

## **ANALYSIS OF ISLAMIC CRIMINAL LAW ON LEGAL SANCTIONS FOR ALCOHOLIC BEVERAGE BUSINESS ACTORS**

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### **ABSTRACT**

Liquor (Al-Khamr) is a drink that can reduce consciousness so that it can make someone who drinks it drunk. In Indonesia, the legal system used is a positive legal system and of course also different from the Islamic criminal law system. Therefore, this paper is made to see how the view or legal perspective between positive law and and Islamic criminal law regarding liquor or khamr. To see how these two legal systems view, about liquor. Based on this analysis, it was found that liquor or khamr is very harmful to the human body so that it is regulated in positive law and has even been forbidden in Islamic law and Islamic law has been formulated to realize and maintain five basic objectives, namely, religion, soul, reason, honor and offspring, and property. Therefore, man should not do things that he already knows that are harmful to himself and others including his own family.

**Keywords: Positive Law, Islamic Law, Al-Khamr**

## A. INTRODUCTION

Criminal law is a moral code of a nation, because it regulates prohibitions, regulates good things and what is not good according to the views of a nation and state. So that criminal law becomes the most reliable reflection in the civilization of a nation.<sup>1</sup>

The Holy Prophet(saw) said issued by Bukhori in the 74th book of the book of drinks chapter 1 "Whoever drinks khamr in the world does not repent of it, then will not be given (the drink) in the Hereafter."<sup>2</sup>

Rasulullah SAW, Bersabda:

وَقَالَ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ : اجْتَنِبُوا الْخَمْرَ فَإِنَّهَا مِفْتَاحُ كُلِّ شَرٍّ

Artinya:

Stay away from khamr, because khamr is the key to all evil.

In Islamic law as in his book Imaning Yusuf, entitled Fiqh Jinayah, says that khamar is a liquid produced from fermenting grains or fruits and turning their essence into alcohol. This kind of drink is called khamar because it muddy and envelops the mind.<sup>3</sup> While the meaning of liquor in this modern era is a drink that contains ethanol. Where in the chemical dictionary ethanol is a type of alcohol compound that has the chemical formula C<sub>2</sub>H<sub>5</sub>OH; Clear liquid colorless, distinctive smell, flammable, and easy to mix with water. Used as an antiseptic (70% alcohol), a liquor ingredient (beer, wishky wine), and as a fuel, as a raw material in some chemical industries, which is generally capable of lowering consciousness.<sup>4</sup>

Consuming alcoholic beverages excessively, has a great effect on the attitudes and actions of perpetrators that lead to deviations, such as speeding on the highway which can disrupt traffic, create commotion and chaos, and disturb the peace of other communities. This is due to reduced self-control due to consuming liquor. We can see that lately many deaths have been caused by bootleg liquor which in addition to being

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<sup>1</sup> H. Syaiful Bahri, *Kebijakan Kriminal Dalam Perspektif Pembaruan Sistem Peradilan Pidana Indonesia*, (Total media, Jakarta, 2010), hlm. 55

<sup>2</sup> Musa Shin, *Fath al-Mun'im Sharh Sahih Muslim*, (Cairo: Dar Shuruq, 2002), cet.I, hlm 327.

<sup>3</sup> Imaning Yusuf, *Fiqh Jinayah (Hukum Pidana Islam)*, (Palembang: Rafah Press, 2009), hlm. 93

<sup>4</sup> Mulyono HAM, *Kamus Kimia*, (Jakarta: PT Bumi Aksara, 2012), hlm. 123

consumed excessively is also mixed with deadly chemicals that should not be intended for human consumption.

The number of alcoholic products circulating and sold in the community, especially in Kel. Belawan II Kec. Medan Belawan, of course this is contrary to positive law in Indonesia. The Government of the Republic of Indonesia, in addressing this problem, seeks to eradicate trade channels, circulation, and use of intoxicating beverages. For this reason, in an effort to increase security supervision of intoxicating beverages in the community, the government issued a regulation of the Minister of Health No. 86 / Men.Kes / IV / 1997 concerning Intoxicating Drinks, which can be concluded as a ban as follows:

1. Producing and importing without the permission of the Minister of Health.
2. Distributing liquor with ethanol content of more than 1% is calculated against ethanol content.
3. It is forbidden to sell or hand over to children under the age of 16.
4. It is forbidden to advertise liquor that has 20%-55% adaretanol..

