

Issuance of Crowd Permit for Hajatan Activities in Gresik Regency

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Abstract. This study aims to determine how the process of applying for a crowd permit for celebration activities that use public facilities in the form of public roads and to find out whether the process of applying for a crowd permit for celebration activities in the Gresik Regency community is in accordance with PP 60 of 2017. This type of research uses normative research with a statute approach. The results of this study state that the process of applying for a crowd permit for activities in Gresik Regency is still in an oral form submitted to the local hamlet head which is not in accordance with PP 60 of 2017, and there is still a legal vacuum in Gresik Regency regarding the delegation of authority for what agency is authorized to issue a recommendation letter for a crowd permit in Gresik Regency.

Keywords: Authority, Licensing, Public Facilities

1 Introduction

The Unitary State of the Republic of Indonesia is a State based on law, as stated in Article 1 paragraph (3) of the 1945 Constitution which reads: "The State of Indonesia is a State of Law". This means that all actions, authorities, issued by the State must be based on the provisions of existing regulations and laws [1]. Law in the perspective of a state has a very important role. This law is a reference in running the country, more specifically in Indonesia. This law is a reference in carrying out life starting from regulating its people, regulating communication between countries, regulating order, administration, and so on. The unitary state of the Republic of Indonesia makes the 1945 Constitution as a legal foundation, in carrying out its statehood. This basic law is the basis of all existing legal products. In the state, the 1945 Constitution is the basic norm of all norms (Law) in Indonesia. The 1945 Constitution is hierarchically the highest norm, this can be seen in article 7 paragraph (1) of Law Number 12 2011. By making the 1945 Constitution the basis of all existing laws, the state is required to make the 1945 Constitution the basis for making various legal products, authorities, regulations, in order to meet all the needs of life and the lives of its citizens. Starting from the needs of citizens in a small scope, the desires between residents of villages, neighborhoods and up to the level of relations with other countries. Likewise, with the livelihood of each of its citizens, the State is obliged to be able to protect, provide facilities, and also participate in securing the livelihood of each citizen of the State.

The interests of every citizen are the human rights of every citizen. The state should not prevent its citizens from exercising their interests as human beings and citizens and the state should not prohibit its citizens from exercising their interests while taking into account that the process of exercising these interests does not violate existing laws and does not violate and reduce the rights of other people. One of the interests that exist in Indonesian society is the interest of society, Indonesian society is famous for its many diverse cultures, customs. One form of culture that continues to be carried out by the community today is to carry out a cultural procession of celebrations, which in Indonesia has various kinds and types of celebrations. Hajatan is an activity of the community carrying out a series of traditions and religious activities that have become the identity, habit, of the local community. The community believes that by organizing a celebration, the community gives legitimacy to the identity of a community group. In the life of the community, hajatan culture is often carried out using several types of public facilities presented by the local government to support the activities of the local community, public facilities that are often used are public roads. The habit of the community to use public roads as a place to carry out this celebration culture often causes several problems, namely by using public roads it often causes congestion that harms other communities, not only that, other problems that arise are related to the authority to grant permits for the implementation of the celebration culture itself.

In this research, the researcher contains a case of celebration culture that occurs in Gresik Regency where in general the local community often uses public facilities to carry out their celebration culture. Problems like the above also often occur in Gresik Regency and the most frequent is related to granting permits to carry out celebration culture by using public roads. Therefore, the researcher wants to present a research entitled "Issuance of Crowd Permits for Hajatan in Gresik Regency".

2 Methods

This research uses the Normative legal research method, which is a type of research that conducts intellectual studies on articles in laws and policies that can be critically analyzed and explained their meaning and implications for legal subjects [2]. The approach used in this research uses the *Statue Approach* by using primary legal materials in the form of laws and regulations and secondary legal materials in the form of literature studies from books and journals. Collecting data using technical documentation studies regarding the materials used in this research and analyzing the data using deductive reasoning.

