

Revocation of The Attachment III of The Presidential Regulation Number 10 of 2021 in The Perspective of Human Rights and *Maqasid Al-Shari'ah*

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Abstract: This research is based on a decision of the President of the Republic of Indonesia, Joko Widodo, by revoking the Attachment III of the Presidential Regulation Number 10 of 2021 concerning the business sector of investment in the liquor and alcoholic drink industry. This presidential decree attracts a wide attention from all levels of Indonesian society. Most of them welcome the decision, and a few are more optimistic about the implementation of the presidential regulation because it has actually offered a clear and proportional regulation. To get a sharp analysis result, the researcher looks at this constitutional fact through the theory of human rights and *maqasid al-shari'ah*. Based on the research results, it is stated that the decision of the President of the Republic of Indonesia by abolishing the presidential regulation is in line with the basic values and principles contained in human rights and *maqasid al-shari'ah*. Even so, there are some basic rights points that need serious attention from the government, particularly how to revive the people's economy which is teetering due to the Covid-19 pandemic. At least, this is the reason for arguing for groups who are opposing to the presidential decision.

Keywords: investment, liquor, human rights, *maqasid al-shari'ah*

Abstrak: Penelitian ini bertumpu pada sebuah keputusan Presiden Republik Indonesia, Joko Widodo, dengan mencabut Lampiran III Peraturan Presiden Nomor 10 Tahun 2021 tentang bidang usaha penanaman modal dan

investasi industri minuman keras dan minuman beralkohol. Keputusan presiden ini cukup mengundang perhatian dari seluruh lapisan masyarakat Indonesia. Sebagian besar dari mereka menyambut gembira keputusan itu, dan sebagian kecil lebih optimis dengan pemberlakuan peraturan presiden itu karena sebenarnya telah menawarkan suatu regulasi yang jelas dan proporsional. Untuk mendapatkan hasil analisis yang tajam, peneliti melihat fakta konstitusi ini melalui teori Hak Asasi Manusia dan *maqasid al-shari'ah*. Berdasarkan hasil penelitian menyatakan bahwa keputusan yang diambil Presiden Republik Indonesia dengan menghapus peraturan presiden itu sejalan dengan nilai-nilai dan prinsip-prinsip dasar yang tertuang dalam hak asasi manusia dan *maqasid al-shari'ah*. Meskipun demikian, ada beberapa poin hak-hak dasar yang perlu mendapatkan perhatian serius dari pemerintah terutama bagaimana membangkitkan perekonomian rakyat yang tertatih-tatih akibat pandemic Covid-19. Setidaknya, inilah yang menjadi alasan mendasar kelompok yang berseberangan dengan keputusan presiden tersebut.

Kata Kunci: investasi, minuman keras, Hak Asasi Manusia, *maqasid al-shari'ah*

Introduction

Revocation of the Attachment III of the Presidential Regulation Number 10 of 2021¹ concerning the investment business sector in the liquor and alcoholic drink industry by President Jokowi has reaped the pros and cons among the Indonesian people. Most of the Indonesian people are excited. They argue that in addition to religious orders, liquor and alcoholic drink provide more harm than benefit. In fact, it often triggers violence both in the household and in the society which is perpetrated by liquor and alcoholic drinkers. In this ranks are generally

¹ The Government of the Republic of Indonesia, "The Attachment of the Presidential Regulation Number 10 of 2021," t.t.

people who uphold religious principles, both as individuals and as part of religious mass organizations.

In addition, almost all religious-based parties, such as the United Development Party (PPP), the National Awakening Party (PKB), the National Mandate Party (PAN), the Prosperous Justice Party (PKS), and several government opposition parties, have very loudly voiced their rejection of the imposition of the presidential regulation. Regardless of the political motive to increase the electoral rating by ingratiating their party supporters, they firmly reject and are even willing to take an opposition position against the government. Their reason is quite simple, that the Attachment III of the Presidential Regulation Number 10 of 2021 is not in line with the spirit of the 1945 Constitution and *Pancasila*, especially the first principle of "God Almighty".

However, despite the large number of loud voices from the majority group of supporters of the abolition of the presidential regulation on investment in liquor and alcoholic drink, there are a small number of community groups who reject the abolition. Their reason is that in fact the presidential regulation already describes the existence of clear regulations regarding certain territorial restrictions as a form of local wisdom of indigenous peoples. Because there is a small part of society whose rights must be fulfilled, and this includes the right to survive by making efforts to fulfill their needs.

In the midst of the collapse of the country's economic pillars due to the Covid-19 pandemic, some small groups who agree with the Attachment of the Presidential Regulation Number 10 of 2021 are very optimistic that it is precisely at this time that the state must rise from adversity in all fields, especially in the economic field. With more and more investors investing capital in Indonesia, the Indonesia's economic condition

will soon revive, particularly in areas that are often the destination of both foreign and domestic tourists. They are very optimistic that this policy can increase the return of foreign tourist visits to Indonesia, especially the four areas that have the potential for foreign tourist arrivals.

Departing from the above description, this study looks at the repeal of the Attachment III of the Presidential Regulation Number 10 of 2021 concerning the business sector of investment in liquor and alcoholic drink industry within the perspective of human rights and *maqasid al-shari'ah*. Apart from that, from the constitutional aspect, it is to know whether the presidential decision can be justified or not.

Overview of the Attachment III of the Presidential Regulation Number 10 of 2021

On February 2, 2021, the government, President Jokowi, decided to revoke the regulations regarding investment in liquor and alcoholic drink industry as listed in the Attachment III of the Presidential Regulation Number 10 of 2021. The attachment details the types of business fields with certain requirements. At least, there are three types of businesses that are open to investment, namely priority business fields, business with cooperative partnerships and Micro, Small and Medium Enterprises, and business with certain conditions. Meanwhile, the liquor industry is included in the category of business sectors with certain requirements. This means that the presidential regulation has the potential to open the door to the liquor industry through investment.

