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**REFORMULATION OF LEGAL REGULATIONS CONCERNING
ALCOHOLIC BEVERAGES IN BALI WITH LEGAL CERTAINTY AND
BENEFIT**

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Legal arrangements regarding control, supervision, determination of areas/places of sale, authority to issue alcoholic beverage permits and provisions regarding the regulation of traditional alcoholic beverages have urgency, considering that Bali is one of the domestic and international tourist destinations. That traditional alcoholic drinks are also used as a complementary means of religious ceremonies. Researchers see that there has been a legal vacuum after Presidential Regulation No. 74 of 2013 was issued concerning Control and Supervision of Alcoholic Beverages. This situation can certainly raise the issue of legal uncertainty. This article is a normative legal research, using a statutory, historical, and conceptual approach. The research results show that Presidential Regulation (Perpres) No. 74 of 2013 and Law no. 23 of 2014 explicitly regulates control, supervision, determination of places to sell alcoholic and traditional alcoholic beverages and regulates the authority to grant business licenses. Regulations regarding alcoholic beverages have been regulated in laws and presidential regulations, these provisions should be followed up immediately by issuing regional regulations as the implementation of the regulations above, based on the principle of hierarchy, thereby providing legal certainty and providing benefits to the wider community.

Keywords: traditional drink, local regulations, and delegation of authority

1. Introduction

Draft regarding the rule of law sourced of the two systems different laws; that is europe continental/civil law system and *common law/anglo saxon system*. They both called with different terms: *rechtsstaat* and *the rule of law*. However, the substance focused on the same meaning and substance, namely the rule of law state. Second, system law the same view that law used as tool For realize order life nation and state, however in its application second system law the own typical difference. (Siallagan, 2016) In a rule of law should action government and people based on law. (Iswari, 2020)

Principle legality is is one from some principle law. (Situngkir, 2018) One required feature as a rule of law is principle legality, which emphasizes on each good deeds carried out by the government nor public always based on on law. Principle legality known, in realm law criminal, legal state administration (HAN) and state administrative law (HTN). When examined more in, basic legality has stated in Article 5, letter a, Law Number 30 of 2004 concerning Administration Government. Principle legality (*wetmatigheid*) is defined that every decision must based on something provision law. (Ansori, 2015)



Regulation legislation stated start enforced as well as own binding force when enacted, except determined different inside regulation legislation. On the other hand, a regulation legislation stated No own strength binding/not apply when stated No apply or repealed by law legislation that has power/position level or position higher. (Hamidi, 2012)

Government Bali Province has publish Bali Provincial Regulation No. 2 of 2016 which contains about withdraw and declare No apply Bali Province Regional Regulation (Perda) Number 5 of 2012 concerning Control Circulation Drink Alcoholic in Bali Province. Since being revoked, The Provincial Government of Bali has not yet set Regulations regulating control, supervision, area/place sales, licensing business as mandated in Regulation President No. 74 of 2013 concerning Control and Supervision Drink Alcoholic. Reality This raises emptiness law to arrangement area/place sale drink alcohol, gifts permission business drink alcohol in the Province of Bali. Condition This when dragged on will give impact to exists uncertainty law.

Law is something governing guidelines pattern life humans who have role important in reach objective peace life society. (Failin, 2017) Arrangement law about distribution, place sale drink alcohol and permits production drink containing traditional alcohol is something very important condition, considering Bali as one objective domestic and foreign tourism, besides That drink alcoholic traditionally used as one complementary means ceremony religious. Therefore arrangement about place sales and licensing must adhere principle caution because they are so related with impact drink alcoholic for health society and use drink non - alcoholic controlled can stimulate happening enhancement follow criminal.

Circulation drink alcohol and drinks alcoholic traditionalyang No under control can resulted abuse drink alcoholic beverages that lead to alcoholism or addicted drink alcoholic, and can trigger happening crime. Therefore arrangement to control circulation drink alcoholic is imperative and very important in order besides related with order, also arrangement that so you can give impact expediency as well as certainty law for public

its rising regulation about Control drink alcohol and control Drink Alcoholic as Regulation president no. 74 of 2013 is replacement Presidential Decree No. 3 of 1997 because exists decision Supreme Court stated No apply again KEPRES No. 3 of 1997 so happen emptiness law about arrangement implementation in the region is good Province and Region, then done study this is discussed how arrangement about controlling, supervising, determining area/place sales, publishing permission business drink alcoholic ?; and Is existing regulations related with drink alcoholic has give certainty legal and beneficial for society.

