

## Existence Bali Governor Regulation No. 1 of 2020 Concerning Governance of Bali Fermented and or Distilled Beverages

Yogi Yasa Wedha<sup>1\*</sup>, I Made Hendra Wijaya<sup>2</sup>, I Wayan Eka Artajaya<sup>3</sup>,  
Putu Lantika Oka Permadi<sup>4</sup>

Faculty of Law, Mahasaraswati University, Denpasar, Indonesia

**Corresponding Author:** Yogi Yasa Wedha [yogiyasawedha@unmas.ac.id](mailto:yogiyasawedha@unmas.ac.id)

---

### ARTICLEINFO

*Keywords:* Traditional Drinks, Governor Regulations and Legal Ideals

*Received :* 16, Month Septembe

*Revised :* 30, September

*Accepted:* 21, October

©2024 Wedha, Wijaya, Artajaya, Permadi: This is an open-access article distributed under the terms of the [Creative Commons Attribution 4.0 International](https://creativecommons.org/licenses/by/4.0/).



### ABSTRACT

This research discusses the issue of the existence of gubernatorial regulations Bali No. 1 of 2020 concerning the Governance of Balinese Fermented and/or Distilled Drinks, what is the Legal Certainty and Benefits. The aim of the research is to see to what extent the existence of Bali Gubernatorial Regulation No. 1 of 2020 can regulate the issue of governance of Balinese fermented and/or distilled drinks and whether this regulation can provide legal protection, legal certainty and benefits as expected. The problem that will be discussed is related to the Management of Balinese Fermented and/or Distilled Drinks Efficacy and Benefits for the people of Bali. Normative legal research methods with a statutory approach, historical approach, and conceptual approach. The research results show that the Governor based on his authority and function can issue Governor regulations, but materially, the substance regulated therein cannot conflict with the substance that has been regulated in the statutory regulations above. This study shows that the substances regulated in PERGUB1/2020 is contrary to the above regulations (PERPRES 74/2013) therefore, based on the principle of Lex Superior Derogat Legi Inferiori, Gubernatorial Regulation No. 1/2020 cannot normatively be enforced as a product of binding statutory regulations, thus its existence cannot provide legal protection and benefits for the community.

---

## **INTRODUCTION**

The right to live in prosperity is part of Human Rights (HAM), namely human rights that are inherent in every individual as a creature created by God and apply universally. Article 28 H paragraph (1) of the 1945 Constitution of the Republic of Indonesia (1945 Constitution of the Republic of Indonesia), states: Every person has the right to live in physical and spiritual prosperity, to have a place to live, and to have a good and healthy living environment, and has the right to receive health services. This is a right that cannot be violated by anyone and must be upheld and respected, so that everyone can enjoy their life and be prosperous. Welfare is a condition that shows that society is prosperous with the fulfillment of material and social needs (Samud, 2018).

The aim of national development as stated in the 1945 Constitution of the Republic of Indonesia, paragraph IV, is to advance general welfare and make the nation's life more intelligent. Development carried out by the government and society aims to improve social welfare for all people. Economic development based on harmony, harmony and balance is carried out in order to achieve the goals of the state. In particular, it has been scheduled in the Nawa Cita which is the current government's priority agenda.

The Governor of Bali created development plans based on his vision and mission. The vision of "Nangun Sat Kerthi Loka Bali" was then pursued through twenty-two Bali development missions, which became the direction of Bali's development strategy. The planned universal development pattern launched by the Governor of Bali includes realizing food independence, increasing added value and competitive ability in the agricultural sector, and improving the welfare of farmers while building and developing culture-based small and medium industries (Bali branding) to strengthen the Krama Bali economy (Nangun Vision Sat Kerti Loka Bali, 2020). As an effort to support and realize this vision and mission, the Bali provincial government on January 29 2020 promulgated Bali Governor Regulation Number 1 of 2020, hereinafter referred to as PERGUB 1/2020 concerning the Management of Balinese Fermented and/or Distilled Drinks. In its consideration, it is stated that the issuance of this regulation is an effort to protect, maintain, and develop Balinese cultural diversity while also supporting long-term economic empowerment based on culture, realizing cooperation, and developing mutually beneficial partnerships based on the principle of mutual cooperation, namely by leveraging the potential of fermented drink craftsmen and/or Balinese distillation with other parties. This arrangement is a legal basis for business actors in implementing management of Balinese fermented drinks and/or distillation so that it is hoped that it will create an increase in community welfare. The aim in question is certainly in line with the ideals of the Republic of Indonesia, namely advancing general welfare.

