

Problems in Enforcing the Liquor Prohibition Regulation

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Abstract: Enforcing local regulations prohibiting alcoholic beverages in Papua is a complex challenge that requires a comprehensive understanding of the legal framework, law enforcement practices, and community dynamics. This study aims to analyze the challenges of enforcing the prohibition of alcoholic beverages in Papua Province. The researcher seeks to explore the substance of the prohibition of alcoholic beverages in Papua Regulation No. 15 of 2013 and its legal status within the Indonesian legal framework. The results of the study reveal that the substance of Papua Regulation No. 15 of 2013 is to completely ban the production, distribution, sale, and consumption of alcoholic beverages. This legal status is legally contrary to the principle of the hierarchy of laws based on the principle of "Lex Superiori Derogad Lege Inferiori." This Regional Regulation was revoked by the Minister of Home Affairs via Letter No. 188 34-3629 of 2016. However, to protect the public from the negative impacts of alcoholism, the Governor of Papua continued to enforce the Regional Regulation. The Governor of Papua, from a progressive legal perspective, has set aside the principle of legal certainty for the sake of humanity; however, within the context of a rule-of-law state, this violates the principle of "due process of law."

Kata Kunci:
 Problematika, PERDA,
 Larangan Minuman
 Keras, Papua.

Abstrak: *Penegakan PERDA larangan miras di Papua merupakan tantangan yang kompleks dan membutuhkan pemahaman yang komprehensif mengenai kerangka hukum, praktik penegakan hukum, dan dinamika masyarakat. Penelitian ini bertujuan menganalisa problematika penegakan peraturan larangan miras di Provinsi Papua. Peneliti berupaya mengeksplorasi substansi pelarangan miras dalam aturan Papua Nomor 15 Tahun 2013 dan status hukumnya dalam tata aturan perundang-undangan di Indonesia. Hasil penelitian mengungkapkan bahwa substansi Peraturan Papua Nomor 15 Tahun 2013 adalah melarang secara total produksi, distribusi, penjualan dan konsumsi minuman keras beralkohol. Status hukum ini secara yuridis bertentangan dengan prinsip hierarki perundang-undangan berdasarkan asas "Lex Superiori Derogad Lege Inferiori". PERDA ini dibatalkan oleh Menteri Dalam Negeri dengan Surat Nomor 188 34-3629 Tahun 2016. Namun guna melindungi masyarakat dari dampak negatif alkoholisme, Gubernur Papua tetap memberlakukan PERDA tersebut. Gubernur Papua dalam perspektif hukum progresif telah mengesampingkan asas kepastian hukum demi kemanusiaan, tetapi dalam konteks negara hukum telah melanggar asas "duo process of law".*

INTRODUCTION

Enforcement of the Regional Regulation (PERDA) on alcohol in Papua Province is a complex challenge and requires a comprehensive understanding of the legal framework, law enforcement practices, and community dynamics. The issue of regulating alcohol consumption and distribution is not unique to Papua, but also a national concern in Indonesia. The effective enforcement of such regulations is crucial to maintain public order, health and safety in the community.¹ In examining the enforcement of alcohol regulations in Papua, it is important to consider the role of law enforcement agencies such as Satuan Polisi Pamong Praja (Satpol PP). These agencies play an important role in enforcing and implementing PERDAs related to alcohol control.² However, challenges may arise in the implementation process, including issues related to coordination of efforts, resource allocation, and the legal mechanisms

¹ Tri Yanuaria and Budiyanto, "Efektivitas PERDA Provinsi Papua Nomor 15 Tahun 2013 Tentang Pelarangan Produksi, Pengedaran dan Penjualan Miras di Kota Jayapura," *Jurnal Ius Publicum* 3, no. 3 (November 15, 2021): 107–18, <https://doi.org/10.55551/jip.v3i3.26>.

² Khaliza Tiar, "Peranan Satuan Polisi Pamong Praja Dalam Menegakkan PERDA Tentang Pelarangan Miras di Kabupaten Indramayu," *Jurnal Tatapamong*, December 31, 2022, 128–42, <https://doi.org/10.33701/jurnaltatapamong.v4i2.2757>.

available to effectively address violations.³ The legal basis for enforcing alcohol regulations in Papua can be found in specific PERDAs, such as the Papua Province Regional Regulation No. 15/2013 on the Prohibition of Production, Distribution and Sale of Alcoholic Beverages. The effectiveness of such regulations depends not only on their formulation, but also on the enforcement mechanisms in place.⁴

In addition, the involvement of various stakeholders, including the government, law enforcement agencies, and community members, is important to ensure compliance and overcome challenges in law enforcement.⁵ Enforcement of alcohol regulations in Papua also intersects with broader issues such as health, security and social order. The impact of alcohol consumption on society, especially in terms of health and security, underscores the importance of effective enforcement measures.⁶

Addressing the challenges in enforcing these regulations requires a multi-faceted approach that considers the unique legal, social and cultural factors in a region.⁷ Moreover, the implementation of the PERDA on alcohol in Papua may also face constraints related to the governance structure, legal framework, and community engagement. Understanding the legal complexities and community dynamics around alcohol regulation is essential to develop effective enforcement strategies.⁸ The involvement of local communities, religious institutions, and civil society organizations can also play an important role in supporting law enforcement efforts and encouraging compliance with regulations.⁹

