



The Conflict of Legal Norms: Islamic Law and Positive Law in the Regulation of Alcoholic Beverages in Pekalongan City

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Abstract:

There are inconsistencies between the regulation of alcoholic beverages in Presidential Regulation No. 73/2013 on the Control and Supervision of Alcoholic Beverages and Pekalongan City Regional Regulation No. 13/2000 on the Supervision and Prohibition of Alcoholic Beverages. This article discusses the dialectics of Islamic law and positive law in regulating alcoholic beverages in Pekalongan as a city of santri and its legal consequences. This article is a doctrinal research using statutory, conceptual, and historical approaches. The analysis of legal material is prescriptive to offer arguments to answer problem issues, while the inference technique uses deductive thinking logic. Based on the analysis of Hans Kelsen's norm theory and the principles of legal norm formation, the research shows that the dialectic of Islamic and positive legal norms that produce local regulations on the prohibition of alcoholic beverages in the city of santri is a consequence of the autonomy authority of local governments in making local regulations in order to carry out assistance tasks. Consequently, the local regulation on the prohibition of alcoholic beverages has no binding force because the basic rules of its formation have been declared contrary to law by the Supreme Court, and the content material is contrary to Presidential Regulation No. 74 of 2013. It does not comply with the principles of the formation of local regulations. The legal consequences are uncertainty, regional regulations not following national legal policy, and the potential to cause discrimination. This article presents an understanding of the dialectic of Islamic law on the one hand and positive law on the other regarding regulating the circulation of alcoholic beverages.

Abstrak:

Terdapat inkonsistensi pada regulasi minuman beralkohol dalam Peraturan Presiden Nomor 73 Tahun 2013 Tentang Pengendalian dan Pengawasan Minuman Beralkohol dengan Peraturan Daerah Kota Pekalongan Nomor 13 Tahun 2000 Tentang Pengawasan dan Pelarangan Minuman Beralkohol. Artikel ini membahas dialektika hukum Islam dan hukum positif dalam pengaturan minuman beralkohol di kota Pekalongan sebagai kota santri serta akibat hukumnya. Artikel ini merupakan penelitian doktrinal menggunakan pendekatan undang-undang, konseptual dan historis. Analisis materi hukum bersifat preskriptif dengan maksud untuk menawarkan argumen untuk menjawab masalah masalah, sedangkan teknik inferensi menggunakan logika berpikir deduktif. Berdasarkan analisis teori norma Hans Kelsen dan asas-asas pembentukan norma hukum, penelitian menunjukkan bahwa dialektika norma hukum Islam dan positif yang menghasilkan peraturan daerah tentang larangan minuman beralkohol di kota santri merupakan konsekuensi dari

kewenangan otonomi pemerintah daerah dalam membuat peraturan daerah dalam rangka melaksanakan tugas pendampingan. Akibatnya, keberadaan peraturan daerah tentang larangan minuman beralkohol a quo sebenarnya tidak memiliki kekuatan yang mengikat karena aturan dasar pembentukannya telah dinyatakan bertentangan dengan hukum oleh Mahkamah Agung dan materi isinya bertentangan dengan Peraturan Presiden No. 74 Tahun 2013 dan tidak sesuai dengan prinsip-prinsip pembentukan peraturan daerah. Konsekuensi hukumnya adalah ketidakpastian hukum, keberadaan peraturan daerah tidak sesuai dengan kebijakan hukum nasional dan berpotensi menimbulkan diskriminasi. Artikel ini menyajikan pemahaman mengenai dialektika hukum islam di satu sisi, dan hukum positif di sisi lain mengenai bagaimana praktik pengaturan peredaran minuman beralkohol.

A. Introduction

According to data from the Central Statistics Agency of Pekalongan, the number of residents by religion in Pekalongan City in 2022 is 96.67% of the city's population, while the rest adheres to other religions. The majority of the population of Pekalongan City is Muslim, and there are more than 100 Islamic boarding schools established in Pekalongan City, which makes this city called Santri's city. In addition, this area has potential in the industrial, agricultural, and trade sectors. With this statement, the city of Pekalongan must be a role model to avoid bad habits that are contrary to the teachings of all religions, especially Islam, namely consuming alcoholic beverages. Pekalongan City Regional Regulation Number 13 of 2000 is an example of the implementation of local governments monitoring the distribution of alcoholic beverages in Pekalongan. This is one of the efforts to make Pekalongan City a religious city.

Regional Regulation of Pekalongan City Number 13 of 2000 concerning the Control and Supervision of Alcoholic Beverages refers to a higher level regulation, namely Presidential Decree No. 3 of 1997 concerning the Control and Supervision of Alcoholic Beverages.¹ However, the Presidential Decree has been reconsidered at the Supreme Court and was decided on June 18, 2013, which canceled Presidential Decree No. 3 of 1997 concerning the Control and Supervision of Alcoholic Beverages with the reason that it is contrary to Pancasila, the 1945 Constitution, Law No. 36 of 2009 concerning Health, Law No. 8 of 1997 concerning Consumer Protection, and Law No. 7 of 1996 concerning Food. Before that decision, a legal vacuum resulted in the lower regulation having no binding legal force, so Presidential

¹ Lusi Andriyani, "Political Policy on the Control and Supervision of Alcoholic Beverages in Jakarta Based on Presidential Regulation No. 74 of 2013," *Swatantra* 15, no. 74 (2017): 145.

Regulation No. 73 of 2013 was issued concerning the Control and Supervision of Alcoholic Beverages was ratified on December 6, 2013.²

Presidential Regulation No. 73 of 2013 states that the distribution of alcoholic beverages is not restricted, and there are no regulations regarding the prohibition of consuming alcoholic beverages. Meanwhile, Pekalongan City Regional Regulation No. 13 of 2000 states the contrary that it is prohibited to distribute, sell, and provide alcoholic beverages. There is a contradiction between the two regulations of different levels. Indonesia, as a country based on law (rule of law), has its legal system (domestic normative system), which is arranged hierarchically, as stipulated in Article 7 paragraph (1) of Law 12/1011, which explains the type and hierarchy of legislation consisting of: 1945 Constitution, Decree of the People's Consultative Assembly, Law or Perppu, Government Regulation, Presidential Regulation, Provincial Regulation, Regency or City Regional Regulations.

