

## CHAPTER ONE

### INTRODUCTION

#### A. Background

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.

President Joko Widodo signed Government Regulation in Lieu of Law Number 2 of 2017 amendment of Law Number 17 of 2013 on Community Organizations at 10<sup>th</sup> July 2017<sup>1</sup>. Government Regulation in Lieu of Law

---

<sup>1</sup>Humas, Inilah Perppu No. 2/2017 tentang Perubahan UU No. 17/2013 tentang Organisasi Kemasyarakatan, [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%20Regulation%20in%20Lieu%20of%20Law-no-22017-tentang-perubahan-uu-no-172013-tentang-organisasi-kemasyarakatan/), accessed on Friday 17<sup>th</sup> November 2017 at 5:14 a.m.

Number 2 of 2017 affirms the definition of community organization. Community organization is an organization founded and formed by the community voluntarily based on similarity of aspirations, good will, needs, interest, activities and objectives to participate in the development of nation in order to achieve the objectives of the unitary state of Republic of Indonesia.<sup>2</sup>

According to Wirjono Prodjodikoro, President of Republic of Indonesia holds the authority of government based on to the Constitution. Based on Article 4 Paragraph 1 of 1945 Constitution, it is stated that the President of Republic Indonesia is the only one who leads the whole government.<sup>3</sup> President of Republic Indonesia has authority to run the government system in Indonesia to reach the goals of Indonesia based on Constitution. The words “in accordance with the Constitution” mean the authority of the President is regulated in the Constitution, so the authority of President shall be in accordance with the Constitution. Indonesia is a democratic state based on the rule of Law. Therefore, the President has rights to exercise the power based on Constitution and Laws.<sup>4</sup>

Furthermore, based on Article 4 paragraph 1 of 1945 Constitution, it clearly explains that the President of Republic Indonesia is the only leader

---

<sup>2</sup> See Government Regulation in Lieu of Law Number 2 of 2017 on Community Organization

<sup>3</sup>Wirjono Prodjodikoro, 1989, *Asas – asas Hukum Tata Negara di Indonesia*, Jakarta, Dian Rakyat, p.60.

<sup>4</sup>*Ibid.*, p. 61.

who leads the entire of government in Indonesia. Besides, the President is not only as the head of government but also as the head of state.<sup>5</sup>

One of the authorities of the President is to issue Government Regulation in Lieu of Law. The President has authority to form Government Regulation in Lieu of Law under an emergency condition that forces President to issue Government Regulation in Lieu of Law.<sup>6</sup>

The authority of the President is considerable in the enacting Government Regulation in Lieu of Law in state emergency.<sup>7</sup> 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.<sup>8</sup>

The number of types, forms, activities, and objectives of the community organization has made very high dynamics of organizational society. On the one hand the rights and freedoms of every citizen should be fulfilled, but on the other hand the rights to secure public interest must be fulfilled in Indonesia at the same time.

---

<sup>5</sup>Article 4 paragraph 1 of 1945 Constitution

<sup>6</sup>Bagir Manan, 2003, *Lembaga Kepresidenan*, Yogyakarta, FH UII-Press, p. 122.

<sup>7</sup>Abdul Ghoffar, 2009, *Perbandingan Kekuasaan Presiden Indonesia Setelah Perubahan UUD 1945 dengan Delapan Negara Maju*, Jakarta, Kencana, p.77

<sup>8</sup>Catur Wibowo, Herman Harefa, "Urgency of Community Supervision Organization by Government", Badan Penelitian dan Pengembangan (BPP) Kementerian Dalam Negeri, (February, 2015), p.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 Foundation of the Indonesian Legal Aid Institute, in Indonesian terms Yayasan Lembaga Bantuan Hukum, hereafter YLBHI in Menteng, Central Jakarta.<sup>9</sup>

The contribution of community organization in the development of state is considerable. It has been proven before the independence of Indonesia for independence until present but it still cannot be denied that there are still some community organizations that in various activities actually cause conflict in the society. Based on data collected from secondary data, it can be found the various case caused by community organizations in various regions.

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

---

<sup>9</sup>Robertus Belarminus, *Kerusuhan di YLBHI Bentrokan Pecah hingga RSCM dan Stasiun Cikini*, 11<sup>th</sup> November 2017, <http://nasional.kompas.com/read/2017/09/18/02065111/kerusuhan-di-ylbhi-bentrok-pecah-hingga-rscm-dan-stasiun-cikini>, accessed on Thursday, November 11<sup>th</sup>, 2017, at 3:30 a.m.

Regulation in Lieu of Law: Case Study of Government Regulation in Lieu of Law Number 2 of 2017 on Community Organization”.

## **B. Research Problem**

Considering the research background above, the researcher formulates a research problem “What is the Constitutional basis of the President in issuing the Government Regulation in Lieu of Law Number 2 of 2017 on Community Organization?”

## **C. Objective of Research**

There are some objectives of research as follows:

1. To understand further the President authority in issuing Government Regulation in Lieu of Law in Indonesian Constitutional System;
2. To analyze the issue of the President authority in issuing Government Regulation in Lieu of Law Number 2 of 2017 regarding Community Organization;
3. To propose suggestion on clearer concept of Government Regulation in Lieu of Law in the future.

## **D. Benefit of Research**

1. Theoretical benefit

This research will provide scholars, the government, and other supported instruments an understanding of Constitutional Basis of the President Authority in enacting Government Regulation in Lieu of Law.

2. Practical benefit

This research will suggest recommendation for President to be wiser to use his authority in issuing Government Regulation in Lieu of Law.