

The Authority of Regency/City Governments in Control of Alcoholic Beverage Sales

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Abstract

The purpose of this research is to analyze the authority of the Regency/City Government in controlling the sale of alcoholic beverages. This research is normative legal research using a statutory approach and a conceptual approach. Primary legal materials were collected by inventorying and categorizing laws and regulations, while secondary legal materials were collected through literature studies. Legal materials were analyzed using normative analysis. The results of the study found that the Regency/City Government is given attribution authority to control the sale of alcoholic beverages in the form of (1) Authority to provide SIUP-MB class B and C for retailers and direct sellers of drinks on the spot and (2) Authority to determine certain places that are permitted or restricted or prohibited from selling and distributing alcoholic beverages under regional characteristics under the provisions of Article 12 paragraph (3) of Law No. 23 of 2024 and its Attachments, Article 7 of Presidential Regulation No. 74 of 2013, and Article 28 of Minister of Trade Regulation No. 20 of 2014. To implement this authority, the Regency/City Government needs to form Regional Regulations and Regional Head Regulations to provide legal certainty for the implementation of alcoholic beverage sales businesses and legal protection for the community in the region.

1. Introduction

Indonesia is a unitary state as stipulated in Article 1 paragraph (1) of the 1945 Constitution of the Republic of Indonesia. A unitary state is a single-tiered state, therefore the main characteristic of a unitary state is the centralization of the authority to organize government affairs in the Central Government.¹ However, with the guarantee of regional autonomy regulated in Article 18 of the 1945 Constitution of the Republic of Indonesia, the implementation of government affairs is not only carried out by the Central Government, but some government affairs are decentralized to autonomous regions. Autonomous regions are organized based on the principle of the widest autonomy as guaranteed in Article 18 paragraph (5) of the 1945 Constitution of the Republic of Indonesia.

Government affairs that are decentralized to autonomous regions are called concurrent affairs. According to Article 10 paragraph (3) of Law Number 23 of 2014 concerning Regional Government (Law No. 23 of 2014), concurrent affairs are government affairs that are divided between the Central and Regional Governments, both provincial and district/city. The decentralized concurrent affairs are the basis for the implementation of regional autonomy. Concurrent affairs in Article 12 of Law No. 23 of 2014 amount to 32 government affairs which are divided into 2 (two), namely mandatory concurrent and elective concurrent. Mandatory concurrent affairs are government affairs that must be organized by autonomous regions

¹ Syofyan Hadi and Tomy Michael, "Implikasi Hukum Resentralisasi Kewenangan Penyelenggaraan Urusan Konkuren Terhadap Keberlakuan Produk Hukum Daerah," *Jurnal Wawasan Yuridika* 5, no. 36 (2021): 267-90.

which are divided into mandatory government affairs related to basic services totaling 6 government affairs and mandatory government affairs that are not related to basic services totaling 18 government affairs. Meanwhile, elective government affairs are government affairs that can be organized by autonomous regions if they have the potential to be managed totaling 8 government affairs. As a result of the decentralization of concurrent affairs, autonomous regions, both provinces and districts/cities, are given the authority to regulate (*regelendaad*) and manage (*bestuursdaad*) government affairs autonomously. This means that autonomous regions are given the authority to (1) form Regional Regulations or Regional Head Regulations to organize these government affairs; and (2) manage or organize these government affairs.

One of the decentralized government affairs is the government affairs in the trade sector as regulated in Article 12 paragraph (3) letter f of Law No. 23 of 2014. This means that autonomous regions, both provinces and regencies/cities, are given the authority to regulate and manage the trade sector. Furthermore, according to Attachment DD of Law No. 23 of 2014, the Regency/City Government is given the authority of attribution in the form of "Issuance of alcoholic beverage trade business permits (SIUP-MB) class B and C for retailers and direct sellers of drinks on the premises". So, based on these provisions, the authority is given to issue SIUP MB class B and C for retailers and direct sellers of drinks on the premises. In the authority to issue the SIUP-MB, the Regency/City Government is implicitly given the authority to control the sale of alcoholic beverages for class B and C. This is in accordance with the characteristics of the permit, namely as a preventive instrument, and aims to control the behavior of citizens. Based on this explanation, this study examines the authority of the Regency/City Government in controlling the sale of alcoholic beverages.