2. Method

To answer legal issues outlined in preface, she then needed related studies with substance law that is form regulation legislation. Study This is study normative whose object is a legal norm, analyze norm law, rule of law, and legal doctrine so can answer legal problems encountered. (Marzuki, 2008) Study This done through approach regulation legislation/*Statue Approach*, Approach conceptual/*Conceptual approach* and approach history/*Historical approach*. (Marzuki, 2008)

Approach regulation legislation used For discuss material primary law ie Presidential Regulation No. 74 of 2013 concerning Control, and Supervision Drink Alcoholic and some regulation other related laws. Approach history used For discuss substance Why regulation drink alcoholic important and visible from corner development history, meanwhile approach case used For discuss problem repeal Perda drink alcohol and approach draft used For serve analysis about rule of law concept, principle legality, principle hierarchy and theory about goal law.

Article constitutes study from writer to importance quick made arrangement law about drink alcohol and drinks alcoholic traditional For mitigate happening problem related with uncertainty law and benefit.

3. Results And Discussion

Legal arrangements concerning Control, supervision, determination area/place sales, gifts permission business drink alcoholic.



Settings his⁷ry law to supervision, and technical system control containing drinks alcohol at first arranged in Presidential Decree No. 3 of 1997 concerning Supervision And Control Drink Alcoholic. Arrangement This based on consideration that government responsible answer on effort For give peace and order life society, because abuse Good production nor sale or presentation drink alcoholic can impact directly to peace and order society.

Regulation implementation arranged in form regulation ministers and decrees minister trade. Based on KEPRES No.3 of 1997. Based on the Presidential Decree, Government Province of Bali published Regional Regulation (Perda) No. 9 of 2002 about Supervision and Control Circulation Drink Alcoholic. Implementation arranged in Regulation Governor (Pergub) Bali No. 17 in 2003 and has experience several times the last change Governor Regulation no. 32 of 2006. In 2012, the Government The Province of Bali publishes Perda no 5 of 2012, regulates about Control Circulation Drink Alcoholic and deprive existence Perda Bali Province No. 9 of 2002 follows whole Regulation Implementation that is Governor Regulation No. 68 of 2012.

⁷ In 2012 it was published Decision Supreme Court No. 42/P/HUM/2012 which fused presidential decree Number 3 of 1997 concerning Supervision and Control Drink Alcoholic No valid and not have strength law, and content Presidential Decree along whole regulation implementation stated No apply again. act continue decision the Supreme Court, then President emit Regulation President (Perpres) No. 74. year 2013 about Control and Supervision Drink Alcoholic as replacement Presidential Decree no. 3 of 1997.

Article 9 of Presidential Decree No. 74 of 2013 in effect firm state that “ provisions more carry on about control and supervision drink alcoholic regulated by the Minister/ Head of Institution accordingly with field their respective duties. Regents/Mayors and Governors For area special the capital Jakarta only own authority arrangement to production, distribution and sales drink alcoholic traditional For need custom customs or ceremony religion in their respective areas of work.

About Authority For do control and supervision drink former alcoholic is authority Regents/Mayors and Governors based on Perpres This has switch bestowed to the appropriate Minister with field his job. As consequence on publication Presidential Decree no. 74 in 2013, remember task For supervising and managing control mikol No Again is authority Provincial Government. Remember condition such, then Government Bali Province has publish Perda no. 2 of 2016 which retracts Bali Province Regional Regulation No. 5 of 2012 concerning Control, Circulation Drink Alcoholic in Bali Province.

In relationship with containing drinks alcohol, Law No. 2 3 of 2014 About Local Government has arrange regarding authority Good That to government in the province, as well government in the District or City ie in accordance attachment letters DD presented in table following :

Table 1. Distribution Authority About Drink Alcoholic.

Central Government	Province	Regency /City
Authorized For publish letter permission business trading (SIUP) of beverages alcoholic importer registered drink alcoholic beverages (ITMB), distributors and sub-distributors.	Authorized published letter permission business trading drink alcoholic shop free customs and deliver permission recommendation publishing Trade Business License Drink Alcoholic (SIUP-MB) for distributors.	Authorized publish letter permission business trading drink alcoholic group B and C For retailer and seller direct drink place.