A 2014 study showed that one of the causes of the high number of divorces filed at the Jayapura Religious Court was domestic violence, which accounted for 15% of the total cases. These acts of violence were committed by married couples against their spouses who were influenced by alcohol consumption. A Jayapura Religious Court report on the implementation of Legal Aid Post (POSBAKUM) activities states that there were 195 divorce cases due to domestic violence due to the influence of

³ Yullyus Kocu et al., "Peran Stakeholder Dalam Kajian Lingkungan Hidup Strategis Rencana Detail Tata Ruang Kawasan Perkotaan Manokwari," *Jurnal Ilmu Lingkungan* 22, no. 1 (December 2023): 228–39, <https://doi.org/10.14710/jil.22.1.228-239>.

⁴ Tri yanuaria and Budiyanto, "Efektivitas PERDA Provinsi Papua Nomor 15 Tahun 2013 Tentang Pelarangan Produksi, Pengedaran dan Penjualan Miras Di Kota Jayapura."

⁵ Anju Indah Sucita, I Ketut Sukadana, and I Made Minggu Widyantara, "Penegakan PERDA Kota Denpasar di Kawasan Prostitusi Belanjong Sanur," *Jurnal Konstruksi Hukum* 1, no. 1 (August 2020): 57–62, <https://doi.org/10.22225/jkh.1.1.2129.57-62>.

⁶ Tri Yulia, "Analisis Yuridis Penegakan Hukum Bagi Warga Yang Membuang Sampah Sembarangan di DKI Jakarta Sebagai Dampak Pencemaran Lingkungan Hidup," *Jurnal Indonesia Sosial Sains* 2, no. 7 (July 21, 2021): 1209–23, <https://doi.org/10.36418/jiss.v2i7.366>.

⁷ Tri Yanuaria and Budiyanto, "Efektivitas PERDA Provinsi Papua Nomor 15 Tahun 2013 Tentang Pelarangan Produksi, Pengedaran dan Penjualan Miras Di Kota Jayapura," *Jurnal Ius Publicum* 3, no. 3 (November 15, 2021): 107–18, <https://doi.org/10.55551/jip.v3i3.26>.

⁸ Mukti Stoffel, "Penegakan Hak Asasi Manusia Terkait New York Agreement 1962 Dalam Hal Penentuan Pendapat Rakyat Papua," *Negara Dan Keadilan* 10, no. 1 (April 2021): 45, <https://doi.org/10.33474/hukum.v10i1.4625>.

⁹ Marius Suprianto Sakmaf, "Tanggung Jawab Pemerintah Provinsi Papua Barat Dalam Pengelolaan Situs Mansinam Sebagai Objek Wisata Religi Berbasis Kesejahteraan Warga Hukum Adat," *JPPi (Jurnal Penelitian Pendidikan Indonesia)* 9, no. 1 (March 31, 2023): 203, <https://doi.org/10.29210/020221897>.

alcohol consumption in the 2015-2017 period.¹⁰ Based on observations in Papua Province, especially in Jayapura City, traffic accidents, murder, extortion, and other criminal acts often occur due to alcohol consumption by the perpetrators. This condition causes unrest, fear, anxiety and discomfort among the local community, thus affecting people's ability to carry out their daily activities.¹¹

South Jayapura Police Chief AKP Julkifli Sinaga stated "*alcohol is the main cause of traffic accidents in Jayapura City, Papua, especially in South Jayapura District*".¹² The main cause of traffic accidents has been identified as alcohol consumption, which has resulted in a high number of accidents in Jayapura City. This is the most identifiable form of accident. In Papua Province, there is a significant negative impact of alcohol consumption by the general public, resulting in significant social problems. The Papua Provincial Government including the Governor and the Papuan People's Representative Council (DPRP) have agreed to implement regulations that can reduce the amount of alcohol consumption in the region.

Papua Provincial Regulation No. 15/2013 is the legislation that formalizes this initiative. The document in question contains information on the production, circulation and consumption of alcohol.¹³ To protect the people of Papua from the adverse effects of alcohol abuse this measure can be considered a form of protection for the government. On March 30, 2016, the Regional Leadership Communication Forum submitted an integrity pact regarding the prohibition of alcohol in Papua Province. The signing took place in the context of a Regional Working Meeting designed to provide assistance to the community from the government and local governments in each region that is part of Papua Province. The liquor problem in Papua Province has been resolved through the above 2 stages. However, the impact of liquor on the lives of Papuans is still a major concern. Based on this, it has been analyzed how to obtain a PERDA that is problematic according to the law. The cooperation between the City Government and District Committees throughout Papua Province to implement the integrity pact that has been decided previously is also one of the factors behind this. Based on the description of the problem, this paper aims to find out the substance of the prohibition of alcohol in the regulation of PERDA in Papua Number 15 of 2013 and its legal status in the system of legislation in Indonesia.

¹⁰ Nur Sinta, "Wawancara" (2020).