3 Results And Discussion

3.1 The authority of the Regional Government in issuing crowd permits is based on Government Regulation Number 60 of 2017 concerning Procedures for Licensing and Supervision of Public Crowd Activities, Other Community Activities, and Notification of Political Activities

In state administrative law, what is meant by authority is the powers possessed by public officials to be able to carry out legal actions of a public nature. According to Yusri munaf in his book State Administrative Law [3]. What is meant by authority is power, which is often aligned with the Dutch term "*bevoegheid*". Which means that the government can carry out its functions on the basis of the authority it has obtained. Power or power to be able to do something, create something, also includes being able not to do something. The authority possessed by State officials, government organs aims to be able to carry out government functions in accordance with the course, within the authority there are also limits that have been regulated, so that the government or State organs cannot commit arbitrary acts. An authority issued by the government, or public officials is intended so that a country can achieve its goals, namely assistance, security, order for its citizens.

To realize good governance in order to improve the quality of government administration, and to solve problems in the administration of government, the state is present by forming regulatory instruments in the form of Law Number 30 of 2014 concerning Government Administration. Law Number 30 of 2014 concerning Government Administration in this study hereinafter referred to as Law 30/2014 regulates several aspects related to government administration in Indonesia, one of which has been regulated, namely related to government authority. Based on Article 1 paragraph 6 of Law 30/2014, authority is the power of government agencies and/or officials or other state administrators to act in the public domain. In the realm of work from the government to provide services to the public is a form of government administration action. In the same article, paragraph 8 of Law 30/2014 states that government administrative actions are actions of government officials or other state administrators to perform and/or not perform concrete actions in the context of governance. In carrying out their duties, government officials or other state administrators have government authority based on laws and regulations. This means that in accordance with article 7 paragraph 1 of Law 30/2014, it states that officials are obliged to carry out government administration in accordance with the provisions of laws and regulations, government policies and general principles of good governance.

The authority exercised by government officials or other state administrators is obtained through attribution, delegation, and/or mandate. The authority of attribution based on Law 30/2014 Article 12 states that government agencies and/or officials obtain authority through attribution if it has been regulated in the 1945 Constitution and / or laws, this attribution authority is given to government agencies and / or officials. This attributable authority cannot be delegated to other government bodies and/or officials unless it has been regulated in the 1945 Constitution or Law. Therefore, the conception of responsibility related to the authority of attribution exists and is attached to the government body and/or official who obtains the authority of attribution.

The next authority regulated by Law 30/2014 is delegated authority. Delegation authority is regulated in Article 13 of Law 30/2014, which states that the delegation of authority is based on the provisions of laws and regulations. Furthermore, this delegation authority is given by government agencies and/or officials to other government agencies and/or officials by making stipulations in the form of instruments of

Government Regulations, Presidential Regulations, and/or Regional Regulations. Therefore, the conception of responsibility lies with the recipient of this delegated authority.

The next nature of authority is mandate authority. This mandate authority is regulated in Article 14 of Law 30/2014, which states that government agencies and/or officials who obtain mandates when assigned by government agencies and/or officials above them and are carrying out routine tasks. Government agencies and/or officials who obtain authority through mandates are not authorized to make strategic decisions and/or actions that have an impact on changes in legal status in the aspects of organization, staffing, and budget allocation. Therefore, the conception of responsibility lies with the mandate giver.

The government in carrying out its duties as a service provider to the public, has an obligation to provide services in all aspects of community life in the life of the nation and state. To support the success of services to the public, not only regulatory instruments as the basis for regulating and implementing services but also require other supporting instruments, namely supporting facilities and infrastructure. These supporting facilities and infrastructure are referred to as public facilities. Public facilities based on good and correct Indonesian spelling come from 2 words, namely Facility and Public. Facilities can be interpreted as facilities, infrastructure, or clearly can be interpreted as a means to facilitate the implementation of functions. As for the General is a facility provided for the public, such as roads, public lighting, and so on. With this, public facilities can be interpreted as facilities, infrastructure provided for the common / public interest. Public facilities are not only roads, street lights, but public facilities of various kinds, ranging from places of worship, places to fulfill traditional events, mosques, schools, and many others. These public facilities support activities in the community.

