



MINOL (Alcoholic Beverage) Bill IN THE TIME OF THE COVID-19 PANDEMIC IN PERSPECTIVE LAW AND HAM

Putu Daniel Gombo

Fakultas Hukum dan Ilmu Sosial, Universitas Pendidikan Ganesha,

Email: dagogombo@gmail.com

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Abstract

This study aims to analyze the Covid-19 pandemic Minol (Alcoholic Drinks) Prohibition Bill from a legal and human rights perspective and review the draft Law on the Prohibition of Minol (Alcoholic Drinks). This research is a research that uses normative legal research methods using the invitation approach (statue approach). This normative study was conducted by collecting primary, secondary and tresier legal materials. The material collected is then arranged systematically and analyzed using descriptive qualitative methods. The results of this study indicate that the existence of the Bill or Bill on the Prohibition of Minol (Alcoholic Drinks) is one of the things that threatens legal human rights (the right to legal equality) for alcoholic drink lovers and some residents who do not have a source of water that makes drinks. alcoholic as a water appearance. The Bill or Draft Bill on the Prohibition of Minol (Alcoholic Drinks), which is being drafted in the discussion at the House of Representatives, has triggered a trigger for crime in Indonesia.

Abstrak

Penelitian ini bertujuan untuk menganalisis RUU atau Rancangan Undang-Undang Larangan Minol (Minuman Beralkohol) pandemi Covid-19 dalam perspektif hukum dan HAM serta meninjau kembali draft RUU atau Rancangan Undang-Undang Larangan Minol (Minuman Beralkohol). Penelitian ini merupakan penelitian yang menggunakan metode

Corresponding Author:
Putu Daniel Gombo, e-mail :
dagogombo@gmail.com

penelitian hukum normatif dengan menggunakan pendekatan perundang-undangan (*Statue approach*). Studi normatif ini dilakukan dengan mengumpulkan bahan hukum primer, sekunder dan tersier. Materi yang dikumpulkan lalu disusun secara sistematis serta dianalisis dengan menggunakan metode deskriptif kualitatif. Dari hasil penelitian ini menunjukkan bahwa, adanya RUU atau Rancangan Undang-Undang Larangan Minol (Minuman Beralkohol) merupakan salah satu hal yang mengancam dari hak asasi hukum (*right of legal equality*) bagi pecinta minuman beralkohol dan beberapa penduduk yang tidak memiliki sumber air yang menjadikan minuman beralkohol sebagai pengganti air. RUU atau Rancangan Undang-Undang Larangan Minol (Minuman Beralkohol) yang sedang dimasukkan draft pembahasan di Dewan Perwakilan Rakyat, hal ini berpotensi pemicu meningkatnya kriminalitas di Indonesia.

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Preliminary

Law is a rule made by society to regulate life between communities which is binding, which if a person or group violates it will be subject to sanctions. In every country it is required to have binding laws so that people residing in the country are subject to the laws in that country, law is the hope of a way to guide the country and its people to the desired state. A flawed law will only lead to the destruction of the people.

Along with the development of the legal age, it does not remain in place but follows the development of the times, and therefore a country often makes a new law or by making changes to a law which may be seen that there are still loopholes that can harm Public. As written by Bellefroid in "Inleiding tot de Rechtswetenschap in Nederland", according to Bellefroid's understanding, there are five areas of law based on its object, one of which includes: "Rechtsgeschiedenis" (History of Law), the object is "the past legal system". The history of law is very important to study in order to understand positive law more deeply, because it analyzes the development of legal institutions, past legal figures who influence the current legal system.

Law exists due to several factors, namely norms and facts. Law is usually lifted from the norms that exist in a society because the people used to tend to follow the norms that live in their midst and sometimes they forget the existing facts from some circumstances, therefore the law must be lifted from the norms in the middle. according to Van Apeldoorn (Inleiding tot de studie van het Nederland-srecht). Based on the criteria, that in reality the law is always, "sollen" (should be), its form is in the form of norms and "sein" (facts), as well as "the art of law", forming and creating laws. "Law arts" (rechtskunnst), includes:

1. Legislation examines on the one hand "Political legislation", namely determining the objectives and contents of statutory regulations. On the other hand, "legal drafting" examines how to formulate norms, so that the objectives and contents of laws and regulations that are meant to be "legal drafters" can be expressed clearly and precisely and do not have multiple interpretations.
2. Judiciary, the art of law relating to the function of judges in implementing law (rechstoepassing), discovering the law of "rec-htsvinding" and even creating the law of "re-chtschepping".

