



## Legal reconstruction of alcohol abuse criminal sanctions based on the values of Pancasila justice

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### Abstract

The purposes of this study are to analyze and find the weaknesses of the Alcohol Abuse criminal sanctions policy and how to reconstruct it based on Pancasila justice value in the research that uses a Normative-juridical approach where the data collection method used is sourced from secondary data and primary data which was carried out using qualitative analysis methods.

The results of the study show that the Weaknesses of the policy on criminal sanctions for alcohol users, from the aspect of the legal substance of the sanctions, it is still unclear, especially considering the increasingly dynamic conditions in society lately. The weakness of the legal structure aspect is that law enforcement officers in this case the Satpol PP and the Police must work together so that there is no overlap of authority. The weakness of the legal culture aspect is that the community must have an understanding of alcoholic beverages, especially regarding the impacts that cause a lot of harm to the community. Therefore, The legal reconstruction referred to is in the Criminal Code (KUHP) by reconstructing Article 300 Paragraph 1 by changing Paragraph 1 number 2 to "(2) Whoever uses intoxicating alcoholic beverages that causes public discomfort". And the Presidential Regulation of the Republic of Indonesia Number 74 of 2013 concerning Control and Supervision of Alcoholic Drinks by reconstructing Article 4 by adding 2 (two) paragraphs in paragraphs 5 and 6, namely: "(5) Alcoholic Drinks can be circulated and traded with strict evaluation by local governments local area by looking at the consequences arising from the alcoholic beverages from criminal acts that occurred in the area". And "(6) If an area where the circulation and trade of alcoholic beverages experiences an increase in criminal acts, the distribution permit and trade permit for alcoholic beverages can be terminated."

**Keywords:** legal reconstruction, alcohol abuse, Pancasila justice

### Introduction

The rampant Alcohol Abuse in Indonesia has reached a very worrying point as consumers of alcoholic are not only limited to adults, but also teenagers who are in a fairly early age. Historically, the presence of alcoholic beverages is not something that is foreign to the people in Indonesia. Even more ironic, consuming alcoholic beverages has become a habit that lasts for generations, so that in their lives they cannot be separated from alcoholic beverages. This fact further shows that public awareness in Indonesia about the dangers of alcoholic beverages is still very minimal (Pribadi, 2017) [6].

The culture of drinking liquor has existed for a long time, not only in Indonesia but also in all parts of the world. In parts of Europe there are various types of liquor that have various names depending on the ingredients, uses, and alcohol content of the drink itself, such as wine, whiskey, tequila, bourbon, and many more. In areas of Latin America where most of the population is of mixed Indian-Spanish-Portuguese descent, there are also liquors in the form of jagermeister and chianti. Likewise, in Japan, there is a special liquor, namely sake, which was made from fermented rice (Piggott, 2010) [4].

As Society Progresses, liquor which is legally and religiously considered a bad thing becomes something that is considered normal and reasonable to do. As a result of these drinking habits, there will be impacts, especially those that are negative in terms of social, economic, and

especially public health in the area. The impact, for example, starts from the increase in criminal cases, especially teenage fights, and disturbs the surrounding community, the emergence of a gap between old drinkers and teenage drinkers or between local drinkers and one another, and increasing poverty. This drinking habit also certainly has an impact on the health of the people in the area, even if the physical shape of the drinkers begins to change, their stomachs become distended with black eye bags, as a sign of frequent drinking and lack of sleep. Although the use of liquor is acceptable in many western nations, its use in Eastern Countries such as Indonesia where most of its citizen follows the teaching of Islam religion that forbids drinking liquor and the opinion that also promotes the danger of drinking liquor such as its bad effect on health and social life further strengthened the idea to restrict the use of liquor. And of course, The role and participation of the people are very large in realizing the ideals of this development aside from the government.

Alcohol is the substance that is most often abused by humans, alcohol is obtained by fermenting honey, sugar, fruit juice, or tubers. From this fermentation, up to 15% alcohol can be obtained, but with the distillation process, higher alcohol content can be obtained, even reaching 100%. Maximum blood alcohol levels are reached 30-90 minutes after absorption, alcohol/ ethanol is disseminated throughout the tissues and body fluids with an increase in blood alcohol levels people will become euphoric, but with this decrease people become depressed.

