

## Legal Review of the Prohibition of Alcoholic Beverages

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### Abstract

*Alcoholic beverages, in addition to being contrary to religious norms and the soul of the Indonesian which is religious, have also been proven to claim a large number of lives. This type of research is normative juridical. The results of this study are: To anticipate and/or overcome the misuse of the circulation of alcoholic beverages, the Regional Government is required to conduct a programmed and sustainable order, namely by forming an integrated team consisting of the following elements in accordance with the Presidential Decree No. 3 of 2007: a. POLRI; b. TNI; c. Civil Service Police; d. Health Service; e. Cooperatives, Industry and Trade Service; f. Legal Section; g. Religious Organizations and Community Organizations; and h. Other elements deemed necessary. The team is coordinated by the Regional Apparatus Organization responsible for enforcing Regional Regulations. The Regional Government is required to provide guidance and supervision in order to overcome the dangers of consuming alcoholic beverages containing intoxicating elements, in this case the Health Service is appointed and responsible for the guidance and supervision. Guidance and supervision are carried out in the form of, among others: a. Counseling regarding the dangers of consuming alcoholic beverages; b. Guidance and supervision of Hotel, Restaurant, Pub and Café Managers who have obtained permits and special areas; and c. Rehabilitation of addict victims. Guidance and supervision, by the Health Service can form a guidance team that is determined by the Regent's Decree. Guidance and supervision involves related elements.*

**Keywords:** *Liquor, Alcohol, Legal*

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## INTRODUCTION

Every citizen has the right to a good and healthy living environment, physical and spiritual prosperity, which is a basic right guaranteed by the state to protect the lives of all Indonesian people based on the 1945 Constitution of the Republic of Indonesia. One of the efforts to obtain a good and healthy living environment and protect the community from the negative impacts of alcoholic beverages is to prohibit alcoholic beverages so that the quality of health, order, peace, and security of the community is maintained.

The rampant consumption of alcoholic beverages in Indonesia has reached a very worrying point. Now, consumers of alcoholic beverages are not only adults, but have also begun to target teenagers who are of a fairly productive age. It seems that the presence of alcoholic beverages is no longer something foreign to the people of Indonesia.

Fulfillment of all human rights including the basic rights to obtain a prosperous life physically and mentally, a good and healthy place to live and a good and healthy environment is the State's Obligation and the Government's responsibility, as stated in Article 28I paragraph (4) of the 1945 Constitution of the Republic of Indonesia. (Maryati B, 2017).

The Indonesian Constitution Article 29 paragraph 1 of the 1945 Constitution states that the state is based on the Almighty God. This means that the life of society in it is formed within the framework of religious teachings. In a way, as a religious country, it will be easier to regulate the development of alcoholic beverages or what are often also called liquor (miras) which can threaten human life at any time.

The rapid economic development in the current era of globalization has forced people to think more progressively and change their lives to be able to adapt to the economic development.

In order to meet the needs of life, people must be able to compete to meet their economic needs. This makes people more active in getting money or income quickly and easily even though they justify any means. One of them is by trading or selling. Trading is sometimes done in a fraudulent manner. An example is selling alcoholic beverages or often referred to as liquor. In the Regulation of the Minister of Trade Number 06 / MDag / Per / 1/2015 of 2015 concerning the Second Amendment to the Regulation of the Minister of Trade Number 20 / M-Dag / Per / 4/2014 concerning Control and Supervision of Procurement, Distribution, and Sales of Alcoholic Beverages, it is stated that if you want to carry out alcoholic beverage trading business activities, you must have a SIUP-MB (a permit to be able to carry out special alcoholic beverage trading business activities) first. With this complicated process, people began to take a middle way and ignored the existing regulations. (Erlies Septiana, 2022)