Balinese fermented and/or distilled drinks are artisanal goods containing ethyl alcohol/ethanol (C<sub>2</sub>H<sub>5</sub>OH) derived from agricultural crops containing carbs by fermentation and distillation. The types of products in the form of Balinese palm wine, Balinese brem, Balinese arak, artisanal products and arak/brem for religious ceremonies as intended in the governor's

regulations have received protection carried out by regional officials in accordance with their authority. It seems that the Governor's efforts to provide protection through PERGUB 1/2020 with the hope of realizing the management of raw materials, production, distribution, control and supervision of Balinese fermented drinks and/or distillates, the substance of which overlaps with Presidential Regulation number 74 of 2013 hereinafter referred to as (PERPRES 74/ 2013) concerning the Control and Supervision of Alcoholic Drinks (State Gazette of the Republic of Indonesia of 2013 Number 190), that alcoholic drinks as regulated in article 1 are:

1. Drinks with ethyl alcohol or ethanol (C<sub>2</sub>H<sub>5</sub>OH) derived from carbohydrate-rich agricultural products, either through distillation or fermentation.
2. Customary alcoholic drinks are passed down from generation to generation, prepared simply, and utilized for religious or customary purposes.

Drinks that are regulated and included in the scope of PERPRES 74/2013 are alcoholic drinks originating from domestic production or export origin. These drinks are grouped based on their ethyl alcohol or ethanol (C<sub>2</sub>H<sub>5</sub>OH) content, namely class A alcoholic drinks contain C<sub>2</sub>H<sub>5</sub>OH up to 5% (five percent); Class B C<sub>2</sub>H<sub>5</sub>OH content is more than 5% (five percent) to 20% (twenty percent) and Class C C<sub>2</sub>H<sub>5</sub>OH content is more than 20% (twenty percent) to 55% (fifty five percent), all categories referred to are designated as goods in supervision, namely supervision of the procurement of alcoholic beverages from domestic production and imported origin as well as supervision of their distribution and sales.

Bearing in mind that the production of traditional alcoholic beverage craftsmen in Bali who use traditional tools is the result of Balinese fermentation and/or distillation, the final product of which is: a. Balinese palm wine; b. Balinese Brem; c. Balinese wine; d. Artisanal Products; and e. wine/brem for religious ceremonies containing ethyl alcohol/ethanol (C<sub>2</sub>H<sub>5</sub>OH) with a content of between 5% (five percent to a maximum limit of 55% which is regulated in Article 3 paragraph 2 that alcoholic drinks originating from domestic production with a certain alcohol content designated as goods under supervision where production, distribution and trade are regulated by certain requirements based on applicable laws and regulations.

That the authority to control and supervise drinks containing ethyl alcohol/ethanol (C<sub>2</sub>H<sub>5</sub>OH) has been regulated in PERPRES 74/2013. The Governor of Bali issued PERGUB Bali 1/2020 concerning the management of Balinese fermented and/or distilled drinks, so the author sees similarities in the substance of the regulations regarding both subjects and objects in both regulations. Apart from that, the author also sees that the actions taken by the Governor of Bali in issuing the Bali Gubernatorial Regulation 1/2020 are not within his authority because the substance of the Gubernatorial Regulation regulates the sale and/or distribution of traditional alcoholic drinks. Basically, this authority is not delegated to the Governor but is given/transferred directly

from the President based on PERPRES 74/2013 to the Regent/Mayor and Governor of the Special Capital Region of Jakarta.

The issuance of the Governor's Regulation in question has given rise to overlaps, conflicting norms and acts of abuse of authority from state administrators which must be resolved immediately so as not to cause ambiguity in its implementation, it can actually give rise to disorder and legal uncertainty in society, in the end the regulations made are not can fulfill its specific objectives in efforts to improve people's welfare.