¹¹ Khairun Nisa'il Hulwah et al., "Hubungan Konsumsi Alkohol Dengan Cedera Disebabkan Kecelakaan Lalu Lintas di Indonesia Tahun 2018 (Analisis Data Riskesdas 2018)," *Buletin Penelitian Sistem Kesehatan* 24, no. 1 (2021): 57-67, <https://doi.org/https://doi.org/10.22435/hsr.v24i1.3707>.

¹² Ardiles Leloltery and Agus Setiawan, "Miras Penyebab Utama Kecelakaan Lalu Lintas di Jayapura," ANTARA: Kantor Berita Indonesia, 2023, <https://www.antaraneews.com/berita/3584664/minuman-beralkohol-penyebab-utama-kecelakaan-lalu-lintas-di-jayapura>.

¹³ Pemerintah Provinsi Papua, "PERDA Provinsi," Pub. L. No. Pasal 1 Huruf J UU No. 21 tahun 2001 Tentang Otonomi Khusus Bagi Provinsi Papua (2001).

RESEARCH METHOD

This study adopts a normative research approach. Normative research aims to analyze the applicable law, especially in this case analyzing the PERDA on Prohibition of Liquor in Papua Number 15 of 2013, and investigate the application of the law in practice.¹⁴ This study applies the normative juridical approach method. This approach emphasizes an in-depth examination of the legal text of Papua's PERDA No. 15/2013, related laws and regulations, as well as relevant legal literature. This approach is taken to deeply understand the problem of enforcement of the PERDA Miras in Papua, through description and analysis of data obtained from various sources.¹⁵ There are two data sources used, namely primary and secondary data.¹⁶ Primary data was obtained through interviews with key informants, and observation. The secondary data is obtained by documentation study, namely by collecting laws and regulations related to the Papua Miras Regulation Number 15 of 2013, research reports, news, and other legal literature.

The data collection techniques used in this research are interviews, observation and documentation. Interviews were conducted with key informants, namely stakeholders including law enforcement officials, local government officials, community leaders, and academics who have knowledge and experience related to the enforcement of the Papua Alcohol Regulation Number 15 of 2013. Observation was conducted in the field to directly observe the enforcement practices of the PERDA Miras in Papua. Meanwhile, documentation involved the systematic collection of secondary data relevant to this research, including laws and regulations, research reports, and news articles.¹⁷ The data obtained from the various sources were then evaluated using qualitative data analysis techniques, which started from data reduction, data classification and data interpretation.¹⁸ The data that has been analyzed is then presented in the form of a detailed description, so as to provide a clear understanding of the problems of enforcing PERDA Miras Number 15 of 2013 in Papua. This research is expected to be able to make a significant contribution to the understanding of the problems of enforcement of PERDA Miras in Papua, as well as provide constructive recommendations to improve the effectiveness of enforcement of the regulation.

RESULTS AND DISCUSSION

Criminalization of Alcohol Consumption Policy in Indonesia

From the beginning to the end of 2015, around 8 provinces in Indonesia have enacted regulations that criminalize alcohol consumption.¹⁹ There is a natural

¹⁴ Bambang Sunggono, *Metode Penelitian Hukum* (Jakarta: PT Raja Grafindo, 2016).

¹⁵ Zainuddin Ali, *Metode Penelitian Hukum* (Jakarta: Sinar Grafika, 2021).

¹⁶ Sugiyono, *Metode Penelitian Kuantitatif (Edisi Ke-3)*, 3rd ed. (Bandung: CV Alfabeta, 2022).

¹⁷ Sugiyono.

¹⁸ Bahder Johan Nasution, *Metode Penelitian Ilmu Hukum* (Bandung: CV. Mandar Maju, 2014).

¹⁹ Moch. Choirul Rizal, "Kebijakan Kriminalisasi Konsumsi Miras di Indonesia," *Jurnal Hukum dan Peradilan* 7, no. 1 (2018): 151, <https://doi.org/10.25216/jhp.7.1.2018.151-174>.

tendency for people to drink alcohol at different levels. Meanwhile, there are 4 regulations that have made policies for alcohol consumption in the form of PERDA and Presidential Regulations.

First, the Aceh Provincial Regulation No. 12/2003 on *Alcoholic Beverages and their Characteristics*. This regulation strictly prohibits anyone from consuming alcoholic beverages at any level. The regulation intends to make it clear that it is unlawful for anyone to consume alcoholic beverages, with criminal sanctions imposed for violations. PERDAs with these characteristics are found in Aceh Province's Qanun No. 12/2003 on *Khamar and Similar Beverages* and Papua Province's Regional Regulation No. 15/2013 on the Prohibition of Production, Distribution and Sale of Alcoholic Beverages.

Secondly, there are PERDAs that allow people to consume alcoholic beverages, but in places designated by the region. PERDAs with these characteristics are found in South Kalimantan Province Regulation No. 7/2008 on the Control and Supervision of the Distribution of Alcoholic Beverages and East Java Province Regulation No. 6/2014 on the Control and Supervision of the Distribution of Alcoholic Beverages.

Thirdly, Article 7 of Presidential Regulation 74/2013 stipulates that class A alcoholic beverages (ethyl alcohol or ethanol content up to 5%), class B (5-20%), and class C (20-55%) can be traded in hotels, bars, or restaurants that meet the requirements of tourism laws and regulations. The trade of alcohol can also be carried out in duty-free shops and certain places determined by the Regent or Mayor and the Governor for regional places that have been determined by the relevant government.