Research on the sale of alcoholic beverages has been conducted by several researchers, but most of them are empirical. *First*, research conducted by I Nyoman Sadhu Bramanta, et al entitled "Issuance of Alcoholic Beverage Distribution Permits Based on Bali Governor Regulation Number 1 of 2020."² The research examines the procedures for obtaining an SIUP-MB and the implications of Bali Governor Regulation Number 1 of 2020, while this research discusses the regulation of the authority of the Regency/City Government in controlling the sale of alcoholic beverages. *Second*, research conducted by Junaedi Hasyim, et al entitled "Analysis of the Effectiveness of the Implementation of Regional Regulation No. 4 of 2014 Concerning Supervision and Control of Procurement, Distribution, and Sellers of Alcoholic Beverages in Makassar City."³ This research is an empirical study that examines the effectiveness and inhibiting factors, while this study discusses the regulation of the authority of the Regency/City Government in controlling the sale of alcoholic beverages. *Third*, a research conducted by Desti Nora Rintasari, et al entitled "Effectiveness of the Implementation of Regional Regulation Number 10 of 2016 Concerning Control and Supervision of the

² I Nyoman Sadhu Bramanta, Ida Ayu Putu Widiati, and Luh Putu Suryani, "Pemberian Izin Peredaran Minuman Beralkohol Berdasarkan Peraturan Gubernur Bali Nomor 1 Tahun 2020," *Jurnal Preferensi Hukum* 1, no. 1 (July 27, 2020): 120-27, <https://doi.org/10.22225/jph.1.1.2169.120-127>.

³ Junaedi Hasyim, Ruslan Renggong, and Baso Madiung, "Analisis Efektivitas Pelaksanaan Peraturan Daerah No. 4 Tahun 2014 Tentang Pengawasan Dan Pengendalian Pengadaan, Peredaran Dan Penjualan Minuman Alkohol Di Kota Makassar," *Indonesian Journal of Legality of Law* 5, no. 2 (June 30, 2023): 298-307, <https://doi.org/10.35965/ijlf.v5i2.2670>.

Distribution and Sale of Alcoholic Beverages in Magelang City".⁴ The research is an empirical study that examines the implementation of Regional Regulation Number 10 of 2016, while this study discusses the regulation of the authority of the Regency/City Government in controlling the sale of alcoholic beverages.

2. Methods

This research is normative legal research, namely a process of discovering legal rules, doctrine, and principles.⁵ This research uses 2 research approaches, namely the statute approach and the conceptual approach. The legal materials used include (1) primary legal materials collected by inventorying and searching for relevant laws and regulations online through the Legal Documentation and Information Network of the State Secretariat which are then categorized according to their type and hierarchy; and (2) secondary legal materials collected using literature studies, both online and offline. Legal materials are analyzed normatively, starting with the stages of description, systematization, and finally prescription of the problems raised.

3. Results and Discussion

3.1. Authority of District/City Governments to Regulate Alcohol Sales

Indonesia is a country based on law, as stipulated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. Brian Z. Tamanaha states that "rule of law means that government officials and citizens are bound by and abided by the law".⁶ Thus, "the rule of law, not man; a government of laws, not men".⁷ Based on this, the government is obliged to act under the law. This obligation in the theory of administrative law is known as the principle of *rechtsmatigheid van het bestuur* or the principle of legality.⁸

The law functions normatively and constitutively for government actions. The normative function means that the law functions as the basis and limits of government actions. Related to the function of the law, Brian Z. Tamanaha stated that one of the functions of the law is "to impose legal restrictions on government officials. In two different ways a). by requiring compliance with existing law, b). by imposing legal limits on law-making power".⁹ The constitutive function means that the law functions to measure the legitimacy of government actions. The estuary of the two functions is the law as an instrument of legal protection for the people.