The public space is a place or space that is utilized for free - just not for profit useful for the community, both individually and in groups. The usefulness of public space is very important, where this space is a place where people can communicate, gather, meet, according to the needs of each community. Public space is one of several vital things, especially in Indonesian society. This public space is very supportive of the lives of Indonesian people. Public spaces whose ownership is shared should not be used privately or only by a group of people. Both public facilities and public spaces have important similarities, namely as a support for the needs of the community, as well as a necessity in social life.

Cultural activities that exist in society are a hallmark of every wealth and variety of cultures owned by the Indonesian people. With a variety of wealth and diversity of culture, the state must be present to protect the rights of the implementation community and also those who do not implement. In carrying out the task of public services, the state needs to cooperate with all state agencies and / or officials as well as other state administrators to provide the maximum possible service to the community. One of state administrators who have an important role in maintaining domestic security which is the main requirement to support the realization of a just, prosperous and civilized civil society based on Pancasila and the 1945 Constitution is the Police. The police as state organizers are present for the maintenance of security and public order, law enforcement, protection, protection, and services to the community in order to human rights.

3.2 Crowd Permit Application Procedures, and Enforcement of Rules Based on Government Regulation No. 60/2017 on Procedures for Licensing and Supervision of Public Crowd Activities, Other Community Activities, and Notification of Political Activities

In their duties, the Police work based on regulatory instruments in the form of Law Number 2 of 2002 concerning the Indonesian National Police, hereinafter referred to in this research as Law 2/2002. Article 13 of Law 2/2002 states that the Police have several main tasks including; maintaining public security and order, enforcing the law, and providing protection, protection, and services to the community. Therefore, the authority possessed by the Indonesian National Police is attributable. The presence of Law 2/2002 is a form of the state's seriousness in realizing Article 30 paragraph (4) of the 1945 Constitution, namely the Indonesian National Police as a state instrument that maintains security and order in order to protect, , serve the community, and enforce the law.

In carrying out its duties, every state institution that organizes the state has authority derived from a legislation. Likewise, the Indonesian National Police in carrying out its duties also gets authority from laws and regulations. Based on Law 30/2014, the authority of the Indonesian National Police is the authority of attribution. The authority of attribution obtained by the Indonesian National Police is a direct order of the 1945 Constitution of the Republic of Indonesia and there is also Law Number 2 of 2002 concerning the Indonesian National Police. Based on Law 30/2014, the authority of attribution cannot be delegated to other agencies and/or institutions, therefore the consequence is that the responsibility for maintaining security and public order is the full responsibility of the Indonesian National Police.

One of the things that often happens in society is that people carry out an activity that has the potential to disrupt security and order in the community. Knowing this, as the implementer of the mandate of the 1945

Constitution, the Indonesian National Police is present to participate in guarding and protecting so that there is no disturbance to security and order in the community. The Indonesian National Police in carrying out security against potential security and order disturbances in the community has taken steps to prevent potential disturbances, including security and order disturbances caused by activities carried out by the community. Government Regulation No. 60/2017 concerning Procedures for Licensing and Supervision of Public Crowd Activities, Other Community Activities, and Notification of Political Activities, hereinafter referred to in this research as PP 60/2017. PP 60/2017 is a regulatory instrument that specifically regulates how community mechanisms are allowed to carry out activities that cause potential security and order disturbances in the community.