Fourth, Papua's PERDA No. 15/2013 on the Production, Distribution and Sale of Alcohol. Overall, the enforcement of the PERDA on alcohol in Papua Province is an issue that has many aspects and requires a comprehensive approach. By examining the legal framework, law enforcement practices, and community dynamics related to alcohol regulations, stakeholders can work to improve the effectiveness of law enforcement efforts. Collaboration between government agencies, law enforcement agencies, and community members is essential to address the challenges associated with enforcing alcohol regulations in Papua. The regulatory differences between the Papua and Aceh PERDAs that influenced the formation of these PERDAs lie in the historical and cultural background. Aceh has a strong Islamic history and a more homogenous culture, while Papua has a more diverse cultural and religious background. The social and economic structure is one of the factors in the formulation of this PERDA. Aceh has a more structured social structure and a more developed economy, while Papua has a more complex social structure and a more diverse economy. Finally, values and norms were also a trigger in its formation. Aceh has strong Islamic values and more conservative norms, while Papua has more diverse and dynamic values and norms based on its culture.

Law Enforcement in Society

Law enforcement on the people can be known by 2 theories, namely through legal protection theory and progressive legal theory. According to legal expert Satjipto Rahardjo, the protection of human rights as a result of protection activities, the mission of society is useful to ensure that its members can obtain legal protection.²⁰ Satjipto Rahardjo, expressed his opinion that the meaning of legal protection is to protect the interests of fundamental rights for humans, namely Human Rights (HAM) which are deprived or harmed by others. In this case, the protection effort is intended for the community to be able to obtain the rights granted by law. Meanwhile, according to progressive legal theory, Satjipto Rahardjo states that it requires placing the law in a relatively favorable position and out of the framework and scope of the idea of absolute legal reasoning.²¹

Hierarchy and Order of Legislation

In solving the problem of enforcing alcohol regulations in Papua, it is important to consider the legal framework and protection of the rights of indigenous peoples in the region. The complexities of enforcing PERDAs, such as those related to alcohol consumption, intersect with broader legal and societal challenges. In Papua, enforcement of laws including those related to alcohol prohibition can be influenced by various factors, such as the autonomy of local governments and the role of political parties post-Constitutional Court rulings.²² In addition, the legal landscape in Papua is also shaped by issues of discrimination and equality before the law, as seen in challenges to the principle of equality in certain areas.²³ Ensuring fair and non-discriminatory law enforcement, including with regard to alcohol prohibition, is crucial to upholding justice and protecting the rights of all people, regardless of their religious or cultural background. The protection of human rights, particularly in the context of internally displaced persons in Papua, adds another layer of complexity to law enforcement in the region.²⁴ Ensuring that the legal framework aligns with international humanitarian law to protect the rights of vulnerable populations is critical. Effective enforcement of laws, including those related to alcohol restrictions, must consider broader human rights implications and prioritize the well-being of all individuals in Papua.

²⁰ Satjipto Rahardjo, *Penegakan Hukum Progresif* (Jakarta: Penerbit Buku Kompas, 2010).

²¹ Satjipto Rahardjo, *Hukum Progresif Sebagai Dasar Pembangunan Ilmu Hukum Indonesia*, (Semarang: Pustaka Pelajar, 2006), 9.

²² Sri Purwanti Budi Utami, "Peran Partai Politik Lokal Dalam Membangun Otonomi Khusus Papua Pasca Putusan Mahkamah Konstitusi Nomor 41/Puuxvii/2019 Tentang Pembentukan Partai Politik Lokal," *Cita Hukum Indonesia* 1, no. 1 (September 2022): 16–31, <https://doi.org/10.57100/chi.v1i1.6>.

²³ Khairil Akbar, Nyak Fadhullah, and Zahlul Pasha Karim, "Challenging The Principle of Equality Before the Law in Qanun Jinayat Aceh," *Media Syari'ah : Wahana Kajian Hukum Islam Dan Pranata Sosial* 24, no. 1 (June 2022): 156, <https://doi.org/10.22373/jms.v24i1.9236>.

²⁴ Thomas Sudarso, "Perlindungan Terhadap Internally Displaced Person Nduga di Wamena, Papua Barat Dalam Perspektif Hukum Humaniter Internasional," *BELLI AC PACIS* 8, no. 2 (June 2023): 120, <https://doi.org/10.20961/belli.v8i2.74497>.

Overall, the enforcement of alcohol regulations in Papua is a multifaceted issue that intersects with broader legal, social and human rights considerations. Upholding the rights of indigenous peoples, addressing discrimination, ensuring equality before the law and protecting vulnerable populations are important aspects to consider when discussing law enforcement in the region. By considering these factors and aligning the legal framework with international standards, authorities can work to ensure effective and fair enforcement of regulations, including those relating to alcohol prohibition in Papua.

Indonesia's legal system should be based on the 1945 Constitution, Decrees of the People's Consultative Assembly (MPR), Government Regulations, Presidential Regulations, Provincial Regulations, and Regency/City Regulations.²⁵ The hierarchy includes the 1945 Constitution, MPR Decrees, Laws or Government Regulations in Lieu of Laws (Perppu), Government Regulations, and Presidential Regulations to be legal legislation that must be considered when establishing laws or laws of an area.

