

ABSTRACT

The decision of the President Joko Widodo to issue Government Regulation in Lieu of Law Number 2 of 2017 on Community Organization has triggered controversy. The President argues that its regulation is necessarily needed to protect the state from any ideological threats. However, human rights activist argues that the decision of President to issue Government Regulation in Lieu of Law is a violation of fundamental rights of citizens, particularly freedom of organization which is protected by the 1945 Constitution. This is an interesting issue to be discussed in the light of president authority and human rights protection. By using normative legal and descriptive qualitative method, the research found that the Constitutional Basis of President Authority in enacting Government Regulation in Lieu of Law emphasizes in Article 22 paragraph 1 of the 1945 Constitution and the criteria is further asserted by the Constitutional Court Decision. The Constitutional Court states that the criteria of compelling crisis situations are if there is an urgent need to solve legal problems quickly based on the law, there is a vacuum of law, the vacuum of law can not be solve by making the law in a normal procedure. The House of Representative should take initiate to amend Law Number 16 of 2017 on the enacting Government Regulation in Lieu of Law Number 2 of 2017 on Community Organization considering the aspiration of citizen and House of Representatives has to pay attention the basic principle of State, that Indonesia is based on the rule of law. Therefore, involving court decision in the process of dissolution of Community organization is still needed.

Keyword: The Authority of President, Government Regulation in Lieu of Law, Community Organization.

A. Introduction

The decision of the President Joko Widodo to issue Government Regulation in Lieu of Law Number 2 of 2017 on Community Organization has triggered controversy. The President argues that the Government Regulation in Lieu of Law Number 2 of 2017 on Community Organization is necessarily needed to protect the state from any ideological threats.

However, human rights activist argues that the decision of President to issue Government Regulation in Lieu of Law is a violation of fundamental rights of citizens, particularly the freedom of citizens to assembly which is protected by the 1945 Constitution. This is an interesting issue to be discussed about the state authority and human rights in enacting Government Regulation in Lieu of Law.

The authority of the President is considerable in the enacting Government Regulation in Lieu of Law in state emergency.¹ Furthermore, in Indonesia there are currently about 139,957 registered community organizations, with 65,577 community organizations were recorded at Ministry of Internal Affairs, 25,406 at Ministry of Social Affairs and 48,886 at Ministry of Law and Human Rights. The data have not been updated with the organizations registered in the Ministry of Foreign Affairs, and the Ministry of Forestry.²

The differences vision among community organizations and state institutions can raise various problems that can disturb peace and order of society for the example, the clash between the Police Officers and the

¹Abdul Ghoffar, 2009, *Perbandingan Kekuasaan Presiden Indonesia Setelah Perubahan UUD 1945 dengan Delapan Negara Maju*, Jakarta, Kencana, p.77

²Catur Wibowo, Herman Harefa, "Urgency of Community Supervision Organization by Government", Badan Penelitian dan Pengembangan (BPP) Kementerian Dalam Negeri, (February, 2015), p.2.

Foundation of the Indonesian Legal Aid Institute, in Indonesian terms Yayasan Lembaga Bantuan Hukum, hereafter YLBHI in Menteng, Central Jakarta.³

Thus, with the enactment Government Regulation in Lieu of Law Number 2 of 2017 on Community Organization made by the President in the emergency condition is expected to be useful to overcome various problems caused by the community organization that are in the process of development to create the goals of the Unitary State of the Republic of Indonesia based on Pancasila. Therefore, the author is interested in conducting a study entitled “Constitutional Authority of the President in Enacting Government Regulation in Lieu of Law: Case Study of Government Regulation in Lieu of Law Number 2 of 2017 on Community Organization”.

B. Methodology

This research belongs to normative legal research which mean this research shows how the laws regulate such condition and how its application. This research uses regulation related to the Community Organization and Government Regulation in Lieu of Law Number 2 of 2017 on Community Organization to examine the constitutional authority of the President in issuing Government Regulation in Lieu of Law. The data were analyzed by using qualitative approach. It means, the research analyses data based on the Constitutions, Legislation, and any other theories which are related to the issue of the authority of the President especially in enacting Government Regulation in Lieu of Law.

³Robertus Belarminus, *Kerusuhan di YLBHI Bentrokan Pecah hingga RSCM dan Stasiun Cikini*, 11th November 2017, <http://nasional.kompas.com/read/2017/09/18/02065111/kerusuhan-di-ylbhi-bentrokan-pecah-hingga-rscm-dan-stasiun-cikini>, accessed on Thursday, November 11th, 2017, at 3:30 a.m.