The effects after consuming alcohol can be felt immediately within a few minutes, but the effects vary, depending on the amount or level of alcohol consumed. In small quantities, alcohol causes a feeling of calm, and users will more easily express emotions, such as feelings of pleasure, sadness, anger, sadness, happiness, and fury excessively). This appears as a result of staggering physical, blurred vision, until unconscious. Mental abilities will experience obstacles, namely disturbances to focus attention and impaired memory.

Users usually feel in control of themselves and control their behavior. In reality, they are not able to control themselves as they thought they could, therefore many vandalism or crime are found in public places that are fatal to other users because of this. When this happens, the toxic effects of the combination use will be even worse and the possibility of experiencing an overdose will be greater.

The science of criminal procedural law, one of the main parts of the regulation of criminal procedural law is regarding the regulation of the criminal case process that is carried out if a criminal act is suspected and someone commits a criminal act to be examined, proven to have received a decision based on the law by the authorized law enforcement officers. Thus, related to the increasingly widespread (Widodo, 2018) <sup>[9]</sup> circulation of alcohol and excessive use, causing criminal acts that violate the laws and regulations, it is very necessary to reconstruct the regulations regarding the criminal law policy of alcohol abuse in order to provide a deterrent effect to both the makers, dealers, and users/ a drinker who commits a crime by considering the elements of the value of justice.

Based on this description, the author is interested in conducting research and examining the problem in a scientific paper titled "*Legal Reconstruction Of Alcohol Abuse Criminal Sanctions Based On The Values Of Pancasila Justice*" where the main problem discussed in this article is as follows:

1. What are the weaknesses of the Alcohol Abuse criminal sanctions policy?
2. How is the reconstruction of the Alcohol Abuse criminal sanctions policy based on the values of Pancasila justice?

### Method of Research

This study uses a constructivist legal research paradigm approach. The constructivism paradigm in the social sciences is a critique of the positivist paradigm. According to the constructivist paradigm of social reality that is observed by one person cannot be generalized to everyone, as positivists usually do.

This research uses descriptive-analytical research. Analytical descriptive research is a type of descriptive research that seeks to describe and find answers on a fundamental basis regarding cause and effect by analyzing the factors that cause the occurrence or emergence of a certain phenomenon or event.

The approach method in research uses a method (*socio-legal approach*). The sociological juridical approach (*socio-legal approach*) is intended to study and examine the interrelationships associated in real with other social variables (Toebagus, 2020) <sup>[7]</sup>.

Sources of data used include Primary Data and Secondary Data. Primary data is data obtained from field observations

and interviews with informants. While Secondary Data is data consisting of (Faisal, 2010) <sup>[4]</sup>:

1. Primary legal materials are binding legal materials in the form of applicable laws and regulations and have something to do with the issues discussed, among others in the form of Laws and regulations relating to the freedom to express opinions in public.
2. Secondary legal materials are legal materials that explain primary legal materials.
3. Tertiary legal materials are legal materials that provide further information on primary legal materials and secondary legal materials.

Research related to the socio-legal approach, namely research that analyzes problems is carried out by combining legal materials (which are secondary data) with primary data obtained in the field. Supported by secondary legal materials, in the form of writings by experts and legal policies.

## Research Result and Discussion

### 1. Weaknesses Of The Alcohol Abuse Criminal Sanctions Policy

In accordance with this, as stated by Satjipto Rahardjo that issuing legal regulations to maintain a status quo is one thing, while making regulations with the aim of regulating society is something else. Now the state is required to not only preserves the status quo but also to become an agent with broader powers. To fulfill this task, he can begin to design a policy in the economic field, for example, which aims to increase welfare and equalize the distribution of production results (Widodo, 2019) <sup>[10]</sup>.

