

Law Enforcement on the Distribution of Alcoholic Beverages based on Bali Governor Regulation Number 1 of 2020 at the Bali Regional Police

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ABSTRACT

The consumption of alcoholic beverages such as arak, brem, and tuak has long been part of Balinese tradition. This study aims to analyze law enforcement regarding the distribution of alcoholic beverages based on Bali Governor Regulation No. 1 of 2020 in the Bali Regional Police and to examine the obstacles faced in its enforcement. This study uses a normative legal method supported by empirical data through field interviews, with a theoretical basis in the Rule of Law, legislation theory, authority theory, and law enforcement theory. The results of the study show a disharmony between regional regulations that legalize the management of traditional Balinese alcoholic beverages and the provisions in the Criminal Code, which have the potential to result in criminal sanctions. The main obstacle to law enforcement is the classification of criminal acts as minor offenses, which does not provide a sufficient deterrent effect. Repressive measures are carried out through routine raids and the confiscation of evidence of violations found

INTRODUCTION

Indonesia, as a country based on the rule of law, affirms the supremacy of law in every public policy. The concept of the rule of law (*rechtsstaat*) requires legal certainty, justice, and benefit. In Bali, fermented and distilled beverages such as arak have cultural and religious dimensions. The Bali Provincial Government regulates this management through Bali Governor Regulation Number 1 of 2020. This regulation aims to protect local products while controlling their distribution.

However, in practice, the circulation of illegal alcoholic beverages is still found and is often associated with disturbances of public order and criminal acts. This situation raises issues of law enforcement, particularly in relation to the harmonization of norms with the Criminal Code.

The Bali Regional Police conducted raids on alcoholic beverages as a concrete effort and measure to prevent social disturbances. However, there are still many cases of illegal alcoholic beverage distribution, and the frequent raids have not reduced the distribution of illegal alcoholic beverages in Bali. The circulation of alcoholic beverages is regulated by law, namely Bali Governor Regulation No. 1 of 2020 concerning the Management of Fermented and/or Distilled Beverages Unique to Bali, whereby any violation of the above law is subject to criminal sanctions in accordance with the provisions of the Criminal Code Criminal Code (KUHP), which can be categorized under Article 204 paragraph (1), which stipulates that: Anyone who sells, offers, accepts, or distributes goods, knowing that the goods are dangerous to life or health and are of a dangerous nature, shall be punished with imprisonment for a maximum of fifteen years.

Based on the background description above, the author conducted research in this thesis entitled: "Law Enforcement on the Distribution of Alcoholic Beverages based on Bali Governor Regulation Number 1 of 2020 at the Bali Regional Police".

Problem Statement

1. How is law enforcement regarding the distribution of alcoholic beverages based on Bali Governor Regulation No. 1 of 2020 concerning the Management of Fermented and/or Distilled Beverages Unique to Bali carried out by the Bali Regional Police?
2. What are the obstacles faced in combating the distribution of alcoholic beverages in the Bali Regional Police?

Research Objectives

This research generally aims to develop legal knowledge, train scientific thinking and writing skills, and deepen the study of criminal law, particularly in relation to the enforcement of laws on the distribution of alcoholic beverages. More specifically, this research aims to analyze law enforcement regarding the distribution of alcoholic beverages based on Bali Governor Regulation No. 1 of 2020 in the Bali Regional Police and to identify the obstacles encountered in efforts to combat it.

LITERATURE REVIEW

Theoretical Framework

The theoretical framework is a systematically structured conceptual framework that contains definitions and scientific references as the basis for analysis in a study. In this thesis, the theoretical framework used includes the theory of the rule of law, the theory of legislation, the theory of authority, and the theory of law enforcement as a basis for examining the issues under study.

The Theory of the Rule of Law

The idea of the rule of law, which had been developed by scholars such as Plato, Aristotle, John Locke, Montesquieu, and others, remained vague and faded into obscurity for a very long time. It then reemerged more explicitly in the 19th century with the emergence of the concept of *rechtsstaat* developed by Frederich Julius Stahl in Continental Europe, inspired by the thinking of Immanuel Kant. The concept of *rechtsstaat* is essentially based on the European Continental legal system. The idea of *rechtsstaat* began to gain popularity in the 17th century as a result of the socio-political situation in Europe, which was dominated by royal absolutism.

A state based on the rule of law is a state that is founded on laws that guarantee justice for its citizens. Justice is a prerequisite for the creation of happiness for its citizens, and as the basis of justice, it is necessary to teach morality to every human being so that they become good citizens. Likewise, legal regulations only truly exist if they reflect justice in the interactions between citizens.