In fact, investment in the liquor industry cannot be enforced in Indonesia automatically. This is because not all regions of Indonesia can accept this regulation. Therefore, the Indonesian government adopted a policy that business with certain requirements in the form of

investment in the liquor industry must meet two requirements, namely; first, investment can only be made in a number of provinces, namely Bali, East Nusa Tenggara, North Sulawesi, and Papua, with due observance of the local culture and wisdom; second, investments outside the provinces must be stipulated by the Head of the Investment Coordinating Board based on the governor's recommendation.

Prior to the existence of the Presidential Regulation Number 10 of 2021, the liquor and alcoholic drink industry was included in the closed business sector. This point is in article 12 of Law Number 25 of 2007² concerning investment and in the Presidential Regulation Number 76 of 2007³ concerning the criteria and requirements for the preparation of closed business and opened business with requirements in the investment sector.⁴ In addition, the liquor and alcoholic drink industry was also included in the Presidential Regulation Number 44 of 2016.⁵ The two Presidential Regulations that were revoked previously placed the liquor and alcoholic

² The Government of the Republic of Indonesia, "The Attachment of the Law Number 25 of 2007," t.t.

³ The Government of the Republic of Indonesia, "The Attachment of the Presidential Regulation Number 76 of 2007," t.t.

⁴ Opened and closed business fields are terms known in investment. These two business fields are regulated in Law Number 25 of 2007, Presidential Regulation Number 44 of 2016, and Presidential Regulation Number 10 of 2021. Basically, all business fields are opened to investment activities, except those that are declared closed or opened with the requirements as set out in article 12 paragraph (1) of Law Number 25 of 2007. So, an opened business field is a business field that is carried out without conditions in the context of investment. Meanwhile, closed business fields are certain businesses that are prohibited to carry out investment activities.

⁵ The Government of the Republic of Indonesia, "The Attachment of the Presidential Regulation Number 44 of 2016," t.t.

drink industry as one of the closed business fields for investment.

Articles containing the elimination of investment of the liquor and alcoholic drink industry which included in the closed business sector are as contained in article 77 Paragraph (2) of the Job Creation Law and the Presidential Regulation Number 10 of 2021. Leaving only 6 closed business fields. The six business fields closed to investment include: (1) narcotics cultivation and industry class I; (2) all forms of gambling and/or casino activities; (3) catching fish species listed in Appendix I of the International Trade in Endangered Species of Wild Fauna and Flora (CITES); (4) utilization or taking of corals and utilization or taking of corals from nature used for calcium limestone building materials, aquariums, and souvenirs/jewelry, as well as recent death streaks; (5) chemical weapons manufacturing industry; and (6) industrial chemicals and ozone depleting substances.

In the Appendix III of the Presidential Regulation Number 10 of 2021, there are 4 standard classifications of Indonesian business fields related to liquor and alcoholic drink, namely the alcoholic liquor industry with number KBLI 11010, the alcoholic drink industry and wine with number KBLI 11031, trade in soft liquor or alcoholic drink with number KBLI 47221, as well as a retail trade of liquor and alcoholic drink with number 47826.

In detail, the Presidential Regulation Number 10 of 2021 regulates all business fields for investment activities. This regulation is stipulated in article 2, that all business fields are opened to investment activities, except for business fields that are declared closed to investment and business for activities that can only be carried out by the central government. This was taken by the government in order to provide regulations for the national interest and

anticipatory steps against things that could threaten the life of the nation and state.

Meanwhile, the Appendix III of the Presidential Regulation Number 10 of 2021 which regulates the opening of investment in the liquor industry and the conditions are that: (1) for new investment can be made in Bali Province, East Nusa Tenggara Province, North Sulawesi Province, and Papua Province by paying attention to the local culture and wisdom; (2) and investment outside the regions mentioned in point one can only be stipulated by the Head of the Investment Coordinating Board based on the recommendation of the governor; (3) The retail trade of liquor or alcoholic drink may only be carried out through special and closed distribution networks.

Concept of Human Rights and *Maqasid al-Shari'ah*

Human rights are the basic rights that humans have since they were born. This right cannot be contested because it is a gift from God Almighty. Human rights are the basic rights that are naturally inherent in humans, are universal and enduring. In Indonesia, human rights, in particular, are regulated in Law Number 39 of 1999.⁶ Some of the characteristics of human rights are: first, they are intrinsic. It is a right that is owned by all people from birth; the second is universal. It means that these rights apply to all people regardless of social status, religion, ethnicity, race and other differences; the third is permanent. It means that these rights cannot be eliminated or transferred to other people; fourth is individual.⁷ It is a

⁶ The Government of the Republic of Indonesia, "The Attachment of the Law Number 39 of 1999," t.t.

⁷ This individualistic idea is often known as liberalism (freedom) which was introduced by John Locke and Jan Jaques Rousseau. This opinion was later quoted by Max Boli Sabon in his book "Human

right that cannot be shared with others and everyone has the right to obtain their rights that have been regulated and defined.

In the context of human rights, human rights and obligations are two things that are interrelated and have a causal relationship. A person can get his rights when he has carried out his obligations firstly. In the Law of the Republic of Indonesia Number 39 of 1999,⁸ article 1 paragraph 2, it is explained that human rights are a set of obligations which if not implemented, and then human rights will not be realized. This means that human obligations are those that must be carried out by every human being with the aim of upholding human rights as a whole.

At the level of human rights in the world, Max Boli Sabon offers the concept of human rights in three generalizations, namely: first is civil and political rights⁹: such as the right to self-determination, the right to life, the right not to be sentenced to death, the right not to be tortured, the right not to be detained arbitrarily, the right to a fair, independent and impartial trial. Meanwhile, examples of political rights are the right to express idea or to express opinions, the right to assemble and associate,

Rights". This understanding is understood that since natural life (naturalist status) humans have had human rights, including rights that are privately owned. Human rights include the right to life, the right to freedom and independence, as well as property rights (the right to own something). See: Max Boli Sabon, *Hak Asasi Manusia* (Jakarta: Universitas Atma Jaya, 2014), 87.