The *Stufentheorie*, or standard-level legal theory, was first proposed by Hans Kelsen.³ According to Kelsen, a hierarchy that starts from the highest rule and descends endlessly determines the validity of a rule. The higher the rule must be obeyed by the lower rule. "Lex superior derogat legi inferior" states that regulations at a lower level should not conflict with regulations at a higher level, which embodies this idea.⁴ The order of legislation in Indonesia is arranged hierarchically to the level of norms proposed by Hans Kelsen, which explains that the lower norms are sourced from the upper norms so that the lower norms cannot contradict the upper norms. Hierarchically, Perpres No. 74/2013 has a higher position than Perda No. 13/2000. Meanwhile, if we refer to Hans Kelsen's theory of norm level, then the existence of the regulation violates the provisions for the formation of statutory norms.

Several researchers conducted previous research about the inconsistency of the law's hierarchy. Nikodemus Roy Pattuju discussed vertical inconsistencies in the hierarchy of laws and regulations in Indonesia, specifically related to Sukabumi City Regional Regulation (Perda) No. 13/2015 on the Prohibition of Alcoholic Beverages and Presidential Regulation No.

² Agus Muchsin, Rukiah, and Muhammad Sabir, "The Legality of Unrecorded Marriage in the Pinrang Community (Analysis of Perma Number 1 of 2015 concerning Integrated Marriage Registration Services)," *DICTUM: Sharia Journal and Law* 17, no. 1 (2019), <https://doi.org/10.35905/diktum.v17i1.653>.

³ Muhamad Baharuddin Jusuf and Adara Khalfani Mazin, "The Application of Hans Kelsen's Theory as a Form of Legal Order in Indonesia," *Das Sollen: Journal of Contemporary Studies in Law and Society* 2, no. 1 (2023): 1–25, <https://doi.org/10.11111/dassollen.xxxxxxx>.

⁴ Nurfaqih Irfani, "The Principle Of Lex Superior, Lex Specialis, And Lex Pesterior: Meaning, Problematics, And Their Use In Legal Reasoning And Argumentation," *Journal of Indonesia Legislation* 17, no. 3 (2020), <https://doi.org/10.54629/jli.v17i3.711>.

74/2013 on the Control and Supervision of Alcoholic Beverages.⁵ This study concludes that there is inconsistency because Sukabumi City Regional Regulation No. 13 of 2015 stipulates a total ban on alcoholic beverages, while Presidential Regulation No. 74 of 2013 only regulates the control and restriction of its distribution without a total ban. The research has not touched on the historical factors behind the contradiction of norms caused by the interaction between Islamic law and positive law. Whereas if you look at the history, the culture of the people who live and develop is the result of the acculturation of local culture with religious law (Islamic Law).⁶

The inconsistency of the two regulations has led to confusion among law enforcers and the public, resulting in inconsistent law enforcement, creating loopholes for uncontrolled norm violations, and the emergence of a hidden black market in alcoholic beverages. It is interesting to study the causes of the inconsistency in alcohol regulation in Pekalongan.

B. Method

This article is doctrinal research using the statutory, conceptual, and historical approaches. The legal materials used as primary data are Presidential Regulation No. 37 of 2013 and Pekalongan City Regional Regulation No. 13 of 2000, as well as secondary legal materials in the form of journals and books relevant to the legal issues studied. The analysis technique used is prescriptive. Researchers try to provide advice or recommendations to solve the legal issues studied. The legal material analyzed is then concluded through deductive thinking⁷ along with Hans Kelsen's norm theory and the principles of legal norm formation.

C. Results

The results show that although Presidential Decree No. 3 Year 1997 on the Control and Supervision of Alcoholic Beverages was annulled by the Supreme Court in 2013, the central government issued Presidential Regulation No. 73 Year 2013 as a replacement to fill the legal vacuum. However, this new regulation is not entirely in line with Pekalongan City's Regional Regulation No. 13 Year 2000, which strictly prohibits the distribution and sale of

⁵ Nikodemus Roy Pattuju, "Inkonsistensi Vertikal Peraturan Perundang-Undangan," *Jurnal Ilmu Hukum: ALETHEA* 3, no. 2 (2020), <https://doi.org/10.24246/alethea.vol3.no2.p99-116>.

⁶ Ramli Muasmara and Nahrim Ajmain, "Akulturasi Islam Dan Budaya Nusantara," *TANJAK: Journal of Education and Teaching* 1, no. 2 (2020): 111–25, <https://doi.org/10.35961/tanjak.v1i2.150>.

⁷ Peter Mahmud Marzuki, *Legal Research* (Jakarta: Kencana, 2019).

alcoholic beverages. Pekalongan, a predominantly Muslim city known as the City of Santri, enacted this prohibition as a reflection of Islamic law and the religious values of the local community. The difference between the central and local regulations reflects the disharmony in alcohol regulations at the national and local levels, especially in applying religious values in local laws. The central government imposes looser restrictions on the distribution of alcoholic beverages, while the local government of Pekalongan imposes a total ban to preserve its community's religious and social values. This reflects the critical role of Islamic law in forming local regulations in Indonesia, especially in Muslim-majority areas such as Pekalongan City.