Legal Theory

According to Hans Kelsen in his book "General Theory of Law and State," translated by Jimly Assihiddiqie with the title *Hans Kelsen's Theory of Law*, among other things, states that. Legal analysis, which reveals the dynamic character of the system of norms and the function of basic norms, also reveals a further peculiarity of law: law regulates its own formation because a legal norm determines the way to create other legal norms, and also, to a certain extent, determines the content of those other norms. This is because one legal norm is valid because it is created in a manner determined by another legal norm, and this other legal norm becomes the basis for the validity of the first legal norm.

According to Hans Kelsen, norms are layered in a hierarchical structure. In other words, lower legal norms apply and originate from higher norms, and higher norms also originate from and are based on even higher norms, and so on, until they reach the highest norm, which is called the basic norm (*Grundnorm*) and, according to Hans Kelsen, is still part of a dynamic system of norms. Therefore, laws are always created and repealed by the authorities that have the power to create them, based on higher norms, so that lower norms (Inferior) can be created based on higher norms (Superior). Ultimately, laws become hierarchical and layered, forming a hierarchy.

Theory of Authority

F.A.M. Stroink and J.G Steenbeek state: “Het Begrip bevoegdheid is dan ook een kembegrip in he staats-en administratief recht” (The concept of authority is therefore a key concept in constitutional and administrative law). From this statement, it can be concluded that authority is a core concept in administrative law. The term authority or wewenang is equivalent to “authority” in English and “bevoegdheid” in Dutch. ‘Authority’ in Black's Law Dictionary is defined as “Legal Power; a right to command or to act; the right and power of public officers to require obedience to their orders lawfully issued in scope of their public duties.”

Authority includes legal powers. Authority is the scope of public legal action, the scope of governmental authority, which not only includes the authority to make governmental decisions (*bestuur*), but also includes the authority to carry out tasks, and the granting and distribution of authority is primarily stipulated in legislation. Juridically, the definition of authority is the power granted by legislation to produce legal consequences.

From the above description, the literature review in this study is based on fundamental theories in legal science that are relevant to the issue of law enforcement against the distribution of alcoholic beverages. The Theory of the Rule of Law proposed by Friedrich Julius Stahl asserts that the state must guarantee the protection of human rights, the separation of powers, government based on law, and the existence of administrative courts, so that the regulation of alcoholic beverages must reflect legal certainty and the protection of society. Hans Kelsen's Theory of Legislation places legal norms in a hierarchical structure, whereby lower regulations cannot conflict with higher regulations, so that in the event of a conflict between Bali Governor Regulation No. 1 of 2020 and the Criminal Code, the principle of *lex superior derogat legi inferiori* applies. The Theory of Authority explains that law enforcement actions by the Bali Regional Police are the implementation of attributive authority granted by law in the criminal justice system. Meanwhile, Soerjono Soekanto's Theory of Law Enforcement states that the effectiveness of law enforcement is influenced by legal factors, law enforcement officials, resources, society, and culture, all of which are parameters of analysis in this study.

METHODOLOGY

The research methodology used in this thesis is normative legal research supported by empirical data obtained through field observations and interviews with the Bali Regional Police regarding the handling of alcohol distribution. The approaches used include a statute approach, which examines the consistency of various regulations, particularly Bali Governor Regulation No. 1 of 2020, and a case approach based on cases handled by investigators. The legal sources consist of primary legal materials such as the Criminal Code, Law No. 2 of 2002, Presidential Regulation No. 74 of 2013, and other related regulations, supported by secondary and tertiary legal materials. Legal materials were collected through literature and documentation studies, then analyzed qualitatively using descriptive, interpretive (authentic, grammatical, and systematic), and

argumentative techniques to answer the research questions systematically and comprehensively.

Overview of Governor Regulations and the Alcoholic Beverage Trade Business and the Police

Several laws form the legal basis for regional administration, namely: Law No. 1 of 1957 on Regional Administration Principles, Law of the Republic of Indonesia No. 18 of 1965 on Regional Administration Principles, Law of the Republic of Indonesia Number 5 of 1974 concerning the Principles of Regional Government, Law Number 22 of 1999 concerning Regional Government, Law Number 32 of 2004 concerning Regional Government, Law Number 23 of 2014 concerning Regional Government.