PP 60/2017 explains that every community activity that has the potential to disrupt public security and order, and uses public facilities, requires permission from the security forces, in this case the Indonesian National Police. PP 60/2017 also regulates how the community can obtain a permit from the Indonesian National Police and what requirements are needed to obtain permit. Based on PP 60/2017, the community needs to provide administrative requirements, including the following; 1). Activity Proposal; 2). Approval from the person in charge of the place owner; 3). Recommendations from related agencies or organizations. Regarding recommendations from related agencies or organizations, it means that people who want to carry out activities that use public facilities need recommendations from related institutions. If the activity will be carried out in a village environment, the community must submit a written request for recommendation to the local village government, if the activity will be carried out in a regional environment that uses public facilities in the form of public roads, the community must apply for a recommendation from the local government in charge specifically related to public roads, in this case the relevant agency is the local district / city government transportation office.

With the existence of a recommendation letter to complete the administrative requirements of the permit application to the Indonesian National Police, the authority to grant permission or not remains with the authority of the Indonesian National Police. Law 2/2002 and Government Regulation 60/2017 state that those who have the authority to grant permission or not for an activity are authorized officials of the Indonesian National Police. This means that nature of Government Regulation No. 60/2017 on the authority to issue permits is cumulative, which is attached to certain agencies, namely the Indonesian National Police. However, before issuing a crowd permit, the requirements stipulated in PP 60/2017 require recommendations from related agencies. If the relevant agency does not provide a recommendation, the Indonesian National Police will consider not issuing the crowd permit that is being requested. Because the recommendation is one of the administrative requirements, if it is not fulfilled, there is no sanction but only in the form of administrative action, namely being invited to reapply by making improvements to the crowd permit application.

When the administrative requirements are complete, the applicant can apply for a crowd permit to the Indonesian National Police, if the requested activity is within the scope of the village area then the applicant needs to submit an application to the local POLSEK, and if the requested activity is within the scope of the area above, the applicant needs to submit an application to the local POLRESTA and/or POLRES. Then the stages of submitting the process based on the Chief of Police Guidelines No.Pol: Juklap/02/XII/1995 Dated December 29, 1995 concerning Licensing and Notification of Community Activities clearly explains the issuance of Permits and application receipt letters (STTP) through the following administrative stages: (1) Receive a permit application addressed to the Chief of Police Up Kasat Intelkam; (2) May receive a permit application addressed to a higher level unit, to be immediately forwarded to address along with the recommendation of the local police; (3) Examine the application file addressed to the Chief of Police and the permit application addressed to a higher level unit, if it meets the requirements then the applicant is given a receipt of receipt of submission of permit application and STTP; (4) If from the result of the examination it is found that the application dossier has not fulfilled the requirements, an explanation shall be given to the applicant to complete the deficiencies in the requirements of the application for license and STTP, and the dossier shall be returned to the applicant without giving a receipt of the submission the application for license and STTP; (5) The file of the permit application addressed to the higher level unit, along with the receipt of the submission of the permit application and STTP sheet II is immediately sent to that place by the Local Police; (6) The receipt of the submission the permit and STTP sheet III is kept as an archive of the Local Police; (7) In the process of licensing and STTP in coordination with related agencies; (8) The permit is given to the applicant no later than 3 (three) days before the implementation of the activity, a copy is sent to the relevant agencies, among others, the Chief of Police, the Mayor, the Head of Operations and the Local Police Chief.

Regarding the submission process, there is also a minimum limit for submitting a crowd permit application, for regional scale activities, the minimum submission limit is 14 days before the activity is held, then for national scale activities, the minimum submission limit is 21 days before the activity and submitted to KAPOLRI, and for international scale activities, the minimum submission limit is 30 days

before the activity is held and submitted to KAPOLRI. Officials of the Indonesian National Police who have the authority to accept and approve applications for crowd permits based on Law 2/2002 and KAPOLRI Regulation Number 10 of 2012 concerning Traffic Regulation in Certain Circumstances and the Use of Roads Other Than for Traffic Activities, namely those who issue permits are BAINTELKAM POLRI (for international and national scale activities), DIRTINTELKAM POLDA (for provincial scale activities), SATINTELKAM POLRESTA / POLRES (for district / city scale activities). When it has been declared worthy of permission, the Indonesian National Police must issue a permit that is submitted to the applicant for a crowd permit and the activity can be carried out and will get an escort from the Indonesian National Police in this case, namely traffic security by POLANTAS.

