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The Romanticism of Alcoholic Beverage Regulation in Indonesia: Evidence of Legal Uncertainty?

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Article	Abstract
<p>Keywords: Alcoholic Beverages Bill; Legal Policy; WM Formation.</p> <p>Article History Received: Jun 21, 2021; Reviewed: Jun 17, 2022; Accepted: Jul 14, 2022; Published: Jul 31, 2022.</p> <p>DOI: 10.28946/slrev.Vol6.Iss2.1239.pp336-349</p>	<p>Legal provisions regarding alcoholic beverages are a complex issue in Indonesia. Therefore, this relates to several aspects, ranging from health or adverse and destructive impacts, halal and haram, to investment-related economic factors. However, to date, no law in Indonesia explicitly regulates alcoholic beverages. The formation of the existing Bill on Alcoholic Drinks must consider all aspects, whether social, cultural, economic, political, or religious. In addition, drafting the Alcoholic Drinks Bill must involve all elements of society comprehensively. This article aims to conduct a legal analysis of the legal policy of regulating alcoholic beverages in Indonesia. The analysis is carried out on the applicable positive law (<i>ius constitutum</i>) and legal policies to regulate alcoholic beverages in the future (<i>ius constituendum</i>). The Normative Legal Research Method is used to analyse the legal system of alcoholic beverages in Indonesia, which shows the uncertainty of management, control, and supervision. This impacts the conflict of interest between investment and the moral life of the Indonesian people. As a result, this study recommends that lawmakers reform the alcoholic beverage law in Indonesia by paying attention to Pancasila as the basis of the nation's philosophy. For this reason, integrated regulation and supervision of alcoholic beverages are needed, and law is urgently needed to unify the overlapping and diverse regulations regarding alcoholic beverages.</p>

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INTRODUCTION

On Feb 2, 2021, President Joko Widodo ratified Presidential Regulation Number 10 of 2021 concerning the Investment Business Sector (from now on referred to as Perpres 10/2021) as a rule for implementing Law Number 11 of 2020 concerning Job Creation (in this paper called Law on Job Creation). The Presidential Decree 10/2021 regulates the investment business sector as mandated in Article 12 of Law Number 25 of 2007 Concerning Investment (Law on

Investment) as amended by the Law on Job Creation (Article 77). Article 12 of The Law on Investment stipulates that all business fields are open to investment activities, except those declared closed for investment or activities the Central Government can only carry out. As referred to in Article 12 of The Law on Investment, the regulation of investment requirements is what is then technically regulated by Presidential Decree 10/2021.

Like the Law of the Republic of Indonesia No. 11 of 2020 on Job Creation, whose ratification received a rejection from various social circles, Presidential Decree 10/2021 also received a firm rejection from many circles. Perpres 10/2021 is rejected because Presidential Decree 10/2021 stipulates that the liquor industry contains alcohol. The beverage industry contains alcohol: wine and the beverage industry contain malt, designated as open investment fields with certain conditions. Concerning the legal policy for open investment in the alcoholic beverage industry, various groups of people have firmly stated that they reject the enactment of Presidential Decree 10/2021. The Indonesian Ulama Council (MUI) officially rejected the Presidential Decree 10/2021, which has legalised the industry and distribution of alcoholic beverages (liquor).¹ Nahdlatul Ulama (NU), one of the most prominent Islamic organisations in Indonesia, has publicly rejected this policy of investing in alcoholic beverages as an open field of business.² In line with NU, the Muhammadiyah Central Board refused to pass Presidential Decree 10/2021.³ In addition, several political parties also rejected the ratification of Presidential Decree 10/2021. Political parties such as PPP, PAN, PBB, and PKB expressed their rejection of Presidential Decree 10/2021, which has opened up investment in the alcoholic beverage industry.⁴ The rejection came from the Papua Regional Government, which has become an open investment in alcoholic beverages based on Presidential Decree 10/2021.⁵

In a study by Putu Daniel Gombo on The Bill of The Probation of Alcoholic Beverages, it shows that the existence of the Bill is one of the things that threatens human rights (right to equality of law) for alcoholic beverages lovers and some residents who do not have a water source which makes them drinkers. The novelty in this study is that the Bill on the prohibition of alcoholic beverages can be detrimental to several parties. Suppose everyone who violates using liquor is subject to articles 18, 19, 20 and 21 considered to have triggered the occurrence of crimes. In that case, there will be a very drastic increase in crime in Indonesia.⁶

The facts above illustrate the phenomenon of legal uncertainty in several communities and regions related to regulating alcoholic beverages. This is a consequence of Indonesia which has a majority Muslim population but has areas that are predominantly non-Muslim, especially eastern Indonesia, which does not question the issue of halal and haram aspects of alcoholic beverages, so some regions provide different rules in the version of national and state life. For example, Bali, Papua, East Nusa Tenggara, and North Sulawesi are in each area.