The purpose of the legal force of laws and regulations is in accordance with their hierarchy, meaning that the laws and regulations below must not contradict the rules that are above them. Regional regulations must not contradict the 1945 Constitution, MPR Decrees, Laws/Perppu, Government Regulations and Presidential Regulations. PERDAs are not allowed to contradict and contradict regulations that have a higher status. This is regulated in Article 250 of Law Number 23 Year 2014 on Regional Government. PERDA that contradicts higher laws and regulations, in this case, must be canceled. There are 2 mechanisms for canceling PERDA, namely legal review conducted by the Supreme Court, and executive agency review conducted by the Minister or Governor.²⁶

Substance of Prohibition of Alcohol in Papua PERDA No. 15/2013

The Papuan community together with religious institutions, social organizations, and PERDA No. 15/2013 was issued by the Papua Provincial Government which consists of the Governor and Deputy Prime Minister. The Regional Leaders Coordination Forum which stands for the Regional Leaders Communication Forum has recently informed the Provincial Government of an integrity pact that has affected liquor consumption. Papua's PERDA No. 15 of 2013 is characterized by a comprehensive approach to the production of all types of goods and the management of alcohol.

Presidential Regulation No. 74/2013 relating to the Control and Supervision of Alcohol has a higher position than PERDA No. 15/2013, and is the legal basis for the regulation of alcohol in Papua Province. The following differences between Papua PERDA No. 15 of 2013 and Presidential Regulation No. 74 of 2013 on Minimum Requirements for Alcohol Consumption can be seen in the following figure:

²⁵ Rahardjo, *Penegakan Hukum Progresif*.

²⁶ Undang-Undang Nomor 23 Tahun 2014 tentang Pemerintahan Daerah, Pasal 251 ayat (1)

Figure 1: Differences between PERDA No. 15/2013 and Presidential Regulation No. 74/2013

NO	PERDASI No. 15 Tahun 2013	PERPRES No. 74 Tahun 2013
1	Tentang Pelarangan, Produksi, Pengedaran dan Penjualan Minuman Beralkohol	Tentang Pengendalian dan Pengawasan Minuman Beralkohol
2	Bertujuan melarang minuman beralkohol secara total	Bertujuan mengendalikan dan mengawasi minuman beralkohol
3	Setiap orang atau badan hukum perdata atau pelaku kegiatan usaha dilarang memasukan, mendistribusikan, dan menjual minuman beralkohol Golongan A, Golongan B, dan Golongan C. (Pasal 5)	<ul style="list-style-type: none"> - Minuman Beralkohol yang berasal dari impor hanya dapat diimpor oleh pelaku usaha yang telah memiliki perizinan impor dari menteri yang menyelenggarakan urusan pemerintahan di bidang perdagangan. (Pasal 4 ayat 2) - Minuman Beralkohol hanya dapat diedarkan setelah memiliki izin edar dari kepala lembaga yang menyelenggarakan pengawasan di bidang obat dan makanan (Pasal 4 ayat 3) - Minuman Beralkohol hanya dapat diedarkan setelah memiliki izin edar dari kepala lembaga yang menyelenggarakan pengawasan di bidang obat dan makanan. (Pasal 4 ayat 4)
4	Setiap orang atau badan hukum perdata dilarang memproduksi minuman beralkohol Golongan A, Golongan B, dan Golongan C. (Pasal 6)	Minuman Beralkohol yang berasal dari produksi dalam negeri hanya dapat diproduksi oleh pelaku usaha yang telah memiliki izin usaha industri dari menteri yang menyelenggarakan urusan pemerintahan di bidang perindustrian. (Pasal 4 ayat 1)
5	Setiap orang dilarang mengkonsumsi minuman beralkohol Golongan A, Golongan B, dan Golongan C dan minuman beralkohol yang berasal dari tumbuh-tumbuhan dan/atau bahan alami serta memproduksi minuman beralkohol dengan cara racikan atau oplosan. (Pasal 8)	<ul style="list-style-type: none"> - Minuman Beralkohol golongan A, golongan B, dan golongan C hanya dapat dijual di: <ol style="list-style-type: none"> a. hotel, bar, dan restoran yang memenuhi persyaratan sesuai peraturan perundangundangan di bidang kepariwisataan; b. toko bebas bea; dan c. tempat tertentu selain huruf a dan b yang ditetapkan oleh Bupati/Walikota dan Gubernur untuk Daerah Khusus Ibukota Jakarta. (Pasal 7 ayat 1) - Selain tempat sebagaimana dimaksud pada ayat (1), Minuman Beralkohol golongan A juga dapat dijual di toko pengecer dalam bentuk kemasan. (Pasal 7 ayat 3)

Source: Data processed, 2025.