D. Analysis and Discussion

1. Analysis of Inconsistencies in Alcoholic Beverage Regulation Norms

The state is an institution formed from the existence of a group of people living in a region or territory, and it then forms regulations to regulate the life of the group according to the collective will. The⁸ 1945 Constitution emphasizes the people's sovereignty and defines the nation as a Unitary State within the Republic. The third Pancasila principle is "Unity of Indonesia," which emphasizes the nation's unity through the 1945 Constitution and Pancasila, which firmly establishes Indonesia as a unitary state.⁹ A unitary state is a sovereign and independent state with a central government full of power over the entire territory. Even though Indonesia is a unitary state, regional autonomy is still implemented there, as stated in Article 1 number 6 of Law Number 23 of 2014, which provides autonomous regions to run their government and meet the needs of local communities while maintaining their interests and within the boundaries of the unitary system of the Unitary State of the Republic of Indonesia.¹⁰

The word "autonomy" comes from the Greek words "autos" (self) and "nomos" (law), which refer to regional autonomy.¹¹ Therefore, autonomy includes self-government (*zelfbestuur*

⁸ Yogi Dwi Saputra and Ramlan Ramlan, "The Application of the Principle of Self-determination to the Establishment of the State of Kosovo Reviewed from the Perspective of International Law," *Uti Possidetis: Journal of International Law* 1, no. 2 (2021): 193–223, <https://doi.org/10.22437/up.v1i2.9867>.

⁹ Muhammad Idris Patarai, "Representative Democracy and Constitution Pancasila Perspective with the 1945 Constitution," *Budapest International Research and Critics Institute-Journal* 4, no. 4 (2021): 12941–51, <https://doi.org/10.33258/birci.v4i4.3355>.

¹⁰ Andi Yakub, Ahmad Bashawir Abdul Ghani, and Mohammad Syafi'i Anwar, "Urgency of Political Decentralization and Regional Autonomy in Indonesia: Local Perspectives," *Journal of International Studies* 14 (2020): 141–50, <https://doi.org/10.32890/jis.14.2018.8003>.

¹¹ Muhammad Makhfudz, "The Controversy of the Implementation of Regional Autonomy," *ADIL: Law Journal* 3, no. 2 (2019): 380, <https://doi.org/10.33476/ajl.v3i2.816>.

) and the ability to make its own laws (*zelfwetgeving*).¹² According to Article 18, paragraph (2) of the 1945 Constitution, the principle of autonomy and assistance duties (*medebewind*) is the basis of autonomy in regulating and managing government activities by local governments. In addition, paragraph (5) clarifies that local governments have significant autonomy, except for regions legally designated as central government affairs. According to the provisions of the Constitution, what is meant by local governments that exercise the broadest possible autonomy is that local governments are given authority in all areas of government, except for the five authorities that are clearly and firmly defined in the Regional Government Law. From the perspective of the adopted system, autonomy can generally be divided into three parts: material autonomy, formal autonomy, and genuine autonomy.

The principle of regional autonomy, as stated in Law Number 23 of 2014, and the guidelines for the preparation of regional regulations, as stated in the Regional Regulation of Pekalongan City Number 1 of 2022, are sustainable because they strictly enforce the need for all regional legal results, including Law Number 1 of 2022. 12 of 2011 concerning Establishing Laws and Regulations must align with these basic principles. These principles must be included in legal products because they reflect the values of Pancasila mandated by the Constitution to prevent conflicts between regional legal frameworks.

Power dynamics, institutional arrangements, financial issues, and supervisory procedures are four essential components in the interaction between central and local governments that require careful attention.¹³ Although they have the same goal, the division of administrative power between the central and regional governments initially formed their respective government functions. Second, the way the two layers of government interact financially is influenced by this power arrangement. Third, the success of governance at both levels is highly dependent on institutional capacity. Finally, granting authority to protect Indonesia's unity emphasizes the importance of oversight structures in this partnership.

The division of government affairs between the central and regional governments is regulated in Law No. 23 of 2014 concerning regional government.¹⁴ These affairs are divided into absolute government affairs, concurrent government affairs, and general government

¹² Qiaoran Jia et al., "Cultural and Creative Industries of Local Autonomy: Cultural Innovation and Cultural Upgrading," *Lex Localis* 22, no. 1 (2024), [https://doi.org/10.52152/22.1.125-151\(2024\)](https://doi.org/10.52152/22.1.125-151(2024)).

¹³ Makhfudz, "The Controversy of the Implementation of Regional Autonomy."

¹⁴ Iza Rumesten, Helmanida, and Agus Ngadino, "Arrangement of the Division of Government Affairs; Criticism of Law Number 23 of 2014 concerning Regional Government," *Simbur Cahaya* Vol.27, no. 1 (2020): 134–55, <https://doi.org/10.28946/sc.v27i1.808>.

affairs. As explained in Article 9, paragraph (2), absolute government affairs refer to all affairs that are the central government's authority, including foreign policy, defense, security, justice, monetary, and religious. In paragraph (3), it is stated that concurrent affairs are divided into central affairs, provincial affairs, and regency/city affairs. Furthermore, paragraph (5) states that general government affairs are affairs that are the authority of the President as head of government.

The norms that form the national legal identity must reflect the outlook on life, which is the soul of the Indonesian nation.¹⁵ Thus, national law is not solely imbued with material interests like secular and materialistic Western law, but the national legal system is imbued with the values of God Almighty, or in other words, it also comes from religious norms.¹⁶ Therefore, national legal norms, both at the central and regional levels, must be sourced from or at least reflect the religious values contained in religion. The significant contribution of religion in shaping national law must be seen not only in the laws and regulations at the central level but also at the regional level. Based on this theory, the religious norms applied in the city of Pekalongan are the main factor in forming the Regional Regulation of Pekalongan City Number 13 of 2000. The content contained in this regulation is contrary to Presidential Regulation No. 73 of 2013, which explains the licensing of the procurement of alcoholic beverages with the following provisions: special provisions based on the class of alcoholic beverages. The lack of synchronization between the two regulations is also consistent with Hans Kelsen and Hans Nawiasky's theory of the hierarchy of legal norms according to the hierarchy of norms and is clarified in the *principle of lex superior derogat legi inferior*, which states that regulations that have a lower position should not conflict with regulations that have a higher position.¹⁷

Thus, based on the explanation above, it can be concluded that the reasons why there are inconsistencies in the norms in Presidential Regulation No. 73 of 2013 and Pekalongan City Regulation No. 13 of 2000 concerning the Control and Supervision of Alcoholic are as follows:

Contrary to the theories of Hans Kelsen and Hans Nawiasky and the Lex principle of *superior derogat legi inferior*, which explicitly explains that regulations at a lower level should not

¹⁵ Dani Pinasang, "Pancasila Philosophy as a Basic Norm (Grundnorm) in the Context of Developing the National Legal System," *Unsrat Law Journal* 20, no. 3 (2020): 1–10.