With so many products indicated to contain alcohol that can cause problems, it needs to be resolved as soon as possible. Therefore, in this case researchers will study and further examine criminal sanctions for business actors that contain alcohol content.

## **B. RESEARCH METHODS**

This type of research is qualitative research that describes data using a series of sentences. The method used in this study is descriptive. A descriptive method is a method whose data sources are words and data from books, journals and other scientific works. Furthermore, whatever is collected will most likely be the key to what you are looking for. Therefore, the use of this method does not produce numerical data, but descriptive data. This study used written data from scientific and research journals.

## **C. RESULTS AND DISCUSSION**

### **1. The Practice of Selling Beverages Containing Alcohol Content by Business Actors**

The rise of the practice of selling alcoholic beverages and the supervision and implementation of regulations related to the prohibition of alcohol sales are considered not very effective, because the mayor of Medan has not maximized raids related to the

technical implementation of supervision and control of the circulation of alcoholic beverages in the midst of the community. In addition, the condition of Medan Belawan District is not too big, there are several shops selling alcoholic beverages and pubs / bars located close to settlements, making alcoholic beverages easy to be consumed by the public freely.<sup>5</sup>

It was further explained that the sale of alcoholic beverages carried out by entrepreneurs / sellers of alcoholic beverages in Ex. Belawan II Kec. Medan Belawan, should be direct sales of alcoholic beverages both from traditional processing and manufactured products, only allowed in certain places such as hotels, restaurants, bars / pubs, cafes and in certain places or areas that are licensed and have been determined by the local government.<sup>6</sup>

The sale of alcoholic beverages in Ex. Belawan II Kec. Medan Belawan does not meet the requirements set by the ministry of health, but the practice in the field illustrates a different thing, where the sale of alcoholic beverages in Ex. Belawan II Kec. Medan Belawan many of these illegal can be seen by the large number of alcoholic beverages that are sold freely, where nightlife venues that sell alcoholic beverages do not have permission from the government. In fact, with the procedures governing the sale of alcoholic beverages in Ex. Belawan II, Medan Belawan District, it is hoped that the circulation of alcoholic beverages can be controlled and intended for certain parties who are considered to be able to carry out existing provisions.<sup>7</sup>

As for the information of some consumers of alcoholic beverages, out of three consumers of alcoholic beverages at the time of purchase, none of them were asked for Identity Cards as proof that the consumers were over 21 years old, as follows:

"The average consumer of alcoholic beverages here is 70% of the guests who come, the age range is around 15-18 years. " He also added: "The way to find out the age of consumers should be to provide identification such as ID cards, but the practice

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<sup>5</sup> Wawancara Mahmud Soleh, tokoh masyarakat Kel. Belawan II Kec. Medan Belawan, Tanggal 29 Oktober 2020

<sup>6</sup> *Ibid.*

<sup>7</sup> *Ibid.*

is guesswork, according to information that some of me know are familiar with consumers."<sup>8</sup>

From the information above, the researcher concluded that the implementation of supervision for the sale of alcoholic beverage consumers who have been 21 years old is not working.

With the circulation of alcoholic beverages, it has caused many negative impacts in the community, especially the people of Kel. Belawan II, Medan Belawan District. The control and supervision of the circulation of alcoholic beverages by the local government (Mayor of Medan) should be carried out more seriously considering the rampant illegal and blatant sale of alcoholic beverages in the community, especially Ex. Belawan II Kec. Medan Belawan considering that alcoholic beverages are very dangerous to the influence they will have on human health and community security Ex. Belawan II Kec. Medan Belawan, then the local government should supervise which is maximum and limits the licensing of the circulation and sale of alcoholic beverages only in a few distributors, this is intended to facilitate the supervision of the circulation and control of the use of alcoholic beverages in Ex. Belawan II Kec. Medan Belawan.<sup>9</sup>

## **2. Legal Sanctions for Beverage Business Actors Containing Alcohol Content According to Positive Law.**

Related discussion about alcohol, the Criminal Code does not regulate products containing alcohol, but only regulates the use of alcohol for drinking and the impact of these acts, which in this case is regulated in the Criminal Code (KUHP) which is spread in several articles, including Article 300; Article 492; Article 536; Article 537; Article 538; Article 539 of the Criminal Code.