⁸ The Government of the Republic of Indonesia, "The Attachment of the Law Number 39 of 1999."

⁹ These civil and political rights are enshrined in the International Covenant on Civil and Political Rights and have been ratified by Indonesia through Law Number 12 of 2005 concerning the ratification of the International Covenant on Civil and Political Rights.

the right to get equal treatment before the law, the right to vote and be elected, and the right to sit in government.

The second is economic, social and cultural rights. (1) Examples of economic rights are the right to work, the right to get the same wage for the same work, the right not to be forced to work, the right to leave, the right to get social security, the right in the form of family allowances, the right to have social services, the right to security when unemployed, suffering from illness, disability, widowhood, reaching old age, mother and child rights to special care and assistance, social protection rights for children outside of marriage. And (3) examples of cultural rights are the right to education, the right to participate in cultural activities, the right to enjoy scientific advancement, the right to obtain protection for copyrighted works.¹⁰

The third includes six types of rights, namely: (1) the right to self-determination in the economic, social, political and cultural fields; (2) the right to economic and social development; (3) the right to participate in, and benefit from, the common heritage of mankind, as well as other information and advancement; (4) the right to peace; (5) the right to a healthy environment; (6) the right to humanitarian assistance.¹¹

According to Jimly Ashiddique, in his book "Constitutional Law and Pillars of Democracy", the three models of human rights created by Max Boli Sabon are more vertical, namely the relationship between the people and the rulers. He added with the fourth conception of human rights, namely from a horizontal perspective. According to Jimly Ashiddique, currently there have been

¹⁰ These economic, social and cultural rights are embodied in the ratification of the International Covenant on Civil and Political Rights and have been ratified in Law Number 11 of 2005.

¹¹ Sabon, *Hak Asasi Manusia*, 31–33.

three horizontal power groups that influence each other, namely state power, world economic power (global capitalism and multinational companies), and the power of civil society. In other terms, there has been a struggle between three influential groups of power, namely the state, market and civil society. Thus, the fourth human right is the right of one group not to be oppressed by another in a horizontal relationship pattern.¹²

In order to avoid a dichotomy between human rights on a world scale and Indonesia¹³, Jimly Asshiddiqie argued that when the 1945 Constitution was amended constitutionally, by adding Chapter XA entitled human rights, constitutionally all Indonesians accepted the concept of human rights as a concept which is in line with the Pancasila ideology. Thus, all debates about the concept of human rights that occurred during the struggle for independence have disappeared, and now there are no longer any cross-over differences of opinion regarding human rights to be included in the 1945 Constitution.¹⁴

¹² Jimly Asshiddiqie, *Hukum Tata Negara dan Pilar-pilar Demokrasi* (Jakarta: Kompas, 2005), 209–29.

¹³ The legal basis of human rights in Indonesia are: (1) the 1945 Constitution; (2) Law Number 39 of 1999 concerning human rights; (3) Law Number 11 of 2005 concerning ratification of the International Covenant on Economic, Social and Cultural Rights; (4) Law Number 12 of 2005 concerning ratification of the International Covenant on Civil and Political Rights.

¹⁴ According to Max Boli Sabon, during the era of Indonesia's independence struggle, there were several debates about whether or not the concept of human rights was included among the nation's founding figures, including: (1) Soekarno was against human rights of the world being included in the 1945 Constitution because conceptually, it was individualistic in the ideology of liberalism. These ideas are not in accordance with the character and behavior of the Indonesian people. (2) Similar to Soekarno, Soepomo also argued that the human rights were more individualistic, so that they contradicted the understanding of the familial state that was being

Moving on from the discussion about human rights which is more oriented towards upholding basic human rights as a gift from God Almighty, in Islamic law is also known as the theory of *maqasid al-shari'ah* which aims at how religious people can realize the goals of the lawmaker (Allah SWT) with more oriented to the values of the greatest benefit for human life. At least, the theory of *maqasid al-shari'ah* has now undergone two fundamental developments, namely a shift from the classical to contemporary *maqasid* theory and the volume of studies around the world. *Maqasid al-shari'ah* is currently projected as an alternative to Islamic legal theory so that it can always be side by side with modernity.

In the study of *maqasid*, the final goal to be achieved is how to realize the greatest possible benefit for human life. According to the term, *maslahah*¹⁵ (interest/*manfa'ah*) is a word that is not mentioned in the text of both in *al-Qur'an* and the *Sunnah* clearly. The embryo of the *maslahah* theory in the realm of Islamic legal methodology has

built. (3) Mohammad Hatta is of the opinion that human rights of the world need to be included in the 1945 Constitution to avoid abuse of power by the state against citizens when one day a rule of law (*rechtsstaat*) turns into a power state (*machtsstaat*). (4) Mohammad Yamin is of the opinion that human rights of the world need to be included in the 1945 Constitution as a protection for the independence of citizens which must be recognized by the 1945 Constitution. See: Sabon, *Hak Asasi Manusia*, 89.

¹⁵ In term of material, the scholars of *usul al-fiqh* divide the *maslahah* into two: (1) *maslahah al-'ammah*, the general benefit which concerns the interests of many people, and (2) *maslahah al-khasah*, personal benefit which concerns the individual. And in terms of *maslahah* existence, there are three forms, namely: (1) *maslahah mu'tabarah*, benefit which is supported by syari'at; (2) *maslahah mursalah*, benefit which is not supported by the argument of the text, but it has strong support from the implicit meaning of a number of existing texts; (3) *maslahah mulghah*, benefit that is rejected because it is against the shari'ah law.

actually been known during the time of the companions. However, it only found its form as an epistemological methodology of Islamic law starting in the 5th century of Hijriyyah.¹⁶

The *maqasid* scholars such as 'Izz al-Din Ibn 'Abd al-Salam defines *maslahah* as "bringing all forms of benefit or rejecting all destructive possibilities".¹⁷ Al-Shatibi said: "*maslahah* is anything that aims to strengthen the continuity and perfect human life in accordance with common sense". In short, he said that *maslahah* is "attracting benefit and throwing away *mafsadah*". Meanwhile, according to Abu Hamid al-Ghazali that *maslahah* is: "maintaining the objectives of the *shari'ah* by taking advantage and rejecting harm". According to him, the objectives of the *shari'ah* include five basic principles, namely: protecting religion (*hifz al-din*), protecting the soul (*hifz al-nafs*), protecting reason (*hifz al-aql*), protecting human sustainability (*hifz al-nasl*), protecting property (*hifz al-mal*).

