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THE 2ND INTERNATIONAL CONFERENCE AND CALL FOR PAPER



Our Speaker



Prof. Henning Glasser
 Thammasat University



Prof. Yuzuru Shimada
 Nagoya University



Melissa Crouch
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Assoc. Prof. Dr. Hj. Sri Kusriyah
 Sultan Agung Islamic University

*Democracy In Digital Era : Law,
 Governance, Sosial And Economic
 Perspective In Asia, Australia And
 Dutch*



September 23-24, 2020
 Imam Assafel Buiding, Faculty of Law, Unissula
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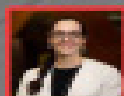
THE 2ND INTERNATIONAL CONFERENCE AND CALL FOR PAPER

THEME : DEMOCRACY IN DIGITAL ERA: LAW, GOVERNANCE, SOCIAL AND ECONOMIC PERSPECTIVE IN ASIA, AUSTRALIA AND DUTCH

Keywords: *Digital Media, Political and Governance Institutions, Electoral Processes, People Representation, Digital Disinformation, Democracy, Digital Economic, Social issue*



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Melissa Crouch
UNSW Australia



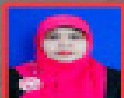
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TECHNICAL MEETING

1. Seminars will be conducted using the Zoom application
2. The Committee will provide a Zoom ID 1 day before the seminar

OBJECTIVE

This agenda aims to provide insights in theory and practice:

1. To exchange and discuss views on the most important issues on Democracy in Digital Era: Law, Governance, Social and Economic Perspective in Asia, Australia and Dutch and its consequences to Law in countries.
2. To discuss the challenges and practical aspect of Democracy and Governance in a Digital Era.

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- **Title:** (15-word limit). The paper title should use proper capitalization in title case.
- **Abstract:** (150-word limit). This abstract will appear in the conference program.

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selected article will be published in indexed International Journal.

IMPORTANT DATES

- Abstract Submission August 10th- Sept 05th 2020
- Announcement September, 06th 2020
- Full Paper Submission and Transfer September, 07-22 2020
- Conference and Presentations September 24th 2020

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KATA PENGANTAR

Bismillahirrohmanirrohim

Assalamu'alaikum Wr. Wb.

Puji syukur kehadiran Allah S.W.T, Tuhan Semesta Alam Yang Maha Esa. Alhamdulillah, sebagai ucapan syukur kehadiran Allah Subhanahu Wata'ala kami dapat menyelenggarakan The 6nd Proceeding International Conference And Call Paper dengan tema "*Democracy In Digital Era : Law, Governance, Sosial And Economic Perspective In Asia, Australia And Dutch*" terselenggara dengan baik. Pemilihan tema tersebut dipilih karena pada era searang ini kita dihadapkan dengan era industri 4.0, dimana para kandidat doktor dituntut untuk bisa menyesuaikan dengan perkembangan global dan meningkatkan kompetensi keilmuan serta kemampuan.

Pada seminar ini telah dipresentasikan hasil penelitian dosen dan mahasiswa yang diikuti oleh peneliti-peneliti dari berbagai universitas yang telah membahas berbagai keilmuan Hukum dan Humaniora.

Sesungguhnya keberhasilan dalam mencapai tujuan pendidikan yang dicita-citakan sangat tergantung pada sikap mental, partisipasi serta disiplin setiap unsur yang terlibat dalam proses belajar mengajar. Mudah-mudahan seminar Internasional yang sederhana ini dapat memberi sumbangsih dalam mencerdaskan bangsa Indonesia serta semoga Allah SWT selalu menyertakan ridho-Nya. Amin. Akhir kata, kami mengucapkan terima kasih kepada pimpinan Universitas Islam Sultan Agung, pimpinan fakultas Hukum Unissuala, pemakalah, editor dan serta pihak-pihak yang telah membantu terselenggaranya seminar ini dengan lancar tanpa hambatan suatu apapun.

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The Criminal Action Of Criminal Drinking In The Perspective Of The Book Of Criminal Law And Islamic Criminal Law

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Abstract

This paper seeks to photograph the criminal act of drinking according to KUP and Islamic Law. There are differences between the two, among others, in the Criminal Code, not all liquor sellers are punishable by punishment and people who are not drunk or drunk but still live at home cannot be caught by the law. Here the KUHP still provides an opening for the perpetrator to commit this alcoholic crime. Whereas in Islamic criminal law it prohibits the production of khamr (alcohol), its sale, the places that sell it, its distribution, and so on. People who violate it means committing a criminal act and he must be subject to ta'zir sanctions. So that Islam saves people from all the dangers that might arise because of khamr.