Alcoholic beverages clinically disrupt health because they cause organic mental disorders, damage nerves and memory, brain edema, liver cirrhosis, heart disorders, gastritis, paranoia, and if consumed continuously in the long term will trigger the emergence of chronic diseases. Alcoholic beverages psychologically can permanently damage brain tissue, causing memory disorders, judgment, learning abilities and certain mental disorders. Memory disorders are usually early signs of mental disorders, such as dementia, Alzheimer's, personality changes (schizophrenia), and other mental disorders. These clinical and psychological impacts, in addition to having an impact on physical and psychological conditions that are sick and require high economic treatment costs, also result in the low quality of Indonesian human resources. Alcoholic beverages, in addition to being contrary to religious norms and the soul of the Indonesian nation which is religious, have also been proven to claim a large number of lives. In addition to the impacts on health and psychology, Alcoholic beverages are considered to be a trigger for high crime rates in several regions in Indonesia, where 58% of cases occur due to drunkenness or the influence of alcoholic beverages. This condition often sparks fights/brawls, disrupts public order, loss of security, and damage to social order in society. The negative impacts caused by Alcoholic Beverages are so complex, but in fact Alcoholic Beverages are still widely produced, imported and traded freely, thus endangering human life, especially children and adolescents, loss of security and peace in society, and loss of life. Meanwhile, law enforcement against problems caused by Alcoholic Beverages is still weak.

Legal issues related to the regulation, control, and supervision of the use of alcoholic beverages are still sectoral and partial, while the most urgent need is for a law to serve as an umbrella for all existing laws and regulations, namely Government Regulations and Regional Regulations in several Provinces and Regencies/Cities in Indonesia. Implementing regional regulations requires supervision of the sale of alcoholic beverages as well as the regulation and enforcement of the parties involved in the regional regulations. In this case, the police have the authority to investigate the crime according to the Criminal Code (KUHP) in Article 300 of the Criminal Code which states "shall be punished with a maximum imprisonment of one year or a maximum fine of three hundred rupiah". In the Criminal Code, the crime of alcoholic beverages is regulated in Article 300, Article 492, Article 536-539 which have criminal elements, namely making people drunk, getting drunk in public and selling freely.

According to research from the Ministry of Health, the content of alcoholic drinks commonly consumed by humans is ethyl alcohol or ethanol which is made through a fermentation process from honey, sugar, fruit juice or tubers. Meanwhile, what is contained in adulterated liquor is not ethanol but methyl alcohol or methanol. Methanol is usually used as an industrial material as a solvent, cleaner and paint remover. Methanol can be found in thinner (paint remover) or acetone (nail polish remover). Without anything mixed with it, methanol is very dangerous for health and can even cause death. Moreover, it is mixed with various other ingredients whose type and content are not clear. The crime of alcoholic beverages according to

the Criminal Code, as stated in Article 300 of the Criminal Code which is interpreted as intentionally selling, making drunk and threats of violence forcing to drink intoxicating drinks and Article 492 of the Criminal Code which is interpreted as being intoxicated disturbing public order. Article 536 of the Criminal Code sells alcoholic beverages to minors (Moeljatno, 2007).

Some people who consume alcohol have made drinking alcohol a habit that is difficult to overcome. Alcohol consumers include old, young, teenagers, even children have started to try drinking it because of curiosity or environmental factors. Alcoholic beverages are now one of the biggest problems in Indonesia. Many victims have fallen due to this drink. This drink is often used as a drink for traditional events or as a drink for fun because this drink turns out to cause an addictive effect. Alcohol if consumed excessively can cause disease (Hartati Nurwijaya, 2009). Regulations related to the prohibition of alcoholic beverages are still spread across many laws and regulations and are still sectoral and partial. The absence of a law that specifically regulates Alcoholic Beverages has resulted in weak regulations at the implementation level.

## RESEARCH METHODS

The type of research used by the author is Normative or Juridical-Normative, in connection with the type of research is normative juridical, the approach used is the legal approach applicable in Indonesia (positive law) which usually uses or is based on data sources in the form of a statutory approach and a case approach. Normative research is carried out by examining library materials or secondary data consisting of primary legal materials, secondary legal materials and tertiary legal materials. These materials are compiled, then studied and conclusions are drawn regarding the relationship with the problem being studied. The problem approach is through legislation and cases. (Muhaimin, 2020).

## RESULT AND DISCUSSION

Alcoholic beverages are beverages containing ethanol processed from agricultural products containing carbohydrates by fermentation and distillation or fermentation without distillation, either by giving prior treatment or not, adding other ingredients or not, or processed by mixing concentrate with ethanol or by diluting beverages containing ethanol derived from fermentation.

Every member of society who lives together in a certain environment is certain to have different desires from one another. To realize the intended desire, each member of society has their own way, which may also be different from others, adjusted to their abilities, both spiritually and physically. However, sometimes, some members of society commit evil or criminal acts to realize their desires.