¹ Sekretariat Kabinet Republik Indonesia, "Presiden Jokowi Cabut Lampiran Perpres 10/2021 Mengenai Investasi Minuman Keras Sumber: <https://Setkab.Go.Id/Presiden-Jokowi-Cabut-Lampiran-Perpres-10-2021-Mengenai-Investasi-Minuman-Keras/>" (Jakarta, 2021).

² Kendi Setiawan, "PBNU Tegaskan Tetap Tolak Investasi Miras," NU Online, 2021.

³ Adam, "Pernyataan Sikap PP Muhammadiyah Terkait Perpres Nomor 10 Tahun 2021," Berita, 2021.

⁴ CNN Indonesia, "Ramai-Ramai Tolak Perpres Investasi Miras," Berita Politik, 2021.

⁵ Wilpret Siagian, "Pemprov Dan DPR Papua Menolak Perpres Investasi Miras, Ini Alasannya," Berita, 2021.

⁶ Putu Daniel Gombo, "Minol (Alcoholic Beverage) Bill in The Time Of The Covid-19 Pandemic In Perspective Law And Ham," *Ganesha Law Review* 3, no. 1 (Apr 8, 2021): 68–78, <https://doi.org/10.23887/blr.v3i1.323>.

This article discusses the juridical analysis of the legal politics of regulating alcoholic beverages in Indonesia after enacting the Job Creation Law. The article explicitly discusses the basic legal framework, philosophically, juridically, and sociologically related to regulating alcoholic beverages in Indonesia. Furthermore, the solutions discussed were to overcome problems regarding regulating alcoholic beverages, which always dwell on issues of morality and health, halal and haram, and business problems.

RESEARCH METHODS

The article uses normative legal research methods. The approach used is the statute approach and the conceptual approach. All related data were interpreted, analysed, and presented qualitatively. This article focuses on how to overcome problems related to regulating alcoholic beverages, which always dwell on issues of morality and health, halal and haram, and business issues. This involves viewing an ethical argument as a syllogism—a type of reasoning in which conclusions are drawn from premises—and testing whether the conclusions drawn in these arguments make sense. Premises are usually statements taken from legal norms. A conclusion must be based on factually accurate premises to be considered valid. The factual accuracy of the premises will be assessed by checking whether they are supported by evidence from field data.

ANALYSIS AND DISCUSSION

The Legal Politics of Alcoholic Beverages Regulations in Indonesia

According to Mahfud MD,⁷ Legal politics can simply be interpreted as state policies regarding laws that will or will not be enforced in a country that can form the formation of new laws or the repeal and replacement of old laws to suit the needs of society. Thus, the legal politics of alcoholic beverages can be interpreted as a legal policy on the enforcement of laws in regulating the industry, distribution, and consumption of alcoholic beverages. The enforcement of the law itself can be seen from two perspectives: the perspective of the *ius constitutum* (current law / positive Law) and *ius constituendum* (the law that will apply). For this reason, the following analysis will discuss the legal policies for alcoholic beverages in Indonesia, both positive legal regulations and those in the form of ideas on the direction of legal policies for regulating alcoholic beverages in the future.

Legal Policy for Alcoholic Beverages

Legal policies regarding the regulation of alcoholic drinks in Indonesia are currently not regulated in a single form of legislation that explicitly regulates alcoholic beverages. Today's legal policies are still scattered in several laws and regulations, starting from the 1945 Constitution to Regional Regulations. To describe the arrangement of laws and regulations regarding alcoholic beverages as arranged in table 1.

Table 1: *Legal Policy Related to Alcoholic Drinks Based on Hierarchy*

Hierarchy	Form of Regulation
The 1945 Consitution	Article 28H The 1945 Constitution 1945
MPR Decree	-

⁷ Moh. Mahfud MD., “Politik Hukum Dalam Perda Berbasis Syari’ah,” *Jurnal Hukum Ius Quia Iustum* Vol. 14, no. No. 1 (2007): 1–21.