The various definitions of *maslahah* given by scholars show that the *maslahah* dimension is a noble principle that must be fought for through the methodology of Islamic law which is about to be shifted from theology-based theory to anthropology-based theory. As a method of legal *intinbat* which is closer to reason (ratio-based methodology), not all jurists would accept *maslahah*. Some jurists from *Mu'tazilah* reject the existence of *maslahah al-mursalah*. Even though there are a group of scholars who have a different concept of *maslahah* from mainstream scholars, however, in principle they

¹⁶ Jasser Auda, "A Maqasidi Approach to Contemporary Application of the Shari'ah," *Intellectual Discourse* 19, no. 1 (2011): 13.

¹⁷ 'Abd al-Wahhab Ibn 'Ali al-Subki, *Al-Ashbah wa al-Nazair*, ed. oleh 'Abd Mawjud, vol. 1 (Beirut: Dar al-Kutub al-'Ilmiyyah, 1991), 12.

agree that *maslahah* is how to give benefit to human life both in the world and in the hereafter.

According to Jasser Auda, *maslahah* can be used as a form of expression in the stipulation of Islamic law. He further said that the categorization of *maslahah* into *maslahah mu'tabarah* and *maslahah mursalah* would actually narrow the scope of Islamic law even more. Therefore, whether *maslahah mu'tabarah* or *maslahah al-mursalah* should still be seen as *maslahah*. *Maslahah* will be more effective if it is based on *maqasid* by still paying attention to the principles of universality, breadth and flexibility of Islamic law.¹⁸

Benefits and Dangers of Liquor Investing in Indonesia

There have been mixed responses to the cancellation of the implementation of the Attachment III of the Presidential Regulation Number 10 of 2021 concerning the granting of investment permits in the liquor and alcoholic drink sector in 4 provinces in Indonesia (Bali, East Nusa Tenggara, North Sulawesi, and Papua). The Indonesian Ulama Council (MUI) firmly rejects the government to legalize the alcohol investment policy even though it is only in the four provinces. They argue that the policy has more harm than good. Some of the points that become the basis for the rejection are: (1) Liquor and Icoholic drink are clearly included in illegal drinks, as stated in the Fatwa Number 11 MUI of 2009;¹⁹ (2) according to the deputy chairman of the Indonesian Ulama Council, Anwar Abbas, that liquor business is an

¹⁸ Jasser Auda, *Maqasid al-Shari'ah as philosophy of Islamic Law, A Systems Approach* (London-Wasinthong: IIIT, 2008), 38.

¹⁹ Indonesian Ulema Council, "The Attachment of the Fatwa Number 11 MUI of 2009," t.t.

endeavor that is detrimental and damaging so that it will cause harm to the people of Indonesia.²⁰

An economist and head of the Indonesian Center of Reform on Economics (CORE), Yusuf Randy Manilet, assessed that there are two disadvantages if this policy continues, including: (1) the emergence of doubts among investors. Investments in liquor have the potential for resistance from some groups of the local community. This, automatically, will affect investors who will invest in the industry in those regions to be increasingly doubtful; (2) investment focus is irrelevant. The supply of alcoholic drink in the four provinces is actually sufficient, so that the focus on alcoholic drink investment is less relevant in these four regions. This is also supported by the argument that the economic strength of the four regions is the tourism sector and not alcoholic drink.

Another economist from the Institute for Development of Economics and Finance (INDEEF), Bima Yudhistira, also has the same opinion that the enactment of the Attachment III of the Presidential Regulation Number 10 of 2021 will actually be detrimental to the Indonesian nation because the majority of its people are Muslim. It is very worried that there will be horizontal turmoil regarding religion and of course it will make Indonesia's image even more unreliable in the eyes of foreign investors, especially from Muslim countries.

Ipung Nimpuno, as Chairman of the Association of Indonesian Beverage Importers and Distributors, added that investors will definitely consider the political conditions of a country that is their investment destination. If the political weather is deemed unstable, especially due to issues of religious sentiment being

²⁰ Tim Editor, "Untung Rugi Investasi Miras di 4 Provinsi," 1 Maret 2021, <https://kumparan.com/berita-bisnis/untung-rugi-investasi-miras-di-4-provinsi-1vGtTR43q7N>.

raised, then investors will think over and over again to keep investing in the conflict area. This is understandable because every investor would want a good profit more politically even economically. That is why the role of government is very important in providing clear and transparent regulations.

Meanwhile, in terms of the benefits that will be obtained by the government with the enactment of the Presidential Regulation Number 10 of 2021, are: (1) the policy can benefit in terms of increasing the country's foreign exchange; (2) creating jobs for the local area which of course will increase economic activity in the tourism-based area; (3) due to the covid-19 pandemic, almost all parts of Indonesia are affected. By opening up investment in liquor, especially in the tourism sector in the four provinces, this will be an advantage in itself because foreign tourist visits to Indonesia will stabilize again.²¹

A number of observers assessed that opening up investment in the liquor and alcoholic drink sector will have positive and negative impacts. The Padjadjaran University economic observer, Aldrin Herwany, considers that legalizing alcoholic drink investment can create jobs. This investment can increase economic activity in tourism-based areas as long as it does not violate the local ethics and wisdom. According to him, this investment is only effective for the alcoholic drink industry in Papua, Bali, East Nusa Tenggara and North Sulawesi, which incidentally are visited by many tourists. However, he refused to expand investment to other areas. He added that in the medium term, he is optimistic that this policy can increase the return of foreign tourist visits to

²¹ Tim Editor.