¹⁶ Fais Yonas Bo'a, "Pancasila as the Source of Law in the National Legal System," *Constitutional Journal* Vol. 15, N, no. 1 (2018): 28–49.

¹⁷ pattuju, "Vertical Inconsistency Of Laws And Regulations."

conflict with regulations at a higher level. Hans Kelsen described the theory of legal norms as a multilevel structure in which each rule or norm depends on the rules on it. In this system, a change to the most basic or highest rule will weaken or affect all the rules below it because the lower rules are connected to and depend on the higher rules in the hierarchy of legal norms. So, the change in the highest rule in the structure of legal norms will significantly influence the entire legal system under it. Furthermore, Hans Nawiasky proposed three basic principles in the provisions of the hierarchy of legal norms, namely the principle of *lex superior derogate legi inferior*, *lex specialist de rogat lex generalis*, and *lex posterior de rogat lex priori*. Based on the principle of *lex superior derogat legi inferior*, regulations at a lower level should not conflict with regulations at a higher level.¹⁸

Apply the principle as broadly as possible to the authority of local governments based on regional autonomy, namely that regions have the authority to regulate and manage their own government and household affairs. In terms of regulation, regions can regulate the formation of their regional legal products, and from the administrative side, regions can regulate regional affairs, including the application of regional regulations regarding actual/natural conditions in the regions.

The norms contained in the Pekalongan City Regional Regulation No. 13 of 2000 indirectly absorb the teachings of Islamic law, namely the prohibition of alcoholic beverages declared haram to be consumed. There are even sanctions if individuals/groups distribute or consume alcoholic beverages. Indonesia itself is not an Islamic country. There is a non-Muslim community that becomes citizens and, therefore, applies the principles of unity and equality to create harmony between nations, races, ethnicities, and religions.

2. Consequences of inconsistency of norms for the regulation of alcoholic beverages

Presidential Regulation Number 49 of 2021 concerning Amendments to Presidential Regulation Number 10 of 2021 concerning the Investment Business Sector. This regulation states that investment in liquor/alcoholic beverages is revoked. However, the meaning of the word revoked is not stated to be revoked in its but is only limited to the requirements listed in liquor/alcohol investment as stated in Article 6 Paragraph 3a that business fields with other investment requirements as referred to in paragraph (1) d include: a). Wholesale trade in

¹⁸ Irfani, "The Principle Of Lex Superior, Lex Specialis, And Lex Pesterior: Meaning, Problematics, And Their Use In Legal Reasoning And Argumentation."

liquor/alcohol (importers, distributors, and sub-distributors) (KBLI 46333), b). Retail trade of liquor or alcoholic beverages (KBLI 47221), c). Street retail trade of liquor and alcohol (KBLI 47826). This restriction is one of the efforts to legalize alcohol investment in Indonesia.

Legislative regulations that impose restrictions are usually referred to as "dispensations" in these regulations. Dispensation in the norms of laws and regulations is carried out when there is an urgent situation. Suppose it is associated with the Regional Regulation of the City of Pekalongan Number 13 of 2000 concerning the Control and Supervision of Alcoholic Beverages. In that case, it can be carried out as a manifestation of the dispensation of Presidential Regulation Number 74 of 2013 concerning the Control and Supervision of Alcoholic Beverages because considering that the city of Pekalongan is a city for students who must prohibit the consumption of alcoholic beverages.¹⁹ In Islam, it is declared haram. However, if this dispensation takes effect, the Regional Regulation of the City of Pekalongan Number 13 of 2000 will be contrary to the principle of *lex superior derogat legi inferior* and principles such as the principle of justice, the principle of equality, the principle of order and the principle of balance. According to Law Number 23 of 2014 concerning Regional Government, the central government is tasked with directing and supervising local governments' running in their official duties.

Meanwhile, the Governor, who serves as a central government representative, is given the authority to provide direction and supervision at the district or city level based on Government Regulation 12 of 2017 concerning the Development and Supervision of Local Governments. Furthermore, the President is responsible for the political administration in the district or city, assisted by the Governor, the central government's representative. At the same time, the Minister of Home Affairs supervises and manages national policies at the regional level.²⁰

Central government supervision of the formation of regional regulations is regulated in Law Number 23 of 2014 concerning Regional Government. Article 91, paragraph 2 states

¹⁹ Rachmansyah Saputra, "Implementasi Kebijakan Pengawasan Dan Pengendalian Penjualan Minuman Beralkohol Di Kabupaten Muara Enim Provinsi Sumatera Selatan," *Jurnal Kebijakan Pemerintahan*, 2019, 21–36, <https://doi.org/10.33701/jkp.v2i2.911>.

²⁰ Harry Setya Nugraha, "Anomali Hubungan Pusat Dan Daerah Dalam Praktik Penyelenggaraan Pemerintahan Daerah," *Jurnal de Jure* 15, no. April (2023): 21–32, <https://doi.org/10.36277/jurnaldejure.v13i2.570>.

that the Governor acts as a central government representative in supervising district/city areas, ensuring that proposed regional regulations are in accordance with national policies.²¹

Article 91, paragraph 3, gives the Governor the authority to revoke regional regulations inconsistent with higher regulations. This revocation is a form of repressive supervision to ensure compliance with national legal norms. According to Bagir Manan, before ratifying, the Governor must evaluate the substance of the regulation in its entirety. Preventive supervision is also carried out by evaluating draft regional regulations before they are enacted. Regional governments must submit drafts to the Governor to ensure compliance with higher regulations and assess social and economic impacts.