There are several aspects of differences in sentencing arrangements between Papua PERDA No. 15 of 2013 and Law No. 12 of 2011 on the Formation of Legislation and Law No. 23 of 2014 on Regional Government as outlined in the table below:

Figure 2. Differences between Local Regulation No. 15 of 2013, Law No. 12 of 2011, and Law No. 23 of 2014

PERDASI NO. 15 TH. 2013	UU NO. 12 TH 2011	UU NO. 23 TH. 2014
<p><i>Pasal 12 ayat (1)</i> Setiap orang yang melanggar ketentuan Pasal 5, Pasal 6, Pasal 7, diancam dengan pidana penjara 5 (lima) tahun atau denda Rp.1.000.000.000.00,- satu milyar rupiah).</p> <p><i>Pasal 12 ayat (2)</i> Setiap orang yang melanggar ketentuan Pasal 8, diancam dengan pidana kurungan paling lama 6 (enam) bulan dan/atau denda paling banyak Rp. 50.000.000,- (lima puluh juta rupiah).</p>	<p><i>Pasal 15 ayat (2)</i> Ketentuan pidana sebagaimana dimaksud pada ayat (1) huruf b dan huruf c berupa ancaman pidana kurungan paling lama 6 (enam) bulan atau pidana denda paling banyak Rp50.000.000,00 (lima puluh juta rupiah).</p>	<p><i>Pasal 238 ayat (2)</i> Perda dapat memuat ancaman pidana kurungan paling lama 6 (enam) bulan atau pidana denda paling banyak Rp50.000.000,00 (lima puluh juta rupiah).</p>

Source: Data processed, 2025.

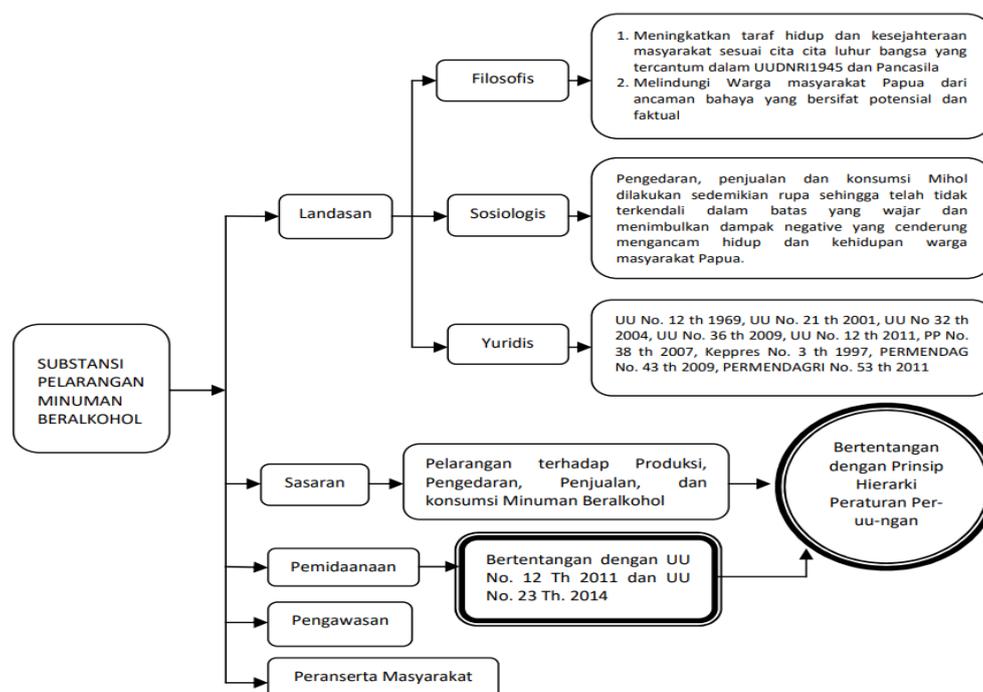
Papua PERDA No. 15/2013 only regulates supervision, but leaves out the coaching aspect. This PERDA does not comprehensively regulate the prevention of alcohol abuse in Papua Province. The substance regulated in the Papua Provincial Regulation No. 15 Year 2013 is still limited to primary prevention, namely prevention so that a person is not involved in liquor abuse. In accordance with World Health Organization (WHO) standards, comprehensive alcoholism prevention efforts are not only limited to primary prevention, but must also include secondary and tertiary prevention. Secondary prevention refers to the prevention of someone who has been involved in alcohol abuse who must receive attention and treatment or rehabilitation so that addicts will not fall back into alcohol abuse. Tertiary prevention, on the other hand, is defined as an effort aimed at people who have realized and stopped abusing alcoholic beverages in order to really stop their actions.

PERDA Papua No. 15/2013 in terms of its substance has several functions, including explaining what actions are allowed and prohibited in terms of production, distribution, sale and consumption of alcoholic beverages, determining the type and form of criminal sanctions against violators, and as a means of resolving cases that arise due to liquor abuse in Papua Province. The functions of law as mentioned above according to Hobel are basically the functions of law as social control to maintain

patterns of social relations and norms applied in the society concerned. Law functions to maintain peace, tranquility, resolve disputes and avoid insubordination.

Based on the analysis conducted, it is known that Papua PERDA No. 15 of 2013 should not only contain articles that can carry out primary prevention in the sense that it only functions as a guardian of public order, but far from that it must contain articles that are able to make secondary prevention efforts to someone involved in alcohol abuse must get attention and treatment, rehabilitation and therapy both medically and spiritually so that they do not fall again into alcohol abuse. Meanwhile, tertiary prevention efforts need to be made for people who repent and stop abusing alcoholic beverages, so that they stop completely. Thus, PERDA Papua No. 15 of 2013 in the future can function as a law as a tool of social engineering and can bring maximum benefits and benefits to the lives of people in Papua Province.