Indonesia, especially the four regions that have the potential for foreign tourist arrivals.²²

Pros and Cons of Revocation of Liquor Industry Investment

The abolition of the Attachment III of the Presidential Regulation Number 10 of 2021 invites pro and contra reactions among the Indonesian people. This presidential regulation contradicts the previous regulation which contained regulations on the liquor and alcoholic drink industry. At that time, the liquor industry was on the negative investment list. This is stated in the Presidential Regulation Number 44 of 2016 concerning a list of closed business and opened business with requirements in the investment sector. The regulation contains a list of 20 closed business fields, including the liquor industry. Meanwhile, the Presidential Regulation Number 10 of 2021 only regulates the requirements for closed investment of six business fields, including the cultivation of the drug industry, all forms of gambling, catching fish species listed in the the Appendix or CITES, taking or utilizing coral from nature, the chemical weapons industry, and ozone depleting chemicals industry. That way, the government has set the liquor and alcoholic drink industry as a positive investment list starting in 2021.

Responding to the Presidential Regulation Number 10 of 2021, the Chairman of the MUI Da'wah Commission, Cholil Nafis, requested that the Presidential Regulation Number 10 of 2021 be repealed. He considered that the

²² Ulfa, "Untung Rugi Investasi Miras di Tengah Penolakan Masyarakat CNN Indonesia," 1 Maret 2021, <https://www.cnnindonesia.com/ekonomi/20210301113524-92-612095/untung-rugi-investasi-miras-di-tengah-penolakan-masyarakat>.

regulation did not improve Indonesia's future. According to him, currently crime is increasing day by day, domestic violence, juvenile delinquency are also increasing. One of the most dominant causes is alcoholism. Therefore, if this nation is to be saved, it must start with the government which strictly prohibits alcoholic drinks. Apart from that, as a consequence of a country with one God Almighty, it is very inappropriate for that rule to be enforced. He further said: "I think the presidential regulation must be repealed if the government still wants to listen to the aspirations of the people, because this is not beneficial for the future of the people. Maybe the investors will benefit, but the harm to humans will be even greater".²³

In fact, in 2009, the Indonesian Ulama Council issued Fatwa Number 11 on the punishment for alcoholic drink and liquor.²⁴ The fatwa explains that the law on liquor and alcoholic drink is prohibited (*haram*). Furthermore, the Indonesian Ulama Council has also recommended the government to ban alcoholic drinks in the community, namely by not giving permission to establish factories and production to trade. The reason for the rejection of alcoholic drink is not only a matter of Islam which explicitly rejects it, but, furthermore, it is for the benefit of the nation and state in the future. In fact, in the midst of increasing competition for human resources, the government has a very dominant role so that the brains of the nation's generation are not poisoned by alcohol.

²³ Dwi Aditya Putra, "Fakta-Fakta Lampiran Perpres 10/2021 soal Investasi Miras yang Dicabut Jokowi," 2 Maret 202M, <https://www.liputan6.com/bisnis/read/4496269/fakta-fakta-lampiran-perpres-102021-soal-investasi-miras-yang-dicabut-jokowi>.

²⁴ Indonesian Ulema Council, "The Attachment of the Fatwa Number 11 MUI of 2009."

Another rejection of the Presidential Regulation Number 10 of 2021 came from the United Development Party (PPP). The party emphatically rejects the government's plan to open the door to investment in the liquor industry. The United Development Party believes that investing in alcohol is worse than benefits. Secretary of the United Development Party, Achmad Baidowi, said that the government's plan to open up investment in the liquor industry needs to be considered not to be implemented. Considering that the dangers of which is further than outweigh the interests of economic gain. The future of the nation's generation will be threatened if this presidential regulation is legalized.

Furthermore, Achmad Baidowi said that the death of Japanese citizens in Indonesia was the result of drinking alcohol. Then, recently, there are instances when the police shot three people after drinking liquor. One of the three victims who died as a result of the gunfire was a member of the Indonesian National Army (TNI). The commotion caused by this alcoholic drink seems to continually tarnish Indonesia's good name in the eyes of the world, from the comments of the Japanese Ambassador to the tarnishing of law enforcement officials. Therefore, if it is allowed to do so, the people will not trust the government. This is because the bad effects of alcohol and liquor, which are slow but sure, will damage the joints of the life of the nation and state.²⁵ He explained, based on World Health Organization's data in 2016, there were more than 3 million people in the world who died because of alcoholic drinks. The data he quoted further strengthens the argument that the presidential regulation on liquor and alcoholic drink deserves to be abolished.²⁶

²⁵ Indonesian Ulema Council.

²⁶ Indonesian Ulema Council.

In contrast to several groups that are pro to the presidential policy, researchers from the Center for Indonesian Policy Studies (CIPS) argue that the repeal of the Attachment III of the Presidential Regulation Number 10 of 2021 was too hasty, without maximizing the socialization process. The Head of the Investment Coordinating Board stated that the presidential regulation will remain in effect even though the liquor investment attachment is revoked. Lack of socialization has resulted in misunderstanding and rejection from some groups in society. In fact, he said, if we want to examine it further, the presidential regulation did not change the provisions regarding the consumption and distribution of alcoholic drinks. Pingkan Audrine Kosijungan said:

“Our observation at CIPS found that the reasons for those who oppose the policy of opening up investment for alcoholic drink are mostly based on the principle of morality and the provisions of religious law which prohibit the consumption of alcoholic drink because they are prohibited (*haram*). In fact, this presidential regulation regulates investment for the production of alcoholic drinks, especially in areas that have the potential to develop their traditional drinks, such as in North Sulawesi, East Nusa Tenggara and Bali. Even the regional heads in the three provinces delivered press statements welcoming the presidential regulation. Meanwhile for Papua, his party was surprised why the government included the province. In fact, the regulatory framework there is clearly restrictive towards the production and consumption of alcoholic drinks, unlike in the other three provinces.