The sound of the article is as follows:

a. Pasal 300 KUHP:

- 1) With imprisonment for a maximum of one year or a fine of not more than Rp 4500 shall be punished:

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<sup>8</sup> Wawancara Fahri pelayan salah satu café yang berada di Kec. Medan Belawan, Tanggal 31 Oktober 2020.

<sup>9</sup> Wawancara Abdul Karim, tokoh agama masyarakat Kel. Belawan II Kec. Medan Belawan. Tanggal 30 Oktober 2020.

1. Whoever knowingly sells or orders to drink intoxicating drinks to a person who has appeared drunk.
  2. Whoever intentionally intoxicates a child who is not quite 16 years old.
  3. Whoever by force or threat of violence deliberately compels people to drink intoxicating drinks.
- 2) If the act causes serious bodily harm, the guilty person shall be punished with imprisonment for not more than seven years.
  - 3) If the act causes death, the guilty person is punished with imprisonment for not more than nine years.
  - 4) If the person guilty of committing the crime is in office, he can be fired from the job.<sup>10</sup>
- a. Pasal 492 KUHP:
- 1) Whoever is drunk, whether in a public place obstructing the road or disturbing order, whether threatening the security of others or an act that must be carried out with proper care so that there is no danger to the life or health of others shall be punished with imprisonment for not more than six days or a maximum fine Rp. 375.000.
  - 2) If at the time of committing the offence it has not passed one year from the decree of the previous sentence for the offender for a similar offence or for an offence described in article 536 he shall be punished with imprisonment for not more than two weeks.<sup>11</sup>
- b. Pasal 536 KUHP:
- 1) Whoever is visibly drunk on a public road, shall be punished with as much fine as possible Rp. 225.000.-
  - 2) If at the time of committing the offence it has not been one year, since the previous provision of law for the offender for a similar offence or an offence alleged under section 492, then the penalty may be replaced by imprisonment for not more than three days.

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<sup>10</sup> KUHP & KUHAP, h 100

<sup>11</sup> *Ibid.* h 158

- 3) If the offence is repeated a second time within one year after the conviction for repetition of the offence, imprisonment for a maximum of two weeks shall be imposed.
  - 4) If the offence is repeated a third or subsequent time within one year after the conviction of the sentence once for repetition of the offence a second or subsequent time, imprisonment for not more than three months shall be imposed.
- c. Pasal 537 KUHP:  
"Whoever sells or gives liquor or wine to a member of the Armed Forces under the rank of lieutenant or to his wife, son or servant, shall be punished with imprisonment for not more than three weeks or a fine of not more than one thousand five hundred rupiah".
- d. Pasal 538 KUHP:  
"A seller or his representative who sells liquor who in the course of his work gives or sells liquor or wine to a child under the age of sixteen, shall be punished with imprisonment for not more than three weeks or a fine of not more than four thousand five hundred rupiah."<sup>12</sup>
- e. Pasal 539 KUHP:  
"Whoever, on occasion of a public feast or folk performance, or a public procession, provides free liquor or promises as a gift, shall be punished with imprisonment for not more than twelve days or a fine of not more than three hundred and seventy-five rupiah."<sup>13</sup>

As for the conclusion regarding the above articles, in general, the rules in the Criminal Code only sanction hard minnuman users, dealers and sellers. It does not specifically discuss products that contain alcohol content. To know the regularity of a law is very important as a legal basis to bind every citizen to obey and obey all existing legal provisions (legality), in order to create order in life in society, nation and state in a system of government based on Pancasila, the 1945 Constitution and its amendments.