A. Introduction

People have known alcohol for a long time, which is a type of drink that can be intoxicating when drunk. There are many types of alcohol, each well known in its own region or locality, each with a different alcohol content, from low to high.

The use of alcohol for a long period of time creates dependence on alcohol, and when people begin to depend on alcohol, there is what is known as alcoholism. Alcoholism is defined as "a condition in which an individual is no longer able to control the amount of alcohol he drinks, in the sense that he is unable to abstain from liquor or stop drinking just before alcohol poisoning".⁴⁹

Thus, in brief it is said that alcoholism is addiction to alcohol in such a way that the person concerned is unable to control himself to refrain from drinking. This kind of thing is very dangerous for oneself, both physically and mentally, as well as the social life around it. Therefore, what is important here is demanded of control or supervision and self-control in order to maintain distance or if necessary abstain from alcohol.

Today, the problem of alcoholism in the form of drinking alcohol is the cause of social problems, both in Europe and in Anglo-America, it is an actual problem that needs serious attention and response.⁵⁰

The problem of alcoholic drinks or what is often referred to as drinking (miras) has recently been hotly discussed in society, because it has a negative impact, damages drinkers and damages society, and even worse causes various (criminal) crimes.⁵¹

At the international level, the alcoholic phenomenon has received attention, among others at the 8th UN Congress in 1990 in Havana Cuba, where it was emphasized that one of the factors conducive to crime (especially in the problem of urban crime) is alcohol abuse.⁵² Likewise, at the 5th UN Congress in 1975 in

⁵². Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana*, Citra Aditya Bakti Bandung, 1996, p. 13.

Geneva, where one of the talking points on the special topic of "changing the form and dimensions of crime" is crimes related to alcohol.⁵³

Alcohol is closely related to crime on the one hand, and on the other hand alcohol is interrelated with socio-political, socio-economic and socio-cultural conditions. Alcohol or liquor with various brands such as brandy, mension, whiskey, beer, wine, arak, baram, tuak, slanted hats, even mouse stamps and others are circulating everywhere to the villages to find their target. This alcohol problem is increasingly difficult to eradicate because there are many invisible hands that link the chain of marketing and security.

The result of this alcoholism is dependence on alcohol, and the emergence of various crimes such as fighting and murder, persecution, duping, being lazy and uncreative, apathy, asocial and others. Until now, they have often read in newspapers and seen on television the destruction of a number of confiscated liquor by the authorities, but it seems that this has not reduced the circulation of liquor, but is even more rampant everywhere.

This is because what the authorities do is confiscate only a part of certain unlicensed shops and alcohol smuggling, but do not cut the chains and enforce regulations related to alcohol, so there are still many negative things that can be caused by this liquor. The regulation of drinking alcohol in Indonesia is regulated in the Criminal Code (KUHP), as well as in Islamic criminal law, which is based on the Koran and Hadith.

From the description of the background of the problem above, the authors formulate a problem regarding: How is the regulation of alcoholic crime seen from the perspective of criminal law (KUHP) and Islamic criminal law?

B. Discussion

The cause of people committing alcoholic acts, especially due to the rampant sale of liquor without supervision, and the perpetrators of selling alcoholic drinks feel that by selling liquor, the perpetrator feels that he gets a greater profit than selling other than liquor.

The scope of distribution of liquor includes several components, namely: producers, importers, wholesalers, distributors, retailers, sellers and consumers, all of which must obtain written permission from the Minister concerned (except consumers).

Controlling the production, distribution and sale or presentation of alcoholic drinks, especially liquor, is very important in the context of maintaining peace and order in people's lives, because alcohol can cause health problems and disturb public order. With that understanding, it also appears implicitly that alcohol can have a negative impact on oneself and others.

The alcohol contained in liquor can reduce the level of awareness of the drinker, and in turn can encourage the individual to behave in a way that deviates from legal norms. By knowing the effects of alcohol, there is no doubt that the negative effects of alcohol are more prominent, both from a religious, medical, and social perspective.

Actions related to liquor include several components that influence each other, namely producers, importers, wholesalers, distributors, retailers, sellers and consumers or drinkers of liquor. Some of these components are parts that cannot be separated from one component to another, so that many have contributed to the occurrence of various kinds of crimes or criminal acts.