Law / Government Regulation in Lieu of Law	<ol style="list-style-type: none"> 1. KUHP (Penal Code); 2. Law Number 11 of 1995 concerning Excise, as amended by Law Number 39 of 2007 concerning Amendment to Law Number 11 of 1995 concerning Excise 3. Law Number 8 of 1999 concerning Consumer Protection; 4. Law 11 of 2020 concerning Job Creation includes amendments to: <ol style="list-style-type: none"> a. Law Number 3 of 2014 concerning Industry; b. Law Number 7 of 2014 concerning Trade; c. Law Number 33 of 2014 concerning Guarantee of Halal Products; d. Law Number 36 of 2009 concerning Health; e. Law Number 18 of 2012 concerning Food; f. Law Number 25 of 2007 concerning Investment; g. Law Number 28 of 2009 concerning Regional Taxes and Regional Levies; h. Law Number 23 of 2014 concerning Regional Government.
Government Regulation	Government Regulation Number 5 of 2021
Presidential Regulation	<ol style="list-style-type: none"> 1. Presidential Regulation Number 74 of 2013 2. Presidential Decree Number 10 of 2021
Provincial Regulation	Various Provincial Regulations
Local Government Regulation	Various Local Government Regulations
Ministerial Regulation	<ol style="list-style-type: none"> 1. Regulation of the Minister of Health Number 86 / Men.Kes / Per / IV / 77 2. Regulation of the Minister of Health Number 59 / MEN.KES / PER / 1982 3. Regulation of the Minister of Industry Number 63 / M-IND / PER / 7/2014 Jo. Permenperin 62 / M-IND / PER / 4. 8/2015 MOT 20 / M-DAG / PER / 4/2014 Jo. MOT 72 / M-DAG / PER / 10/2014 Jo. MOT 06 / M-DAG / PER / 1/2015 Jo. MOT 32 / M-DAG / PER / 5/2016 Jo. Regulation of the Minister of Trade Number 47 of 2018. 5. Regulation of the Head of BPOM Number 14 of 2016

Source: *Analysed from the primary source*

Table 2 describes the diversity of substances in regulating alcoholic drinks in the regions is also a legal problem controlling alcoholic beverages. Several Regional Regulations as a form of legal policy regulating alcoholic beverages in the regions are shown in the table below.

Table 2: *The Diversity of Legal Policy for Alcoholic Beverages through Regional Regulations*

Region	Number/Year	Title of	Regulatory Direction
Bandung Regency	Local Government Regulations No. 3/2004, amended by Local Government Regulations No. 9/2010	Prohibition of circulation and use of alcoholic drinks	regulation and control/Limited Prohibition
Malang City	Local Government Regulations No. 5/2006	Supervision, control, and prohibition the sale of alcoholic beverages	regulation and control / Limited Prohibition
Bandung City	Local Government Regulations No. 11/2010	Prohibition, Supervision, and Control of Alcoholic Drinks	regulation and control/Limited Prohibition
Cirebon City	Local Government Regulations No. 4/2013	Prohibition of distribution and sale of beverages alcohol In Cirebon City	Total prohibition (<i>zero tolerance</i>)
Samarinda City	Local Government Regulations No. 6/2013	Prohibition, Supervision, Control, and Sales of	Regulation and Control/Limited Prohibition

Banyumas Regency	Local Government Regulations No. 15/2014	Alcoholic Beverages in Samarinda City Area Control, supervision, and control over the distribution of alcoholic beverages	Arrangement and Control/Limited Prohibition
Kabupaten Jayapura	Local Government Regulations No. 9/2014 Limited	Alcoholic Beverages	Regulation and Control / Prohibition
West Bandung Regency	Local Government Regulations No. 3/2014	Control and Supervision of Sales of Alcoholic Beverages	regulation and control /Limited Prohibition
Sukabumi City	Local Government Regulations No. 1/2014	Alcoholic Beverages	Ban Total (<i>zero tolerance</i>), except for health purposes (medical) regulation and control / prohibition
Kota Tasik Malaya of Tasikmalaya	Local Government Regulations No. 7/2015 Limited	Control and supervision of Alcoholic Beverages	regulation and control / prohibition
Kota Magelang	Local Government Regulations No. 10/2016	Control, Supervision, and Guidance of the Circulation and Sales of Alcoholic Beverages	Regulation and Control / Limited Prohibition
Kota Kupang	Local Government Regulations No. 12/2016 Limited	Arrangement and Control Regulation and Control	Prohibition
Provinces of Nanggroe Aceh Darussalam	<i>Qanun</i> No. 12/2003	Alcoholic Beverages and the	Like Total Prohibition (<i>zero tolerance</i>)
Papua Province	Provincial Government Regulations No. 15/2013	Prohibition of production, distribution and sale of alcoholic Beverages	Total prohibition (<i>zero tolerance</i>), except for purposes of health (medical) and religious rituals
DKI Jakarta Province	Provincial Government Regulations No. 187/2014	Control and supervision of the sale of alcoholic Beverages	regulation and control/Limited Prohibition
Gorontalo Province	Provincial Government Regulations No. 16/2015	Supervision and control of the circulation of alcoholic drinks	Regulations and Control/Restrictions
Provinces of Bali	Governor Regulation 1/202	Management of fermented and/or beverages	Regulation and Control

Source: *Analysed from the primary source*

In Indonesia, alcohol abuse is also a serious health problem. The frequent news about the trade in alcoholic beverages indicates that alcoholic beverages are widely consumed by people in this country, where the majority of the population is Muslim. The latest case is the promotion of the Holywings cafe, which sells alcoholic beverages using the names Muhammad and Maria to get free liquor which has the effect of public protests and caused social conflicts in various areas; for example, the Jakarta Provincial Government closed all Holywings cafes,⁸ as well as the Bogor City Government.⁹ As for the city of Medan,¹⁰ there was a conflict between the governor and the mayor, the governor ordered to close off the cafe, but the mayor's policy was

⁸ "Izin Dicabut, Berikut Daftar 12 Gerai Holywings Jakarta Yang Ditutup Hari Ini," n.d.