Crime is a form of deviant behavior that always exists and is inherent in every form of society. In other words, there is no society that is free from crime. According to Saparinah Sadli, deviant behavior is a real threat to social norms that underlie life or social order, can cause individual and social tension, and is a real or potential threat to the continuation of social order.

Real or potential threats from a crime have been attempted to be suppressed with various efforts. Barda Nawawi Arief stated that one of the efforts to prevent and control crime is by using criminal law with its sanctions in the form of criminal penalties.<sup>15</sup> Efforts to prevent and overcome crime with criminal law are essentially also part of law enforcement efforts, especially criminal law enforcement.<sup>16</sup> Even today, criminal law is still used and relied on as a means of

criminal politics. In fact, lately, at the end of most legislative products, almost always include a sub-chapter on "criminal provisions".

The use of criminal law as a means of preventing and controlling crime is an option. According to Barda Nawawi Arief, the main issue does not lie in the pros or cons of the use of criminal sanctions, but what is important is the policy lines or approaches that should be taken in using criminal sanctions.

The use of criminal law as a means to criminalize consumers of alcoholic beverages can be reviewed from various criminalization policies that already exist and are manifested in the form of laws and regulations in Indonesia, for example as stipulated in Article 300 of the Criminal Code (KUHP).

The perpetrators of criminal acts as formulated in the article above can be punished if they meet 3 (three) things. First, the perpetrator's actions here must be carried out with violence or the threat of violence. Second, the act must be carried out intentionally forcing the victim to do the act according to the perpetrator's wishes. Third, acts carried out with violence or the threat of violence intentionally force people to drink intoxicating drinks, in the sense of all kinds of drinks that when drunk can intoxicate (make people drunk) such as alcoholic drinks with a high alcohol content. It should be noted that this article is not a criminalization policy against alcoholic beverage drinkers. Meanwhile, the regulation regarding the policy of criminalizing the consumption of alcoholic beverages is implicitly regulated in Article 492 paragraph (1) of the Criminal Code which is classified as a violation. In order to be subject to the article as formulated, the perpetrator must fulfill 3 (three) elements and his actions can also be proven. First, the person must be drunk, namely drinking too much alcohol, so that he can no longer control one of his five senses or his limbs. Second, in a public place, namely not only on public roads, but also in places that can be visited by many people. Third, obstructing traffic or disturbing public order.

In addition, the regulation related to this matter is in Article 536 paragraph (1) of the Criminal Code. In order to be subject to Article 536 paragraph (1) of the Criminal Code, there are 2 (two) elements that must be met. First, the perpetrator is clearly drunk, which is indicated by breath that smells of alcohol, the perpetrator walks unsteadily or helplessly collapses on the street, or speaks incoherently or is completely unable to speak. Second, the perpetrator must be on a public road. In other words, if inside the house, then this article cannot be imposed.

In fact, there is not a single regulation regarding criminal sanctions for consumers of alcoholic beverages regulated in laws and regulations at the law level. However, this is in contrast if you look at laws and regulations at the regional regulation level that have regulated criminal sanctions for consumers of alcoholic beverages. Based on information published on the website of the State Secretary of the Republic of Indonesia, until the end of 2015, there were 4 (four) provincial regions that had made policies criminalizing the consumption of alcoholic beverages in the form of regional regulations.

Regarding the above, there are several things that need to be reviewed. First, there is a regional regulation that strictly prohibits everyone from consuming alcoholic beverages of any level. The regional regulation in question cannot justify everyone from consuming alcoholic beverages, where if it is violated, there are criminal sanctions that can be imposed. Regional regulations with such characteristics are in the Qanun of the Nanggroe Aceh Darussalam Province Number 12 of 2003 concerning Alcoholic Beverages and the like and the Regional Regulation of the Papua Province Number 15 of 2013 concerning the Prohibition of the Production, Distribution, and Sale of Alcoholic Beverages.

Second, there is a regional regulation that allows everyone to consume alcoholic beverages, but in places that have been determined by the region. Regional regulations with such characteristics are in the Regional Regulation of the South Kalimantan Province Number 7 of 2008 concerning the Control and Supervision of the Distribution of Alcoholic Beverages and the

Regional Regulation of the East Java Province Number 6 of 2014 concerning the Control and Supervision of the Distribution of Alcoholic Beverages.

