulations, and international legal instruments, particularly the ICCPR 1966. Secondary legal materials include scholarly books, peer-reviewed journal articles, commentaries, reports issued by international human rights organizations, and other relevant academic publications discussing freedom of association and constitutional democracy. Tertiary legal materials comprise legal dictionaries, encyclopedias, and other reference sources that assist in clarifying legal terminology and concepts.³³

Legal materials were collected through library research, involving the identification, selection, and systematic review of relevant legal documents from both domestic and international sources. To ensure the relevance of the analysis, the study also incorporates recent scholarly publications addressing developments in normative legal research and international human rights law.³⁴

The collected legal materials were analyzed qualitatively using descriptive and prescriptive legal analysis. Descriptive analysis was undertaken to explain the applicable legal framework governing freedom of association under Indonesian law and international human rights law. Prescriptive analysis was subsequently employed to evaluate the extent to which Indonesian legal regulations conform to the standards embodied in Article 22 of the ICCPR and to formulate recommendations for strengthening the legal protection of freedom of association. Through this analytical framework, the study seeks to provide a comprehensive understanding of freedom of association as a constitutional pillar of a democratic state

²⁹ Jeremy Waldron, "The Rule of Law and the Role of Courts," *Global Constitutionalism* 10, no. 1 (2021): 91–105, <https://doi.org/10.1017/S2045381720000283>.

³⁰ Christopher Gane dan Mark Mackarel, "United Nations: Standard Minimum Rules for the Treatment of Prisoners," dalam *Human Rights and the Administration of Justice*, ed. oleh Christopher Gane dan Mark Mackarel (Brill | Nijhoff, 1997), https://doi.org/10.1163/9789004637450_034.

³¹ Rachmat Hidayat dan Herwansyah, "Unraveling the Challenges of the Independence of Constitutional Court Judges Amidst the Politicization of the Judiciary in Indonesia: A Legal and Political Analysis," *Journal of Legal Contemplation* 1, no. 3 (2025): 156–66, <https://doi.org/10.63288/jlc.v1i3.14>.

³² Fatma Faisal, "Eksistensi Pengadilan Hak Asasi Manusia Terhadap Penegakan Hak Asasi Manusia Dalam Sistem Peradilan," *Gorontalo Law Review* 2, no. 1 (2019): 33, <https://doi.org/10.32662/golrev.v2i1.559>.

³³ Joseph dan Castan, *The International Covenant on Civil and Political Rights*.

³⁴ General Assembly resolution, "International Covenant on Civil and Political Rights," *United Nations Human Rights Instruments*, 1966, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>.

governed by the rule of law and to contribute normative recommendations for improving human rights protection in Indonesia.³⁵

D. Conclusion

This study concludes that Indonesian law has not yet fully achieved substantive conformity with Article 22 of the International Covenant on Civil and Political Rights (ICCPR) 1966, despite the constitutional recognition of freedom of association under Article 28E paragraph (3) of the 1945 Constitution and Indonesia's ratification of the ICCPR through Law No. 12 of 2005. While the constitutional and statutory framework formally acknowledges freedom of association as a fundamental right, several legislative provisions and administrative practices continue to permit restrictions that are not consistently assessed against the cumulative requirements of legality, legitimate aim, necessity, and proportionality prescribed by Article 22 of the ICCPR. Consequently, the protection of freedom of association remains stronger at the normative level than in its practical implementation. The study further finds that legal provisions allowing restrictions based on broadly defined concepts such as national security, public order, and administrative supervision of civil society organizations may create excessive discretionary powers when they are not accompanied by clear legal criteria, procedural safeguards, and effective judicial oversight. Such conditions increase the risk of arbitrary interference with the exercise of freedom of association and undermine legal certainty, democratic participation, and the constitutional protection of civil and political rights.

Accordingly, strengthening Indonesia's compliance with Article 22 of the ICCPR requires comprehensive legal reform. First, legislation governing freedom of association should be harmonized with international human rights standards by expressly incorporating the principles of legality, legitimate aim, necessity, and proportionality into all regulatory measures that limit associational rights. Second, independent judicial review should be reinforced to ensure that any restriction imposed on associations is subject to effective constitutional scrutiny and complies with democratic standards. Finally, legislative and administrative reforms should prioritize the protection of civic space and public participation as indispensable components of a democratic state governed by the rule of law. These measures would not only enhance Indonesia's fulfillment of its international human rights obligations but also strengthen constitutional democracy, the rule of law, and the effective protection of fundamental freedoms.

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³⁵ Manfred Nowak, *U.N. Covenant on Civil and Political Rights: CCPR Commentary*, 2nd, rev. ed ed. (Engel, 2005).

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