

*Research Article*

## Legal Protection of Citizens: The Alcoholic Beverages in Licensing, Taxation, and Supervision in Indonesia

Herini Siti Aisyah<sup>1</sup>, Ahmad Munir<sup>1</sup>, Rizky Putra Zulkarnain<sup>1\*</sup>, Tatiek Sri Djatmiati<sup>1</sup>, Muhammad Mazhuri<sup>1</sup> and Heru Irianto<sup>2</sup>

<sup>1</sup>Department of Law, Airlangga University, Surabaya, Indonesia

<sup>2</sup>Bhayangkara University of Jakarta, Indonesia

Address correspondence to Rizky Putra Zulkarnain, rizkypzul@gmail.com

Received 15 November, 2019; Revised 06 February, 2020; Accepted 13 February, 2020

Copyright © 2020 Herini Siti Aisyah, et al. This is an open access article distributed under the terms of the Creative Commons Attribution License, which permits unrestricted use, distribution, and reproduction in any medium, provided the original work is properly cited.

### Abstract

Superior human resources are a form of guarantee of a good and healthy environment. To realize this guarantee there must be rules regarding the consumption of drinks alcohol because it can impact health and social losses. Abuse alcoholic drinks result in death events as well as disrupt security environment. The opposite is the legality of alcoholic drinks and rules on prohibiting alcoholic drinks. This study intends to discuss that “what is the form of collateral legal protection of citizens for alcoholic drinks in Indonesia?”. This study uses a normative research method, through a regulatory approach legislation and conceptual approach related to citizen protection country against alcoholic drinks. The form of legal protection will be examined in terms of licensing, taxation, and supervision of alcoholic drinks.

**Keywords:** Legal protection, licensing, supervision, alcoholic beverages

### 1. Introduction

Indonesia is a country based on the law stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (here in after abbreviated as the 1945 Constitution), that the activities or actions of the community must be based for the rules that apply in society. The form of deeds that are obedient to law will create security and order in society, so that the purpose of the state Indonesia can be achieved [1]. The goal of the Indonesian state can be achieved by giving protection of all Indonesian citizens, namely building resources humans (hereinafter abbreviated HR) who excel in accordance with the vision of the Indonesian state. Excellent human resources must be based on development in physical and spiritual aspects human.

Fulfillment to obtain a physical and spiritual life is a basic right for every citizen [2]. The realization of these human rights is the responsibility and obligation of the state [3]. The state has the highest organization must realize superior human resources by guaranteeing a good and healthy environment. Efforts to fulfill, achieve,

and realize good and healthy environmental guarantees, namely by regulating the consumption of alcoholic drinks because of the impact on health and social losses.

Alcoholic Beverages in terms of health can cause death for someone who consumes. Besides also, have impact against the social order of society who were not drinking alcohol, which fall victim to the drinkers of alcoholic. Such actions could disrupt public order and security with increasing of the criminal cases [4]. The impact of the misuse of alcoholic beverages is the responsibility of the government to regulate it.

Presidential Regulation No. 74 of 2013 concerning Control and Supervision of Alcoholic Beverages [5], became the legal umbrella in controlling the circulation of alcoholic drinks in Indonesia. The essence of the substance of the legal rules of Presidential Regulation No. 74 of 2013 stipulates that alcoholic drinks can be traded through supervision [6]. In addition, Lex No. 36 of 2009 concerning Health [7], Lex No. 8 of 1999 concerning Consumer Protection [8], as well as Lex No. 7 of 1996 concerning Food [9], also regulates alcoholic beverages. However, there are several local regulations issued by prohibiting the total circulation of alcoholic beverages. So there is a conflict of legal rules relating to alcoholic beverages. Given some of role those regulate the circulation of beverage alcohol and the impact of health and social to the need for research on guarantees to legal protection of citizens against drink alcohol.

### 2. Research Methods

This study uses the methodology of normative approaches used are: (1) *Statute Approach*, where researchers will study the legal rules that had sold the beverage alcohol,

(2) *Conceptual Approach*, namely approaching by discuss the opinion of experts that developed in the jurisprudence so that ideas can be found that create legal understandings, legal theories, and legal principles that are relevant to the issue at hand relating to the protection of citizens against alcoholic drinks.

### 3. Results and Discussion

The term legal protection in English, namely legal protection theory, the Dutch language is *theorie van de wettelijke bescherming*, and also *German theorie der rechtliche schutz* [10]. The meaning of legal protection according to Koerniatmanto Soetoprawiro [11], that the nature of legal protection is an attempt to provide guarantees for all citizens by the authorities in order to be able to manifest rights and obligations optimally. Maria Theresia Geme [12], stating the legal protection related to the action of the state to provide assurance of the rights of Giglio rang late or group of people by passing a law. H. Salim HS and Erlies Septiana Nurbani [13]. Men interpret legal protection is a form of service granted by law to legal subjects as well as regarding the protected object.