⁹ "Forkompimda Kota Bogor Segel Holywings Di Jalan Raya Pajajaran," n.d.

¹⁰ "Soal Holywings Di Medan, Edy Rahmayadi: Tutup, Tak Usah Ditawar-Tawar Lagi - Suara Sumut," n.d.

to wait for the applicable legal process. As for Bali,¹¹ the public does not dispute the case of the Holywings cafe. Thus there is uncertainty about the law, its enforcement and its application.

Regulations at the national and regional levels attempt to avoid the negative effects of alcoholic beverages because, morally, alcoholic beverages do more harm than good. In fact, alcoholic beverages will not only give the drinker a drunken effect, even in some cases, it will even result in death, but also every year, the number of alcoholics is not decreasing; it is increasing. For some people, drinking alcoholic beverages is considered a means to show valour or masculinity.

Future Legal Policies

Inventory results and identification of various forms of statutory regulations as legal policies in regulating beverages in the previous section, it is clear and unequivocal that the legal policies related to alcoholic beverages in Indonesia have not been able to answer the problems faced in regulating alcoholic beverages in an integrated manner in a substantially harmonious legal policy. However, the chosen legal policy cannot be implemented effectively. For this reason, it is essential and urgent for the government (executive and legislative) to take policies to overcome disharmony in legal policies related to alcoholic beverages. Forming the Draft Law on Alcoholic Beverages (Bill on Alcoholic Beverages) is a rational choice to address problems related to alcoholic beverages.

The Urgency of the Alcoholic Beverage Bill

The issue of alcoholic beverages is not only a national issue but has become a global issue. WHO¹² in its report stated that in 2016 the use of harmful alcohol caused about 3 million deaths (5.3% of all deaths) worldwide. Deaths from alcohol consumption are higher than those caused by diseases such as tuberculosis, HIV / AIDS, and diabetes. From the aspect of the policy, in 2016, 80 countries reported having a written national alcohol policy, while eight other countries have a subnational policy, and 11 other countries totally banned alcohol.

Thus, as a legal country, the choice to adopt a legal policy on regulating alcoholic beverages in the form of the Alcoholic Beverages Bill is an urgent need. As a commodity, alcoholic beverages significantly impact people's lives.¹³ This can be used as the basis for why Indonesia needs an Alcoholic Beverages Bill. Three basic things are considered the urgency of legal policy in the form of the Alcoholic Beverage Bill in Indonesia.

Philosophical Basis

The formation of the state is to protect, educate and prosper the people. The state must make this happen so that all forms of threats to citizens in all their forms can be eliminated. The basis of this thinking is a view of life, awareness, and legal ideals that encompass the mystical atmosphere

¹¹ "Penutupan Banyak Gerai Holywings Tak Menggoyah Bali, Edy Rahmayadi Bergerak Di Medan - Tribun-Bali.Com," n.d.

¹² World Health Organization (WHO), "Global Status Report on Alcohol and Health" (Switzerland, 2018).

¹³ World Health Organization and Management of Substance Abuse Team, *Global Status Report on Alcohol and Health 2014*. (Geneva: World Health Organization, 2014).; World Health Organization, "WHO Expert Committee on Problems Related to Alcohol Consumption" (Geneva, Switzerland, 2006).; Sitriah Salim Utrina, "Alkohol Dan Pengaruhnya Terhadap Kesehatan Mental," *Jurnal Health and Sport* Vol. 5, no. No. 2 (2012).

and philosophy of the Indonesian nation, which originates from Pancasila and the Preamble to The 1945 Constitution of the Republic of Indonesia.¹⁴

It is also on this philosophical basis that the legal policy for alcoholic beverages is established. The regulation of alcoholic beverages can not only be based on mere economic reasons but must pay attention to the higher ideals of the law. In a study in America, excessive alcohol use is responsible for more than 95,000 deaths yearly, or 261 deaths per day, and costs the country 249 billion dollars in 2010.¹⁵ Likewise, research conducted by Montarat Thavorncharoensap,¹⁶ In Thailand, alcohol imposes a burden. Big economy in society. The total economic cost of alcohol consumption in Thailand in 2006 was estimated at 156,105.4 million baht (9,627 million US \$ PPP), or around 1.99% of the total Gross Domestic Product.