Source : According to the Appendix Letter DD Law 23/2014

The table above clarifies bestowal authority between Central Government, Government Province and Government County and City related with publishing letter permission. That in carrying out something authority Good That bestowal based neither on *attribution* nor *delegation* must based



on principle legality. Principle legality is very important principle for Indonesia as a state of law. (Yasin, 2017) Principle legality in law administration normal called as "*wetmatigheid van bestuur*" (Guslan, 2018). Doctrine principle legality in a rule of law require all action government based on regulation legislation that has own validity, clear and written. Therefore, every action administration must be based on applicable regulations and procedures. (Suratno, 2017)

Government Actions The Province of Bali publishes Regional Regulation No. 2 of 2016, the substance of which unplug enforceability Perda No. 5 of 2012 which regulates question control, and circulation drink alcoholic is step right, besides as form obedience to principle legality, also delivers certainty law at a time avoid happening conflict norms/contradictions rules and differences perception to to Who bestowal authority supervision and control drink alcohol (micol) is given.

Based on corner view theory *hierarchy* as presented by Hans Kelsen, that something regulation legislation is something system likened law as something system child tiered stairs therefore more norms tall become base for formation norm underneath. (Asshiddiqie & Ali, 2006) Theory This also known as theory about system law. So according theory *hierarchy*, more norms low must based on the norms above it. Connection between underlying norm arrangement another norm is superior and subordinated relations. (Asshiddiqie & Ali, 2006) Superior norms determine making inferior norm. Formation based on the superior norm is reason validity from a legal system. Applicability something the norm depends from the norm on it or superior norm, or can stated that when provision existing laws become base or is at above it (superior) is revoked or stated No happens, then in a manner automatic norm inferior laws or those in force based on norms that have revoked/deleted is also stated No happens or deleted. (Farida, 1998) Theory about *Hierarchy* regulation legislation has entered Law No. 12 of 2011 concerning Formation Regulation Legislation.

According to Article 8 Presidential Decree No. 74 of 2013, authority For do supervision and control mikol given to government area regency/city and Governor special for DKI Jakarta. Chapter the in a manner implicit give affirmation that Provincial Government other beyond what is stated in Presidential Decree, incl Government Bali Province does not Again authorized For do supervision as well as control mikol including type drink alcoholic traditional.

Policy Arrangement About Drink Legal Certainty and Beneficial Alcohol

Principle legality in realm law administration government (HAN) is known as *wetmatigheid van het said*, that every action government must based on regulation applicable laws. Therefore, without regulations that provide base authority, the administrator of that country will no longer own base. For operate something authority, For influence or To change something circumstances or position law inhabitant society. (Indroharto, 1993) Action by apparatus government that doesn't based on regulation applicable laws is something arbitrary acts (abuse of *power*) is deviation from principle legality.

Drink alcohol in Bali circulating in a manner area, condition This is part from provision various facilities, considering Bali to be One between *destination* tervavorit, best. Many interesting visit traveler Good domestic nor foreign countries (Movanita, 2019), besides as facility fulfillment will need tourism, in Bali type drink traditional Alcohol is also used as means equipment prayers and ceremonies custom.

Remember second need the so need exists regulation, control, supervision and management publishing permission in a manner clear in form regulation legislation invitation, for avoid happening possible abuse raises problem later day. According to Diana Halim Koentjoro; For prevent and minimize impact bad caused by drinks that contain it alcohol, then needed something effort control and supervision, to be able to prevent happening violation at a time For anticipate more beginning happening transgression, avoid impact bad to abuse drinks containing alcohol. (Koentjoro, 2004)

its rising Regulation President No. 74 of 2013 concerning Control and Supervision Drink Alcoholic as replacement Presidential Decree No. 3 of 1997 is effort government as executive in framework protect public including arrangement law regarding with classification drink alcoholic, control, control, determination area/place sales, and authority in publishing permission effort.

Category something product drink stated as drink alcoholic is related with content *ethyl alcohol* or *ethanol* (C_2H_5OH). the product originates from results containing agriculture element



carbohydrate processed with method fermentation and distillation or with do fermentation without distilled. Whereas drink containing traditional alcohol is made and served traditionally, manufactured with skill in a manner down decreased. Drink containing traditional alcohol generally packaging done in a manner simple, made time and use For need tradition custom customs and or ceremony religious.