The state's actions related to legal protection for citizens are divided into two type's namely preventive legal protection and repressive legal protection [14]. The legal protection preventive intended to prevent disputes, otherwise the legal protection be repressive intends to resolve the dispute. The form of preventive legal protection is the prudential attitude of the government in acting and making decisions [15]. Actions and decisions of the government must be based on the rule of law, so that they serve as guidelines for legal protection for the people against human rights [16].

Health is a Human Rights contained in the Constitution NRI RI Year 1945 Section 28 H paragraph (1) that every citizen has the right to a prosperous life physically and mentally, residing with a good living environment d an unhealthy and are entitled to health care. Furthermore, it is explained more fully in Law No. 39 of 1999 concerning Human Rights [17], Article 9 states that "Every person has the right to live, maintain life and improve his standard of living. Every person has the right to live in peace, security, peace, happiness, prosperity, birth and mind; everyone has the right to a good environment and healthy ". In addition, Law No. 36 Year 2009 on Healthy Article 3 also downloads a guarantee of the right to obtain health status of the setting height. But in Article 9 of Law No. 36 of 2009 concerning Health that there is an active obligation to realize the right to obtain the highest degree of health, Likewise in Law No. 39 of 1999 concerning Human Rights Article 8, states that the Government is responsible for the realization and enforcement of these human rights. Thus the government is obliged to provide health services and make arrangements to protect the health of its people. This is a manifestation of the government's task in carrying out government functions

based on good governance [18]. This concept is also in line with the concept of the right to optimal health status according to the *World Health Organization* (WHO) that the government is obliged to the people in the health field that is setup as a form of protection of healthy for persons with rights as well as the provision of facilities or health care [19].

The history of regulating the legality of alcoholic drinks in Indonesia is Law No. 7 of 1996 concerning Food, Presidential Decree No. 3 of 1997 concerning Supervision and Control of Alcoholic Beverages, Law No. 8 of 1999 on per patronage Consumers and Law No. 36 of 2009 concerning Health. Ak's but there are some local regulations governing the prohibition beverages, causing a conflict between the rule of law. So based on the principle of *superior lex derogat legi inferior*, that the rules that are below must not be in conflict with the rules above. So the regional regulation on the prohibition of alcoholic drinks is contrary to the legality rules governing the liquor that is on it so that it is declared null and void.

Alcoholic beverages in different groups particularly ethanol ( $\text{CH}_3\text{CH}_2\text{OH}$ ) with a certain level capable of making user become lost consciousness when taken in excessive amounts [20]. There are also mixed alcoholic beverages that appear in the news resulting in the effects of poisoning and death. Mixed alcoholic drinks are alcoholic drinks of type vodka, red alcoholic wine, white alcoholic wine or beer mixed with various other ingredients [21]. Alcoholic drinks are a type of addictive substance whose abuse has a serious impact on public health and social problems [22].

Consumption of alcoholic beverages has not become a habit of the Indonesian people, especially because it affects the health and social aspects very detrimentally [23]. As a form protection of law, hence the need for a review in the case of licensing, tax, and supervision of beverage alcohol.

Tatiek Sri Djatmiati [24], states that licensing is a form of state administrative decision (KTUN) which in publishing and revoking it is based on a juridical basis that must be followed. This is in line with the concept of NM Spelled and TJJBJ [25], which defines the license, is a means of judicial administrative law which the government uses to regulate the behavior of citizens of the state.

Shifting licensing goal late as the findings of Tatiek Sri Djatmiati [26], the development of licensing in Indonesia, there has been a shift in the purpose of granting permits. The purpose of the permit as a juridical instrument to control people's lives, turned into a source of income for central and regional licensing. Function as a source of revenue from the licensing of liquor is effective, will be but a regulatory function needs to be improved to help curb health problems that develop [27].

Entertainment venues can have licenses for the sale of alcoholic beverages if already meet the applicable terms

and conditions issued by the Ministry Industry. This permit is issued so that there is control in the sale of alcoholic drinks so that sales do not arise legally. The Ministry of Industry is responsible for the provision of business licenses for the alcoholic beverage industry, and the Ministry of Health is responsible for setting quality standards/distribution licenses for domestic and imported alcoholic beverages. Lex No. 36 of 2009 concerning Health (Articles 111 and 112) Article 111 regulates permits as well as food and beverage standards that are fit for distribution. For the next of standard food safety are also regulated Lex No. 18 of 2012 concerning Food in Article 86, Article 89, Article 90, Article 91, Article 97, Article 99, and Article 104.