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<sup>12</sup> Ibid. h 171

<sup>13</sup> Ibid. h 172

In addition, one of the main objectives of the statutory system is to regulate human behavior in accordance with applicable legal norms. As stipulated in the Law on special crimes relating to the use of alcohol, which is a provision that is complementary to the weaknesses contained in the Criminal Code. With these provisions, the Indonesian government has tried to protect human rights, especially Muslims in obtaining halal guarantees for the consumption of food, beverages, cosmetics and drugs by issuing a number of regulations in the form of laws, government regulations, and presidential instructions, this can be exemplified as follows:

- a. Undang-undang Republik Indonesia No. 23 Tahun 1992 tentang Kesehatan.
- b. Undang-undang Republik Indonesia No. 7 Tahun 1996 tentang Pangan.
- c. Undang-undang Republik Indonesia No. 8 Tahun 1999 tentang Perlindungan Konsumen.
- d. Peraturan Pemerintah Republik Indonesia No. 69 Tahun 1999 Tentang Label dan Iklan Pangan.
- e. Instruksi Presiden Republik Indonesia No. 2 Tahun 1991, tentang Peningkatan Pembinaan dan Pengawasan Produksi dan Peredaran Makanan Olahan.<sup>14</sup>

Regarding criminal sanctions against perpetrators of the sale of liquor / alcohol as regulated in Law of the Republic of Indonesia No. 23 of 1992 concerning Health Criminal sanctions for the use of Alcohol in food, beverages, and drugs, regulated in Law of the Republic of Indonesia No. 23 of 1992 concerning Health CHAPTER X Criminal Provisions in Article 80 and Article 84:

And also sanctions for its institutions, or so-called Corporations / Legal Entities. The definition of corporation according to Law No. 8 of 1999 concerning Consumer Protection is included in the scope of business actors, which is regulated in Article 1 paragraph (3): By using one term, namely "business actor" which includes

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<sup>14</sup> Lajnah Pentashihan Mushaf Al-Qur'an Badan Litbang & Diklat Kementerian Agama RI dengan Lembaga Ilmu Pengetahuan Indonesia (LIPI), Mengenal Ayat-ayat Sains dalam Al-Qur'an (Makanan dan Minuman dalam Perspektif Al-Qur'an dan Sains), (Jakarta: Widya Cahaya, 2015), h 134



individuals and corporations in the Consumer Protection Law, the determination of the types of criminal sanctions and actions is the same. Criminal sanctions are regulated in Law No. 8 of 1999 concerning Consumer Protection Article 62:

- Business actors who violate the provisions as referred to in Article 8, Article 9, Article 10 paragraph (2), Article 15, Article 17 paragraph (1) letter a, letter b, letter c, letter e, paragraph (2), and Article 18 shall be punished with a maximum imprisonment of (5) years or a maximum fine of IDR 2,000,000,000.00 (two billion rupiah).
- Business actors who violate the provisions referred to in Article 11, Article 12, Article 13 paragraph (1), Article 14, Article 16, Article 17 paragraph (1) letter d, letter f shall be punished with a maximum imprisonment of 2 (two) years or a maximum fine of IDR 500,000,000.00 (five hundred million rupiah).

Based on the previous description that the articles regulated in the Criminal Code regarding alcohol only regulate the use of alcohol, dealers and sellers. Does not specifically discuss products that contain alcohol content, which is found in food, beverages, drugs and cosmetics. Therefore, there is a need for rules that regulate it specifically and transparency. As is known that an act can be criminalized if it can cause harm to others, whether committed by individuals or legal institutions (corporations).

Sanctions given to individuals are in the form of principal crimes, namely: imprisonment or fines. As for perpetrators of criminal acts committed by legal institutions (corporations) there are two types of crimes, namely: principal criminal and additional crimes. The main crime is imprisonment and fines as stipulated in Law No. 8 of 1999 concerning Consumer Protection. Thus, criminal sanctions that can be applied to perpetrators of criminal acts apply to anyone, both individuals and legal institutions / entities (corporations).