Based on PP 60/2017 concerning Procedures for Licensing and Supervision of Public Crowd Activities, Other Community Activities, and Notification of Political Activities, there is an article that regulates what actions are allowed to the Police have the authority to deal with licensing violations and / or security and public order disturbances in accordance with statutory provisions, while based on article 14 of PP 40/2017 states that the Police have the authority to dissolve public crowd activities and other community activities carried out without a permit and the Police have the authority to dissolve public crowd activities and other community activities that have a permit but the implementation is not in accordance with statutory provisions.

Public gatherings can also be found in the regulations of the Criminal Code listed in Article 510 which states that *punishable by a fine of up to IDR 375, any person who does not, with the permission of the chief of police or a civil servant appointed by that official: (1) Holding a public party or public gathering; (2) Holding a march in a public street. If the march is carried out to express the will by means of force, the organizer shall be sentenced to a maximum light imprisonment of 2 weeks or a maximum fine of Rp. 2,250.* The interpretation of Article 510 can be referred to the opinion of R.Soesilo in his work book which states that what is meant by public crowds in this article is activities intended for the general public and crowds whose implementation is carried out in public places such as night markets and various types of public activities, R.Soesilo also argues in the same book that circumcision, marriage, or birthdays are a category of private parties, because the implementation is carried out around the house and those who attend these activities are their own circle, and these crowd activities are private parties and are not included in the public crowds regulated in Article 510 of the Criminal Code.

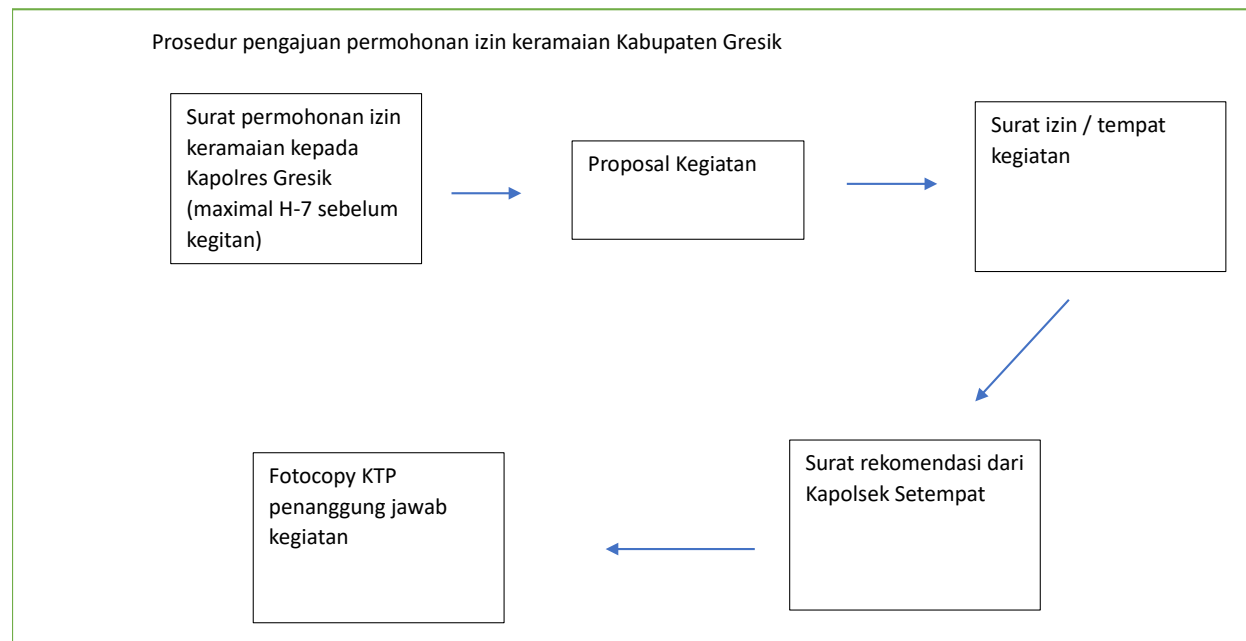


Figure 1. Diagram of the Application Procedure for a Crowd Permit in Gresik Regency

