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The Application of Criminal Sanctions on the Distribution of Alcoholic Drinks

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ABSTRACT

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This study aims to investigate the criminal sanctions on the distribution of alcoholic drinks as well as its application based on Regional Regulation. This case study was conducted in Kuningan District by applying ¹⁴juridical empirical research method. The results showed that Kuningan District has Regional Regulation No. 6 of 2014 concerning ¹Supervision and Control of Alcoholic Drinks. This Regional Regulation regulates the distribution and sale of alcoholic drinks which are classified into 3 (three) groups, namely group A, group B, and group C. These three groups of alcoholic drinks can only be sold in star hotels with the Regent's permission. Law enforcement in the application of criminal sanctions on the distribution of alcoholic drinks is carried out by holding raids in collaboration with related parties which are then followed up by carrying out investigation, search, and confiscation of alcoholic drinks. The sanctions imposed are in the form of imprisonment and/or fines.

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1. Introduction

Liquor is a type of drink that contains alcohol; it is not explained what percentage of alcohol level is in it. Alcohol is an addictive substance, meaning that it can cause addiction and dependence. Liquor is all types of alcoholic drinks. Alcoholic drinks are drinks containing ethanol which are processed from agricultural products containing carbohydrates by fermentation and distillation or fermentation without distillation. (Akhdhian, Hartiwingsih, & Handayani, 2017) Alcoholic drinks can cause someone feel and think unhealthy. Alcoholic drinks can also cause addiction or even dependence. Besides, the addiction of alcoholic drinks can cause various problems in society, such as the occurrence of crimes and violations. (Candrasari & Karjoko, 2018)

The habit of drinking alcohol, especially in young generation, has been widely discussed by experts from all over the world. The teenagers' desire to be considered mature by their surroundings needs serious attention. Teenagers are the nation's next generation who has the potential to develop in accordance with the expectations of society. Yet, as a negative effect of consuming alcoholic drinks, teenagers can become more aggressive and easily irritated. (Triwanto & Aryani, 2020)

The most worrying case is not only the occurrence of regeneration from adulthood, adolescence, and children, but also the significant number of school-age children involved in the habit of consuming alcoholic drinks. (Triwanto & Aryani, 2020) This concern is very reasonable considering that school-age children will lose their future. The

individual and social impacts caused by alcoholic drinks can damage the social system as it can cause various irregularities, such as gambling, prostitution, crime, etc. (Wibowo, 2020)

Accordingly, the government issues some regulations relating to the distribution of alcoholic drinks. Article 538 of the Criminal Code (KUHP) clearly states the seller of liquor or his substitute who is in the exercise of his profession serving or selling liquor or fermented palm wine to a child under the age of sixteen shall be punished by a maximum light imprisonment of three weeks or a maximum fine of four thousand five hundred rupiahs. Further, Article 539 of the Criminal Code (KUHP) declares that any person who, on the occasion of holding festivals or games or parades, supplies free liquor or fermented palm wine and/or offers liquor or fermented palm wine as a reward shall be punished by a maximum light imprisonment of twelve days or a maximum fine of three hundred and seventy-five thousand rupiahs. (Zubaidi, Pratama, & Al-Fatih, 2020)

Yet, Articles 538 and 539 of the Criminal Code (KUHP) are still general in nature and provide a light sanction so that they do not cause a deterrent effect. As a result, law enforcement officers experience difficulties in eradicating the violations of alcoholic drink distribution. Accordingly, the Government of Kuningan District issued Kuningan District Regional Regulation No. 6 of 2014 concerning Supervision and Control of Alcoholic Drinks in Kuningan District which provides heavier sanctions than the provisions in the Criminal Code. (Ishak, Hasibuan, & Arbani, 2020)

Based on the background previously described, the problems discussed in this study are formulated into the following questions; *first*, how the arrangements of criminal sanctions on the distribution of alcoholic drinks in Kuningan District are, and, *second*, how the criminal sanctions on the distribution of alcoholic drinks are implemented in Kuningan District based on Regional Regulation No. 6 of 2014. The method used in this case study was juridical empirical research method. Juridical empirical research method is a legal research method examining how law works in society. The juridical empirical research is a study that moves from the gap between *das-sollen* (theory) and *das-sein* (practice or reality). (Triwanto & Aryani, 2020)