Overall, central government supervision of regional regulations includes evaluating the cancellation of inconsistent regulations. Although the legal framework is clear, challenges to implementation and regional non-compliance still exist, so cooperation between the center and regions is needed to create effective regulations.²²

The Minister of Home Affairs is tasked with supervising regional regulations and regulations set by regional heads, as stated in the Regulation of the Minister of Home Affairs Number 53 of 2007. For this reason, the regent or mayor must clarify the regional regulations of the district or city that have not assessed the draft regulations related to budget issues, regional taxes, levies, and spatial plans and review the draft regulations related to budget changes. The Governor must provide provincial and regional regulations and The Governor's regulations to the Minister of Home Affairs for explanation within seven days of being promulgated as part of this supervision process. Within seven days of its implementation, the regent or mayor, imitating the Minister of Home Affairs, sends the district or city regional regulations to the Governor for explanation. When a regulation that is superior or contrary to the public interest is revealed in the clarification, the Minister of the Interior is asked to recommend the cancellation to the President. In line with that, the Governor also appointed a clarification team, and if the team finds things that are contrary to the general welfare or stricter restrictions, the Governor will propose cancellation to the Minister of Home Affairs.

²¹ Kadek Cahya Susila Wibawa, "Penegasan Politik Hukum Desentralisasi Asimetris Dalam Rangka Menata Hubungan Pemerintah Pusat Dengan Pemerintah Daerah Di Indonesia," *Administrative Law and Governance Journal* 2, no. 3 (2019): 400–412, <https://doi.org/10.14710/alj.v2i3.400-412>.

²² Nanda Indrawati, "The Practice of Ratifying International Treaties After the Constitutional Court Decision Number 13/PUU-XVI/2018," *Law, Development and Justice Review* 3, no. 1 (2020): 99–120, <https://doi.org/10.14710/ldjr.v3i1.7890>.

The public interest or higher laws and regulations must be a reference to justify the cancellation of a contradictory article or paragraph. After obtaining regional regulations and regional head regulations, this must be done within sixty days. The Governor then suspended the implementation of the Governor's regional and provincial regulations within seven days of receiving the notice of cancellation.²³ Similarly, within seven days of receiving the cancellation letter, the regent/mayor stops implementing the regional regulations of the regent/mayor and the district/city. Regional heads may file objections to the Supreme Court if they believe that regional regulations and/or regional head regulations should not be implemented on legal grounds as stipulated in the law. The Supreme Court's decision to abolish regional and/or regional head regulations will be null and void and have no legal standing if maintained.

The next step is to conduct supervision after conducting supervision. The State Department assesses the results of the clarification process in the context of supervising the implementation of regional regulations. This includes the Governor's supervision of regulations set by regents and mayors and district and city regional regulations. By assessing the results, the Governor supervises the implementation of district/city regional regulations and regents/mayors. Every three months or more, if necessary, the Governor also reports the results of his monitoring and supervision to the Minister of Home Affairs.

Based on this explanation, the government carries out the cancellation of regional regulations through *an executive review* based on the provisions of Law No. 23 of 2014 jo Regulation of the Minister of Home Affairs No. 80 of 2015. So far, especially for testing legal regulations under the law, there has been dualism in testing authority between governments.²⁴ In this case, the Ministry of Home Affairs and the Governor through *the executive preview* and *executive review* with the Supreme Court through *judicial review*. The review of regional regulations through the Supreme Court has a strong basis of constitutional legitimacy that rests directly on the authority granted by the 1945 Constitution in conjunction with Law No. 5 of 2004 in conjunction with Law no. 3 of 2009 in conjunction with Law No. 12 of 2011 and Perma no. 1 of 2011. Because of these differences, the Association of Regency Governments throughout Indonesia (APKASK) applied for review to the Supreme Court of Regency/City Regulations

²³ Agung Baok Pratama, "Measuring the Immunity of Perppu 1/2020 Implementing Officials with the Principle of Equality Before the Law," *Rule of Law* 17 (2021): 1–11.

²⁴ Thomy Loda, Ronny Gosal, and Josef Kairupan, "The Performance of the DPRD in Carrying Out the Legislative Function in the West Halahera Regency DPRD," *Executive, Department of Government Science* 3, no. 3 (2019): 1–12.

and Regents or Mayor Regulations. Meanwhile, judicial review was submitted to the Constitutional Court of Regional Regulations and Governor's Regulations, which are contrary to Article 251 paragraphs (2), paragraph (3), paragraph (4), and paragraph (8) of Law Number 23 of 2014 against Article 18 paragraph (6), Article 28D paragraph (1), and Article 24A paragraph (1) of the 1945 Constitution.²⁵

Decree number 137/PUU-XIII/2015 states that the governor and the Minister of Home Affairs no longer carry out Article 251 of Law Number 23 of 2014 concerning the regional government's authority to cancel regional regulations. In its decision, it was stated that the phrase " *regency/city regional regulations and* " in the provisions of Article 251 paragraph (2) and paragraph (4) the phrase " *regency/city and/or regional regulations*" in Article 251 paragraph (3), the phrase " *the organizer of the Regency/City Regional Government cannot accept the decision to cancel the regency/city regional regulation and* "Law No. 23 of 2014 concerning Regional Government is contrary to the Constitution of the Republic of Indonesia and does not have binding legal force. In addition, Decree Number 56/PUU-XIV/2016 states that the central government no longer has the authority to cancel provincial regulations. So, in the absence of the authority of the Minister of Home Affairs and the Governor as representatives of the central government in canceling Provincial Regional Regulations, Governor's Regulations, Regency/City Regional Regulations and, there is only this authority in the Supreme Court, this decision will have an impact.²⁶

Thus, based on the above explanation, it can be concluded that the legal consequences of the inconsistency of the above norms are as follows:

It does not have binding legal force: Regional regulations are said to have no binding legal force if the content of the norms contained is different from higher regulations.²⁷ This is evidenced by the norms in Presidential Regulation No. 73 of 2013 concerning the Control and Supervision of Alcoholic Beverages, explaining that it does not prohibit the distribution of alcoholic beverages as a whole but is limited to the level contained in alcohol.