Sociological Basis

In some cases, these alcoholic beverages have economic value. However, if it is compared “head to head” between the benefits and harms of alcoholic beverages, the harms far outweigh the benefits. The base of the alcohol debate will always be linked to three issues that will always grapple at the same time. The three problems are the good and bad sides of the impact of alcoholic beverages, the halal and haram side, and the business side. First, it relates to good and bad.¹⁷ On the one hand, medical research states the antioxidant properties of grapes. At the same time, each bottle provides a stern warning about the dangers of alcohol consumption.¹⁸ Moderate consumption of alcohol lowers the risk of stroke, but excessive consumption increases the risk of stroke.¹⁹ The second is the problem of halal-haram. This is related to Islamic teachings that forbid Khamar.²⁰ As a country with a majority Muslim population, the problem of alcoholic beverages will always intersect with the Islamic ummah's belief that prohibits alcoholic beverages as intoxicating beverages as referred to in the texts of the Al-Qur'an and Hadith.²¹

The rejection of several Islamic organisations towards opening the alcoholic beverage industry, as mentioned at the beginning of this paper, proves that the alcoholic beverage business is a matter of faith. In Islam, Khamar is the mother of all kinds of sins (ummul-kabaa'ir),²² the

¹⁴ See, *Mohammad Hatta: Politik, Kebangsaan, Ekonomi (1922-1977)* (Jakarta: Kompas Media Nusantara, 2015). See also, Hariyono, *Ideologi Pancasila : Roh Progresif Nasionalisme Indonesia* (Malang, Jawa Timur: Intrans Publishing, 2014).

¹⁵ Centres for Disease Control and Prevention, "Deaths from Excessive Alcohol Use in the US," Alcohol and Public Health, 2021.

¹⁶ Montarat Thavorncharoensap et al., "The Economic Costs of Alcohol Consumption in Thailand, 2006," *BMC Public Health*, 2010, <https://doi.org/10.1186/1471-2458-10-323>.

¹⁷ Alireza Abed and Leila Safaean, "Advantages and Disadvantages of Alcoholic Beverages; What Is the Opinion of the Holy Quran?," *Asian Journal of Medical and Pharmaceutical Researches* Vol. 2, no. Edition 1 (2012): 05–09. See also, World Health Organization, "THIRTY- SECOND WORLD HEALTH ASSEMBLY" (1979).

¹⁸ Mack P. Holt, *Alcohol : A Social and Cultural History* (United Kingdom: berg publishers, 2006).

¹⁹ Young Hwang, "Benefits and Dangers of Alcohol" Vol. 281, no. No. 1 (19991).

²⁰ Qur'an Surah Al-Baqarah: 219, *Annisa*: 43, *Al-Maidah*: 90

²¹ Note the MUI Fatwa on the Law of Alcohol and the Law Alcohol in Beverages, which forbids alcoholic beverages as Khamar. See, Lembaga Pengkajian Pangan Obat-obatan dan Kosmetika Majelis Ulama Indonesia (LPPOM MUI), *Kumpulan Fatwa MUI Bidang Pangan, Obata-Obatan, Kosmetika, Ilmu Pengetahuan Dan Teknologi* (Jakarta: Kumpulan Fatwa MUI Bidang Pangan, Obata-obatan, Kosmetika, Ilmu Pengetahuan dan Teknologi, 2014).

²² Widya Pipit; Herawati and Alfiah Rahmawati Hidana, "Hukuman Bagi Peminum Khamr Pada Putusan Pengadilan Negeri Klaten No 148/Pid.C/2018/ PN.KIn Dalam Tinjauan Fiqh Islam (Studi Perbandingan)," *Sharia* Vol. 3, no. No. 1 (2020).

key to all evils.²³ Regarding this matter, not only is Islam against alcoholic beverages, other religions have the same attitude. Rushmore says many Christians are against alcohol on biblical grounds.²⁴ Likewise in Buddhism, which teaches avoiding liquor, an addictive item that causes weak consciousness.²⁵ In Hinduism, too, in the Bhagavata Purana (I. 17. 38. - 39), there is a description of the chain of drunkenness.²⁶ Third, business problems. This alcoholic beverage industry is one of the industries and trades with business value. This has also led to the tug-of-war policies to prohibit or restrict the industry, distribution, and consumption of alcoholic beverages.²⁷

Apart from these three aspects, generally, the Indonesian people have a low level of consumption of alcoholic beverages. Based on the 2018 Basic Health Research, only 3% consumed alcoholic beverages. Of the 3%, dominated by traditional alcoholic beverages (38.7%), beer (29.5%), wine-arak (21.6%), whiskey (3.8%), Oplosan (3.3 %), and other types (3.1%).²⁸ Based on these data, traditional alcoholic beverages have factually recognised the tradition of alcoholic beverages as "cultural wisdom," especially for religious and customary rituals.²⁹ Regarding the existence of these traditional beverages, of course, it must be considered sociologically in the application of the Legal Policy on the Alcoholic Beverages Bill, as long as the tradition still exists culturally and is indeed intended for limited traditions and religions. Regarding this, in-depth study and research are needed.