The data used in this research were secondary data. This research uses some materials research taken from learning literature which consists of primary legal material, secondary material and tertiary legal material. Primary legal materials consist of regulation as follows: The 1945 Constitution, Law Number 17 of 2013 on Community Organization, Government Regulation in Lieu of Law Number 2 of 2017 on Community Organization. Secondary legal materials consist of several documents that related to the primary legal materials as follows: books, scientific journals, other legal documents related to the issue, trusted sited internet, other non-legal documents related to this research. Tertiary legal materials, as follows: black's Law dictionary, English dictionary; and Indonesian dictionary.

C. Discussion Result

The highest responsibility of government in Indonesia is held by President. The strong position of President shall be based on Constitution as regulated in Article 4 paragraph (1) the 1945 Constitution of the Republic of Indonesia which stipulates that: "The President of the Republic of Indonesia shall hold the power of government in accordance with the Constitution".⁴

State Emergency Law is a regulation governing the authority of state institutions in extraordinary and special way to eliminate emergencies or dangerous in a short time to be applied in everyday life to create welfare of the state under the regulations and applicable laws.⁵

The subject of hazards and state emergency are the basis of the President to take action in issuing Government Regulation in Lieu of Law in Indonesia,

⁴Siti Marwiyah, Sudarsono, Isrok, Jazim Hamidi, "Constitutional Authority of The President of Enacting the Government Regulation In Lieu Of Legislation of State of Emergency", *Journal of Law, Policy and Globalization*, XXXIV (2015), P.106

⁵Herman Sihombing, 1996, *Hukum Tata Negara Darurat di Indonesia*, Jakarta, Djambatan, p. 1.

in order to safeguard the interests of the nation and state as regulated in the 1945 Constitution which contains in Article:⁶

1. Article 22 Paragraph 1 of the 1945 Constitution states that, “In compelling crisis situations the President shall have the right to issue government regulations in Lieu of Law”
2. Article 12 states of the 1945 Constitution states that, “The President declares the state of emergency. The conditions and consequences of a state of emergency shall be regulated by Law”

Based on the above provisions, it can be seen that there are two categories of abnormal circumstances from state of emergency.

There are many community organizations established both national and international in order to create prosperity of the society. There are several types of community organizations are formed such as Non-Governmental Organizations, Social Foundations, Religious Organizations, Youth Organizations, and Organizations based on the Profession.⁷

President Joko Widodo on July 10th, 2017 signed the Government Regulation in Lieu of Law Number 2 Year 2017 on Amendment of Law Number 17 of 2013 on Community Organizations.⁸ The President through the Coordinating Minister for Political, Legal and Security Affairs, Wiranto argues that Law Number 17 of 2013 on Community Organizations is no longer sufficient to prevent spread the ideology that is against the Pancasila and the 1945 Constitution of the Republic of Indonesia, either from the substantive aspects of norms, restrictions, sanctions or legal procedures.⁹

⁶*Ibid*, p.25

⁷*Ibid*

⁸Humas, Inilah Perppu No. 2/2017 tentang Perubahan UU No. 17/2013 tentang Organisasi Kemasyarakatan 16th November 2017, [http://setkab.go.id/inilah-Government Regulation in Lieu of Law-no-22017-tentang-perubahan-uu-no-172013-tentang-organisasi-kemasyarakatan/](http://setkab.go.id/inilah-Government-Regulation-in-Lieu-of-Law-no-22017-tentang-perubahan-uu-no-172013-tentang-organisasi-kemasyarakatan/), accessed on Friday, 17th November 2017 at 5:14 a.m.

⁹Kominfo, Pemerintah Keluarkan Perppu No. 2/2017 tentang Perubahan atas Undang-Undang Ormas, 23th December 2017, <https://kominfo.go.id/index.php/content/detail/10094/pemerintah-keluarkan->

Law Number 17 of 2013 on Community Organization did not contain the principle of *contrario actus* administrative law is the legal principle that the institution issuing the permit or giving the authorization is an institution that should have the authority to revoke or cancel it.¹⁰

Before the enacting Government Regulation in Lieu of Law Number 2 of 2017 on Community Organization The dissolution of Community Organizations can only be done after a verdict of permanent legal force from the District Court. Against this District Court Decision can only be applied to the Supreme Court appeal. While the revocation of organizations in the form of legal entities for Community Organizations with legal entities conducted by the Ministry of Justice and Human Rights.¹¹

The authority of President in enacting Government Regulation in Lieu of Law on Community Organization is to prevent radicalism in Indonesia. The legal basis of the enacting Government Regulation in Lieu of Law regulates in Article 22 paragraph 1 the 1945 Constitution.

Nevertheless, there is no specific explanation what kind of compelling crisis situation in Article 22 paragraph 1 of the 1945 Constitution for the President to issue Government Regulation in Lieu of Law or in other words the President may issue Government Regulation in Lieu of Law only based on the subjectivity of the President.¹² This uncertainty often leads to be multi-interpretation because this article does not clearly regulate the form of compelling crisis situation.

perppu-no-22017-tentang-perubahan-atas-undang-undang-ormas/0/artikel_gpr, accessed on Wednesday, 23rd October 2017 at 4:15 a.m.