²⁵ Alwadud Lule, "Dualisme Pengujian Peraturan Daerah: Legitimasi Konstitusional Dan Mengakhiri Ambivalensi Penyelesaian Hukum," *Crepido* 3, no. 2 (2021): 110–19, <https://doi.org/10.14710/crepido.3.2.110-119>.

²⁶ Benni Erick and T. Risman, "Pembatalan Peraturan Daerah Pasca Putusan Mahkamah Konstitusi (Studi Kritis Peralihan Kewenangan Pengujian Dari Eksekutif Ke Yudikatif)," *Jurnal Sosial Humaniora Sigli* 6, no. 2 (2023): 805–21, <https://doi.org/10.47647/jsh.v6i2.2096>.

²⁷ Nasrullah Nasrullah, "The Authority of the Constitutional Court in Examining Government Regulations in Lieu of Laws," *Politea : Journal of Islamic Politics* 4, no. 1 (2021), <https://doi.org/10.20414/politea.v4i1.2674>.

Meanwhile, in the Regional Regulation of Pekalongan City No. 13 of 2000 concerning the Control and Supervision of Alcoholic Beverages, it is explained that there is a prohibition on the distribution and consumption of alcoholic beverages. There is a lack of synchronization/inconsistency of these two rules, contrary to the theory of Hans Kelsen and Hans Nawiasky through the *lex superior derogate principle legi inferior*, meaning that regulations at a lower level should not conflict with regulations at a higher level. This has an impact on the Pekalongan City Regional Regulation No. 13 of 2000 does not have an impact on its implementation because it does not have binding legal force that is valid in the eyes of the law.

No legal certainty: Laws that do not have the value of legal certainty lose their meaning because they can no longer be a guideline for everyone. People tend to ignore regulations at a lower level than regulations at a higher level because regional regulations do not directly impact the content of regulatory norms.²⁸

Not in line with the central government's policy: The central government, through a presidential decree, issued norms regarding the absence of a ban on the distribution or consumption of alcoholic beverages. This is, of course, based on various considerations since the draft presidential regulation was made and passed as a presidential regulation. Meanwhile, regional regulations are based on the principle of autonomy, which gives the authority to regions to regulate their government affairs, including forming regional legal products.²⁹ The Pekalongan City area, which is a city of Islamic boarding school students, has its considerations in forming a draft regional regulation regarding the prohibition of alcoholic beverages by paying attention to the religious norms applied by the majority of the Muslim population so that the prohibition is strengthened by Islamic religious teachings that state that drinking *khamr*/alcoholic beverages is *haram*. So, the local government is not in line with the central government in creating legal products prohibiting alcoholic beverages.

Contrary to the principle of forming local regulations, every material must fulfill the established principles of legal certainty and balance and harmony in forming regional legal products. Legal certainty ensures that the law can realize justice and benefit the community, while balance and harmony focus on the compatibility between legal norms and other legal

²⁸ Kania Dewi Andhika Putri and Ridwan Arifin, "The Theoretical Review Of Justice And Legal Certainty In Indonesia," *The Yustitia* 2, no. 2 (2019), <https://doi.org/10.52166/mimbar.v2i2.1344>.

²⁹ M Musmulyadi et al., "Challenges of Investment Law Regulation in Indonesia in Encouraging Economic Growth," *Journal of Education* ... 7 (2023): 32380–84, <https://jptam.org/index.php/jptam/article/view/12296%0Ahttps://jptam.org/index.php/jptam/article/download/12296/9473>.

norms to create harmony as a system. These principles are regulated in Pekalongan City Regional Regulation No. 1 of 2022 and refer to Law No. 12 of 2011, which emphasizes the importance of harmony between the type and content of laws and regulations.

Potential for discrimination and social conflict: According to data from the residents of Pekalongan City, the majority of whom adhere to Islam, this makes the local government consider itself regarding the formation of regional legal products. However, in the city of Pekalongan, there are not only residents who are Muslims, but there are other religions such as Buddhism, Hinduism, Catholicism, and Protestantism. Indirectly, non-Muslims feel excluded by the enactment of this regulation. Even in Islam, it is declared haram, but there is no prohibition whether something is haram done by Muslims or not. Based on this, individual rights are regulated in the 1945 Constitution, which states that every individual right of every human being must be respected, respected, and recognized so that ignoring it can cause discrimination against the citizens of Pekalongan City itself. Article 28D paragraph (1) explains that the right to recognition, guarantee, protection, and legal certainty is fair and equal treatment before the law. Then, Article 28I paragraph (1) explains the right to own private property. Fundamental human rights that cannot be taken away under any circumstances include the right to life, freedom from torture, freedom of conscience and thought, freedom of religion, freedom from slavery, legal recognition of one's identity, and immunity from past prosecution. In addition, everyone is obliged under Article 28J paragraph (1) to respect the human rights of others.³⁰

In theory and practice, the norm system should be formed consistently from a higher level of norms to a higher level as a harmonious system.³¹ However, in practice, differences of opinion regarding norms set by recognized legal organizations usually cause conflicts between legal norms. Based on the explanation above, in this case, the loss or legal consequences arising from the enactment of the Regional Regulation of Pekalongan City No. 13 of 2000 concerning the Control and Supervision of Alcoholic Beverages, the regulation must be revoked/canceled by the Supreme Court with the provisions that have been determined. This arises because of the inconsistency of norms between this regulation and Presidential Regulation No. 73 of 2013 concerning the Control and Supervision of Alcoholic Beverages, which results in various legal

³⁰ Lori G. Beaman, "No TitleThe Will to Religion: Obligatory Religious Citizenship," *Research and Religion* 1, no. 2 (2013): 141–57, <https://doi.org/doi:10.1177/2050303213490040>.