Juridical Basis

Juridically, the legal policy in the Alcoholic Beverage Bill in the future must consider that the legal policy that is formed is to solve legal problems or fill legal gaps by considering existing rules, which will be changed, or which will be revoked in order to guarantee legal certainty and taste. Community justice. Based on the inventory and identification of regulations related to alcoholic beverages, the Alcoholic Beverages Bill that will be formed should be able to harmonise these various regulations, especially the new Work Creation Law that has been passed.

²³ Muhammad Yusuf Danka, "The Key to All Evils Are Alcohol and Drugs," 2006. See also Mohammed Ali Albar, *The Problem of Alcohol and Its Solution in ISLAM* (Saudi Arabia: Saudi Publishing & Distributing House, 2001).

²⁴ Louis Rushmore, *Beverage Alcohol* (Winona: J.C. Choate Publications, 2008).

²⁵ Ronald Satya Surya, *5 Aturan Moralitas Buddha: Pengertian, Penjelasan, Dan Penerap* (Yogyakarta: Insight Vidyāsenā Production, 2009).

²⁶ Mahkamah Agung R.I, "No Title," n.d., 18.; Shabra Syatila, "Larangan Minuman Keras Dalam Berbagai Agama," jendela, 2014.

²⁷ Based on the Ministry of Industry's records, the mining industry played a role in increasing the state treasury from the excise value of Rp. 5.27 trillion in 2017, an increase of around 2.63% compared to excise revenues of the previous year, which reached Rp. 5.14 trillion. See, Annisa Sulisty Rin, "Ini Kontribusi Industri Minuman Beralkohol Terhadap Kas Negara," *Bisnis.com*, 2018.; The excise contribution from the MMEA was around 3.1 per cent of the realisation, while the government's excise revenue reached Rp. 115.32 trillion as of September 2020. See, CNN Indonesia, "Manisnya Industri Minuman Beralkohol Yang Terancam RUU Minol," *Berita Bisnis*, 2020.

²⁸ Kementerian Kesehatan RI, "Laporan Nasional RISKESDAS 2018" (Jakarta, 2018).

²⁹ Tri Rini Puji Lestari, "Menyoal Pengaturan Konsumsi Minuman Beralkohol Di Indonesia," *Aspirasi* Vol. 7, no. No. 2 (2016). See also, Shanti Riskiyani et al., "The Social Culture Aspect of Alcohol (Tuak) Used in North Toraja," *Media Kesehatan Masyarakat Indonesia*, 2016. See also, Harisan Boni Firmendo, "Keraifan Lokal Minuman Tradisional Tuak Dalam Merajut Harmoni Sosial Di Tapanuli Bahagian Utara," *Aceh Anthropological Journal* Vol. 4, no. No. 2 (2020). See also, Kadek Rai Suwena, "Menjual Tuak (Alkohol Bali) Sebuah Pilihan (Tinjauan Dari Perspektif Sosial Dan Ekonomi Masyarakat Di Desa Datah)," *International Journal of Social Science and Businnes* Vol. 1, no. No. 1 (2017).

The Content and Scope of Regulation of the Alcoholic Beverage Bill

The Alcoholic is included in Beverage Bill in the 2020-2024 National Legislation Program,³⁰ and included as the 2021 national legislation program (prolegnas) priority list, clarifying the government's political-legal position in regulating alcoholic beverages in one form of law.

In this case, the author wants to strengthen the idea of forming the Alcoholic Beverages Bill as part of the development of national law through the formation of good legislation. The contents and scope of the Alcoholic Beverages Bill must be formed based on fundamental and in-depth considerations. The tug of war between the issues of benefit and harm, halal-haram, business and investment interests, and the existence of local wisdom (customs and culture), must be a major concern. A paradigm of comprehensive, principle-abiding, radical, and wise thinking is very much needed to create an effective Alcohol Beverages Bill. The main values of law, legal certainty, justice, and benefit, must be manifested in the Alcoholic Beverages Bill. Thus, the Alcoholic Beverage Bill that will be produced is not a law that produces social harmfulness or unjust law. The relevance of what was conveyed by Gustav Radbruch:

“Of course, it is true that the public benefit, along with justice, is an objective of the law. And, of course, laws have value in and of themselves, even bad laws: the value, namely, of securing the law against uncertainty. And, of course, it is true that owing to human imperfection, the three values of the law - public benefit, legal certainty, and justice - are not always united in-laws harmoniously, and the only recourse, then, is to weigh Whether validity is to be granted even to bad, harmful, or unjust laws for the sake of legal certainty, or Whether validity is to be withheld because of Reviews their Injustice or social harmfulness.”³¹