Based on the diagram above, it shows the flow of the crowd permit application process that must be carried out by the community if they want to hold crowd activities that use public facilities. In the process of applying for this crowd permit, the community needs to see the time limit related to the application must be sent 7 days before the activity is carried out and sent to the local Police Chief. What needs to be completed by the community in the permit application process is related to the activity proposal which contains all information related to the proposed crowd activity. Then after the Police Chief has verified, the Police Chief must issue a recommendation letter regarding the crowd activity and submit it to the crowd permit applicant. After the

applicant has obtained a recommendation letter, the applicant can carry out the public crowd activity which must be in accordance with the proposal that has been submitted in the previous crowd permit application process.

3.3 Implementation of Government Regulation Number 60 of 2017 concerning Procedures for Licensing and Supervision of Public Crowd Activities, Other Community Activities, and Notification of Political Activities in Gresik Regency

The diverse cultural patterns of the people in Indonesia show that Indonesia really applies the principles of a good democratic state, which still maintains the values of human rights to have a culture, race, and religion in accordance with their beliefs as long as it does not conflict with the ideology and philosophy of the state. In order to continue to create order and security for the community, the state needs to be present to provide services to the community in order to create order and security for its citizens. The form of the presence of the state in providing order and security services to its citizens, the state has instruments to do it all. One of the instruments formed by the state is the Indonesian National Police. The Indonesian National Police in its duties has legitimacy in carrying out its duties as stated in Law Number 2 of 2002 concerning the Indonesian National Police. One of the main tasks of the Indonesian National Police is to maintain security and public order in carrying out the life of the nation and state. One of the concrete forms of the duties of the Indonesian National Police is to grant permits, provide supervision and escort related to community activities throughout the administrative territory of the Indonesian state.

No exception in the Gresik Regency area, Gresik Regency which is one of the districts / cities that support the City of Surabaya as the capital of East Java Province has a fairly dense population of 1,319 million people spread throughout the Gresik Regency area. With such a large population, there are many types and varieties of ethnicities, religions and races that live side by side in Gresik Regency. In the local community, is still something that is not well known by the general public regarding how the mechanism for applying for crowd licensing in Gresik makes it still not orderly to apply for a crowd application permit administratively in Gresik Regency. One form of community activity that is often held by the local community is related to celebrations held around the place of residence where it often happens that these activities use public facilities. In order to hold a celebration, it certainly requires a permit to obtain legal legitimacy or legal certainty for the activity. The understanding that occurs in the local community related to licensing applications is that the community still applies for a crowd permit with an oral request through the local hamlet head to use public facilities around their home. It is well known that in PP 60/2017 there is no instrument indicating that the hamlet head can grant a permit, while what is contained in PP 60/2017 is the village level or even the sub-district level and the sub-district sector police or even higher. In Gresik Regency itself still does not have a special instrument issued by the Regional Government that regulates this specifically, but the Intelkam Unit of the Gresik Regency Police has provided information regarding the mechanism for applying for a crowd permit which has listed on its website at <http://intellkamgresik.com/izin-keramaian/> but on the website page it is still not clear the detailed mechanisms and stages as regulated in PP 60/2017.

With the absence of instruments formed by the Regional Government, the process of applying for a crowd permit submitted by the local community is still often done verbally to the highest leader in the neighborhood, which is still requested to the local village government verbally even though it uses a public road connecting the village with the city of Gresik. Then the local village government also did not issue a written letter to provide a recommendation on the application for a crowd permit submitted by the community. This, when correlated with the and regulations that specifically regulate the mechanism of crowd permit applications, cannot be justified, because basically the authority to issue crowd permits is a cumulative authority attached to the National Police of the Republic of Indonesia with consideration of recommendations from the local government. Then the process of applying for a crowd permit is done orally and there is no written evidence. If the activities carried out cause disturbances to public order and security, the Indonesian National Police is authorized to dissolve the activity on the basis of applicable laws and regulations.