The principle of legality not only requires the government to act in accordance with positive law (formal) but also must comply with unwritten law (material) known as the

⁴ Desti Nora Rintasari, Adimas Bagus Mahendra, and Muchamad Chanafi, "Efektivitas Pelaksanaan Peraturan Daerah Nomor 10 Tahun 2016 Tentang Pengendalian Dan Pengawasan Terhadap Peredaran Dan Penjualan Minuman Beralkohol Di Kota Magelang," *Amnesti Jurnal Hukum* 1, no. 2 (August 26, 2019): 47-55, <https://doi.org/10.37729/amnesti.v1i2.647>.

⁵ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2016).

⁶ Brian Z. Tamanaha, "The History and Elements of the Rule of Law," *Singapore Journal of Legal Studies*, no. 12 (2012), <https://doi.org/10.2139/ssrn.2255262>.

⁷ Julian Sempill, "The Rule of Law and the Rule of Men: History, Legacy, Obscurity," *Hague Journal on the Rule of Law* 12, no. 3 (December 1, 2020): 511-40, <https://doi.org/10.1007/s40803-020-00149-9>.

⁸ Syofyan Hadi, "Principles of Defense (Rechtmatigheid) In Decision Standing of State Administration," *Jurnal Cita Hukum* 5, no. 2 (February 2, 2018), <https://doi.org/10.15408/jch.v5i2.7096>.

⁹ Brian Z. Tamanaha, "A Concise Guide to the Rule of Law," in *Relocating the Rule of Law*, 2008, <https://doi.org/10.5771/9783845219264-19>.

general principles of good governance-AUPB (*algemene beginselen van behorlijke bestuur*). For that, the principle of legality in the theory of administrative law is divided into 2 (two), namely formal legality and material legality. Formal legality consists of authority and procedures, while material legality consists of substance. About this, Philipus M. Hadjon stated:

“the principle of legality in government actions/decisions includes i) authority, ii) procedure, and iii) substance. Authority and procedure are the basis for formal legality which gives rise to the principle of *praesumptio iustae causa/vermoden van rechtmatig*/ the validity of government actions. While the substance will give rise to material legality. Failure to fulfill these three components of legality results in a legal defect in a government action/decision.”¹⁰

Normatively, the government's obligation to act in accordance with the law is regulated in Article 7 paragraph (1), Article 8, Article 9, and Article 10 of Law Number 30 of 2014 concerning Government Administration (Law No. 30 of 2014). In the articles, the government is required to act in accordance with laws and regulations and AUPB.¹¹ Even from the perspective of a material legal state as normative in Article 9, the absence of laws and regulations should not be a reason for the government not to provide public services. This is intended so that the government can provide optimal public services so that the welfare of the people can be realized.

One of the things that must be fulfilled when the government takes action is the existence of authority (*bevoegd*). In line with this, Article 8 paragraph (1) and Article 52 paragraph (1) of Law No. 30 of 2014 stipulate that government action is said to be valid if it is determined by an authorized official. According to Article 1 number 6 of Law No. 30 of 2014, authority is the power of a government agency/official to act in the realm of public law. Meanwhile, Black's Law Dictionary states that authority is "the right, ability, of faculty of doing something; Authority to do any act which the grantor might himself lawfully perform".¹² Ridwan HR also stated that "authority is the ability to carry out certain legal actions".¹³ Based on this understanding, authority is the power to act in the realm of public law. In other words, authority is the basis/foundation that gives government officials the power to act in the realm of public law.¹⁴ *A contrario*, government officials do not have the power to act in the realm of public law without authority. Without such authority in the theory of administrative law, it is known as the concept of *onbevoegd* both in terms of material, place, and time. In fact, in the theory of administrative law it is stated that if the government acts without authority, then the action is null and void (*nietig van rechtwege*).

¹⁰ Philipus M Hadjon et al., *Hukum Administrasi Dan Good Governance* (Jakarta: Trisakti University Publisher, 2010).