Based on this description, this article will discuss the existence of PERGUB 1 /2020 concerning the Management of Balinese Fermented and/or Distilled Drinks; Efficacy and Benefits for the people of Bali.

## **LITERATURE REVIEW**

The authority to control and supervise drinks containing ethyl alcohol/ethanol (C<sub>2</sub>H<sub>5</sub>OH) has been regulated in PERPRES 74/2013. The Governor of Bali issued PERGUB Bali 1/2020 concerning the management of Balinese fermented and/or distilled drinks, so the author sees similarities in the substance of the regulations regarding both subjects and objects in both regulations. Apart from that, the author also sees that the actions taken by the Governor of Bali in issuing the Bali Gubernatorial Regulation 1/2020 are not within his authority because the substance of the Gubernatorial Regulation regulates the sale and/or distribution of traditional alcoholic drinks. Basically, this authority is not delegated to the Governor but is given/transferred directly from the President based on PERPRES 74/2013 to the Regent/Mayor and Governor of the Special Capital Region of Jakarta.

The issuance of the Governor's Regulation in question has given rise to overlaps, and conflicts/contradictions of norms and acts of abuse of authority from state administrators which must be resolved immediately so as not to cause ambiguity in its implementation, it can actually give rise to disorder and legal uncertainty in society, in the end the regulation made unable to fulfill its specific objectives in efforts to improve people's welfare. If a conflict of norms occurs between one regulation and another, it can be seen that it is resolved using the principle of preference, namely the principle of *Lex Superior Derogat Legi Inferiori*, where laws and regulations of a higher level/hierarchy will override lower level laws and regulations. From the point of view of legal ideals, like the utilitarianism school of law, legislative instruments should provide the greatest happiness for the greatest number.

Based on this description, this article will discuss the existence of PERGUB 1 /2020 concerning the Management of Balinese Fermented and/or Distilled Drinks; Efficacy and Benefits for the people of Bali.

## **METHODOLOGY**

This style of legal study employs objects in the form of legal norms discovered through the process of discovering legal rules, legal principles, and legal doctrines to address legal difficulties (Peter Mahmud Marzuki, 2008). This is normative legal study, with statutory regulatory, historical, and conceptual approaches. The statutory regulatory approach is used to discuss primary legal

material, namely PERGUB 1 / 2020 concerning the Management of Balinese Fermented and/or Distilled Beverages and related statutory regulations; the historical approach is used to discuss the substance of why regulation of alcoholic drinks is important; and the case approach is used to discuss the problem of the existence of Balinese fermented and/or distilled beverage governance; concept analysis is used to. The author's paper is a study of the presence of PERGUB 1 /2020 concerning the Management of Balinese Fermented and/or Distilled Drinks, and if the regulations published are in compliance with the Governor's power.

## RESEARCH RESULTS

Governor's Regulation Number 1 of 2020 is one of the efforts taken by the governor to support culture-based economic empowerment which is of course expected to contribute to the welfare of the people. However, when compared with Presidential Regulation Number 74 of 2013, it turns out that between the two regulations there are different philosophical points of view. It's published PERPRES 74/2013 is philosophically intended to provide protection and maintain public health, order and tranquility from the negative impacts of alcohol abuse, while Governor Regulation 1/2020 is philosophically intended to protect Bali's cultural diversity and support sustainable, culture-based economic empowerment. The two are contradictory, these two philosophical foundations should be the reason for consideration in making a policy. So it not only provides protection against the use of alcoholic drinks, it can also ultimately improve community welfare.

## DISCUSSION

### *Juridical Legitimacy Bali Governor Regulation no. 1 of 2020 Concerning Governance of Balinese Fermented and/or Distilled Drinks*

The formation of a good regulation must be based on philosophical, sociological, juridical, political and administrative aspects as well as its enforceability (Jimly Asshiddiqie, 2006). Apart from that, it must also be based on the principle of the Formation of applicable Legislation, which includes (Article 5 Law Number 12 of 2011):

- a. clarity of purpose;
- b. the appropriate forming institution or official;
- c. conformity between types;
- d. hierarchy and content material;
- e. can be implemented;
- f. usefulness and usefulness;
- g. clarity of formulation; And
- h. openness.