The State of Indonesia is an independent and sovereign nation, of which regional governments are an integral part. Due to the vastness of the country and the multitude of government affairs, it is impossible for the central government to manage everything on its own. Therefore, state affairs require various state institutions to help realize the objectives of the State.

Article 18 of the 1945 Constitution regulates Regional Government, namely the division of Indonesia into large and small regions, with the structure of the government determined by law, taking into account and considering the basis of deliberation in the state government system and the original rights in regions that are special in nature. Regional Government consists of the Regional Head and other Regional Autonomous organs as the Regional Executive Body. Meanwhile, Regional Administration is the implementation of Regional Autonomous Government by the Regional Government and the Regional People's Representative Council (DPRD) according to the principle of Decentralization.

Local governments have several principles in carrying out their functions and affairs. There are four main principles of local government related to regional autonomy, including the following:

1. The principle of centralization, which states that authority lies with the central government.
2. The principle of decentralization, which states that the authority of the central government is delegated to autonomous regions.
3. The Principle of Deconcentration, which states that the authority of the central government is delegated to local governments and agencies as well as regional institutions that assist the work of local governments.
4. The Principle of Assistance, which states that local governments delegate authority to lower levels, for example, from the governor to the regent or mayor to the sub-district or village apparatus.

Article 18 of the 1945 Constitution regulates Regional Government, stating that the Unitary State of the Republic of Indonesia is divided into provinces, regencies, and cities, each of which has an autonomous regional government regulated by law, and affirms the principles of autonomy and assistance in the administration of regional government, including the democratic election of regional heads and recognition of the unity of customary law communities. This

article has been amended to provide a legal basis for broader regional autonomy and community participation.

The division of government affairs in Indonesia is regulated in Articles 10 to 18 of Law Number 23 of 2014 concerning Regional Government. Article 10 paragraph (1) states that "Regional governments shall carry out government affairs within their authority, except for affairs that are determined by this law to be the affairs of the central government. Based on this article, it can be said that the regional government exercises its autonomy to the fullest extent possible based on the principles of autonomy and assistance (Article 10 paragraph (2)). The division of government affairs is divided into three principles, namely decentralization, deconcentration, and assistance. Regarding the implementation of autonomy, there are several matters that are the responsibility of the central government, as stated in Article 10 paragraph (1), namely:

1. Foreign policy
2. Defense
3. Security
4. Justice
5. Monetary and fiscal affairs
6. Religion

One of the most important powers of a region that regulates and manages its own affairs is the power to establish regional regulations. Regional regulations are regulations established by the regional head with the approval of the Regional People's Representative Council and must meet certain formal requirements to have legal force and be binding.

Regional Regulations are regulations made by provincial and regency/city heads together with the Provincial and Regency/City Regional Representative Councils (DPRD) in the context of implementing regional autonomy, which provides legal basis for the execution of regional government. Several laws form the legal basis for regional government administration, namely Law No. 1 of 1957 on Regional Government Principles, Law of the Republic of Indonesia No. 18 of 1965 on Regional Government Principles, Law of the Republic of Indonesia No. 5 of 1974 on Regional Government Principles, Law Number 22 of 1999 concerning Regional Government, Law Number 32 of 2004 concerning Regional Government, and Law Number 23 of 2014 concerning Regional Government.

Law Number 12 of 2011 has placed regional regulations of regencies/cities as the lowest level of all laws and regulations. Regional regulations are a type of law and regulation and are part of the national legal system based on Pancasila. Regional regulations have a strategic position because they are constitutionally based, as stipulated in Article 18 paragraph 6 of the 1945 Constitution of the Republic of Indonesia. In addition to being an elaboration of higher laws and regulations, regional regulations are legal instruments created by regional governments. This is to exercise their authority in realizing their autonomy.

Meanwhile, regional regulations have various functions and purposes, as follows:

1. As a policy instrument to implement regional autonomy and assistance in accordance with the 1945 Constitution of the Republic of Indonesia and the Regional Government Law.
2. As implementing regulations of higher laws and regulations. Regional regulations are subject to the provisions of the hierarchy of laws and regulations.
3. As a means of accommodating regional specificity and diversity and channeling the aspirations of the people in the region, while remaining within the framework of the Unitary State of the Republic of Indonesia based on Pancasila and the 1945 Constitution of the Republic of Indonesia.
4. As a tool for development in improving regional welfare.

RESULTS AND DISCUSSION

Law enforcement against the distribution of alcoholic beverages based on Bali Governor Regulation No. 1 of 2020 concerning the Management of Fermented and/or Distilled Beverages Unique to Bali in the Bali Regional Police.