¹¹ Moudy Raul Ghozali and Syofyan Hadi, "Perlindungan Hukum Bagi Pejabat Pemerintahan Dari Ancaman Pidana Dalam Penggunaan Diskresi," *Mimbar Keadilan* 14, no. 2 (June 21, 2021): 170-82, <https://doi.org/10.30996/mk.v14i2.5092>.

¹² Brian A Garner, *Black Law Dictionary*, ed. West Publishing, 9th ed. (Minnesota, 2009).

¹³ Ridwan HR, *Hukum Adminitrasi Negara* (Jakarta: Raja Gravindo Persada, 2014).

¹⁴ Syofyan Hadi and Moudy Raul Ghozali, "Perlindungan Hukum Bagi Rakyat Dalam Penggunaan Diskresi Pemerintahan Padamasa Pandemi Covid-19," *Jurnal Ilmu Hukum* 18, no. 1 (2022): 77-87.

In the perspective of a unitary state that uses a decentralized system, the state recognizes and guarantees autonomy to each region.¹⁵ This guarantee can be seen in the provisions of Article 18 paragraph (2) of the 1945 Constitution of the Republic of Indonesia which states that the implementation of regional government is based on the principle of autonomy (*authonomy*). Even the autonomy implemented by the regions is the broadest possible autonomy except for government affairs which according to the law are the authority of the Central Government. Normatively, autonomy means the rights, authorities, and obligations of each autonomous region to regulate (*regelendaad*) and manage (*bestuursdaad*) government affairs decentralized by the Central Government based on the law independently (*vide* Article 1 number 6 of Law No. 23 of 2014). In essence, autonomy gives authority to regions to regulate and manage independently (self-regulation and self-governing).

One of the legal implications of granting regional autonomy is that the Central Government decentralizes part of its government affairs to each autonomous region. According to Article 9 of Law No. 23 of 2014, government affairs are divided into 3 (three), namely absolute government affairs which are the absolute authority of the central government, concurrent government affairs (mandatory and optional) which are divided between government units, and general government affairs. One form of such government affairs is concurrent affairs which are regulated in Article 12 of Law No. 23 of 2014. The article stipulates that concurrent government affairs are divided into 2 (two), namely mandatory concurrent affairs and optional concurrent affairs. These mandatory concurrent affairs are divided into mandatory affairs related to basic services and those not related to basic services. Furthermore, Article 12 paragraph (3) letter f of Law No. 23 of 2014 stipulates that one form of optional concurrent government affairs is "trade affairs". This means that government affairs in the field of trade are divided entirely to government units, both central, provincial, and district/city.

Based on the explanation above, the Regency/City Government is decentralized in government affairs in the field of trade as stipulated in the Attachment DD Law No. 23 of 2014. In the Attachment of the law, it is determined that one of the authorities held by the Surabaya City Government is "Issuance of alcoholic beverage trade business licenses class B and C for retailers and direct sellers of drinks on the spot". So, based on these provisions, the Regency/City Government is given the authority to issue SIUP MB class B and C for retailers and direct sellers of drinks on the spot. In the authority to issue the SIUP MB, the Regency/City Government is implicitly given the authority to control the sale of alcoholic beverages for class B and C. This is in accordance with the characteristics of the permit, namely as a preventive instrument and aims to control the behavior of citizens.

In addition to the authority to issue SIUP-MB, it also includes the authority of the Regency/City Government to determine places that are restricted or prohibited from selling alcoholic beverages. The authority of the Regency/City Government attribution is regulated in Presidential Regulation Number 74 of 2013 concerning Control and Supervision of Alcoholic Beverages (Presidential Regulation No. 74 of 2013). Related to the authority of the

¹⁵ Rusdianto Sesung and Syofyan Hadi, "Peraturan Presiden Nomor 33 Tahun 2020 Dalam Perspektif Otonomi Dan Desentralisasi," *DiH: Jurnal Ilmu Hukum* 17, no. 1 (January 30, 2021), <https://doi.org/10.30996/dih.v17i1.4146>.