Regarding taxation, the Ministry of Finance is responsible for determining taxes, import duties and excise for alcoholic drinks. The existence of excise tax can regulate the consumption of alcoholic beverages; it is in accordance with the opinion of Philip J. Cook and George Tauchen that "An estimate of the responsiveness of average consumption to the tax rate is at best indirect evidence on the more interesting issue of how alcohol taxes influence the prevalence of chronic heavy consumption" [28]. In accordance with the enactment lex No. 11 of 1995 on Customs, the determination of customs levies in three commodities namely tobacco products, ethyl alcohol, and drinks that contain ethyl alcohol. Besides Indonesia, several countries which are members of the *Organization for Economic Cooperation and Development* (OECD), namely Japan, Australia, Germany, United Kingdom, South Korea, and so on, also apply limited excise tax on three types of commodities. The agreement of the countries in the OECD to limit the consumption of cigarettes and alcoholic beverages with the imposition of excise with the primary consideration of the damages incurred.

Regarding supervision, supervision is paralleled in English with the term *control*. The term *control* in the Black's law Dictionary is defined as "*To exercise power or influence over (the judge controlled the proceedings); To regulate or govern (by law, the budget office controls expenditures); To have a controlling interest in*" [29]. George R. Terry [30], said that supervision of the measures of control carried out at the end of an activity to give an evaluation, after the activities of that produce something. Meanwhile, Newman argues that: "*Control is assurance that the performance conforms to the plan*". Supervision is an attempt to guarantee the implementation of the tasks in accordance with the plan. Mockler mentions supervision as: "*Controlling is a systematic effort by business management to compare performance to predetermined standards, plans, or objectives to determine whether performance is in line with the standards and presumably to take any remedial action required to see that human and other corporate resources are being used in the most effective and efficient way possible in achieving corporate objectives*" [31].

Thus the concept of supervision from Mockler contained important objectives to be achieved based on the criteria, norms and standards of supervision. According Prajudi Atmosudirjo surveillance is "the process of activity - activity that compares what is executed, executed, or held it with what was intended, planned or established" [32]. Bagir Manan views control as both a function and a right, so it is commonly called the control function, or control right. Furthermore Bagir Manan said that "control contains dimensions of supervision and control. Supervision related to restrictions, and control related to directives [33]. Supervision according to Muchsan is "An activity to evaluate a de facto task implementation" [34]. Thus supervision is an act of government responsibility in the limitation and control. The Ministry of Trade is responsible for overseeing and controlling the procurement, distribution and sale of alcoholic beverages; as well as the Ministry of the Interior is responsible for supervising the circulation of alcoholic beverages in each area - each as well as supervision of the business of making traditional alcoholic beverages. The dual function in the supervision of the distribution of alcoholic beverages by the Ministry of Trade and the Ministry of the Interior is not only the responsibility of the two ministries, but must be supported by community participation.

#### 4. Conclusions and Recommendations

Abuse alcoholic beverages detrimental to the health and social care community, so the government should be responsible for providing legal protection for citizens. Forms legal protection as a guarantee of responsible government in alcoholic beverages through licensing late, taxation, and supervision.

Legally the regulation of alcoholic drinks for licensing, taxation and supervision of alcoholic drinks has been fulfilled, but there is still a legal vacuum in the regulation of alcoholic drinks namely there is no regulation regarding alcoholic beverage users who consume excessive alcoholic drinks and even have an impact on the surrounding community. All of these laws and regulations are the control and supervision that occurs in the uncontrolled alcoholic beverage distribution community, both legal alcoholic drinks and illegal alcoholic drinks. Mixed drinks or mixtures of various alcoholic drinks with mixed substances are also the biggest problems so that victims arising from poisoning to death. Another thing that is also a legal problem is the absence of a legal absence of regulations for users of alcoholic beverages who abuse or consume excessive alcoholic beverages.

#### References

- [1]. Opening of the 1945 constitution the fourth paragraph, namely that *to protect the entire nation of Indonesia and the whole of Indonesia's blood spill and to promote public welfare, educate the nation's life, and participate in carrying out world order based on independence, Eternal Peace And Social Justice.*