Figure 3: Problems of Enforcement of Alcohol Regulation in Papua Province



Source: Data processed, 2025.

Legal Status of Papua Regulation No. 15/2013 in the Hierarchy of Laws and Regulations

The central government as the highest government organizer has the duty and authority to carry out control and supervision on the procurement, distribution and sale of liquor. This aims to protect the public from negative access to liquor abuse. Therefore, the central government issued Presidential Regulation (PERPRES) No. 74 of 2013 on the Control and Supervision of Alcoholic Beverages. The local government of Papua Province also has an interest in prohibiting the production, distribution, sale and consumption of alcoholic beverages in Papua Province to protect the public from the negative impact of alcohol abuse that threatens the lives of indigenous Papuans

and the people of Papua. Therefore, the local government of Papua province issued Papua Province Regional Regulation No. 15 of 2013.

The central government and the local government of Papua Province are both highly committed to tackling alcohol abuse to protect the public from the negative impacts of alcoholism. However, the central government has a different policy from the Papua provincial government in the way it tackles alcohol abuse. The central government allows the production, distribution, sale and consumption of alcoholic beverages under strict control and supervision, while the Papua provincial government totally prohibits the production, distribution, sale and consumption of alcoholic beverages except for health purposes and religious rituals.

Based on the hierarchy of laws and regulations in Article 7 of Law Number 12/2011 on the Formation of Laws and Regulations, provincial regulations are at the same level as presidential regulations, which means that provincial regulations cannot contradict presidential regulations. Provisions on regional regulations that are prohibited from contradicting higher regulations are also regulated in Article 250 of Law Number 23 Year 2014 on Regional Government. The substance of Papua PERDA No. 15/2013 that regulates the prohibition of the distribution, circulation, sale and consumption of alcoholic beverages contradicts higher laws and regulations, especially Presidential Regulation No. 74/2013 that regulates the Control and Supervision of Alcoholic Beverages.

The central government has the authority to revoke Papua PERDA No. 15/2013 because it contradicts Presidential Regulation No. 74/2013. The provisions of Article 251 paragraph (1) of Law Number 23 Year 2014 on Regional Government states that Provincial PERDAs and governor regulations that contradict the provisions of higher laws and regulations, public interests, and/or morality are canceled by the Minister. The Minister of Home Affairs has clarified through Letter Number 188.34/1387/SJ dated March 17, 2013 Regarding Clarification of Regional Regulations or with some instructions that allegedly contradict higher status laws and regulations. This is with consideration, among others, as follows:

1. The provision considering number 7 is deleted and replaced with the Minister of Home Affairs Regulation Number 1 Year 2014 on the Formation of Regional Legal Products.
2. Article 1d number 5 of the Local Regulation contradicts article 1 number 1 of Presidential Regulation Number 74 of 2013.
3. Article 3 of the Local Regulation should be adjusted to Article 3 of Presidential Regulation Number 74 of 2013.
4. Chapter III, prohibition from Article 5 to Article 8 of the Regulation, which regulates prohibition on the production, distribution and sale of alcoholic beverages, contradicts Article 4 and Article 7 of Presidential Regulation No. 74 of 2013.

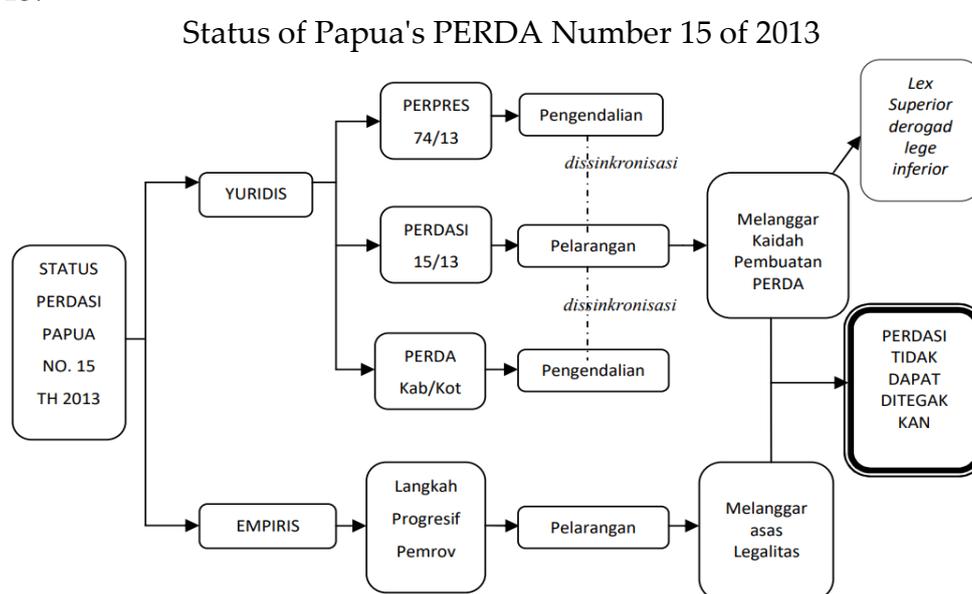
As the Papua Provincial Government did not respond to the Minister of Home Affairs' letter 188.34/1387/SJ dated March 17, 2013 regarding the clarification of Papua's PERDA No. 15/2013, the Minister of Home Affairs' letter 188.34-3629 dated March 29-4-2016 regarding the cancellation of some provisions of Papua's PERDA No. 15/2013 was issued. In its consideration, it decided to cancel several provisions of Papua PERDA No. 15/2013 on the Prohibition of Production, Distribution and Sale of Alcoholic Beverages. This is because they are contrary and incompatible with higher laws and regulations and contrary to the public interest, as listed in the attachment as an integral part of the ministerial decision.