Another research finding is that there is still no statutory instrument prepared by the local government, especially the Gresik Regency Government. If an area does not have rules that specifically regulate it, it can follow the rules that are above it in legal language is the principle of "*lex superior derogat legi inferiori*". Likewise with Gresik Regency, in terms of the mechanism for applying for a crowd permit, it follows the existing laws and regulations, namely Government Regulation Number 60 of 2017 concerning Procedures for Licensing and Supervision of Public Crowd Activities, Other Community Activities, and Notification of Political Activities. So that way the mechanism for applying for a crowd permit requested by the community will be in accordance with existing regulations and get an escort from the Indonesian National Police in order to maintain order and security in the community.

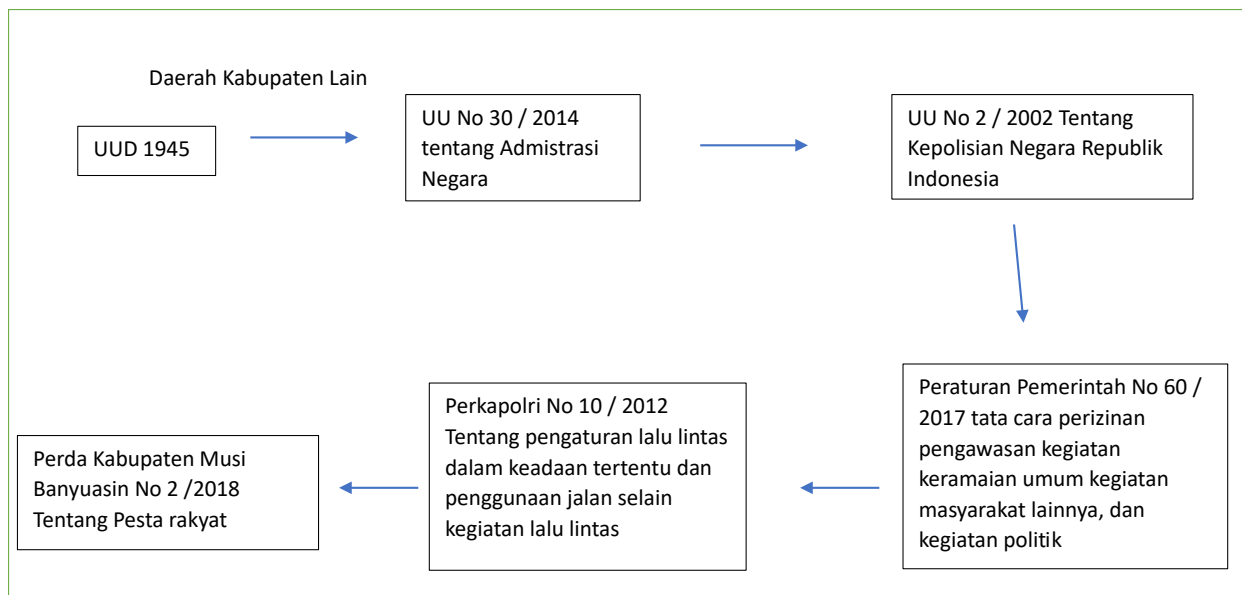


Figure 2. Diagram of the Implementation Mechanism of Crowd Permit Licensing in Other Regions