Thus it appears that the conventional boundaries between law and economics are blurred because it turns out that designing a legal product also means designing a production process and its distribution once. This situation does not only occur in the economic field, but also in other fields. And it is further emphasized that the process of mutual entry between fields that were initially strictly compartmentalized is one of the most interesting forms of development today (Toebagus, 2022) <sup>[8]</sup>.

In addition, of course, the consequence of this situation is that the enforcement of a law for the regulation of certain purposes (alcoholism) requires organization and administration with a management system that moves people to manage, funds and resources, equipment, and so on, in such a way that It is hoped that the enactment of a statutory provision can achieve its objectives. More concretely, in addition to those stated above, efforts to overcome them can also be carried out as follows:

- a. Discipline enforcement of Presidential Decree No. 3 of 1997 concerning Supervision and Control of Alcoholic Beverages, Public awareness, and control rules are two things that cannot be separated. This alcohol is legally positive is legal. Therefore, after building public awareness, it is necessary to control rules that are clear and firm, as well as strong in law enforcement. The government must dare to take serious steps, namely asking minimarket entrepreneurs who are currently still selling alcohol to withdraw their products and stop selling the alcohol. Minimarkets that sell alcohol, regardless of the alcohol content, a little or a lot, still have the potential to harm the environment. Remember, the addictive substance contained is still minor.

b. Supporting the ratification of the Bill on Alcoholic Beverage Regulation. Currently, the only positive law regarding Minol is Presidential Decree No. 3/1997 and local regulations in several regions, but the regulations between regions differ in extreme ways. Through regional regulation, the local government can completely prohibit everything from the production, ownership, distribution, sale, storage, carrying, promotion, and consumption of minerals. Although the presidential decree is still binding, ideally it is an adjustment by making a law (UU), so that the same arrangement can cover all residents and regions in Indonesia. By law, a criminal determination can be made tougher for crime prevention. This situation shows the urgency and need for the Alcohol Law. The existing regulations are not adequate with the proven high crime rate due to alcohol. Thankfully, all factions of the DPR RI approved the inclusion of the proposed Draft Law (RUU) on the Regulation of Alcoholic Drinks into the 2013 Priority National Legislation Program.

c. Supporting the ratification of the Draft Criminal Code on Moral Crimes, Although the Criminal Code explicitly regulates alcohol, the articles need to be revised again because many are less clear and lack the substance of alcohol itself, making it difficult for the security forces to take firm action. For this reason, the Draft Criminal Code again proposes revisions to the articles that regulate the problem of intoxicating drinks, which are contained in Chapter XVI on Moral Crimes, and Seventh Chapter on Intoxicating Substances. In Article 499 paragraph 1(a): "shall be sentenced to a maximum imprisonment of 1 year or a maximum fine of Rp. 30 million for each person who sells or gives intoxicating substances to people who appear to be drunk with a maximum imprisonment of 1 year or a maximum fine of Rp. 30 million for each person selling or giving intoxicating substances to persons under the age of 18." In addition, they are also threatened with similar punishment if they force people to drink liquor, the threat of punishment is increased to 4 years in prison if the drunkenness results in serious injury to other people. If it results in the death of another person, a drunk person is sentenced to a maximum of 9 years in prison.

The regulation of alcoholic beverages has not been specifically regulated in Indonesian Law. The provisions provided in the Criminal Code are considered to be too general. With the regulation that is not firm, it will potentially give birth to illegal buying and selling transactions or the black market. So alcoholic beverages will still exist, but it will be difficult to control their circulation because it is prohibited.

The culture of drinking liquor has existed for a long time in Indonesia, even in all parts of the world know what is called liquor. In parts of Europe there are various types of liquor that have various names depending on the ingredients, uses, and alcohol content of the drink itself, such as wine, whiskey, tequila, bourbon, and so on. In areas of Latin America where most of the population is of mixed Indian-Spanish-Portuguese descent, there is also liquor in the form of jagermeister, and chianti. Likewise, in Japan, there is a typical liquor, namely sake which was made from fermented rice.