Based on on content ethyl alcohol or ethanol (C_2H_5OH) is good containing drinks alcohol results from production local in the country and or containing drinks alcohol import results, grouped in three category namely :

- a. Drink alcoholic who has content C_2H_5OH with concentration content maximum 5 % grouped as class - A;
- b. Drink alcoholic who has content C_2H_5OH with concentration content between 5 % to 20 %, grouped as class - B; And
- c. Drink alcoholic who has content C_2H_5OH with concentration content between 20%. until with 55 %. grouped as class - C.

Drink alcoholic with content as category class -A, class -B and class -C by the government categorized as goods in supervision, fine procurement, distribution and sale. Therefore Government through Law no. 13 of 2014, Presidential Decree No. 74 of 2013 and regulations implementation has arrange provision about mechanism permission For production, importer, license issue, permission trade including arrangement against labeling. Regulations were also made For arrange about standard quality and standards security product drink alcoholic.

Besides bestow some authority related with permission to head area regency or mayor as well as Governor special for DKI Jakarta, authority in matter arrangement place can sold drink alcohol is also authority has bestowed to head area regency or mayor as well as Governor special for DKI Jakarta, incl including in matter set restrictions based on consideration characteristics and culture area. Drink alcoholic This forbidden sales in a nearby area with location places/houses of worship, schools/institutions education and home Sick as well as sales must separated place with goods another sale.

Related policy controls and policies supervision containing drinks alcohol is the authority of the relevant Minister, however special to drink designated alcohol For need ceremonial and religious “ drink alcoholic traditional ”, Regional Heads in districts./mayors and Gurbenur for DKI Jakarta is given authority For publish regulation in matter control and supervision to production, distribution and sales.

Based on on Law No. 23 of 2014 and Presidential Decree 74 of 2013 specifically about arrangement drink alcoholic Good results production domestic included drink containing traditional alcohol nor product imported, where Already clear which one is affairs absolute government and affairs concurrent staging, then For give certainty law and finish problem emptiness law related with licensing, supervision, and control so Governors and Regents/Mayors must quick make regulation area based on authority at a time For give certainty law for society.

As for the immediate policy must formulated is arrangement adapted laws with authority namely :

- a. Government Province make regulation regarding procedures/requirements related with mechanism submission and issuance permission effort, which regulates about technical and requirements policing letter
- b. permission For try sale containing drinks alcohol as well as publishing recommendation for those who apply application Trade Business License Drink Alcoholic (SIUP-MB) for distributors, so can give certainty law about permits and ultimately also expediency for society.
- c. Heads in Regencies or Cities and Governors special for DKI Jakarta based on authority quick make Regional regulations regarding procedures issuance of license business trading drink alcoholic class B and C for retailer. Policy about seller direct drink place, restrictions arrangement place/location sales and policies For control and supervision production, distribution/circulation, and or about sale drink alcoholic traditional special For need custom customs or ceremony religious.



Writer argue that reformulation regulation law about containing drinks alcohol and drinks containing traditional alcohol must quick done based on bestowal authority Good in a manner attribution nor delegation. Reformulation regulation can form drafting repeat local regulations about drink alcoholic as form obedience in implementation autonomy areas and assignments assistance, with substance that is not contrary with regulation above it.

Perda is base for government area For carry out autonomy area. Established regulations To give certainty law and avoid conflict between One regulation with regulation others can result in hesitation or confusion in society. Out of doubt impact on no achievement certainty law. (Suyatna, 2019) Established regulations To give certainty law and avoid conflict between One regulation with regulation others can result in hesitation or confusion in society. Out of doubt impact on no achievement certainty law. (Suyatna, 2019) Therefore policy Government For quick publish regulation related with drink alcoholic as one method For realize certainty law in life socialize. According to Radbruch, substance from law related directly to justice, because law is concretization from justice. So aim for justice That No is objective law That Alone that is prioritize kind for public broad (*gemeinwohl*). (Suyatna, 2019)

So can understood that principle expediency is related principles with well-being general. When the goal For get expediency done, then objective That must subject to justice and certainty law For avoid emergence arbitrariness. Government area in make policy about drink alcoholic Of course must still stick to the basics benefit to get give impact No just on regularity but also on enhancement well-being society. Thereby case with reformulation regulation drink alcohol and drinks alcoholic traditional, formulated regulations should consider mark economical as possible give expediency for public based on justice and certainty law.