The forms of criminal sanctions imposed on perpetrators who violate the regional regulations in question are very diverse. First, in the Nanggroe Aceh Darussalam Provincial Regulation Number 12 of 2003 concerning Alcoholic Beverages, the form of the criminal penalty is 'uqubat hudud (whipping) 40 times. Second, criminal sanctions in the form of imprisonment ranging from three to six months. Third, criminal sanctions in the form of a fine, namely a maximum of IDR 50,000,000 (fifty million rupiah). The criminal threats aimed at violators of regional regulations are arranged in various forms of criminal systems. First, an alternative system, namely the judge can choose between imprisonment or a fine to be imposed on the violator, for example in the East Java Provincial Regulation Number 6 of 2014 concerning Control and Supervision of the Distribution of Alcoholic Beverages. Second, the cumulative-alternative system, namely the judge can choose or impose a joint sentence of imprisonment and a fine on the offender, for example in Papua Province Regional Regulation Number 15 of 2013 concerning the Prohibition of the Production, Distribution and Sale of Alcoholic Beverages.

Liquor or alcoholic beverages according to Presidential Regulation Number 74 of 2013 concerning the Control and Supervision of Alcoholic Beverages, hereinafter referred to as PERPRES RI Number 74 of 2013, are beverages containing ethyl alcohol or ethanol (C<sub>2</sub>H<sub>5</sub>OH) which are processed from agricultural products containing carbohydrates by fermentation and distillation or fermentation without distillation.

The teachings of every religion certainly agree that the existence of alcoholic beverages can threaten human life both directly and indirectly. However, the reality is that our country has not been able to create a legal umbrella regarding the law prohibiting alcoholic beverages. This is inseparable from the many political interests in it.

The existence of demands from the community to create legal regulations/laws regarding the prohibition of alcoholic beverages, should not be misinterpreted as the desire/interest of some Muslims in order to implement Islamic law. The demand for the formation of a Law on the Prohibition of Alcoholic Beverages is more due to the dangers of alcoholic beverages themselves in human life.

For example, in the United States, even though the US government does not refer to the Islamic religion, President Reagan (1986) has carried out a campaign to prohibit alcoholic beverages (say no to alcohol) and implemented the Alcoholic Beverages Prohibition Act which is essentially a prohibition with exceptions.

The negative impacts of alcoholic drinks include the following:

1. GMO (Organic Mental Disorder), which causes behavioral changes such as acting violently, causing problems with family, society, and career. Physiological changes, such as crossed eyes, red face, and staggering. Then, psychological changes, such as difficulty concentrating, incoherent speech, easily offended and others;
2. Damages memory, namely at the age of adolescence (17-19 years), the human brain is still experiencing rapid development, therefore, it is a shame if teenagers are accustomed to being addicted to alcoholic drinks, because it will inhibit the development of memory and brain cells;
3. Brain edema, is swelling and blockage of blood in brain tissue, resulting in disruption of normal coordination in the brain;
4. Liver cirrhosis, this disease is characterized by the formation of connective tissue accompanied by nodules in the liver due to acute infection and hepatitis viruses which cause extensive inflammation of liver cells and cell death;
5. Heart problems, consuming alcoholic drinks, especially addiction, can cause heart problems, where over time the heart will not function properly;

6. Gastritis, which is due to addiction to alcohol and causes inflammation or ulcers in the stomach; and
7. Paranoia, which is a mental disorder due to addiction where it is as if one feels beaten, so that one behaves rudely towards the people around one, or as if there are whispers to do something, and one will do something beyond one's reason.

The habit of consuming alcoholic drinks can be caused by several factors, including: (Ahmad Irfan, 2018).

- a. Individual factors, these factors can arise from within the person themselves because of a high sense of curiosity, trial and error, and can also be because the person is feeling very stressed.
- b. Drug factors, these factors can arise due to pharmacological properties, psychological conditions or individual personality, so that the person must be forced to consume alcoholic beverages.
- c. Environmental factors, these factors can arise due to external influences, for example from daily interactions, lifestyle, cultural values in society, and so on.

Based on the processing and packaging methods, alcoholic beverages are divided into 2 types, namely: (Cindawati, 2014)

- (1) Manufactured alcoholic beverages;
- (2) Traditionally Processed Alcoholic Beverages.