³¹ Suud Sarim Karimullah, "Pursuing Legal Harmony: Indonesianization of Islamic Law Concept and Its Impact on National Law," *Mazabib Journal of Islamic Legal Thought* 21, no. 2 (2022): 213–44, <https://doi.org/10.21093/mj.v21i2.4800>.

repercussions that can occur if the regulation is still enforced. This law will impact the unity of the state, which is guided by the principle of regional autonomy. In preparing regional legal products, the central government must carry out its duties and authorities in supervising the formation of draft regional regulations before they are passed into regional regulations by mutual agreement. In this case, the supervisory function still needs to be reaffirmed to avoid inconsistencies in legal and regulatory order norms. Regulations that do not have binding legal force can be said to be null and void or revoked/canceled because there is no fundamental basis for establishing such regulations.

E. Conclusion

Establishing laws and regulations on the control and supervision of alcoholic beverages includes the establishment of Pekalongan City Regional Regulation on the Control and Supervision of Alcoholic Beverages contradicts Presidential Regulation No. 73/2000 on the Control and Supervision of Alcoholic Beverages. The cause of this norm inconsistency is due to several factors, namely: First, the annulment of Presidential Decree No. 3 of 1997 by the Supreme Court, which resulted in all regulations that refer to the Presidential Decree losing their basis, including the local regulation of Pekalongan City No. 13 of 2000. Second, applying the principle of the widest possible local government authority based on regional autonomy states that the region can regulate and manage its own household affairs, including the formation of regional legal products. Third, the norms contained in Pekalongan City Regional Regulation No. 13/2000 on the Control and Supervision of Alcoholic Beverages indirectly absorb the teachings of Islamic law, where the Islamic prohibition against consuming/distributing alcoholic beverages is declared haram. To overcome this problem, the local government must revise and synchronize to form harmonious legal norms and create legal certainty. In addition, increased coordination between the central and local governments in terms of supervision and involving the public in forming local regulations following local aspirations and culture. Legal consequences due to the inconsistency of norms of Pekalongan City Regional Regulation No. 13 of 2000 concerning the Control and Supervision of Alcoholic Beverages and Presidential Regulation No. 73 of 2013 concerning the Control and Supervision of Alcoholic Beverages, as follows, do not have binding legal force, does not have a law of certainty, is not in line with the policy of the central government, is contrary to the principles of the formation of regional regulation is potentially discriminatory, and potentially sued at the Supreme Court, as for the limitations in this research where juridical studies still dominate the

discourse in it, in the future it is necessary to conduct a proportional and comprehensive discourse.

F. Conflict of Interest Statement

The authors affirm that no conflicts of interest could taint the impartiality or results of this article's publishing. This article's authoring is the result of independent study and analysis; neither outside nor commercial parties had any input or involvement during the composition or publication of this piece.

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H. Reference

- Agus Muchsin, Rukiah, and Muhammad Sabir. "Legalitas Perkawinan Yang Tidak Tercatat Pada Masyarakat Pinrang (Analisis Perma Nomor 1 Tahun 2015 Tentang Pelayanan Terpadu Pencatatan Nikah)." *DIKTUM: Jurnal Syariah Dan Hukum* 17, no. 1 (2019). <https://doi.org/10.35905/diktum.v17i1.653>.
- Andriyani, Lusi. "Kebijakan Politik Pengendalian Dan Pengawasan Minuman Beralkohol Di Jakarta Berdasarkan Peraturan Presiden No. 74 Tahun 2013." *Swatantra* 15, no. 74 (2017): 145.
- Beaman, Lori G. "No TitleThe Will to Religion: Obligatory Religious Citizenship." *Research and Religion* 1, no. 2 (2013): 141–57. <https://doi.org/10.1177/2050303213490040>.
- Dwi Saputra, Yogi, and Ramlan Ramlan. "Penerapan Prinsip Self Determination Terhadap Pembentukan Negara Kosovo Ditinjau Dari Perspektif Hukum Internasional." *Uti Possidetis: Journal of International Law* 1, no. 2 (2021): 193–223. <https://doi.org/10.22437/up.v1i2.9867>.
- Erick, Benni, and T. Risman. "Pembatalan Peraturan Daerah Pasca Putusan Mahkamah Konstitusi (Studi Kritis Peralihan Kewenangan Pengujian Dari Eksekutif Ke Yudikatif)." *Jurnal Sosial Humaniora Sigli* 6, no. 2 (2023): 805–21. <https://doi.org/10.47647/jsh.v6i2.2096>.
- Fais Yonas Bo'a. "Pancasila Sebagai Sumber Hukum Dalam Sistem Hukum Nasional (Pancasila as the Source of Law in the National Legal System)." *Jurnal Konstitusi* Vol.