⁵³. Barda Nawawi Arief, *Kebijakan Legislatif Dalam Penanggulangan Kejahatan Dengan Pidana Penjara*, Ananta, Semarang, 1994, p. 13.

Thus, it can be said that liquor is a problem or social condition that can directly or indirectly cause or promote crime in terms of economic, social, cultural and defense and security aspects, especially when viewed from the impact of alcohol. for yourself.

The presence of liquor in Indonesia is not an absolute necessity, in fact, seen from the religious life and climate of Indonesia, the existence of liquor is neither expected nor prohibited. Because of the negative impact of alcoholic beverages for oneself or others (public order) in the form of crimes or violations, criminal law is also related to issues related to alcohol.

Alcohol can cause intoxication (poisoning, anesthesia) from the brain. The drink seems to cause psychosis, with the characteristics of, among other things, great feelings, joy, loss of control, etc., which leads to the inability to take responsibility or the inability to do so.

In this case one must distinguish between those who voluntarily become drunk and those who desire self-drunkenness. In the first case, it can be accepted that there is incapacity to take responsibility. Here the maker involuntarily becomes drunk, in this case it can be accepted that there is an incapacity to take responsibility, because he is doing an unconscious act, he is in a state of disease (pathologisch roes). The level of drunkenness is difficult to determine with certainty, therefore it cannot be used as a measure to determine one's ability and inability to be responsible.⁵⁴

Whereas in the case of a person deliberately getting intoxicated before committing a crime in order to be brave or for other purposes, in essence the relationship between his will and his actions is not broken. This person can still be said to be aware of the value of his actions and their consequences, therefore he can be held accountable.⁵⁵

The following can describe the comparison of alcoholic crimes, which are regulated in the Criminal Code and Islamic criminal law:

1. Criminal Code (KUHP)

The Criminal Code states that the crime of alcoholism is regulated in several articles, including that:

a. Article 300 of the Criminal Code:

Article 300 paragraph (1) KUHP which reads: By a maximum imprisonment of one year or a maximum fine of three hundred rupiahs shall be punished:

1st: Whoever knowingly sells or gives drunken drinks to someone who is already visibly drunk;

2nd: Whoever deliberately makes a child who is not yet sixteen years old drunk on purpose;

3rd: Whoever by force or threat of violence forces people to drink intoxicants.

Article 300 paragraph (2) of the Criminal Code, which reads: If the act results in serious injuries, the guilty is subject to a maximum imprisonment of seven years.

Article 300 paragraph (3) of the Criminal Code, which reads: If the act results in death, the guilty is subject to a maximum imprisonment of nine years.

Article 300 paragraph (4) which reads: If the person who is guilty of committing said crime, in carrying out his livelihood, can be deprived of his right to carry out that livelihood.

54. Sudarto, *Hukum dan Hukum Pidana*, Alumni, Bandung, 1975, p. 100.

55. Sudarto, *Hukum Pidana I*, Badan Penyediaan Bahan-bahan Kuliah, FH Undip, Semarang, 1987, p. 99-100.

From Article 300 of the Criminal Code, there are three actions that are prohibited, namely selling or giving drunk drinks to people who are already drunk, drunk a sixteen year old child, by force or threats of violence forcing people to drink intoxicating.

With due observance of the above provisions, it can be seen that not all liquor sellers are punishable by punishment. It is said so, because the seller who can be convicted, namely the seller who meets the requirements, in this case must know that the person who bought or was given the drink was drunk. Thus, if they do not meet these requirements, they cannot be convicted.

The existence of such restrictions or conditions, in fact, shows the weakness and not anticipation of the Criminal Code. This is because the Criminal Code itself opens opportunities to sell intoxicating drinks that can cause or cause problems.

From the provisions of this Article, it can be concluded briefly that in order to be punished according to this article, the person who sells or gives alcoholic drinks must know that the person who buys or is given the drink must have been visibly drunk, otherwise, cannot be subject to this Article.