Regency/City Regional Government, Article 7 of Presidential Regulation No. 74 of 2013 has determined the following:

- (1) Class A, class B and class C alcoholic drinks can only be sold at:
 - a. hotels, bars and restaurants that meet the requirements in accordance with laws and regulations in the tourism sector;
 - b. duty free shops; and
 - c. certain places other than letters a and b as determined by the Regent/Mayor and Governor for the Special Capital Region of Jakarta.
- (2) The sale and/or distribution of alcoholic beverages in certain places determined by the Regent/Mayor and Governor for the Special Capital Region of Jakarta as referred to in paragraph (1) letter c is not close to places of worship, educational institutions and hospitals.
- (3) Apart from the places referred to in paragraph (1), Class A Alcoholic Beverages may also be sold in retail stores in packaged form.
- (4) Taking into account regional characteristics and local culture, the Regent/Mayor and Governor for the Special Capital Region of Jakarta may determine restrictions on the distribution of Alcoholic Beverages in places as referred to in paragraph (1) and paragraph (3).
- (5) Sales of Alcoholic Beverages are carried out separately from other goods for sale.

In addition to the aforementioned authority, Article 8 of Presidential Decree No. 74 of 2013 also stipulates that “the Regent/Mayor and Governor for the Special Capital Region of Jakarta shall exercise control and supervision over the production, distribution and sale of Traditional Alcoholic Beverages for the needs of customs or religious ceremonies in their respective work areas.”

When interpreted, Article 7 and Article 8 of Presidential Decree No. 74 of 2013 above contain the following legal norms:

- a. Class A, class B and class C alcoholic drinks can only be sold in:
 - 1) hotels, bars and restaurants that meet the requirements in accordance with laws and regulations in the tourism sector;
 - 2) duty free shops; and
 - 3) certain places other than letters a and b determined by the Mayor

The article uses the word “only” which indicates a limitative and restrictive meaning so that *a contrario* it can be argued that outside of these three places, alcoholic beverages are prohibited from being sold and/or distributed. In addition to using the word “only”, the article also uses the word “can” which indicates the meaning of “not necessarily”, “not bound”, or “freedom”, so that these three places can be determined as places where alcoholic beverages are sold or determined as places where the sale of alcoholic beverages is prohibited. This interpretation is strengthened by the provisions of Article 7 paragraph (4) which gives the Mayor the authority to impose restrictions in these three places.

- b. The authority of the Regency/City Government in controlling the sale of alcoholic beverages, namely:
 1. Determining certain places as places for selling alcoholic beverages other than hotels, bars and restaurants that meet the requirements as well as duty-free shops (*vide* Article

- 7 paragraph (1) letter c) on the condition that they are not close to places of worship, educational institutions and hospitals (*vide* Article 7 paragraph (2)).
2. Establishing restrictions on the sale/distribution of alcoholic beverages in hotels, bars and restaurants that meet the requirements, in duty-free shops, and in certain places that have been determined by the Mayor of Surabaya by taking into account regional characteristics and local culture (*vide* Article 7 paragraph (4))
 3. Carrying out control and supervision of the production, distribution and sale of Traditional Alcoholic Beverages for customary or religious ceremony needs in their respective work areas.

The attributive authority of the District/City Government in controlling the circulation of alcoholic beverages is also regulated in Article 20 paragraph (4) of the Minister of Trade Regulation Number 20/M-DAG/PER/4/2014 on Control and Supervision of Procurement, Distribution, and Sales of Alcoholic Beverages (Minister of Trade Regulation 20 of 2014) which states “The Regent/Mayor...can limit the circulation of alcoholic beverages in their work area...”. Article 28 of Minister of Trade Regulation No. 20 of 2014 has determined places that are prohibited from retailing and selling alcoholic beverages, namely places that are close to:

1. Youth arenas, street vendors, terminals, stations, small kiosks, youth hostels, and camping grounds;
2. Places of worship, schools, hospitals; And
3. Other specific places determined by the Mayor taking into account regional conditions.

Based on this, the District/City Regional Government is given attribution authority to control the sale of alcoholic beverages. The attribution authority includes:

- a. The authority to issue SIUP-MB MB class B and C for retailers and direct sellers of drinks on the premises;
- b. The authority to determine certain places that are permitted to sell and distribute alcoholic beverages;
- c. The authority to designate certain places that are restricted to selling alcoholic beverages in accordance with regional characteristics; and

The authority to determine certain places where the sale of alcoholic beverages is prohibited according to regional characteristics.