Therefore, there is no need to revoke it, just tighten the implementation".²⁷

In line with CIPS, the Head of the Investment Coordinating Board, Bahlil Lahadalia stated that there had been a lot of debate about alcohol investment before the government opened the license to invest in liquor and alcoholic drink in Indonesia. "We understand well that the compilation process goes through a long debate and comprehensive discussion while still paying attention to business actors and the thoughts of religious, community and youth leaders", Bahlil explained in a press conference. Bahlil claims the process of making the Presidential Regulation and Government Regulation which are derivative rules of Law Number 11 of 2020²⁸ concerning Job Creation are very open.²⁹

Separately, a Trisakti University Public Policy analyst, Trubus Rahardiansyah, said that in fact, the Attachment III of the Presidential Regulation Number 10 of 2021 does not need to be revoked. What the government actually needs to do is to tighten its implementation. Because according to him, the mechanisms and procedures have been strictly regulated, who is the buyer, the types and including the distribution technique? He added that local liquor is an attraction for foreign tourists to Indonesia. Therefore, he assessed that the designation should be clarified, as well as classified

²⁷ Gtp, "Pakar Nilai Jokowi Tergesa-gesa Cabut Lampiran Perpres Soal Investasi Miras," 3 Maret 2021, <https://www.dw.com/id/pakar-nilai-jokowi-tergesa-gesa-cabut-izin-investasi-miras/a-56752862>.

²⁸ The Government of the Republic of Indonesia, "The Attachment of the Law Number 11 of 2020," t.t.

²⁹ Emir Yanwardhana, "Sederet Alasan Jokowi Cabut Lampiran Perpres Investasi Miras," 3 Maret 2021, <https://www.cnbcindonesia.com/market/20210303090101-17-227420/sederet-alasan-jokowi-cabut-lampiran-perpres-investasi-miras>.

which ones are for tourists to consume and which are for local residents. Of course, the government must prepare strict sanctions so that its distribution is not misused.³⁰

Legal Basis for Revocation of the Attachment III of the Presidential Regulation Number 10 of 2021

In the provisions that apply in Indonesia, a statutory regulation can only be repealed by a statutory regulation that is at the same level or has a higher level governing such revocation. Meanwhile, President Joko Widodo, in his press statement at the Merdeka Palace on Tuesday, March 2, 2021, said that he had withdrawn the Attachment III of the Presidential Regulation Number 10 of 2021 after receiving input and considerations from several religious organizations, such as the Indonesian Ulama Council (MUI), *Nahdlatul Ulama* (NU), *Muhammadiyah*, and other mass organizations as well as other religious figures and including several legal considerations, suggestions, and input from provinces and regions. They assured that this presidential regulation would have a sectoral impact that would have a direct impact on the life of the nation and state if it is maintained.

From the perspective of public policy, this is one of the moments where the Jokowi's policy leadership is being tested. Various hypotheses related to the steps taken by the president have emerged, starting from the pros and cons. The two camps, which oppose and support the repeal of the presidential regulation, have enormous potential to protest against the president. However, we cannot also imagine if the president took steps to defend the presidential regulation. It can be ascertained that religious Indonesians, especially the majority of Muslims,

³⁰ Yanwardhana.

will go down the road through the ongoing Covid-19 pandemic. Their goal is one, namely the repeal of the presidential regulation because it is considered to have injured the life of the nation and religion. As a devout country and all religions reject intoxicating alcohol, Jokowi's move by revoking the Attachment III of the Presidential Regulation Number 10 of 2021 is quite appropriate.

There are two interesting things that can be learned from Jokowi's decision to revoke the presidential regulation. It is because the policy leadership of the leader of a country is the key of the good and effective governance. Good public policy is when a decision made by a leader can effectively become a tool to achieve the country's goals as stated in the 1945 Constitution. Second, good public policy will also depend on the leader's ability to interpret the decisions he makes, turning it into action, and controlling its implementation across the country. So, even though there are a small number of people who disagree with the decision, the majority of the Indonesian people welcome the decision. This will, in fact, further increase public confidence in Jokowi's leadership.

Based on the Presidential Regulation Number 44 of 2016, several government legal reasons that may be taken to establish closed business fields for investment, both foreign and domestic, are due to health, moral, culture, environmental, defense and national security factors, and the other nation's interests. Based on article 12 paragraph (2) Law Number 25 of 2007, the business fields closed to foreign investors are: (1) production of weapons, ammunition, explosives, and war equipment; and (2) business fields that are explicitly declared closed based on law.

Between Local Wisdom and Religious Communities

Local wisdom is a view of life, science, and civilization of a particular local community as a strategy in responding to and fulfilling their needs, especially when problems occur in social life and morality which are considered to be damaging the existing order. Another term for local wisdom is local knowledge, local intelligence, local customs that have been agreed upon by community members collectively to carry out certain actions that have beneficial values for themselves.

In addition, local wisdom can also be understood as a social and humanitarian problem that is offered to restore civilization from the crisis of modernity. As local wisdom, it is often in a position at odds with the values and order that is happening in society at large. Usually, local wisdom is often faced with modern scientific standards. Modern science is considered to be manipulating nature and culture because it often eliminates aspects of value and morality on the grounds of objectivity and relativity. Meanwhile, the word "local" specifically refers to a limited interaction space and a limited value system. As an interaction space that has been designed in such a way that involves a pattern of relationships between humans and humans or humans and their physical environment.