¹⁰*Ibid*

¹¹Imas Sholihah, "Menyoal Organisasi Kemasyarakatan (ormas) Anti-Pancasila", *Jurnal Rechtsvinding*, I, (June, 2016), p. 1.

¹²Article 22 paragraph (1) 1945 Constitution

With the unclear explanation of compelling crisis situations in Article 22 paragraph 1 of the 1945 Constitution which does not clearly explain the element compelling crisis situations for the President to issue Government Regulation in Lieu of Law creates various polemic and assumption that, its regulation could be as the tools for President to play a role as the head of government to abuse of his authority with the enacting Government Regulation in Lieu of Law or at least to fulfill his political interests as the decision makers of its regulations to make strength his position as the President.

However, in 2009, a new norm has emerged that sets objectively as the parameters or conditions for the President to issue Government Regulation in Lieu of Law. This arises because there is a request for judicial review from 13 applicants (Saor Siagan, SH, et al) to the Constitutional Court.

The object of judicial review is in the case of the enacting Government Regulation in Lieu of Law Number 4 of 2009 on Amendment to Law Number 30 of 2002 on the Corruption Eradication Commission which is considered to be contradictory to Article 22 paragraph (1), Article 28D, Article 9 of the 1945 Constitution of the Republic of Indonesia. One point of legal consideration of the Constitutional Judges states that the Government Regulation in Lieu of Law is required if:¹³

1. The existence of a situation that is an urgent need to solve legal problems quickly based on the law;
2. The required legislation is not available so there is a vacuum of law, or there is a law but is inadequate;
3. The vacuum of law cannot be solved by making the law in a normal procedure because it will take a long time while the emergency circumstances need legal certainty to be resolved.

¹³See point 3.10 dalam Putusan Mahkamah Konstitusi Nomor 138/PUU-VII/2009.

Based on Constitutional Court Decision Number 138/PUU-VII/2009, the determination of the conditions for the President to enact Government Regulation in Lieu of Law is based on judicial decision not only through doctrine. With this change, the consequences emerge new norms that changes of the norm mentioned in Article 22 of the 1945 Constitution of the Republic of Indonesia. Thus, it can be said that there is a change of the Constitution without going through Article 37 of the 1945 Constitution of the Republic of Indonesia but through judicial practice.¹⁴

The absolute authority of the President to interpret the meaning of "compelling crisis situations" are enormous, but today the absolute authority of the President which previously subjective becomes objective because there is another cumulative provision for the President which is determined by the Constitutional Court as mentioned above.¹⁵

D. Conclusion

Based on discussion in chapter IV, the researcher arrives at the conclusion that the Constitutional Basis of President Authority in enacting Government Regulation in Lieu of Law is emphasizing in Article 22 paragraph 1 of the 1945 Constitution which states "In compelling crisis situations, the President shall have the right to issue Government Regulations in Lieu of Law". Article 22 paragraph 1 of the 1945 Constitution does not clearly explain the criteria of compelling crisis situations. So, it further asserts by the Constitutional Court Decision Number 138/PUU/V-II/2009

¹⁴ See Article 37 of the 1945 Constitution

¹⁵Ibnu Sina Chandranegara, "Pengujian Perppu terkait Sengketa Kewenangan Konstitusional antar-Lembaga Negara" *Jurnal Yudisial*, Volume 5, Nomor 1, April 2012, p. 3

which gives the criteria of the President shall have right to issue Government Regulation in Lieu of Law as follows:

- a. The existence of a situation that is an urgent need to solve legal problems quickly based on the law;
- b. The required legislation is not available so there is a vacuum of law, or there is a law but is inadequate;
- c. The vacuum of law can not be solve by making the law in a normal procedure because it will take a long time while the emergency circumstances need legal certainty to resolve.

With the enactment Government Regulation in Lieu of Law Number 2 of 2017 on Community Organization by the President. The President violate the principles of checks and balances in the state because it has eliminated the role of judicial institution in the process of revocation of community organization in Indonesia.

E. Recommendation

Based on the problems that have been discussed, the house of representative should take initiative to amend Law Number 16 of 2017 about the enacting Government Regulation in Lieu of Law Number 2 of 2017 on Community Organization contain the principles of *contrario actus*. It is principles violate the fundamental rights of citizens which protected by the 1945 Constitution. The house of representatives has to pay attention the principles of checks and balances in Indonesia. Indonesia is a state based on the rule of law (*rechtsstaat*). Therefore, involving court in the process of dissolution of Community organization is still needed.

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