- [2]. 1945 Constitution of the Republic of Indonesia (hereinafter abbreviated as the 1945 Republic of Indonesia Constitution) Article 28H paragraph (1) that "every person has the right to live in peace and harmony, to live, and to get a good and healthy living environment and is entitled get health services".
- [3]. Article 28I paragraph (4) of the 1945 Republic of Indonesia Constitution which states "Protection, promotion, enforcement and fulfillment of human rights is the responsibility of the state, especially the government"
- [4]. Y. Raja, *Supervision of Alcoholic Beverages in Batam City*, Jom Fisip, 3 (2), (2016).
- [5]. State gazette of the republic of Indonesia (2013), 190.
- [6]. Y. P. Harris, *Sibuea, Law enforcement of alcoholic beverages*, Rule of Law, 7 (1), (2016).
- [7]. State gazette of the republic of Indonesia (2009), 144. Supplement to the State Gazette of the Republic of Indonesia Number 5063.
- [8]. State gazette of the republic of Indonesia (1999), 42, Supplement to the State Gazette of the Republic of Indonesia Number 3821.
- [9]. State Gazette of the Republic of Indonesia (2012) 227, Supplement to the state gazette of the republic of Indonesia Number 22760.
- [10]. H. Salim, H. S. Erlies, S. Nurbani, *Application of legal theory to thesis and dissertation research*, Rajawali Press, Jakarta, (2013)
- [11]. K. Soetoprawiro, *Legal protection arrangements, Rights of women and children in citizenship*, Pro Justitia Law Journal, 3 (2002), 20.
- [12]. Maria Theresia Geme, *Legal protection of customary law communities in the management of the Watu Ata Nature Reserve, Ngada Regency*, East Nusa Tenggara Province, Dissertation, Brawijaya University, Malang, (2012), 99.
- [13]. H. Salim, *Erlies Septiana Nurbani*, Op Cit, (2015), 262.
- [14]. P.M. Hadjon, *Normative Law Research*, Faculty of Law, Airlangga University, Surabaya, (1988), 1-2. In: Reny Heronia Nendissa, *State responsibility in improving people's welfare in the era of regional autonomy*, Dissertation, Airlangga University, Surabaya (2015), 165.
- [15]. K. Purbopranoto, *Some legal notes on government administration and administrative law*, Alumni Publisher, Bandung, (1975), 44.
- [16]. R. H. Nendissa, *State Responsibility in improving people's welfare in the era of regional autonomy*, Dissertation, Airlangga University, Surabaya, (2015), 151.
- [17]. State gazette of the republic of Indonesia (1999) 165. Supplement to the State Gazette of the Republic of Indonesia Number 3886.
- [18]. K. T. Slamet, *Right to optimal health degrees as human rights in Indonesia*, Alumni, Bandung, (2007), 7.
- [19]. H. Salim, *Erlies Septiana Nurbani*, Op Cit, (2013), 1-3.
- [20]. Y. P. Harris, *Law Enforcement of Alcoholic Beverage Regulations*, Negara Hukum, 7 (2016), 132-133.
- [21]. M. Mohammad, *Emergency Miras Oplosan*, Brief Info, 24 (2014), 10.
- [22]. T. R. Lestari, *Questioning regulation on the consumption of alcoholic beverages in Indonesia*, Aspiration, 7 (2016), 127.
- [23]. T. R. Lestari, *Questioning regulation on the consumption of alcoholic beverages in Indonesia*, Aspiration, 7 (2017), 26-28.
- [24]. T. S. Djatmiati, *Principles of industrial enterprises in Indonesia*, Dissertation, Department of Law, the Graduate Program, University of Airlangga, Surabaya, (2004), 247.
- [25]. N. M. Spelled and P. M. Hadjon, *Introduction to Licensing Law*, Yuridika, 1<sup>st</sup> edn, Surabaya, (1993).
- [26]. T. S. Djatmiati, *Licensing as juridical institution in public services*, Lecture Teaching Materials, Faculty of Law, Airlangga University, Surabaya, (2014), 19.
- [27]. R. A. Findlay, C. M. Sheehan, J. Davey, H. Brodie and F. Rynne, *Liquor law enforcement: policy and practice in Australia*, *Drugs: education, prevention and policy*, 9 (2002), 86.
- [28]. P. J. Cook and G. Tauchen, *The effect of liquor taxes on heavy drinking*, *The Bell J Economics*, 13 (1982), 384.
- [29]. B. A. Garner, *Black's law dictionary*, A Thomson Reuters business, USA, (2004), 378.
- [30]. G. R. Terry, *Control is to determine what is accomplished evaluate it, and apply corrective measures, if needed to insure results in keeping with the plan as quoted by Muchsan*, the Supervision System on the Acts of the Government Officials and the State Administrative Court in Indonesia, (2015).
- [31]. S. C. Certo and S. T. Certo, *Modern management: concepts and skills*, Pearson Prentice Hall (15<sup>th</sup> edn), (2006), 480.
- [32]. P. Atmosudirjo, *State Administrative Law*, Revised Edition, Tenth Printing, Ghalia Indonesia, Jakarta, (1994), 84.
- [33]. B. Manan, *Improvement of community control functions against legislative, executing and judicial institutions*, Paper, Presented at the Kosgoro National Level Orientation and Face-to-Face Forum in Cipanas-Cianjur, 26 (2000), 1-4.
- [34]. M. Muchsan, *Supervision system on the acts of government officials and state administrative court in Indonesia*, loc cit, (2004), 37.