According to Permana, local wisdom is a creative answer to local-geographic-political, historical, and situational phenomena. Local wisdom can also be interpreted as a view of life and knowledge and various life strategies in the form of activities carried out by local people in answering various problems in fulfilling their needs.³¹ According to the Big Indonesian Dictionary, wisdom means intelligence as something that is needed in

³¹ Cecep Eka Permana, *Kearifan Lokal Masyarakat Baduy dalam Mengatasi Bencana* (Jakarta: Wedatama Widia Sastra, 2010), 20.

interaction. The word local denotes a certain place or a place where it grows which may be different from other places.³² Whereas in Law Number 32 of 2009, it is explained that local wisdom is the noble values that apply in the order of community life, among others, to protect and manage the environment in a sustainable manner.

The relationship between local wisdom and religion is that religion always teaches positive values for human life, such as truth, justice, responsibility, harmony, and so on, so that human life is safer and more peaceful. Meanwhile, what is the target point of local wisdom is how the traditional truth in an area can be defended. Local wisdom contains a high value of life and deserves to be continuously explored, developed, and preserved as the antithesis of socio-cultural change and modernization. Local wisdom, as a product of past culture that occurs continuously, is used as a guide for life. Even though it has local value, the value contained therein is considered very universal. Local wisdom is a form of cultural excellence in the local community as well as geographical conditions in a broad sense. This is where the meeting point between religion and local wisdom, namely in the spirit of wanting to make social life better, safer, more orderly, gives more value to goodness and benefits, although there is often a dichotomy between the two.

An example of the dichotomy between local wisdom and religious doctrine is in the case of trafficking and consuming liquor and alcoholic drink. One side of the local community or indigenous people sees it as a custom that is considered normal and does not violate existing norms. In fact, it has a dominant economic aspect to support family life. On the other hand, consuming and

³² Muin Fahmal, *Peran Asas-asas Umum Pemerintahan yang Layak dalam Mewujudkan Pemerintahan yang Bersih* (Yogyakarta: UII Pers, 2006), 30.

trading liquor and alcoholic drinks result in an increase the number of crimes that occur in society and various other negative consequences that are very detrimental to their lives. It is for this reason that any religions prohibit the consumption of alcohol with various considerations. Therefore, in the case of the dichotomy that occurs between the two, the state must be present to break up through the regulation of the boundaries of the two and the search for common ground between the two.

Analysis of Human Rights and *Maqasid al-Shari'ah* on the Revocation of the Attachment of the Presidential Regulation Number 10 of 2021

This section discusses how human rights and *maqasid al-shari'ah* are used as an analysis tool for the revocation of the Attachment III of the Presidential Regulation Number 10 of 2021 concerning investment in the liquor and alcoholic drink industry. In general, the two analysis knives have the same final result, namely how to realize the value of benefits in the form of fulfilling basic human needs as a creation of Allah SWT. However, in practice, there are several characteristics and ways of working that are slightly different, especially the basic principles and orientation of meeting human needs. In detail, the two analyzes are as follows:

First is the analysis of human rights on the revocation of the Attachment III of the Presidential Regulation Number 10 of 2021. As stated in the theoretical basis, human rights are the basic rights that humans have since birth which are naturally inherent in humans, are universal, and cannot last, can be contested because they are a gift from God Almighty. In this context, the Presidential Regulation Number 10 of 2021 provides space for investment activities in the liquor and alcoholic drink industry in Indonesia. The investment and trade activities

in liquor and alcoholic drink that occur in Indonesia are not just personal or individual activities anymore but have led to group actions that involve many components in society. As a group action, it means that it is no longer within the realm of the basic human rights as an individual which is inherent in human nature, universal in nature, and can never be contested.

Based on the analysis of human rights, as regulated in Law Number 39 of 1999,³³ the enactment of the Attachment III of the Presidential Regulation Number 10 of 2021 or the revocation of the presidential regulation must be measured through clear, measurable and responsible indicators. It is clear that Law Number 39 of 1999 has made it clear that basic human rights must meet the main criteria of human rights, namely intrinsic, universal, permanent, and individual. If the reason of the groups who agree with the implementation of the government regulation is that they have the right to live and defend their life as a gift from God Almighty, then this can be justified. This means that the right to life is an implementation of the essential and individual character.

However, if it is seen from a universal and permanent perspective, then a question will arise is "why did the groups that contested the enforcement of the presidential regulation arise?" This indicates that the right to live and sustain life by doing liquor transactions is not necessarily justified because there are other people's rights at the same time they want to live and sustain life by avoiding consuming liquor and alcoholic drink. Their reasons are quite reasonable, namely from the health aspect that liquor and alcoholic drink can damage one's intellect and intellectual abilities.

³³ The Government of the Republic of Indonesia, "The Attachment of the Law Number 39 of 1999."

As a supporter of the physical health, Head of Subdit Laka of the Directorate of Law Enforcement of the National Police Corps, Commissioner Agus Suryo Nugroho, explained that in the 2019 period, the total number of traffic accidents was 121,641 cases. Of that number, it was said that 888 incidents or 0.73 % were caused by alcohol which caused 241 people died, 195 were seriously injured, and 533 people were slightly injured. While based on data in 2020, it shows that the total number of accidents was 101,198, with 726 incidents or 0.71 % involving the use of liquor and alcoholic drink. Accidents due to liquor and alcoholic drink in 2020 left 201 people dead, 184 people seriously injured and 417 others slightly injured.³⁴

Agus also said that Papua and North Sulawesi were the areas with the highest number of accidents due to the influence of liquor and alcoholic drink. Previously, a transportation observer, Darmaningtyas, stated that whatever the reason, liquor and alcoholic drink should be banned, not mass-produced officially. He said many cases of accidents were triggered by drunkenness. He added that liquor is one of the biggest causes of traffic accidents. Therefore, the World Health Organization also recommends not producing and consuming alcohol in excess for purposes that are not justified by applicable laws. This is because how great the negative effects of drinking are that outweigh the positive effects.³⁵

In the perspective of the human rights, Max Boli Sabon states that humans have basic rights in the form of

³⁴ Ryh, "Data Kecelakaan Lalin Akibat Miras, Ratusan Tewas 2019-2020," 2 Maret 2021, <https://www.cnnindonesia.com/teknologi/20210302104302-384-612531/data-kecelakaan-lalin-akibat-miras-ratusan-tewas-2019-2020>.