Provisions regarding the legality of alcoholic beverages in Bali Province can be found in Bali Governor Regulation No. 1 of 2020 concerning the Management of Fermented and/or Distilled Beverages Unique to Bali. The production, sale, and distribution of alcoholic beverages are forms of violation and criminal acts regulated in several legal regulations, namely, Regulation of the Minister of Trade of the Republic of Indonesia Number 120 of 2018 concerning the fifth amendment to Regulation of the Minister of Trade Number 20/M-DAG/PER/4/2014 concerning Control and Supervision of the Procurement, Distribution, and Sale of Alcoholic Beverages, Regulations in the Criminal Code in the provisions of the Criminal Code criminal acts of distributing oplosan alcoholic beverages are regulated in Article 204 paragraph (1) of the Criminal Code.

In practice, supervision of the implementation of the Management of Fermented and/or Distilled Beverages Typical of Bali will always be monitored by the Governor of Bali and guidance will also be provided. A previous case involved a Sumba resident in Bali who stabbed his friend under the influence of alcohol. The details of the case are as follows: Damung Kilimandu alias Angga (34), a man from Sumba, was arrested by the police for stabbing his friend, Dominggus Dapa (24), during a birthday party. The repeat offender, who has a butterfly tattoo on his neck, killed the victim because he was offended. The stabbing occurred at Pondok Mangga Manis, Taman Pancing, Pemogan, South Denpasar, on Sunday (6/30/2019) at 8:30 p.m. At the time, the victim, Dominggus Dapa, arrived with five friends to attend Soni's birthday party. "At the location, there was a party where beer mixed with arrack was poured into a gallon, stirred, and distributed to his friends. It was then that a commotion occurred where the suspect argued with the victim, immediately the suspect swung the knife at his waist and stabbed the victim, and the victim died instantly at the scene," said Denpasar Police Chief Kombes Ruddi Setiawan during a press

conference at the South Denpasar Police Station, Jl By Pass Ngurah Rai, Denpasar, Bali, Wednesday (July 3).

The police are still searching for the knife used by the suspect to kill the victim. The victim was found dead with three stab wounds on his body. "Three stab wounds, the most severe on the back, on the stomach, causing his intestines to spill out. According to the suspect's confession, the knife was thrown somewhere, and he asked someone else to secure it, but the identity of the person who secured it has been obtained, initials F, and we have conducted a search," said South Denpasar Police Chief Kompol Nyoman Karang at the same location. The tragic incident occurred when the victim tried to break up a fight between his friends. The suspect, who was accidentally hit by the victim's block, became emotional due to intoxication. "The victim and the suspect had no argument; it was their friend who was causing trouble, and they were trying to separate them. During the process of separating them, the suspect was hit by the victim's block, and in his intoxicated state, the suspect immediately grabbed a knife, chased after him, and struck him. In fact, they were not hitting each other but trying to separate them," explained Nyoman.

Based on the above case study, it can be said that the effects of consuming alcohol on a massive scale are very detrimental to individuals and those who drink it. In this regard, it can be said that reducing the circulation of liquor or alcoholic beverages is very necessary, and reducing the circulation of liquor requires a major role from the police to crack down on the circulation of alcoholic beverages, especially in Bali. It should be noted that the case study above occurred before Bali Governor Regulation No. 1 of 2020 was enacted. One can imagine what will happen after this regulation is enacted, which will likely lead to an even more widespread circulation of alcoholic beverages. Consequently, the incidence of violence and, not infrequently, murder influenced by alcohol consumption will undoubtedly increase.

Law enforcement against the criminal act of distributing alcoholic beverages is influenced by a number of supporting factors that facilitate the performance of officials in carrying out their duties. In general, there are three main factors that support the effectiveness of law enforcement by the Bali Regional Police, namely legal substance factors, law enforcement factors, and community leader factors. The legal substance factor relates to the existence of adequate laws and regulations, such as Bali Governor Regulation No. 1 of 2020 and provisions in the Criminal Code, which provide a legal basis for the police to conduct investigations. The law enforcement factor includes the role of officials and community support as informants who help provide information related to the situation and conditions of alcohol distribution. Meanwhile, community leaders play a strategic role in social control, community behavior development, and providing constructive input, thereby helping to minimize the distribution of illegal alcohol in the community.