The Governor of Papua continues to take progressive steps by continuing to enforce Papua PERDA Number 15 of 2013 after it was canceled by the Minister of Home Affairs. Juridically, PERDA Papua No. 15/2013 has violated the rules of making PERDA so that it was canceled by the Minister of Home Affairs. However, due to special autonomy considerations, the Governor of Papua insisted on enforcing Papua PERDA No. 15/2013. For example, there was a case of confiscation of alcohol by Papua Provincial Government officials in a shop owned by Theresia Sumendap in April 2017. Then Theresia as the shop owner sued the Jayapura State Administrative Court (PTUN). As a result of the judicial verdict, the lawsuit she filed was decided to win by the panel of judges of the Jayapura State Administrative Court. Despite having been decided to lose through the decision of the Jayapura State Administrative Court (PTUN), Papua Governor Lukas Enembe continues to implement and enforce PERDA Number 15 of 2013. Lukas Enembe has stated that the Papua Provincial Government will not appeal the decision of the Jayapura Administrative Court. This is because the emergence of the PERDA Miras regulation is Law Number 21 of 2001 concerning Special Autonomy for Papua whose status is higher than ministerial-level regulations. With the existence of the Special Autonomy Law, Papua Province is given the authority to take care of itself.

Lukas Enembe's statement is in line with the statement of the Chairman of Commission I of the Papuan Parliament, Ruben Magai, who stated that the circulation of liquor has caused a lot of crime, crime and also deadly traffic accidents. This only benefits certain groups of people, but sacrifices many indigenous Papuans. Therefore, it is hoped that the commitment to prohibit the circulation of alcohol will continue to be encouraged for the benefit of indigenous Papuans in their own land. The low level of welfare of the Papuan people is used by entrepreneurs who adhere to capitalism to reap the coffers of their business, including the sale of alcohol. This is very dangerous for indigenous Papuans. The solution is none other than PERDA No. 15 of 2013, a preventive measure passed by the Papuan House of Representatives based on the aspirations of the people.

Doren Wakerkwa, Assistant I of the Papua Provincial Secretariat for Government and Legal Affairs emphasized the attitude of the Papua provincial government to continue implementing Papua's PERDA Number 15 of 2013, that the

prohibition of the PERDA will continue until the end of the world. The Papua government will not stop to enforce the PERDA Prohibition of Alcohol in Papua Province. This is for the sake of humanity on the land of Papua. The Papuan people must be protected and preserved so that they can rise up and become great people in their own land. The move by the local government of Papua Province to continue enforcing this PERDA is a progressive step to protect the people of Papua from the dangers of alcoholism. Lukas Enembe does not want to be co-opted by the positivistic legal paradigm that tends to prioritize legal certainty, so that justice achieved is not only limited to legalistic formal justice by ignoring substantial ethical justice. The following describes the results of the discussion of the status of Papua PERDA Number 15 of 2013:



Source: Data processed, 2025.

Based on the data and information obtained, it is known that the Papua Provincial Government should revise the Papua PERDA No. 15 of 2013 by observing the principles of suitability of the type, hierarchy, and content of PERDA No. 15 of 2013. Based on Presidential Regulation No. 74 of 2013, the appropriate content material should be formulated in the Papua PERDA on the control and supervision of alcoholic beverages, not on the prohibition of alcoholic beverages, so that it can be enforced in order to realize the greatest benefit for the people of Papua.

CONCLUSION

The substance of Papua's PERDA No. 15/2013 is to totally prohibit the production, distribution, sale and consumption of alcoholic beverages which is juridically contrary to the principle of hierarchy of laws and regulations. The status of Papua PERDA No. 15/2013 based on the principle of "Lex Superiori Derogad Lege Inferiori" was canceled by the Minister of Home Affairs through the official letter of the Minister of Home Affairs No. 188 34-3629 Year 2016 Dated 29-4-2016. However, in

order to protect the public from the negative impact of alcoholism, the Governor of Papua continues to enforce the PERDA. In the perspective of progressive law, the Governor of Papua has overridden the principle of legal certainty in favor of humanity, but in the context of the rule of law has violated the principle of "duo process of law". The Papua Provincial Government should revise and review the PERDA on Prohibition of Alcohol Number 15 of 2013 by paying attention to the principle of conformity between the type, order of legislation and its content. This means that in the making of the Papua PERDA on alcoholic beverages it is important to consider the material and content that is relevant to the order of the legislation in force in Indonesia.

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