- 15, N, no. 1 (2018): 28–49.
- Indrawati, Nanda. “Praktik Ratifikasi Perjanjian Internasional Pasca Putusan Mahkamah Konstitusi Nomor 13/PUU-XVI/2018.” *Law, Development and Justice Review* 3, no. 1 (2020): 99–120. <https://doi.org/10.14710/ldjr.v3i1.7890>.
- Irfani, Nurfaqih. “Asas Lex Superior, Lex Specialis, Dan Lex Pesterior: Pemaknaan, Problematika, Dan Penggunaannya Dalam Penalaran Dan Argumentasi Hukum.” *Jurnal Legislasi Indonesia* 17, no. 3 (2020). <https://doi.org/10.54629/jli.v17i3.711>.
- Jia, Qiaoran, Ding Li, Zhong Wang, Tao Zhang, and Shiru Li. "Cultural and Creative Industries of Local Autonomy: Cultural Innovation and Cultural Upgrading." *Lex Localis* 22, no. 1 (2024). [https://doi.org/10.52152/22.1.125-151\(2024\)](https://doi.org/10.52152/22.1.125-151(2024)).
- Jusuf, Muhamad Baharuddin, and Adara Khalfani Mazin. “Penerapan Teori Hans Kelsen Sebagai Bentuk Upaya Tertib Hukum Di Indonesia.” *Das Sollen: Jurnal Kajian Kontemporer Hukum Dan Masyarakat* 2, no. 1 (2023): 1–25. <https://doi.org/10.11111/dassollen.xxxxxxx>.
- Karimullah, Suud Sarim. "Pursuing Legal Harmony: Indonesianization of Islamic Law Concept and Its Impact on National Law." *Mazabib Jurnal Pemikiran Hukum Islam* 21, no. 2 (2022): 213–44. <https://doi.org/10.21093/mj.v21i2.4800>.
- Loda, Thomy, Ronny Gosal, and Josef Kairupan. “Kinerja DPRD Dalam Melaksanakan Fungsi Legislasi Di DPRD Kabupaten Halahera Barat.” *Eksekutif, Jurusan Ilmu Pemerintahan* 3, no. 3 (2019): 1–12.
- Lule, Alwadud. “Dualisme Pengujian Peraturan Daerah: Legitimasi Konstitusional Dan Mengakhiri Ambivalensi Penyelesaian Hukum.” *Crepido* 3, no. 2 (2021): 110–19. <https://doi.org/10.14710/crepido.3.2.110-119>.
- Makhfudz, Muhammad. “Kontroversi Pelaksanaan Otonomi Daerah.” *ADIL: Jurnal Hukum* 3, no. 2 (2019): 380. <https://doi.org/10.33476/ajl.v3i2.816>.
- Muasmara, Ramli, and Nahrin Ajmain. “Akulturasi Islam Dan Budaya Nusantara.” *TANJAK: Journal of Education and Teaching* 1, no. 2 (2020): 111–25. <https://doi.org/10.35961/tanjak.v1i2.150>.
- Musmulyadi, M, S Agustina, K S D br Haloho, and ... “Tantangan Regulasi Hukum Investasi Di Indonesia Dalam Mendorong Pertumbuhan Ekonomi.” *Jurnal Pendidikan ...* 7 (2023): [32380–84](https://doi.org/10.32380-84). <https://jptam.org/index.php/jptam/article/view/12296%0Ahttps://jptam.org/inde>

x.php/jptam/article/download/12296/9473.

- Nasrullah, Nasrullah. "Kewenangan Mahkamah Konstitusi Dalam Menguji Peraturan Pemerintah Pengganti Undang-Undang." *Politea: Jurnal Politik Islam* 4, no. 1 (2021). <https://doi.org/10.20414/politea.v4i1.2674>.
- Nugraha, Harry Setya. "Anomali Hubungan Pusat Dan Daerah Dalam Praktik Penyelenggaraan Pemerintahan Daerah." *Jurnal de Jure* 15, no. April (2023): 21–32. <https://doi.org/10.36277/jurnaldejure.v13i2.570>.
- Patarai, Muhammad Idris. "Representative Democracy and Constitution Pancasila Perspective with the 1945 Constitution." *Budapest International Research and Critics Institute-Journal* 4, no. 4 (2021): 12941–51. <https://doi.org/10.33258/birci.v4i4.3355>.
- Pattuju, Nikodemus Roy. "Inkonsistensi Vertikal Peraturan Perundang-Undangan." *Jurnal Ilmu Hukum: ALETHEA* 3, no. 2 (2020). <https://doi.org/10.24246/alethea.vol3.no2.p99-116>.
- Peter Mahmud Marzuki. *Penelitian Hukum*. Jakarta: Kencana, 2019.
- Pinasang, Dani. "Falsafah Pancasila Sebagai Norma Dasar (Grundnorm) Dalam Rangka Pengembangan Sistem Hukum Nasional." *Jurnal Hukum Unsrat* 20, no. 3 (2020): 1–10.
- Pratama, Agung Barok. "Mengukur Imunitas Pejabat Pelaksana Perppu 1/2020 Dengan Asas Equality Before The Law." *Supremasi Hukum* 17 (2021): 1–11.
- Putri, Kania Dewi Andhika, and Ridwan Arifin. "Tinjauan Teoritis Keadilan Dan Kepastian Dalam Hukum Di Indonesia (The Theoretical Review of Justice and Legal Certainty in Indonesia)." *MIMBAR YUSTITIA* 2, no. 2 (2019). <https://doi.org/10.52166/mimbar.v2i2.1344>.
- Rumesten, Iza, Helmanida, and Agus Ngadino. "Pengaturan Pembagian Urusan Pemerintahan; Kritik Terhadap Undang-Undang Nomor 23 Tahun 2014 Tentang Pemerintahan Daerah." *Simbur Cabaya* Vol.27, no. 1 (2020): 134–55. <https://doi.org/10.28946/sc.v27i1.808>.
- Saputra, Rachmansyah. "Implementasi Kebijakan Pengawasan Dan Pengendalian Penjualan Minuman Beralkohol Di Kabupaten Muara Enim Provinsi Sumatera Selatan." *Jurnal Kebijakan Pemerintahan*, 2019, 21–36. <https://doi.org/10.33701/jkp.v2i2.911>.
- Susila Wibawa, Kadek Cahya. "Penegasan Politik Hukum Desentralisasi Asimetris Dalam Rangka Menata Hubungan Pemerintah Pusat Dengan Pemerintah Daerah Di Indonesia." *Administrative Law and Governance Journal* 2, no. 3 (2019): 400–412.

<https://doi.org/10.14710/alj.v2i3.400-412>.

Yakub, Andi, Ahmad Bashawir Abdul Ghani, and Mohammad Syafi'i Anwar. "Urgency of Political Decentralization and Regional Autonomy in Indonesia: Local Perspectives." *Journal of International Studies* 14 (2020): 141–50. <https://doi.org/10.32890/jis.14.2018.8003>.


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