### 3. Legal Sanctions for Beverage Business Actors Containing Alcohol Content According to Islamic Criminal Law.

The scholars agree that sellers and consumers of liquor/alcohol/khmar are subject to the sanction of the law of had, which is the law of dera according to the severity of the offense committed by a person. However, the jurisprudence scholars differ on the amount of the derivation. According to Imam Malik and Imam Hanafi, a person who drinks khamr is subject to a limit of eighty times. This is based on ijma' sahabat (agreement of the companions of the Prophet) as in the narration, that Umar had held deliberations with the community regarding the punishment of drinking khamr. At that time Abdur Rahman bin Auf said, that the lightest punishment in the punishment chapter, which was eighty strokes. This opinion was carried out by Umar and then told to Khalid and Abu Ubaidah, the governor of Sham, to be enforced in the land of Sham.<sup>15</sup>

Whereas according to Imam Shafi'i, one who drinks khamr didera with forty strokes. The determination of the number forty, based on the hadith of Anas the Prophet SAW said as follows:

أَنَّ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أُتِيَ بِرَجُلٍ قَدْ شَرِبَ الْخَمْرَ، فَجَلَدَهُ « عَنْ أَنَسِ بْنِ مَالِكٍ رَضِيَ اللَّهُ عَنْهُ  
«بِجَرِيدَةٍ نَحْوِ أَرْبَعِينَ  
[متفق عليه] - [صحيح]

It was from Anas that the Prophet (peace be upon him) was confronted by a man who had drunk khamr, and he was struck with two fronds of dates about forty times. (Narrated by muttafaqun alaihi).<sup>16</sup>

These scholars, each of them has arguments based on hadith and ijma' companions. The actions of the Messenger of Allah are arguments that should not be abandoned just because of other deeds or examples. While ijma' is not recognized when it contradicts what the Prophet did. Umar's act of increasing the number of blows

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<sup>15</sup> Sayyid Sabiq, *Fikih Sunnah*, Terj. Nabhan Husein, Bandung: PT. Al-Ma'arif, 1997, cet. 9, h. 77-78.

<sup>16</sup> Al-Imam Aby Al-Husaini Muslim Ibn al-Hajjaj al-Qusairy an-Naisabury, *Shahih Muslim*, Juz 3, (Arabiyah: Darul Kutubi as-Sunah, 136 M), h. 1330.

was to emphasize the deterrent effect on the perpetrator and this could have been done if the imam saw the urgency.

This view is corroborated by the case that Umar once punished a man who was manly and always drank khamr with eighty times, while a weak and thin man was punished forty times. The difference in the determination of this punishment is because the qath'i passage that prescribes the limit punishment for khamr drinkers does not exist. In addition, there is no history confirming the existence of ijma'sahabat in imposing a limit penalty for drinking khamr, as suggested by one group. Although the Qur'an forbids khamr, which is later corroborated by the hadith of the Prophet, the punishment is by no means definitively established.

Fuqaha who considers that the limit punishment for drinking khamr is eighty times argues that the companions have agreed (ijma'), while ijma' is also one of the sources of law (postulate) of shara'. However, those who argue that the limit penalty for drinking khamr is forty times the dera is reasoned with the sunnah, which binds the drinker of khamr with forty dera. Thus, the excess of forty dera is a ta'zir punishment that may be applied if the imam (judge) deems it necessary.<sup>17</sup>

Forty punishment is clearly God's right, that is, it is a limit punishment, so it must not be forgiven or aborted. Forty more, however, were disputed by the scholars. Some consider it a limit that must be performed together with the forty dera, and some consider it a ta'zir whose application is left to the consideration of ulil amri (imam/judge).<sup>18</sup>

Yusuf Al-Qaradawi argues that the opinion of scholars about the punishment for drinking khamr need not be rejected. As long as torture is not set in the nash, then it is up to the leadership of the ummah and its ijtiḥad. There is also emphasis on the flexibility of punishment for khamr drinkers. The multiple of the punishment can be set between forty and eighty times, with consideration to cause a deterrent effect for khamr drinkers. If with forty strokes, a person is not also a deterrent, then the punishment is increased to eighty times. While the legal sanction for sellers of khamr,

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<sup>17</sup> Ahmad Wardi Muslich., h. 77.