Based on the level of ethanol content, alcoholic drinks are categorized into:

- a. Group A, namely drinks containing ethanol alcohol (C<sub>2</sub>H<sub>5</sub>OH) levels above 0% (zero percent) up to 5% (five percent);
- b. Class B, namely drinks containing ethanol alcohol (C<sub>2</sub>H<sub>5</sub>OH) of more than 5% (five percent) up to 20% (twenty percent).
- c. Class C, namely drinks containing ethanol alcohol (C<sub>2</sub>H<sub>5</sub>OH) of more than 20% (twenty percent) up to 55% (fifty five percent).

In Article 5, Regional Regulation of Mamasa Regency Number 1 of 2019 Regarding Supervision and Control of Alcoholic Beverage Distribution related to the distribution permit for alcoholic beverages, everyone is prohibited from distributing alcoholic beverages without a permit issued by the Regent or an appointed Official.

To anticipate and/or overcome the misuse of the distribution of alcoholic beverages, the Regional Government is required to conduct a programmed and sustainable Order. In terms of order, the Regional Government forms an integrated team consisting of the following elements: a. POLRI; b. TNI; c. Civil Service Police; d. Health Service; e. Cooperatives, Industry and Trade Service; f. Legal Section; g. Religious Organizations and Community Organizations; and h. Other elements deemed necessary. The team is coordinated by the Regional Apparatus Organization responsible for enforcing Regional Regulations.

The Regional Government is required to provide guidance and supervision in order to overcome the dangers of consuming alcoholic beverages containing intoxicating elements, in this case the Health Service is appointed and responsible for the guidance and supervision. Guidance and supervision are carried out in the form of, among others: a. Counseling regarding the dangers of consuming alcoholic beverages; b. Guidance and supervision of Hotel, Restaurant, Pub and Café Managers who have obtained permits and special areas; and c. Rehabilitation of addict victims. Guidance and supervision, by the Health Service can form a guidance team that is determined by the Regent's Decree. Guidance and supervision involve related elements.

Direct sales of traditionally processed alcoholic beverages are only permitted in certain places that have been determined by the Regent and can only be consumed in direct sales places and at certain times determined by the Regent or appointed officials. Direct sales of alcoholic beverages must not cause a commotion and disturb the surrounding environment. The Regent

determines the technical requirements that must be met by a place to be permitted to become a direct sales place for traditionally processed alcoholic beverages. Especially on certain occasions, incidentally, alcoholic beverages can be consumed outside the time and place that have been permitted as long as it does not disturb public order.

Places distributing and/or selling alcoholic beverages are prohibited from being close to places of worship, schools, hospitals, or other specific locations. The radius and/or distance of the place selling alcoholic beverages is regulated by the Regent's Regulation with reference to the provisions of applicable laws and regulations.

Hotel, restaurant, pub, bar and cafe managers are prohibited from directly selling manufactured alcoholic beverages outside the area and/or outside their respective management locations and may only directly sell manufactured alcoholic beverages to guests or visitors if consumed on the premises.

Retailing of class A alcoholic beverages by retailers may only be done in stores and placed in certain places that are not easily seen by everyone. Retailing of class B and C alcoholic beverages may only be done in Duty Free Shops (TBB) with reference to the provisions of the Regulation of the Minister of Trade concerning Supervision of the Distribution of Alcoholic Beverages. Direct sellers and retailers are not permitted to sell alcoholic beverages to buyers who are not yet 21 (twenty one) years old.

## CONCLUSION

To anticipate and/or overcome the misuse of the distribution of alcoholic beverages, the Regional Government is required to conduct a programmatic and sustainable order. In terms of order, the Regional Government forms an integrated team consisting of the following elements: a. POLRI; b. TNI; c. Civil Service Police; d. Health Service; e. Cooperatives, Industry and Trade Service; f. Legal Section; g. Religious Organizations and Community Organizations; and h. Other elements deemed necessary. The team is coordinated by the Regional Apparatus Organization responsible for enforcing Regional Regulations. The Regional Government is required to provide guidance and supervision in order to overcome the dangers of consuming alcoholic beverages containing intoxicating elements, in this case the Health Service is appointed and responsible for the guidance and supervision. Guidance and supervision are carried out in the form of, among others: a. Counseling on the dangers of consuming alcoholic beverages; b. Guidance and supervision of Hotel, Restaurant, Pub and Café Managers who have obtained permits and special areas; and c. Rehabilitation of addicted victims. Guidance and supervision, by the Health Service can form a guidance team that is determined by the Regent's Decree. Coaching and supervision involve related elements.

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