Article 18 paragraph (6) The 1945 Constitution states that regional governments have the right to establish regional regulations and other regulations to implement regional autonomy and assistance tasks. In connection with the position of the Governor in the administration of Regional Government vide Law no. 23 of 2014 concerning Regional Government; The Governor has 3 (three) roles/functions, namely the Governor as head of the

autonomous region, the Governor as the representative of the Government in the region, and the Governor as the 'representative' of the President in carrying out general government affairs (Wilda Prihatiningtyas, 2017). As head of an autonomous region, the Governor based on his authority can make Governor Regulations. Law no. 12 of 2011, also known as (UU 12/2011), concerning the formation of legislative regulations states that a Governor's Regulation (PERGUB) is a type of statutory regulation; however, the existence of a new PERGUB is recognized and has binding legal force as long as it is ordered by higher Legislative Regulations or is formed based on authority and promulgated in the regional gazette.

The issuance of a PERGUB is the authority of the Governor in the context of carrying out certain government affairs and is based on authority based on law. PERGUB 1/2020 in its philosophical considerations contains ideal legal norms (ideal norms), namely efforts to protect, maintain and develop Balinese cultural diversity and at the same time utilize it to support sustainable economic empowerment based on culture which is of course expected to lead to an increase in Community welfare is a noble goal in social and state life and is in line with the Governor of Bali's vision for development policy in Bali through the Vision "Nangun Sat Kerthi Loka Bali".

A study from the philosophical aspect of PERPRES 74/2013 when compared with PERGUB 1/2020 and based on the clarity of the objectives of the issuance of these statutory regulations, there are two different points of view, namely; In PERPRES 74/20 the regulation of alcoholic beverages is philosophically intended to provide protection and maintain public health, order and tranquility from the negative impacts of alcohol abuse, while in PERGUB 1/2020 it is philosophically intended to protect Bali's cultural diversity and support culturally-based sustainable economic empowerment. . The author believes that the two philosophical aspects that underlie the two laws and regulations should be used as the basis for consideration in drafting laws and regulations. Regional governments should be wiser in enacting regulations, not only based on considerations of economic potential but must also consider the negative impacts resulting from the growth in production of traditional fermented and distilled products by craftsmen which contain alcohol/ethanol which is not only related to the health of the people who consume it but also abuses it. Alcoholic drinks can affect public order so that it can trigger an increase in criminal acts.

Legal politics in the formation of legislative regulations are essentially aimed at providing legal protection, efforts to maintain public health, order and peace from the negative impacts of alcohol abuse. At the level of legal philosophy, an understanding of the implementation of national morals into law is included in the meaning called *rechtsidee*, namely what is actually expected from the law, for example to guarantee justice, order, prosperity and so on which grow from the value system of the community (nation) regarding good and bad, views regarding the relationship between individuals and society, and so on ( Bagir Manan, 1995 ). The author believes that from an ontological perspective the basic philosophical values in PERPRES 74/2013 and

PERGUB 1/2020 are essentially in their considerations complementary and not mutually exclusive.

In making legal products, the government must pay attention to the principles of forming statutory regulations, guided by Law 12/2011 concerning the Formation of Legislative Regulations. One of the most important factors in determining the validity of a statutory regulation is that, in addition to the authority of the institution that created it, it must also be based on the principles of its creation, so that the regulations created do not cause vertical or horizontal disharmony with other statutory regulations.

If we look again from a juridical perspective, the norms in article 5 paragraph (1) PERGUB 1/2020; protection, maintenance and utilization of typical Balinese fermented and/or distilled drinks including: a. palm wine; b. Bali Brem; c. Balinese wine; d. artisanal products; and e. wine/brem for religious ceremonies. This article has emphasized the strengthening and provision of protection, maintenance and utilization of a. palm wine; b. Bali Brem; c. Balinese wine; d. artisanal products; and e. wine/brem for religious ceremonies, the form of protection is carried out through:

- a) Empowering and strengthening raw material craftspeople for Balinese fermented/distilled drinks.
- b) Create governance for procuring raw materials, producing, and distributing Balinese fermented and/or distilled drinks.
- c) Standardize raw material sourcing, production procedures, and distribution for Balinese fermented or distilled drinks.
- d) Helping manage and maintain intellectual property.
- e) Labeling traditional Balinese fermented and distilled items with the arak/brem brand.