Alcoholic beverages must result from various interests and wills between government and society. Regarding this matter, the author calls it WM Formation in forming laws and regulations. Figure 1 describes that W represents the government's interests (Up), and M represents the interests of the community and all relevant stakeholders (Bottom). The link between W and M will result in a law that not only describes the power of the government as the authority for the formation of laws, but the laws that are formed are also the will and aspirations and reflect the nature and character of the community. Which is in the language of Karl von Savigny,³² That law comes from and follows the nation's spirit (*volksgeist*). Therefore, because law comes from society's unique spirit, *volksgeist* becomes the basis of study in all its manifestations. Figure 1 describes the WM Formation regarding the establishment of the alcoholic beverages Bill.

³⁰ Based on Keputusan DPR RI Nomor 46/DPR RI/I/2019-2020 tentang Program Legislasi Nasional Rancangan Undang-Undang Tahun 2020-2024. See also, Sekjen DPR-RI, “Program Legislasi Nasional,” Prolegnas 2020-2024, 2020.

³¹ Gustav Radbruch, “Five Minutes of Legal Philosophy (1945),” trans. Bonnie Litschewski Paulson and Stanley L. Paulson, *Oxford Journal of Legal Studies* 26, no. 1 (2006): 13–15, <https://doi.org/10.1093/ojls/gqi042>.

³² Luis Kutner, “Legal Philosophers: Savigny: German Lawgiver,” *Marquette Law Review* Vol. 55, no. No. 2 (1972).

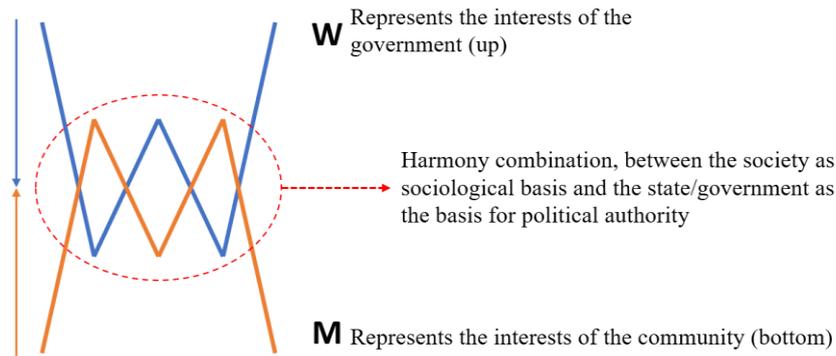


Figure 1: *WM Formation in the Establishment of the Alcoholic Beverages Bill*

The prohibition in the Alcoholic Beverages Bill described in figure 1 will be the centre of debate between a total ban (total tires) or a limited ban. In this regard, the involvement of all stakeholders is an option to get as much input as possible. In this case, the writer's WM Formation is very relevant. Do not let the choice to implement a total prohibition lead to deviant behaviour in the consumption of alcoholic beverages. Do not, because of the total prohibition; people instead seek other forbidden ways to get alcoholic beverages. An analysis of the 1920s ban on alcoholic beverages in the United States³³ showed that although alcohol consumption fell at the start of the ban, it then increased. Alcohol becomes more dangerous to consume; crime increases and becomes "organised"; the court and prison system expands to a breaking point; and rampant public official corruption. Although America's sociological condition is certainly different from Indonesia, at least this experience can be used as a reference in determining alcoholic beverage legal policies in Indonesia.

Departing from the current regulation of alcoholic beverages in Indonesia, several things must be considered in preparing the contents of the Alcoholic Beverages Bill. The author formulates this in several indicators to see the urgency of regulating the Alcoholic Beverages Bill. These indicators are Rule, Opportunity, Capacity, Communication, Interest, Process, and Ideology (ROCCIPI). These seven indicators are important because the theory of institutionalist law formation is built on the premise that there is no single factor that causes behaviour.³⁴

Rule. Whether a rule establishes or explicitly permits problematic behaviour; expressly or in words that are not clear or ambiguous, gives the appointed party the flexibility to decide how they should behave; determine possible criteria and procedures to ensure that the executing body's officials make decisions not arbitrarily; determine the required behaviour of relevant role holders (including executing agency officials) in words that make them unsure of what they should or may do. Related to this, of course, with the spread of alcoholic beverages regulations in many laws and regulations and not yet in the form of a law explicitly regulating alcoholic beverages, this can lead to unclear regulations and is not even effectively implemented. Although there are already regulations governing alcoholic beverages in the form of a Presidential Decree and a Ministerial Regulation, this has not yet resolved the existing alcoholic beverage problem.

³³ Mark Thornton, "Alcohol Prohibition Was a Failure," Cato Institute Policy Analysis No. 157 (Massachusetts - the USA, 1991).