<sup>18</sup> *Ibid.*

is explicitly not explained in either the nash of the Qur'an or al-Hadith. But based on the hadiths about the prohibition of selling khamr which are explained simultaneously with the khamr itself and the drinker, it can be said that the punishment for the person who sells khamr is the same as the law for the person who drinks khamr which is punished by the limit with dera forty times or eighty times according to the capacity of the seller and the quantity of khmar sold. Ahmad Rofiq argues that the religion of Islam places the misuse of khamr and the like as something that is clearly forbidden. So for drinkers, dealers, entrepreneurs and sellers are subject to criminal threats. Because it is also categorized as a criminal offense. Mardani suggested that legal sanctions for producers and sellers of liquor can be equated with legal sanctions for drug abuse, namely ta'zir punishment. Ta'zir punishment can be severe or light depending on the court process (authority of the judge). In relation to this ta'zir sanction, Abdul Aziz Amir, suggested that there are several types of ta'zir sanski, including:

1. Sanctions affecting bodies such as the death penalty and binding.
2. Sanctions related to one's independence such as imprisonment and exile.
3. Sanctions related to property such as fines, confiscation, confiscation and destruction.

According to H.A. Jazuli, the objectives of the ta'zir sanction are as follows:

1. Ta'zir sanctions are preventive. The point is that ta'zir sanctions must have a positive impact on others (who are not subject to ta'zir sanctions) so that he does not do the same.
2. Ta'zir sanctions are repressive. The point is that ta'zir sanctions must have a positive impact on the condemned himself so as not to repeat his actions.
3. Ta'zir sanctions are curative. The point is that these sanctions are able to bring improvements in attitudes and behavior.
4. Ta'zir sanctions are educational. The point is that the sanction is able to heal the desire of the condemned to change his lifestyle for the better.<sup>19</sup>

Although the ta'zir sanction is the authority of ulil amri (judge) to determine the severity or lightness of the sentence, he must consider many things such as the

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<sup>19</sup> H.A. Jazuli, *Fiqih Jinayah*, (Jakarta: PT. Raja Grafindo Persada, 2000), h. 213.

circumstances of the perpetrator, his finger, the victim of the crime, the time and place of activity so that the verdict is preventive, repressive, curative and educational. Therefore, judges should have material resources. Likewise, ulil amri should make an Islamic penal code (*qanun al-jina'i al-Islami*).<sup>20</sup>

Drinking khamr is required to fulfill the following conditions:

1. The drinker is a reasonable person, because reason is a taklative order (God's demands). Therefore, lunatics who drink khamr are not punished, including people with neurological diseases.
2. The drinker is already puberty. If the person who drank was a child, then for him he was not subject to punishment, because he had not been converted (had not been burdened with demands).
3. The drinker does his deeds by his own will. People who drink khamr because they are forced (forced) are not punished, whether the coercion is in the form of threats of suicide or physical torture or in the form of threats that their property will be confiscated entirely.
4. The drinker knows, that what he drinks is indeed intoxicating. If he drinks khamr in a state of ignorance that it is intoxicating, then this ignorance is old, and therefore he is not punished.<sup>21</sup>

#### **D. CONCLUSION**

In Islamic law it is forbidden to drink khamr, whether drunk a little or a lot because liquor is considered the imduk of all evil and one of the great sins. Because the khamr has been damned in substance, whether the one who drinks it, pours it, sells it, buys it, the one who extorts it or is asked to squeeze it, and the one who eats the price is still prohibited in Islamic law.

#### **E. SUGGESTION**

It is hoped that all levels of society can apply the values contained in Islamic teachings not only to know it but also to carry it out in life. Perhaps this is what is

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<sup>20</sup> Mardani., h. 131.

<sup>21</sup> Ahmad Rofiq., h. 80-82.

discussed in writing this scientific paper, even though this writing is far from perfect for that researchers still need constructive criticism from readers.

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