However, considering that Balinese fermented and/or distilled drinks contain ethyl alcohol/ethanol (C<sub>2</sub>H<sub>5</sub>OH), because PERPRES 74/2013 has regulated the Production, Control and Supervision of drinks containing ethyl alcohol/ethanol (C<sub>2</sub>H<sub>5</sub>OH) or referred to as alcoholic drinks and beverages. traditional alcoholic beverage. So it is clear that in substance it can be stated that the subject regulated in PERGUB 1/2020 is the same as the subject in PERPRES 74/2013, namely relating to drinks containing ethyl alcohol/ethanol (C<sub>2</sub>H<sub>5</sub>OH). Apart from that, there are similarities in the object of regulation, namely regarding the management of alcoholic drinks and beverages. traditional alcoholic.

Based on the theory of levels of legal norms, it is linked to Hans Kelsen's teachings about stufen theory which states that a lower norm applies, is sourced and based on a higher norm, the norm is also sourced and based on a higher norm and so on until it reaches a norm that cannot be explored further, namely the basic norm (grundnorm) (Hans Kelsen, 1945), and based on principles hierarchy and content material Law 12/2011 concerning the formation of statutory regulations states that the legal force of each statutory regulation must be in accordance with its hierarchy/level, that lower statutory regulations must not conflict with higher statutory regulations. It turns out, PERGUB 1/2020 is in conflict with the above regulations, namely PERPRES 74/2013,

causing disharmony and conflict of norms. It is clear that the similarities in the regulation of subjects and objects in PERGUB 1/2020 with PERPRES 74/2013 where each regulates differently will create legal ambiguity and uncertainty in its implementation, therefore to avoid ambiguity of understanding and confusion in its implementation, the government, in this case the Governor of Bali Province, will immediately consider harmonizing norms Government Regulation 1/2020.

That if there is a conflict of norms between one regulation and another, it can be seen to be resolved based on the principle of preference, namely the principle of *Lex Superior Derogat Legi Inferiori* where laws and regulations with a higher hierarchical position will override lower level laws and regulations (Bagir Manan-2004), then based on this principle, several articles in PERGUB 1/2020 are contrary to PERPRES 74/2013, for this reason the provisions regarding the management of alcoholic beverages in PERGUB 1/2020 it should be immediately adjusted by making changes or revoked by the institution or authorized agency that formed it or a judicial review can be carried out by the institution according to its authority.

Indonesia as a legal state highly upholds the principle of legality. In state administrative law/constitutional law, the principle of legality is known as *wet en rechtmatigheid van bestuur*, which means that every government action must have a legal basis in a statutory regulation (Muhamad Yasin, 2017), it has been expressly stated in Article 5 of Law Number 30 of 2014 concerning Government Administration that the implementation of government administration prioritizes the legal basis for decisions and/or actions made by Government Agencies and/or Officials. As a consequence, decisions or actions of government bodies or officials cannot be carried out arbitrarily because they can lead to arbitrariness and/or abuse of authority. The principle of legality provides meaning, without the basis of authority given in accordance with applicable laws and regulations, government officials will not have the authority to influence or change the situation or legal position of citizens (Indroharto, 1993). Apart from ensuring legal certainty, the principle of legality has two other functions, namely, as a benchmark for the legality of the actions of the authorities, and as a guarantee of protection for legal subjects in the state (ELSAM, 2008).

Pay attention to the contents of Article 4 of PERPRES 74/2013 which states that alcoholic beverages can only be produced by business actors who already have an industrial business permit. and food. Trade is regulated according to groups based on ethyl alcohol or ethanol (C<sub>2</sub>H<sub>5</sub>OH) content, and can only be carried out if you have a permit to trade alcoholic beverages.

Furthermore, article 7 regulates the issue of places for the sale and/or distribution of alcoholic beverages, that as per this presidential regulation, regulatory authority has been explicitly delegated to the Regent/Mayor and Governor for the Special Capital Region of Jakarta. Likewise, for the control and supervision of the production, distribution and sale of traditional alcoholic drinks for the needs of customs or religious ceremonies, authority is also

delegated to the Regent/Mayor and Governor for the Special Capital Region of Jakarta.