This article also applies to people who make minors drunk. All these actions are carried out intentionally and with violence or the threat of violence to force people to drink alcohol.-

Taking into account the criminal sanctions imposed in that Article, it can be said to be concerning because selling dangerous drinks is only punishable by a one year sentence. It is felt that such an amount is not commensurate with the production. Moreover, if seen in practice this amount can still be deducted through a court decision. Thus, the lighter the sentence for the convicted, the less deterrent they will be. This is because a short sentence will not be able to realize the guidance system adopted in the penal system.

b. Article 492 of the Criminal Code:

Article 492 paragraph (1) of the Criminal Code which reads: Whoever is drunk, in public, obstructs traffic, or disturbs the order, or threatens the safety of others, or acts something that must be done carefully or by carrying out certain precautionary measures, so as not to endanger the life or health of others, shall be punished by a maximum imprisonment of six days, or a maximum fine of twenty-five rupiahs.

Article 492 (2) of the Criminal Code which reads: If when the violation is committed it has not passed one year since the punishment has become permanent due to the same violation, or because of the matters described in Article 536, the maximum imprisonment is two weeks.

With the aforementioned provisions, it means that a person who is not drunk or he is drunk but still lives at home, cannot be ensnared by that provision. Thus the entry into force of Article 492 of the Criminal Code is very limited and not anticipatory, because it is still possible to drink alcohol to get drunk. In fact, this is precisely what causes acts that deviate from existing norms which should be prevented by criminal law. However, the KUHP left the colonial legacy overlooked.

d. Article 536 of the Criminal Code

Article 536 paragraph (1) of the Criminal Code which reads: Anyone who is clearly drunk on a public road, shall be threatened with a maximum fine of fifteen rupiah.

Article 536 paragraph (2) of the Criminal Code which reads: If the violation has not

passed one year since the punishment has become permanent due to the same violation or as described in Article 492, the fine may be replaced with a maximum imprisonment of three days.

Article 536, which reads: If in one year the last sentence is due to the second or subsequent repetition which becomes permanent, shall be subject to a maximum imprisonment of three months.

In order to be subject to this Article, the offender must be visibly drunk and on public roads. If at home, not subject to this article.

- e. Article 537 KUHP: Anyone outside the army canteen sells or gives liquor or wine to members of the armed forces under the rank of lieutenant or to his wife, child or servant, shall be punished by a maximum imprisonment of three weeks or a maximum fine of one thousand five hundred rupiahs;
- f. Article 538 of the Criminal Code: A seller or his representative who sells liquor who in carrying out his job provides or sells liquor or wine to a child under the age of sixteen, shall be punished by a maximum imprisonment of three weeks or a maximum fine of four thousand and five hundred rupiah.

Those who can be punished according to this Article are liquor sellers who give liquor to children who are underage. This article is also linked to Article 300 of the Criminal Code.

- g. Article 539 of the Criminal Code: Whoever, when people hold a public party / folk games / parade for the public, provides alcoholic liquor or tuak for nothing or provides liquor or hard wine as a party. gift, punishable by a maximum imprisonment of twelve days or a maximum fine of three hundred seventy-five rupiah.

According to this Article, those who are punished are those who provide it free of charge or as a gift of liquor or tuak when there is a public crowd.

From the provisions of these articles, it can be concluded that drunkenness according to the Criminal Code is drinking mostly liquor, so that one cannot control one of the five senses or limbs, drink in public places, obstruct traffic, and disturb public order.

With these provisions, it is hoped that it can eliminate or reduce acts related to liquor, although there are still many gaps, weaknesses or deficiencies in the articles in the Criminal Code that are colonial legacy.

2. Islamic Criminal Law

Before the arrival of Islam, the Arab community was familiar with alcoholic drinks or also called liquor (khamar in Arabic). In addition, almost all Arabic poetry / poetry before the arrival of Islam could not be separated from the worship of alcoholic beverages. This implies how familiar the people are with the habit of drinking alcohol.

The principle of the prohibition of khamr was held firmly by Islamic countries until the end of the 18th century. However, in the early twentieth century, Islamic countries began to orientate towards the West by applying positive law and leaving Islamic law. So, in principle, khamr (liquor) is not prohibited and people who drink it are not threatened with punishment, unless they are drunk in public.⁵⁶

While Islamic countries are immersed in Western influence because they have become colonies of Western countries, non-Islamic countries themselves have begun to actively intensify anti-alcohol

⁵⁶. Ahmad Wardi Muslich, *Hukum Pidana Islam*, Cetakan Pertama, Sinar Grafika, Jakarta, 2005, p. 71.

campaigns, because they are aware of the dangers of this alcohol, both to health and public order. ⁵⁷

Islam forbids khamr (liquor) gradually, because at that time liquor has become a habit that is difficult to abandon. According to Sayid Sabiq that up to the time of the Prophet SAW moving from Mecca to Medina, there were still many people who drank liquor (khamr), so there were many questions from Muslims to Prophet Muhammad about this khamr. Then, come down the verses of the Qur'an in Surah Al-Baqarah verse 219.⁵⁸

Khamr in Islam it does not always refer to alcohol. Khamr is all things drinks and food that can cause drunkenness, as explained in the following hadith: "Every thing that is intoxicating means khamr, and every khamr is haram" (Narrated by Bukhary and Muslim). The definition of khamr can also be found from the explanation of Umar RA: "Anything that can cover one's mind is called khamr" (Narrated by Bukhary and Muslim).