³⁴ Ann Seidman, *Assessing Legislation: A Manual for Legislator* (Boston, 2003). See Ann Seidman, *Legislative Drafting for Democratic Social Change* (London: Kluwer Law International Ltd., 2001).

Opportunity. Do circumstances facilitate problem behaviour? If so, therefore, the new law should try to change the environment's too complicated behaviour. Even though alcoholic beverages have been regulated in such a way based on existing regulations, the impact of behaviour due to consumption of alcoholic beverages is still a socio-economic problem. Thus, the Alcoholic Beverages Bill must be able to provide a regulation regarding the aspect of strict supervision, whether the legal policy taken is a total prohibition or a limited prohibition. They are establishing a supervisory organ involving the participation of the community.

Capacity. This is related to the question of whether the related actors have the knowledge, skills, and resources they need to behave differently from what they do now. The capacity here is related to the capacity, both the capacity of the apparatus and the capacity of the community to understand the adverse effects of alcoholic beverages substantively. This capacity-building and enhancement can be done through continuous education. Thus, the Alcoholic Beverage Bill must regulate the educational aspects to prevent the harmful effects of alcoholic beverages. Prevention through continuous education is the key to success in anticipating the adverse effects of alcoholic beverages. With adequate capacities controlled by both the apparatus and the community, it will foster a commitment to comply with legal regulations related to alcoholic beverages.

Communication. Do the actors know and understand the existing rules? Apart from the spread of various laws and regulations and weak socialisation regarding legal rules related to alcoholic beverages, of course, it will determine how the community behaves towards alcoholic beverages. A person cannot consciously obey a law without knowing that it exists and understanding the behaviour it dictates. Therefore, the involvement of all elements in forming the Alcoholic Beverages Bill is the key to the success of legal policies related to alcoholic beverages.

Interest. What incentives are there to encourage related actors to behave the way they do? Interest '(or incentives) refers to the actors' perceptions of how existing legal costs and benefits affect them. This may include material benefits, such as cash or additional benefits. They may also include non-material incentives, such as power or self-respect. From the beginning, this has been a perpetual circle of debates regarding regulating alcoholic beverages. Apart from the good and bad impacts of halal and haram, regulating alcoholic beverages will also be related to the interests of economic, investment, and income motives. Also, these alcoholic beverages are "recognised" as local wisdom related to customs and culture in some areas. For this reason, the Alcoholic Beverages Bill must pay attention to this aspect of interest when it chooses a total prohibition in its policy. Moreover, even if a limited prohibition is chosen, then the limitation must be emphasised in clear and measurable boundaries.

Process. Based on what criteria and procedures - by what process - do actors decide whether or not to comply with a Rule of Law? Thus, in the Alcoholic Beverage Bill, clear criteria and procedures must be determined regarding regulating alcoholic beverages. Anything included in alcoholic beverages, wherever alcoholic beverages can be traded and consumed when the legal policy is limited to prohibition, what and how to participate in the community, administrative sanctions, and what kind of criminal sanctions can be threatened.

Ideology. (values and attitudes): What is on the actor's head that helps explain behaviour? Ideology here refers to beliefs, including values, attitudes, tastes, myths about the world, religious

beliefs, and more or less well-defined political, social, and economic ideologies. The Alcoholic Beverages Bill must be able to accommodate all the values that exist from all sociological realities related to the arrangement of alcoholic beverages in the future, how all aspects must be considered, both economic aspects, customs, to religious aspects. When the legal policy to be taken is total prohibition, do not let the total prohibition not consider customary and economic aspects. At the same time, when the legal policy that is taken is a limited prohibition, do not let the restriction conflict with religious values and customs.

CONCLUSION

The regulation of alcoholic beverages in Indonesia is still not regulated in a special law. As a result of the absence of a law that serves as a legal umbrella, the regulation, use and supervision of alcoholic beverages in each region are different, resulting in difficulties in supervision and various legal actions taken by law enforcement officers. This situation creates legal uncertainty normatively. On the other hand, it is also not controlled and managed properly, which impacts morale and health problems, halal and haram, and business problems. Especially for business problems, with the issuance of the Job Creation Law which opens up investment opportunities in the alcoholic beverage business, it has become counter-productive philosophically, juridically, and sociologically. Therefore, following The WM Formation legal theory, the formation of the alcoholic beverage law must follow Pancasila as the basis of the nation's philosophy, community aspirations, and spiritual issues that control investment activities in the alcoholic beverage sector in order to answer the problems of a sociology of law and the vicious circle between business, morals and health, halal and haram in society. For this reason, integrated regulation and supervision of liquor are needed. A law urgently needs to unify the regulations regarding alcoholic beverages that are already circulating but are varied in nature. For this reason, integrated regulation and supervision of liquor are needed. It is an urgently needed law to unify the regulations regarding alcoholic beverages that are already circulating but are varied in nature.

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