3.2. Guiding District and City Governments in Alcohol Beverage Sales Control

As explained above, according to Attachment to Law No. 23 of 2014, Article 7 of Presidential Regulation No. 74 of 2013, and Article 28 of Minister of Trade Regulation No. 20 of 2014, the Regency/City Government is given attribution authority to control the sale of alcoholic beverages, either in the form of issuing a Business License (SIUP-MB) or determining certain places that are permitted, restricted, or prohibited from selling alcoholic beverages. In issuing a Business License (SIUP-MB), each Regional Government must provide it under the risk-based business licensing procedure (risk-based approach) as regulated in laws and regulations. Meanwhile, in determining permitted places, restricted places, and prohibited places, the Regency/City Government must pay attention to the following provisions:

- a. The determination of permitted locations by the District/City Regional Government must not be close to places of worship, educational institutions, and hospitals.

- b. Restrictions on the sale of alcoholic beverages in places permitted by the District/City Regional Government based on considerations of regional characteristics and local culture.
- c. The prohibition on the sale of alcoholic beverages has been specified in a limited manner in Article 28 of Trade Ministerial Regulation No. 20 of 2014.

To implement this authority, the Regency/City Government needs to form regulations at the regional level in the form of Regional Regulations and Regional Head Regulations. The need to form these regional regulations is based on the following arguments:

1. Constitutionally, regions are given the authority to attribute to form Regional Regulations and Regional Head Regulations to implement autonomy as guaranteed in Article 18 paragraph (6) of the 1945 Constitution of the Republic of Indonesia. Implementing autonomy means that regions have the authority to form regional regulations to regulate concurrent affairs that fall under their authority. One of the concurrent affairs that fall under the authority of the Regency/City Government as explained above is the authority to issue SIUP-MB or determine certain places that are permitted, restricted, or prohibited from selling alcoholic beverages. For this reason, it is necessary to form Regional Regulations and Regional Head Regulations.
2. Law No. 23 of 2014, Presidential Regulation No. 74 of 2013, and Ministerial Regulation No. 20 of 2014 only regulate the authority of the Regency/City Regional Government but do not regulate the implementation procedures. Therefore, to provide legal certainty and guidelines for regions, it is necessary to form Regional Regulations and Regional Head Regulations. This is also necessary to prevent actions that are not in accordance with the law in the implementation of regional authority.
3. Presidential Regulation No. 74 of 2013 and Ministerial Regulation No. 20 of 2014 provide general and discretionary authority to the Regency/City Regional Government, especially to determine places that are permitted, restricted, and prohibited from selling alcoholic beverages. Therefore, to provide legal certainty for doing business in the region and provide legal protection for business actors and the community, a Regional Regulation is needed that regulates places that are permitted, restricted, and prohibited from selling alcoholic beverages.

Regional Regulations and Regional Head Regulations are also needed to increase community participation in the implementation of government, especially in the aspect of supervision of controlling the sale of alcoholic beverages in the region.

4. Conclusions

Based on Law No. 23 of 2024 and its Attachments, Article 7 of Presidential Decree No. 74 of 2013, and Article 28 of Minister of Trade Regulation No. 20 of 2014, the Regency/City Government is given attribution authority to control the sale of alcoholic beverages in the form of (1) Authority to issue SIUP-MB MB class B and C for retailers and direct sellers of drinks on the premises and (2) Authority to determine certain places that are permitted or restricted or prohibited to carry out the sale and distribution of alcoholic beverages under regional characteristics. To implement this authority, the Regency/City Government needs to form regulations at the regional level in the form of Regional Regulations and Regional Head Regulations because regions are given attribution authority under Article 18 paragraph (6) of the 1945 NRI Constitution to implement regional authority in controlling the sale of alcoholic

beverages and to provide legal certainty for the implementation of alcoholic beverage sales businesses and legal protection for the community.

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