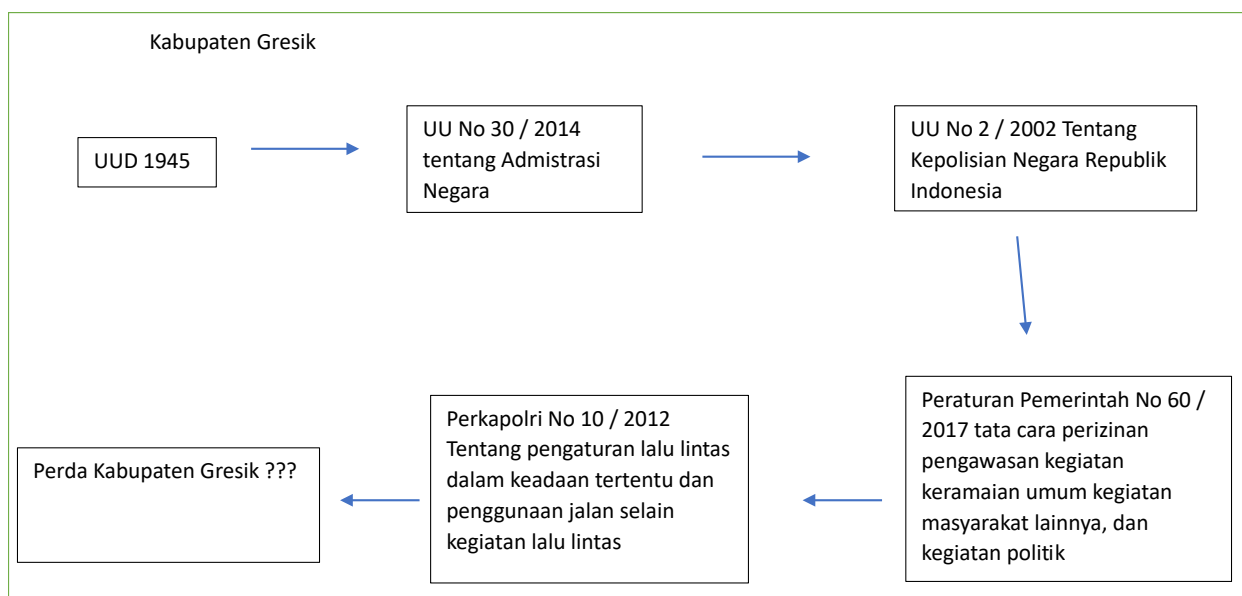


Figure 3. Diagram of the Legal Vacancy in Gresik Regency Regarding Crowd Permits

Based on the flowchart above, it shows the hierarchy of derivatives of laws and regulations related to crowd licenses. For other regions related to laws and regulations related to crowd permits, the rules governing from the top to the level of regulation in the regions are linear with their use, namely there is one region that already has special rules governing crowd permits which is a derivative of the regulations above, namely Government Regulation Number 60 of 2017 concerning Procedures for Licensing Supervision of General Crowd Activities Other Community Activities and Political Activities, and the next flowchart shows the hierarchy of derivatives from laws and regulations related to crowd permits in the Gresik Regency area, based on the results of research that in Gresik Regency there is still a legal vacuum governing crowd permits held by the community in Gresik Regency.

4 Conclusion

Based on the Problem Formulation and Discussion above, the following conclusions can be drawn. In the process of issuing a crowd permit for community activities requires a permit issued in writing by the Indonesian National Police by obtaining a letter of recommendation from the relevant agency with certain affairs. In applying for a crowd permit there are administrative requirements that need to be completed by the applicant, and if the conditions have been met then the Indonesian National Police must issue a permit

or Application Acceptance Letter (STTP) for an activity that has been requested, and if the conditions are not met then the Indonesian National Police will return the requirements and provide a rejection letter regarding crowd permit application.

Problems with the application for a crowd permit in Gresik Regency, in applying for a permit is still done orally and submitted to the local *polo* or hamlet head. This cannot be justified because there is already a regulatory instrument related to the application for a crowd permit. Another problem that occurs in Gresik Regency is that there is still a legal vacuum or the absence of regulatory instruments that designate or provide clear delegation of authority related to what agencies are entitled to issue recommendation letters on applications for crowd permits that have been submitted by the community. This legal vacuum results in uncertainty regarding which agency has the right to issue a recommendation letter on application for a crowd permit.

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