³⁵ Ryh.

civil and political rights:³⁶ such as the right to self-determination, the right to life, the right not to be sentenced to death, the right not to be tortured, the right not to be arbitrarily detained, the right to a fair, independent and impartial trial. Based on the features of the civil and political rights, alcoholic businessmen, alcoholic drinkers, and parties sympathetic to this business, they have the same rights as groups that oppose alcohol investment. This can be justified in the constitution while it is still within the corridor of the current constitution. Unless, it is found that actions and behaviors that violate the rule of law, then anyone from both sides can be considered guilty and must accept legal consequences.

Furthermore, in the perspective of economic, social and cultural rights, such as the right to work, the right to get the same wages for equal work, the right to self-determination in the economic, social, political and cultural fields, the right to economic and social development . Groups that agree with the presidential regulation have economic, social and political rights in order to determine their destiny to get a decent life, especially during the Covid-19 pandemic. However, these basic rights also need to be seen from the aspects of the right to peace, the right to a healthy environment, the right to humanitarian assistance.³⁷ The data presented by the Indonesian Reuplik Police above can be used as benchmarks and evidence that the fulfillment of basic economic, social and cultural rights, in the context of drinking liquor and alcoholic drink, can interfere with the

³⁶ These civil and political rights are stipulated in Law Number 12 of 2005 concerning the ratification of the International Covenant on Civil and Political Rights.

³⁷ Sabon, *Hak Asasi Manusia*, 31–33.

continuation of the fulfillment of basic needs in the form of peace, a healthy, safe and peaceful environment.

The second is the analysis of *maqasid al-shari'ah* on the revocation of the Attachment III of the Presidential Regulation Number 10 of 2021. In the study of *maqasid*, the final goal to be achieved is how to realize the maximum benefit for human life. Then Abu Hamid al-Ghazali explained that *maslahah* is: "maintaining the objectives of the *shari'ah* by taking advantage and rejecting harm". The purpose in question rests on five basic human needs, namely: the maintenance of one's religion (*hifz al-din*), safety of the soul (*hifz al-nafs*), safety of reason (*hifz al-aql*), safety of the offspring (*hifz al-nasl*), the safety of property (*hifz al-mal*).

As the data has been presented in the sub-chapter on "benefits and dangers of investing in alcohol in Indonesia", there are various responses to the repeal of the implementation of the Attachment III of the Presidential Regulation Number 10 of 2021 concerning the granting of investment permits in the liquor and alcoholic drink sector in 4 provinces in Indonesia, such as Bali, East Nusa Tenggara, North Sulawesi, and Papua. The reason put forward by the Indonesian Ulama Council against the presidential regulation was that investing in alcohol had more dangers than good. This means that the dangers caused by drinking liquor and alcoholic drink are actually fatal because it can damage the joints of the nation's life, including the nation's future generations. Indeed, from the aspect of the principle of *maqasid, hifz al-mal* (safeguarding property), it is a little connected, but it is still not justified because it is obtained through a process that is not justified by Islamic law.

Based on the principle of *maqasid, hifz al-din* (keeping religion), *hifz al-nafs* (keeping the soul), *hifz al-aql* (keeping sense), it is clear that investment in drinking

liquor and alcoholic drink as stated in the Attachment III of the Presidential Regulation Number 10 of 2021 cannot be justified. From the aspect of *hifz}al-din*, liquor is clearly included in alcoholic drink which is absolutely prohibited (*haram*).³⁸ In terms of *hifz}al-nafs*, the data submitted by the POLRI is sufficient to prove the ferocity of liquor for the safety of one's soul.³⁹ In addition, the liquor business is an endeavor that is detrimental and damaging, so that it will cause harm to the people of Indonesia.⁴⁰

Meanwhile, based on the principle of *hifz}al-'aql*, investment in liquor and alcoholic drink as stated in the Attachment III of the Presidential Regulation Number 10 of 2021 is a practice that will endanger human reason. Therefore, what was conveyed by the Secretary of the United Development Party, Achmad Baidowi, who said that the government's plan, to open up investment in the liquor and alcoholic drink industry needs to be considered not to be enforced is correct. This is because it can damage human reason, especially the generation of nations in the midst of world nations that are competing in various aspects of life, especially science and technology.

Conclusion

From a human rights perspective, the repeal of the Attachment III of the Presidential Regulation Number 10 of 2021 concerning the business sector of investment in the liquor and alcoholic drink industry can be justified locally and in line with the basic values and principles embodied in human rights. However, there are several points of basic rights that should not be violated, such as social

³⁸ This decree is contained in Fatwa Number 11 of the Indonesian Ulama Council of 2009.

³⁹ Ryh, "Data Kecelakaan Lalin Akibat Miras, Ratusan Tewas 2019-2020."

⁴⁰ Tim Editor, "Untung Rugi Investasi Miras di 4 Provinsi."

rights, economic rights and political rights as long as they do not violate the constitution. Therefore, the government is obliged to make regulations, especially how to revive the people's economy which is teetering due to the Covid-19 pandemic.

In the perspective of *maqasid al-shari'ah*, revocation of the implementation of the Attachment III of the Presidential Regulation Number 10 of 2021 is a right step due to investment in liquor and alcoholic drink has more dangers than good. Indeed, from the principle aspect of *maqasid, hifz al-mal* (safeguarding property), it is a little connected but still not justified because it is obtained through a process that is not justified by Islamic law. Based on the principle of *hifz al-din*, it is clear that investment in liquor and alcoholic drink cannot be justified because it is absolutely prohibited (*haram*). In terms of *hifz al-nafs*, alcohol can trigger people to act evil, both to themselves and to others. And based on the principle of *hifz al-'aql*, investing in liquor and alcoholic drink is a practice that will endanger human reason.

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