In accordance with the provisions in PERPRES 74/2013, Governors of other provinces do not have the authority to regulate trade, supervision and control of alcoholic beverages, whether produced or imported, including traditional alcoholic beverages. The authority possessed by the Governor as a delegation of authority by attribution, namely regarding the regulation of alcoholic beverages, is only related to regulation of business permits for trading alcoholic beverages in duty-free shops and recommendations for the issuance of SIUP-MB for distributors as determined based on Attachment letter DD to Law No. 23 of 2014 in the matrix list for the division of concurrent government affairs between the central government and provincial and district/city regions as in the following table:

Table 1. Authority According to Attachment Letter DD of Law No. 23 of 2014 which Relates to Alcoholic Drinks

Central government	Provincial Area	Regency/City Area
Issuance of permit letter trading business alcoholic beverages registered importer alcoholic beverages (ITMB), distributors and subdistributors.	Arranging permits trading business alcoholic beverage shop duty free and publication recommendations Alcoholic Beverage Trading Business License(SIUP-MB) for distributors.	Issuance of permit letter trading business alcoholic beverages groups B and C for retailers and direct seller drink on the spot.

The table above provides clarity regarding the delegation of authority based on attribution to the Central Government, Provincial Governments and District/City Governments regarding the issuance of alcoholic beverage trade business permits.

The description above clearly shows that the issuance of the Governor's Regulation in question has given rise to conflicting norms and arbitrary actions, namely actions carried out without a strong legal basis, or are arbitrary actions by state administration officials. This problem should be resolved immediately so as not to cause problems in implementation. Because the creation of legal rules is actually intended so that the rules can be enforced optimally, if the rules that have been made can be enforced optimally then it will be able to create justice, legal certainty and benefit.

***Bali Governor Regulation No. 1 of 2020 in Efficacy and Usability as Well as Legal Protection for the People in Bali***

The Constitution of the Republic of Indonesia (UUD NRI 1945) determines that the Indonesian state is based on law (rechtstaat), not based on mere power (machtstaat) (Jimly Ashiddiqie, 2005). In the concept of the rule of

law, it is idealized that what must be the commander-in-chief in the dynamics of state life is law, not politics or economics (Meriam Marcelina Kaingge, 2017). The existence of law is basically to provide justice and aims to provide security, order and ensure welfare for society. Legal rules, in addition to protecting human interests against dangers that threaten them, also regulate relationships between humans (Sudikno Mertokusumo, 2011). Adherents of the utilitarian school of thought introduce a third legal aim, apart from justice and legal certainty, the aim of the law is to provide benefits for everyone. Starting from the legal ideals of the utilitarianism school, the formation of a legislative instrument should be able to provide the greatest happiness for the greatest number (H. Lili Rasjidi and Ira Thania Rasjidi, 2012).

In fact, law acts as an instrument that must provide benefits to a holistic society. The Bali Provincial Government has made efforts to help the people of Bali, including the release of a legal document in the form of PERGUB 1/2020 addressing the management of Balinese fermented and/or distilled drinks. Pro-people policy instruments based on local wisdom are intended to provide protection, maintenance, utilization for cultural purposes, customs and religious ceremonies as economic resources, as well as to carry out guidance, control, supervision of the process of procurement of raw materials, production, distribution and supervision of drinks the result of fermentation and/or distillation. In the end, it is hoped that it can achieve its goals, namely:

- a) utilize Balinese fermented and/or distilled drinks as economic resources to improve the welfare of Balinese culture;
- b) strengthening and empowering craftsmen of raw materials for Balinese fermented and/or distilled drinks;
- c) realizing management of raw materials, production, distribution, control and supervision of Balinese fermented and/or distilled drinks;
- d) building production standardization to ensure the safety and legality of Balinese fermented and/or distilled beverage products; And
- e) protect the public from food that does not meet quality and safety requirements. Based on these aims and objectives, it can be said that the Bali Regional Government, through the legal instruments created, seeks to improve the welfare of the Balinese people.

What is the aim of the issuance of PERGUB 1/2020, is essentially in line with the aim of the law, for adherents of utility theory or benefit theory is that the aim of the law is to provide the greatest happiness for as many individuals as possible, the greatest happiness for the greatest number (I Dewa Gede Atmadja, 2013).