In Indonesia, the problem of alcoholism has begun to attract attention. During colonial rule and even before the war, drunkenness existed, but it could almost be said that it did not cause social problems and disturbances. Currently, in

the stages of Indonesian independence, at the stage of development in all fields and we already have the Archipelago Insight and National Resilience, the symptoms that appear in the association of teenagers lately are marked by, among other things, the drunkenness of alcohol until "high" according to their terms, there is sufficient evidence not only to be alarming but also to arouse national vigilance from all Indonesian people. Doctors in particular practices as well as in some hospitals have started to accept more patients who suffer from alcoholism. In general, they are victims with a background of running away due to frustration, invitations from friends, and the result of unsupervised relationships that begin with drinking at parties which have prolonged consequences (Freeman, 2022). The etiology seems to lie in the social aspect in a broad sense, the efforts to overcome it will and must link various agencies and institutions such as the Ministry of Health, Ministry of Education and Culture, Ministry of Religion, Ministry of Information and Telecommunications, and so on. Also, private social institutions must be deployed in an integrated manner, all of which require a good legal arrangement and management system.

Actually drinking alcoholic beverages does not matter if you drink it in small doses at certain times, for example when the weather is cold or after eating meat, because of the ability of alcohol to increase metabolism and body temperature, but other than that, the rest of the alcohol is actually misused so that what appears more is negative impact rather than positive impact.

When viewed from a health perspective, the habit of drinking alcohol will certainly have a negative impact on health. Drinkers usually display different physical characteristics from ordinary people, their lower abdomen (side) looks distended while their upper body is thin. In addition, they have dark eye bags due to staying up too often. This is only seen from the outside, not to mention other diseases that are also caused by the habit of drinking alcohol, including liver, heart, and brain diseases. As a result of staying up late drinking until late at night, of course, their bodies will be weak so there is no enthusiasm to work even though they need money to live and buy alcohol of course, as well as those who are still in school, at school will be sleepy and not concentrate on lessons. So indirectly this drinking habit has an impact on the economy and their low level of education (Choudhuri, 2022)<sup>[1]</sup>.

From a social point of view, the habit of drinking alcohol causes many problems. Such as fights, inconvenience to people living in the vicinity, and causes of traffic accidents. Many thugs appear in some areas due to young people who are addicted to alcohol. In addition, alcohol is also placed as the main cause of domestic violence (KDRT) (Dutta, 2019)<sup>[3]</sup>.

Generally, People already know a lot about the bad effects of drinking alcohol. However, there is still a lack of sense of responsibility after knowing the dangers. That is why it is necessary to educate users and distributors/ traders/ makers about this. Education to users, especially teenagers, must also be carried out as the main priority as they are not yet an adult, therefore, drinking liquor may cause bad effects on their health and their social life. The Anti Alcohol campaign must continue to be rolled out, it can be in schools and in a community that is packaged creatively to avoid boredom which is the nature of teenagers. While educating the community, so that community can play an active role in

monitoring and reporting if they see any activities related to alcohol. Education for distributors/ traders/ makers can also be done to provide a way out for business opportunities that are lawful and not detrimental to the concept of straight entrepreneurship until this group will stop their illicit business and switch to a good, safe, and blessed business. In conducting education, it is better to coordinate with officials, religious leaders, and local community leaders. For prevention (other than the two groups), education can be done through regular studies in the family or the surrounding environment or by writing blogs or other social media to the wider public so that they strictly keep alcohol out of their lives.

## 2. Reconstruction Of The Alcohol Abuse Criminal Sanctions Policy Based On The Values Of Pancasila Justice

Justice is generally defined as a fair act or treatment. While fair is impartial, subjective, and siding with the right. Justice according to philosophical studies is when two principles are fulfilled, namely: first, not harming a person and second, treating every human being in what is his or her right. If these two can be met then it is said to be fair. In justice, there must be a comparable certainty, which if combined with the combined results will be justice.

Justice will be felt when the relevant systems in the basic structures of society are well organized. A sense of community justice can also be found in the implementation of law enforcement through judges' decisions, although, In practice, the meaning of modern justice in handling legal problems is still debatable.