The performance of the Bali Regional Police in handling the distribution of alcoholic beverages is relatively good, but it still faces various internal and external obstacles that cause cases to recur frequently. Internal obstacles include limited human resources, particularly investigators, and inadequate facilities and

infrastructure to support law enforcement. Meanwhile, external obstacles include a lack of coordination with the Civil Service Police Unit as mandated by Law No. 2 of 2002, minimal community participation in reporting, and weak enforcement of regional regulations that only categorize violations as minor offenses. In addition, the cultural and traditional factors of Balinese society, which considers alcoholic beverages, especially arak, as part of religious and traditional rituals, also complicates enforcement. Low legal awareness among business actors and conflicts between economic, cultural, and legal interests also pose obstacles to efforts to eradicate the distribution of illegal alcoholic beverages.

Challenges in Combating Alcohol Distribution in the Bali Regional Police

The Bali Regional Police has performed well in handling cases of alcohol distribution, but there are many challenges that have prevented a reduction in cases of illegal alcohol distribution, and these cases are often repeated. These challenges arise both within and outside the police force. Challenges faced by the police in enforcing the law, which cause these cases to recur frequently, include:

1. Internal obstacles include human resources (HR) factors and infrastructure factors.
2. External constraints faced by the Bali Regional Police in combating the distribution of illegal alcoholic beverages because cases involving the distribution of alcoholic beverages are categorized as minor crimes and are considered mere violations, thus failing to provide a deterrent effect for sellers/distributors of alcoholic beverages.

Prevention of Alcoholic Beverage Distribution in the Bali Regional Police

First, through pre-emptive measures, efforts are made to prevent crime by instilling good values and norms so that these norms are internalized in each individual. In this pre-emptive effort, the Bali Regional Police, as law enforcers, prevent the distribution of alcoholic beverages by educating the public on the importance of obeying the applicable laws.

Secondly, through preventive measures, the Bali Regional Police are attempting to curb the distribution of alcoholic beverages by using preventive measures, whereby the Bali Regional Police Narcotics Investigation Unit plays a role as law enforcers against the distribution and use of substances or drugs that deviate from the laws and regulations within the jurisdiction of the Province of Bali. including efforts to control the circulation of alcoholic beverages that are produced or sold illegally and classified as dangerous goods.

And the third is through repressive measures. At this stage, the Bali Regional Police are conducting repressive measures in the form of enforcement and control operations. The targets are food stalls, cafes, and herbal medicine shops suspected of selling illegal alcoholic beverages and oplosan. One of the efforts that can be made by the police to reduce the incidence of alcohol distribution in the community is to conduct raids on illegal alcoholic beverages.

Other repressive measures taken by the Bali Regional Police include conducting routine raids in the months leading up to holidays. These raids involve elements outside the police force, such as community leaders and the

Health Office and the Industry and Trade Office. During these raids, anyone caught selling illegal alcoholic beverages is immediately punished and the goods are confiscated. The confiscated beverages are then collected as evidence if the perpetrator is proven to be a suspect. At the end of each year, the Bali Regional Police destroy dangerous items that have been confiscated, such as narcotics and psychotropic substances, including illegal alcoholic beverages. This destruction is attended by representatives from government agencies and community leaders.

CONCLUSIONS AND RECOMMENDATIONS

Based on the discussion above, it can be concluded that law enforcement regarding the distribution of alcoholic beverages in Bali is regulated in Bali Governor Regulation No. 1 of 2020 concerning the Management of Fermented and/or Distilled Beverages Unique to Bali. However, the sanctions stipulated in this regulation have not been entirely effective in deterring offenders. Therefore, in practice, the Bali Regional Police Investigators apply criminal provisions based on Article 204 paragraph (1) of the Criminal Code to prosecute perpetrators who trade alcoholic beverages that are harmful to health or life. Nevertheless, enforcement efforts still face obstacles because some cases are categorized as minor offenses, resulting in less stringent penalties. This is compounded by the public perception that traditional alcoholic beverages such as arak are part of Balinese culture and socio-religious practices, which also affects the effectiveness of law enforcement.

Stricter law enforcement is needed against the distribution of alcoholic beverages through the application of deterrent sanctions, both based on Regional Regulations and Governor Regulations, and supported by the application of criminal provisions in the Criminal Code. It is necessary to evaluate and improve the capacity of the Bali Regional Police, in collaboration with the Public Order Agency and Civil Defense, in conducting raids and providing education to the community, in order to prevent the distribution of alcoholic beverages and create order and security in the community.

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