In the author's opinion, the Governor of Bali has tried to protect, maintain and develop the diversity of Balinese culture. It is hoped that protection for traditional drink craftsmen will lead to an increase in community welfare. However, the Governor's good intention to empower the community's economy through the issuance of an umbrella must of course be carried out through legal studies so that it meets the formal and material requirements in its preparation so that its effectiveness and usefulness is achieved as expected.

The relationship between legal certainty and PERGUB 1/2020 is that the preparation of PERGUB 1/2020 was carried out based on the Governor's authority to make Governor Regulations that its existence is recognized and has binding legal force as long as it is ordered by higher or established legislation based on authority and promulgated in the regional gazette. The basis of this authority is based on the principle of legality, which is the principle of the rule of law. PERGUB 1/2020 is formally intended to provide legal certainty for craftsmen and the community, however, in fact, the material content of the PERGUB in question is not in accordance with the principles in the Hierarchy of the formation of Legislative Regulations in Indonesia because their contents conflict with the regulations above, namely PERPRES 74/2013 concerning the control and supervision of alcoholic beverages and its implementing regulations, Minister of Trade Regulation No. 20/DAG/ PER/4/2014 concerning the control and supervision of the procurement, distribution and sale of alcoholic beverages. The conflict relates to production, sales places, control, supervision and authority in issuing business permits for alcoholic drinks and/or traditional alcoholic drinks.

Based on the description above, the author is of the opinion that although the Governor, based on his authority and function, can issue regulations Governor's Regulation However, regulations issued philosophically should be supportive and provide holistic benefits to society. The legal instrument issued must provide the greatest happiness for the majority of society, not just for certain groups. Likewise, PERGUB 1/2020, apart from providing increased welfare and protecting cultural heritage, is also intended to reduce negative risks, especially in relation to health levels.

Government Regulation 1/2020 materially the substance regulated therein cannot conflict with the substance that has been regulated in the above statutory regulations, because according to the principle of hierarchy, lower laws and regulations must not conflict with higher laws and regulations. When there is conflict or disharmony between one regulation and another, the principle of *Lex Superior derogat legi Inferiori* applies, namely higher level legal regulations override lower level legal regulations, so that PERGUB 1/2020 cannot be enforced so it does not provide legal protection to the public, because it is contrary to PERPRES 74/2013.

## CONCLUSIONS AND RECOMMENDATIONS

The Governor, based on his authority and role/function, has the authority to make Governor Regulations. But in its formation must be based on the principles of forming applicable laws and regulations. In relation to principles the benefits and efforts to provide legal protection to the community, considering the substance regulated in Government Regulation 1/2020 contrary to the above regulations, then based on the principle of preference, namely *Lex Superior derogat legi Inferiori* then it can be stated that the existence of PERGUB 1/2020 must be set aside or normative Government Regulation 1/2020 does not have binding force, thus the regulations in PERGUB 1/2020 do not provide legal protection and benefits for the people of Bali.

## ADVANCED RESEARCH

This research focuses on the position or existence of the Bali Governor Regulation No. 1 of 2020 concerning Governance of Balinese Fermented and or Distilled Drinks because there are norms that conflict with the regulations above, of course this is related to how they apply in society.

## ACKNOWLEDGMENT

We express our gratitude to all parties who have worked hard and were involved in helping to complete this research.

## REFERENCES

Ashiddiqie Jimly, (2005). Indonesian Constitution & Constitutionalism, Jakarta: Kontitusi Press.

Atmadja I Dewa Gede, (2013). Thematic and Historical Dimensions of Legal Philosophy, Setara Press, Malang.

Bali Province Regional Regulation No. 2 of 2016, regulates revocation of Bali Province Regional Regulation Number 5 of 2012 concerning Controlling the Distribution of Alcoholic Drinks in the Province Bali. (2016 Regional Gazette Number 2).