4. Conclusion

Arrangement about controlling, supervising, determining area/place sale drink alcohol and drinks alcoholic traditional as well as authority gift permission business drink alcoholic has arranged in Presidential Regulation No. 74 of 2013 and Law No. 23 of 2014, however Provincial Government and District Government/Government City district yet do policy reformulation as implementation from regulation on based on on *Hierarchy*. Therefore , Government area provinces, districts and cities should quickly compile policy for society to obtain certainty law and in the end can expediency To use enhancement well-being society.

References

- 3 Ansori, L. (2015). Diskersi Dan Pertanggungjawaban Pemerintah Dalam Penyelenggaraan Pemerintah. *Jurnal Yuridis*, 2(1).
- Asshiddiqie, J., & Ali, S. M. (2006). *Theory Hans Kelsen Tentang Hukum*. Sekretariat Jendral & Kepaniteraan Mahkamah Konstitusi RI .
- Failin. (2017). Sistem Pidana dan Pemidanaan di dalam Pembaharuan Hukum Pidana Indonesia. *JCH (Jurnal Cendekia Hukum)*, 3(1).
- 8 rida, M. (1998). *Ilmu Perundang-Undangan*. Kanisius.
- Guslan, O. F. (2018). Tinjauan Yuridis Mengenai Batasan Antara Perbuatan Maladministrasi Dengan Tindak Pidana Korupsi. *JCH (Jurnal Cendekia Hukum)*, 4(1).
- 5 amidi, J. (2012). *Teori dan Hukum Perancangan Perda* (Cetakan Pe). UB Press.
- Indroharto. (1993). *Usaha Memahami Undang-Undang Tentang Peradilan Tata usaha Negara*, buku I : Beberapa Pengertian Dasar Hukum Tata Usaha Negara. Pustaka Sinar Harapan.
- 6 Iswari, F. (2020). Aplikasi Konsep Negara Hukum Dan Demokrasi Dalam Pembentukan Undang-Undang Di Indonesia. *JCH (Jurnal Cendekia Hukum)*, 6(1), 127.
- Koentjoro, D. H. (2004). *Hukum Administrasi Negara*. Ghalia Indonesia.
- Marzuki, P. M. (2008). *Penelitian Hukum*. Prenada Media Group.
- Movanita, A. N. K. (2019). Bali jadi salah satu destinasi paling banyak dikunjungi turis di dunia.



Compas.Com.

Siallagan, H. (2016). Penerapan Prinsip Negara Hukum di Indonesia. *Sosiohumaniora*, 18(2).

Situngkir, D. A. (2018). Asas Legalitas Dalam Hukum Pidana Nasional Dan Hukum Pidana

3 Internasional. *Soumatara Law Review*, 1(1).

Suratno, S. B. (2017). Pembentukan Peraturan Kebijakan Berdasarkan Asas-Asas Umum Pemerintahan yang Baik. *E-Journal Lentera Hukum*, 4(3).

Suyatna, I. N. (2019). Penyelenggaraan Pemerintahan Dalam Konteks Negara Hukum Indonesia; Menyoal Signifikasi Pembatalan Peraturan. *Jurnal Kertha Patrika Udayana*.

Yasin, M. (2017). *Makna asas-asas legalitas dalam hukum administrasi negara*.
Www.Hukumonline.Com.

Undang-undang Nomor 30 Tahun 2004 tentang Administrasi Pemerintahan.

Undang no. 23 tahun 2014 Tentang Pemerintahan Daerah.

Peraturan Presiden Republik Indonesia No 74 Tahun 2013 tentang Pengendalian dan Pengawasan Minuman Beralkohol

Keputusan Presiden Nomor 3 Tahun 1997 tentang Pengawasan dan Pengendalian Minuman Beralkohol

Peraturan Daerah Provinsi Bali No. 9 tahun 2002 tentang Pengawasan dan Pengendalian Peredaran Minuman Beralkohol

Peraturan Daerah Provinsi Bali No. 5 tahun 2012, mengatur tentang Pengendalian Peredaran 4 Minuman Beralkohol dan mencabut Perda provinsi Bali No. 9 tahun 2002.

Peraturan Daerah Provinsi Bali No. 2 tahun 2016, mengatur tentang Pencabutan Peraturan Daerah Provinsi Bali Nomor 5 Tahun 2012 Tentang Pengendalian Peredaran Minuman Beralkohol Di Provinsi Bali.

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