2. Results and Discussion

2.1. The arrangements of alcoholic drinks

The amendments to the 1945 Constitution of the Republic of Indonesia, the concept of the rule of law as regulated in Article 1 Paragraph (3) has undergone changes. Our country is no longer *rechstaat* or the rule of law, but the combination of these two concepts. Thus, Indonesia recognizes both the Law and the existence of laws that live and develop in society as the source of law. The rule of law is always associated with the principles of governance which must be based on the law and the constitution to realize justice, legal certainty, and the greatest benefit for the people. Therefore, the government has issued various regulations that must be obeyed by every citizen, including the regulation on the distribution of alcoholic drinks. (Akhmaddhian et al., 2017)

The concept of Indonesian constitutional state is built on the basis of the philosophy of Pancasila. Therefore, law is developed based on the ideological foundation of Pancasila, meaning that law must reflect the principles or values of Pancasila which are the basis of the State. Pancasila is a source of enlightenment, a source of inspiration and a basis for solving problems faced by the Indonesian people. (Jamaludin & Karjoko, 2019)

Law of the Republic of Indonesia No. 36 of 2009 on Health regulates the government's efforts to maintain public health, including; 1) food and drinks distributed in society must be based on health standards, 2) food and drinks can only be distributed after obtaining a distribution permit in accordance with the regulations, and 3) every packaged food and drinks must be given a sign or label containing the name of the product, the list of ingredients used, the net weight or net content, the name and address of the party producing or importing food and drinks into the territory of the Republic of Indonesia, and the date, the month, and the year of expiration. (Hutomo & Karjoko, 2018)

Further, Government Regulation of the Republic of Indonesia No. 19 of 2004 concerning Trade in Goods under Supervision clearly regulates the procedures, including licensing, of trade in goods under supervision so that administrative sanctions can be imposed on violations of these trading procedures. This means that, in accordance with the provisions of this regulation, law enforcement officers, such as police, judges, prosecutors, and advocates, can assist the supervision of the distribution of goods with the category of alcoholic drinks. (Hutomo & Karjoko, 2018)

Meanwhile, Regulation of the Minister of Trade of the Republic of Indonesia No. 20/M-DAG/PER/4/2014 concerning Supervision and Control of the Procurement, Distribution, and Sales of Alcoholic Drinks states that the sale of alcoholic drinks to be drunk directly on the spot can only be held in hotels, restaurants, and bars, in accordance with the legislation in tourism sector, and other certain places determined by the Regent/Mayor and Governor for the Province of the Special Capital Region of Jakarta. Then, the retail sale of alcoholic drinks can only be held by retailers at Duty Free Shops and other certain places determined by the Regent/Mayor and Governor for the Province of the Special Capital Region of Jakarta. (Handayani, 2013)

In carrying out its duties, Kuningan District has exercised its rights and authorities to develop Regional Regulation in an effort to protect public order and peace as well as to maintain environmental sustainability. Article 4 of Kuningan District Regional Regulation No. 6 of 2014 concerning Supervision and Control of Alcoholic Drinks in Kuningan District states Alcoholic Drinks are categorized into the following groups. (Handayani, Sulistiyono, Leonard, Gunardi, & Najicha, 2018)

Alcoholic Drinks Group A are drinks containing ethyl alcohol or ethanol (C₂H₅OH) with alcohol level up to 5% (five percent). Alcoholic Drinks Group B are drinks containing ethyl alcohol or ethanol (C₂H₅OH) with alcohol level more than 5% (five percent) to 20% (twenty percent); and Alcoholic Drinks Group C are drinks containing ethyl alcohol or ethanol (C₂H₅OH) with alcohol level more than 20% (twenty percent) to 55% (fifty five percent). (Akhmaddhian et al., 2017)

This regulation declares that alcoholic drinks Group A, B and C can only be sold at hotel bars with 3 (three) stars and above after obtaining the Regent's permission. Here, the Regent has the right to close and/or demolish places according to his judgment and on the recommendations and suggestions of the team. The team is the Supervisory Team for the distribution of alcoholic drinks/traditional alcoholic drinks. The formation and duties of this supervisory team are determined by the Regent. If there is a violation against this regulation, the sanction imposed is a maximum imprisonment of 6 (six) months or a maximum fine of Rp. 50,000,000.00 (fifty million rupiah). (Akhmetov & Rysaeva, 2015)

2.2. The application of criminal sanctions on the distribution of alcoholic drinks

The enforcement of Regional Regulations is carried out by the Civil Service Police in collaboration with Civil Servant Investigators (PPNS). According to Regional Regulation No. 6 of 2014 concerning Supervision and Control of Alcoholic Drinks, the investigation against violations of the provisions of Article 6 is carried out by Civil Servant Investigators (PPNS) in collaboration with the State Police Investigators of the Republic of Indonesia having a coordination and supervision function. The duties and authorities of Civil Servant Investigators, based on Regional Regulation No. 6 of 2014 concerning Supervision and Control of Alcoholic Drinks. (Luthviati, Registration, & Maret, 2020)