Keep in mind that alcohol is only a form of chemical substance. This substance is also used for various other purposes such as in disinfectants, cleaners, solvents, fuels and as a mixture of other chemical products. For these examples of use, alcohol cannot be considered as khamar, therefore its use is not prohibited in Islam.

On the other hand, types of drugs such as psychotropic drugs and narcotics, even though they do not contain alcohol, are categorized as khamar in Islamic perspective as haram / prohibited.

The rules for the prohibition (prohibition) of liquor (khamar) apply to all Muslims and there are no exceptions for certain individuals. What is forbidden in Islam is the act of drinking the khamar itself, regardless of whether the drinker is drunk or not. This is quite clearly stated in Surah Al-Maidah verse 90: "O you who believe, in fact (drinking) khamar, gambling, (sacrificing for) idols, drawing fate with arrows, are among the acts of satan. So stay away from these deeds so that you get good luck.

Islam is not ignorant of the benefits of khamar, but in Islamic view the impact of damage to khamr in human life is far greater than the benefits that can be obtained. This is stated in the Al Quran surah Al Baqarah verse 219 which means: "They ask you about khamar and gambling. Say: "In both there are great sins and some benefits to humans, but the sins of both are greater than the benefits".

Islam strictly forbids khamar. As in the word of Allah SWT in QS. Al Maidah verse 90: "O you who believe, verily (drinking) khamr, gambling, sacrificing for idols, drawing fate with arrows, are among the actions of satan. So stay away from these deeds so that you get good luck.

The following verse mentions various evils to signal the great danger and material evils of the crimes of gambling and drinking wine. Allah says in QS al Maidah verse 91: "Surely that satanic intends to cause enmity and hatred among you because (drinking) khamar and gambling, and preventing you from remembering Allah and praying, then stop you". Rasul SAW also warned: "Abstain from khamr, because in fact it is the key to all badness" (Narrated by Al Hakim and al-Baihaqi).

Islam views that drinking khamr is a great immorality and the perpetrator must be subject to had sanctions. Had to drink khamr is bound forty times and can be added. Ali ibn Abi Talib said: "The Prophet (PBUH) bound (the person who drank khamr) 40 times, Abu Bakr bound him 40 times and Umar bound 80 times, and all are sunnah". (Reported by Muslim).

Islam also prohibits all things related to khamr (miras), including production, sales, shops and their

57. *Ibid.*

58. *Ibid.*, p. 72.

products, and so on. Rasul SAW said: "Allah cursed khamr and cursed those who drank it, poured it, who squeezed it, asked to be squeezed, who bought it, sold it, brought it, asked to be brought, who ate the price" (Narrated by Ahmad). Therefore the Islamic system will prohibit the production of khamr (alcohol), its sale, the places that sell it, its distribution, and so on. People who violate it means committing a criminal act and he must be subject to ta'zir sanctions.

With all that, Islamic sharia eliminates the alcohol market, cutting down on alcohol production, sales, distribution and sales venues in the community. With that Islam closes one of the doors of all evil. Islam saves people from all the dangers that may arise because of khamr.

C. Conclusion

Drinking alcohol can have a negative or harmful effect on yourself and others. For yourself, drinking can damage your health and even take your own life. The negative impact on others, alcohol can disrupt public order, be it accidents, theft, murder, and other crimes.

In the Criminal Code, not all liquor sellers are punishable by punishment and people who are not drunk or drunk but still stay at home cannot be caught by the law. Here, the Criminal Code still provides an opening for the perpetrator to commit this alcoholic crime. Whereas in Islamic criminal law it prohibits the production of khamr (alcohol), its sale, the places that sell it, its distribution, and so on. People who violate it means committing a criminal act and he must be subject to ta'zir sanctions. So that Islam saves people from all the dangers that may arise because of khamr.

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