Bali Province Regional Regulation no. 9 of 2002 concerning Supervision and Controlling the Distribution of Alcoholic Drinks;

Bali Provincial Regulation No. 5 of 2012, regulates Controlling the Distribution of Alcoholic Drinks and repealing Bali Province Regional Regulation no. 9 of 2002. (2012 Regional Gazette Number 5);

ELSAM (Institute for Community Studies and Advocacy), (2008). Position Papers *Advocacy for the Criminal Code Bill* Series#1 Principles of Legality in the Draft Criminal Code. [https://lama.elsam.or.id/downloads/1274688138\\_01.asas-legalitas-dalam-ruu-kuhp-1.pdf](https://lama.elsam.or.id/downloads/1274688138_01.asas-legalitas-dalam-ruu-kuhp-1.pdf)

Indroharto, (1993), Efforts to Understand the Law on State Administrative Justice, Book: Some Basic Understandings of State Administrative Law, Jakarta: Pustaka Sinar Harapan.

Kaingge Meriam Marcelina (2017). Supremacy of Law on the Principle of People's Sovereignty Based on the 1945 Constitution. Sam University E-

Journal Ratulangi, Lex et Societatis, Vol. V/No. 3/May/2017.<file:///C:/Users/user/Downloads/15586-31269-1-SM.pdf>

Kelsen, Hans. General Theory of Law and State, New York, Russell & Russell, (1945), p. 35. In the Juridical Journal "*Delegation of Regulations by Law to Lower Regulations and Their Legal Consequences*", Sukardi and E. Prajwalita Widiati. Vol. 27 No 2 2012 University Airlangga. Doi:[10.20473/ydk.v27i2.293](https://doi.org/10.20473/ydk.v27i2.293)  
<https://ejournal.unair.ac.id/YDK/article/view/293>

Law Number 23 of 2014 concerning Regional Government (State Gazette of the Republic of Indonesia of 2014 Number 244, Supplement to State Gazette of the Republic of Indonesia Number 5587) as amended several times, most recently by Law Number 6 of 2023 concerning the Determination of Government Regulations in Lieu of Laws.

Law Number 2 of 2022 concerning Job Creation becomes law (State Gazette of the Republic of Indonesia for 2022 Number 238, Supplement to the State Gazette of the Republic of Indonesia Number 6841);

Law Number 30 of 2004 concerning Government Administration (State Gazette of the Republic of Indonesia of 2014 Number 292, Supplement to the State Gazette of the Republic of Indonesia Number 5601);

Mahmud Marzuki Peter (2008). Legal Research, Prenada Media Group, Jakarta.

Manan Bagir (2004). Indonesian Positive Law, Yogyakarta.

Mertokusumo Sudikno (2011) Legal Theory, 1st Printing, Jogjakarta: Atma Jaya University.

Presidential Decree Number 3 of 1997 concerning Supervision and Beverage Control Alcoholic. (2002 Regional Gazette Number 17);

Presidential Regulation of the Republic of Indonesia No. 74 of 2013 concerning Control and Supervision of Alcoholic Drinks (State Gazette of the Republic of Indonesia 2013 Number 190);

Rasjidi Lili H. and Ira Thania Rasjidi (2012). Introduction to Legal Philosophy, Mandar Proceed, Bandung.

Samud. (2018). The Role of Government in Prospering Society through Social Assistance Islamic Economic Perspective, *Al-Amwal journal*, Volume 10, No 2 Faculty of Sharia and Islamic Economics IAIN Syekh Nurjati Cirebon. h. 216. DOI:[10.24235/amwal.v10i2.3565](https://doi.org/10.24235/amwal.v10i2.3565)  
<http://www.syekhnurjati.ac.id/jurnal/index.php/amwal/article/view/3565>

Vision of Nangun Sat Kerti Loka Bali,<https://disdikpora.baliprov.go.id/nangun-sat-kerthi-loka-bali/> accessed March 14 2020

Wilda, Prihatiningtyas (2017) The Function of the Governor in the Administration of Government *In Area*, *Airlangga Development Journal*. Vol.1 No.1  
doi=<http://dx.doi.org/10.20473/adj.v1i1.10572> University Airlangga  
<https://ejournal.unair.ac.id/ADJ/article/view/10572/5905> downloaded on March 16, 2020.

Yasin Muhammad. (2017). The Meaning of the Principle of Legality in State Administrative Law. *Hukumonline.com*.<https://www.Hukumonline.com/klinik/detail/ulasan/cl6986/makna-asas-legalitas-dalam-Hukum-administrasinegara/>