Investigator as referred to Article 17 paragraph (1) of Regional Regulation No. 6 of 2014 concerning Supervision and Control of Alcoholic Drinks, shall notify the commencement of investigations and report the results of their investigations to the Public Prosecutor in accordance with the provisions stipulated in the Criminal Procedure Code (KUHP). Based on data on violations of the distribution of alcoholic drinks in Kuningan District, there are 23 cases of violations of the distribution of alcoholic drinks from 2018 to 2020, including 14 cases in 2018, 6 cases in 2019, and 3 cases in 2020. The total cases that have been followed up at the court level were none in 2018, 5 cases in 2019, and 3 cases in 2020. Most of the violations were caused by the offenders who did not pay a fine in accordance with the applicable regulations. (Akhmaddhian et al., 2017)

The implementation of the law enforcement process against the violation of the distribution of alcoholic drinks highly depends on substance factors. Hence, the regulations must have strict sanctions and have a deterrent effect. Basically, there are many laws existed, but not all regulations can cover all problems. The law applies with the aim of avoiding similar problems. When someone violates the provision of a regulation, the violator will get strict and binding sanctions that aim to create a deterrent effect. (Karjoko, Jaelani, et al., 2019)

The application of criminal sanctions based on Regional Regulation No. 6 of 2014 concerning supervision and control of alcoholic drinks in Kuningan District has been effective in enforcing law. However, there are still many violators who violate the provisions of this regulation as the criminal sanctions imposed are

less strict and do not cause a deterrent effect. Based on the data previously mentioned, up to now, there are still many similar cases, namely violations of the distribution of alcoholic drinks in Kuningan District.(Rosidah, 2020)

Law enforcement efforts by implementing criminal sanctions on the violations of distribution of alcoholic drinks in Kuningan District are carried out by conducting investigations, searches, and confiscation. If there is a report of a criminal act of distributing alcoholic drinks, raids will be conducted by collaborating with related parties. Then, the violators are subject to sanctions in the form of imprisonment or fines. Besides, the public were asked to participate in the supervision of the distribution of alcoholic drinks with the aim of enforcing Regulation on Supervision and Control of Alcoholic Drinks in Kuningan District.(A. Kadir Jaelani, Handayani, & Isharyanto, 2019)

In terms of the legal structure, some problems were found, including the facilities needed are inadequate and the law enforcement process carried out by the Kuningan District Police has not been effective. Here, the police will resolve the criminal cases of alcoholic drink sellers with a small number of evidence. They will only conduct a coaching session and ask the sellers to make a stamped statement to not repeat his actions/does not resell alcoholic drinks. Meanwhile, alcoholic drink sellers with large amounts of evidence will be subject to criminal acts and submitted to the Court.(Abdul Kadir Jaelani, Handayani, & Karjoko, 2020)

Further, the legal culture factor of the society also gives an effect because the legal compliance of the society is one of the factors characterizing the functioning of the law. Regional Regulation No. 6 of 2014 on supervision and control of alcoholic drinks in Kuningan District also accommodates community participation as regulated in Article 6 stating that the public can report to the authorized officials if he finds out about the sale and distribution of alcoholic drinks. Based on the provisions of this Article, the community must have legal awareness. Here, the duty of law enforcement officers is to provide direction or to socialize the applicable regulations to the public so that they have legal awareness.(Karjoko, Maret, & Riyadi, 2019)

3. Conclusion

The arrangement of criminal sanctions on the distribution of alcoholic drinks in Kuningan District adheres to the *lex specialist* system as it no longer

refers to the provisions contained in the Criminal Code, but refers to Kuningan District Regional Regulation No. 6 of 2014 concerning Supervision and Control of Alcoholic Drinks in Kuningan District. The application of criminal sanctions on the distribution of alcoholic drinks in Kuningan District which is based on Regional Regulation No. 6 of 2014 has not been effective due to several factors. First, substance factor, namely the law enforcement process based on the Regional Regulation by the civil service police unit has not been effective. Second, structural factors, namely the lack of facilities and equipment possessed by the authorized officials so that most cases are resolved peacefully. Third, cultural factors, namely society has not supported law enforcement efforts yet because some alcoholic drinks are also developed traditionally.

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