The problem of alcoholic beverages is related to the justice of Pancasila, especially in the fifth precept. In relation to social justice, the view of justice in law literally means that what is in accordance with the law is considered fair, while those who violate the law are considered unfair. If there is a violation of the law, it must be done by the court to restore justice. In the event of a criminal offense or what in everyday language is called a "crime" then a court must be carried out which will restore justice by imposing punishment on the person who committed the criminal offense or crime.

The view of justice in national law is based on the basis of the state. Pancasila as the basis of the state or state philosophy is still maintained and is still considered important for the Indonesian state. Axiologically, the Indonesian people are supporters of Pancasila values as the Indonesian nation is a godly, humane, unified, populist, and socially just nation (Darmodihardjo, 1996)<sup>[2]</sup>.

As a supporter of values, it is the Indonesian people who respect, recognize, and accept Pancasila as a value. The recognition, appreciation, and acceptance of Pancasila as something of value will appear to reflect in the attitudes, behavior, and actions of the Indonesian people. If the acknowledgment, acceptance, or appreciation is reflected in the attitudes, behavior, and actions of the Indonesian people and the nation, in this case, they are also the bearers of the attitudes, behavior, and actions of Indonesian people. Therefore, Pancasila is a source of the highest law nationally and also its rationality.

The view of justice in the national law of the Indonesian nation is focused on the basis of the state, namely Pancasila, whose fifth precept reads: "*Social justice for all Indonesian*

*people*". The problem now is what is called fair according to the conception of national law which is based on Pancasila. To further elaborate on justice from the perspective of national law, there is an important discourse on justice and social justice. Fair and justice are recognition and balanced treatment between rights and obligations. So it is necessary to reconstruct the policy of criminal sanctions for alcoholic drink users based on the values of Pancasila justice. Where the reconstruction referred to is in the Criminal Code (KUHP) by reconstructing Article 300 Paragraph 1 by changing Paragraph 1 number 2 which originally read: "(2) Anyone who uses alcoholic beverages". Become: (2) Whoever uses intoxicating alcoholic beverages that cause public discomfort". And the Presidential Regulation of the Republic of Indonesia Number 74 of 2013 concerning Control and Supervision of Alcoholic Drinks by reconstructing Article 4 by adding 2 (two) paragraphs in paragraphs 5 and 6, namely: "(5) Alcoholic Drinks can be circulated and traded with strict evaluation by local governments local area by looking at the consequences arising from the alcoholic beverages from criminal acts that occurred in the area". And "(6) If an area where the circulation and trade of alcoholic beverages experiences an increase in criminal acts, the distribution permit and trade permit for alcoholic beverages can be terminated." by adding this, the author argues that the substance of law would allow the structure of law to act better in restricting the distribution of liquor and can be in line with the justice value of Pancasila.

## Conclusion

Based on the results of the research, the following conclusions can be drawn:

1. Weaknesses of the policy on criminal sanctions for alcohol users, from the aspect of the legal substance of the sanctions, it is still unclear, especially considering the increasingly dynamic conditions in society lately. The weakness of the legal structure aspect is that law enforcement officers in this case the Satpol PP and the Police must work together so that there is no overlap of authority. The weakness of the legal culture aspect is that the community must have an understanding of alcoholic beverages, especially regarding the impacts that cause a lot of harm to the community
2. The legal reconstruction referred to is in the Criminal Code (KUHP) by reconstructing Article 300 Paragraph 1 by changing Paragraph 1 number 2 which originally read: "(2) Anyone who uses alcoholic beverages". Become: "(2) Whoever uses intoxicating alcoholic beverages that causes public discomfort" And the Presidential Regulation of the Republic of Indonesia Number 74 of 2013 concerning Control and Supervision of Alcoholic Drinks by reconstructing Article 4 by adding 2 (two) paragraphs in paragraphs 5 and 6, namely: "(5) Alcoholic Drinks can be circulated and traded with strict evaluation by local governments local area by looking at the consequences arising from the alcoholic beverages from criminal acts that occurred in the area". And "(6) If an area where the circulation and trade of alcoholic beverages experiences an increase in criminal acts, the distribution permit and trade permit for alcoholic beverages can be terminated."

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