

CHAPTER 1

INTRODUCTION

A. Background

In 2016, there were 3.143 local regulations nullified by Ministry of Home Affairs.¹ Those nullified relations were related to investment, retribution, and public services. The regulations had caused slow growth of local and national economic, besides they also contradicted to the higher legislation.² The establishment of local regulation was assumed to strengthen local autonomy because it has the right, authority and duty to regulate and manage its government affairs and public interest as guaranteed in the 1945 Constitution.

On the nullification of local regulations there are two regimes or legal basis that can be used. First, Article 251 of Law No. 23 of 2014 states that those of Provincial Local Regulation and Governor Regulation which are contrary to provisions and higher regulation, and public interest, should be nullified by Minister of Home Affairs and those of Local Regulation of Regency/City and Regent Regulation/Mayor should be nullified by Governor as representative of Central Government. Nullification by

¹ See Daftar Perda / Perkada dan Peraturan Menteri Dalam Negeri yang Dibatalkan / Revisi, downloaded in http://www.kemendagri.go.id/media/filemanager/2016/06/21/b/a/batal_perda_21_juni_2016.pdf at Monday, 27 Juni 2016, 9.30 P.M

² Ministry of Home Affairs, "Presiden Umumkan Pembatalan 3.143 Perda Bermasalah", retrieved from <http://www.kemendagri.go.id/news/2016/06/13/presiden-umumkan-pembatalan-3143-perda-bermasalah> at Monday, 27 Juni 2016, 9.30 P.M.

Ministry of Home Affairs is called as executive review. Second, Article 24A of the 1945 Constitution, implies that the Supreme Court has authority to review regulation under the law. This nullification is called as judicial review. The argument about executive review and judicial review of local regulation bring up a question of local autonomy considering that Local Regulation is a product of the Head of Region and Regional House of Representative. Freedom in law making of local regulation to run local autonomy, in fact had caused many contrary to higher regulations such as too many bureaucracies and disadvantage factor of economic growth in the region.

The actual motivation of the regulation given to the local government was to increase local revenue, higher ratio of local revenue considered independently of fiscal in the local government, eventhough from the substance it created the burden to society.³ The problem in nullification of local regulation is substantively not relevant to regulation above. The question is what should be allowed to be continued? Of course based on the science of legislation, nullification should be done to the regulation which is in contrary to higher regulation.⁴ For example if Law of Water Resources have been nullified so automatically local regulations

³ Metro TV, “Perda Bermasalah Siapa Salah”, watched in <https://www.youtube.com/watch?v=xKYuqeE6AHk> at Sunday, 19 Juni 2016, 07:15 P.M

⁴ Hamzah Halim, 2009, *Cara Praktis Menyusun dan Merancang Peraturan Daerah (Suatu Kajian Teoretis & Praktis Disertai Manual) Konsepsi Teoritik Menuju Artikulasi Empiris*, Makassar, p. 11

relating to water resources should be nullified as well. In fact local regulations on water resources still exist and should be nullified.

B. Research Problem

1. How is the mechanism of nullification of local regulation in Indonesian legislation system?
2. What are the issues of nullification of local regulation?

C. Objectives of the Research

The objectives of this research are:

1. To understand the current mechanism of nullification of local regulations;
2. To analyze the issues of nullification of local regulation;
3. To propose a better mechanism of nullification of local regulation.

D. Benefits of Research

This research provided benefits as follows:

1. Theoretically

This research is expected to answer legal issues in the context of mechanism of nullification local regulations not only present, but also in the future so that law reform within the framework of law will

undertake the implementation of local autonomy in order to achieve prosperity for all citizens.

2. Practically

This research is expected to provide a thread on process or correct mechanism in nullification of local regulation according to Indonesia legislation system.