Therefore, a law must not be blunt upward and sharp downward. Talking about law cannot be separated from human rights. Human rights are owned by every human being in the whole world, when human rights have not been echoed, there are often many deviations of human rights where there are several histories that discriminate against an existing group and race, namely in the form of slavery, rejection of a group, comparison skin color. After going through several tragedies that shocked the world, finally human rights began to be echoed by the whole world community. Human Rights or commonly known as HAM is a normative legal concept that applies anytime, anywhere and to anyone, so that it is universal and is owned by every person or human since he was born.

In the midst of this pandemic, several drafts of bills or what is commonly called the Draft of Law this time which will be discussed are the Bill on the Prohibition of Alcoholic Drinks (RUU Minol) which regulates criminal sanctions for drinkers or people who consume alcoholic beverages, in the form of imprisonment for a maximum of two years or a maximum fine of IDR 50 million. Such criminal sanctions or fines are contained in Article 20 Chapter VI concerning the criminal provisions of the Minol Bill.

YLKI: The DPR Does Not Need To Prohibit the Consumption of Alcoholic Drinks "Every person who consumes alcoholic beverages as referred to in Article 7 shall be punished with imprisonment of at least three months and a maximum of two years or a fine of at least Rp. 10 million and a maximum of Rp. 50 million "reads the draft regulation as downloaded from the DPR website.

Article 7 Chapter III regarding the prohibition referred to above regulates that every person is prohibited from consuming alcoholic drinks of class A, class B, class C, traditional alcoholic drinks and mixed or concocted alcoholic drinks. Criminal sanctions and fines for drinkers can be added if the person concerned is considered to be disturbing public order or threatening the safety of others. As stated in Article 21 point (1) Chapter VI concerning the Criminal Provisions of the Minol Bill, imprisonment for drinking minol who disturbs public order or threatens the safety of others is increased to a maximum of five years or a maximum fine of Rp. 100 million.

ICJR Reveals the Potential of Overcriminalization in the Minol Prohibition Bill, even in Article 21 point (2) it is stated that if drinking Minol is proven to have killed another person's life, then the sentence will be added by one third of the basic sentence.

In addition to drinkers, the Minol Bill also regulates the threat of sanctions for people who produce, import, store, distribute and sell mineral oil. Article 18 Chapter VI of the Criminal Provisions of the Minol Bill states that a person who

produces minol can be jailed for a maximum of 10 years or a maximum fine of Rp1 billion.

Meanwhile Article 19 Chapter VI of the Criminal Provisions of the Minol Bill stipulates that people who enter, keep, distribute and sell minol can be subject to a maximum imprisonment of 10 years or a maximum fine of Rp1 billion. The Minol Bill also regulates three classifications of minol based on its ethanol content, to be precise in Article 4 Chapter II concerning Classification.

The draft regulation states that class A alcoholic drinks are those with 1 to 5 percent ethanol content, group B minols with 5 to 20 percent ethanol content, and group C minols with 20 to 55 percent ethanol content. Even so, the prohibition for people to produce, import, store, distributing, selling, and consuming mineral oil does not apply for several purposes. Article 8 point (2) Chapter III concerning Prohibition states that the exception to the Minol Bill is given for the interests of customs, religious rituals, tourists, pharmacies, and in places permitted by statutory regulations. Responding to the Minol Bill, the Institute for Criminal Justice Reform (ICJR) warned of the potential for over-criminalization that might occur if this draft regulation was passed into law. On this basis, the Executive Director of ICJR, Erasmus Napitupulu, considered that the Minol Bill did not need to be discussed by the DPR. "The approach to prohibiting alcoholic drinks can have a negative impact on criminal justice in Indonesia," Erasmus said in an ICJR release, Wednesday (11/11).

After reading the draft of the draft ban on minolism which is available on the DPR website, Erasmus assessed that the proposed law would use a prohibitionist approach. Even so, one of the proposers for the Minol Bill from the PPP faction, Illiza Sa'aduddin Djamal, said that the Minol Bill was claimed to protect the community from negative impacts and raise public awareness about the dangers of Minol.

"The bill aims to protect the public from negative impacts, create order and peace in society from drinkers of mineral alcohol," Illiza told CNNIndonesia.com, Wednesday (11/11).

Based on the above background, the writer intends to carry out research on this problem, so the title of the research is appointed as follows: "BILLION ON MINOL (Alcoholic Drinking During the Pandemic Covid-19 PERSPECTIVE)

"With the aim to find out the impact of the Minol (Alcoholic Drink) Prohibition Bill on society in the perspective of Law and Human Rights.

Research methods

This type of research is normative juridical research. This type of normative juridical research is research based on main legal materials by examining theories, concepts, legal principles and statutory regulations related to this research (law in the books). This type of research is also better known as the library approach, namely by studying books, laws and regulations and other documents related to this research (Yudiono, 2013).

Data collection techniques in normative legal research are using secondary data collection. Secondary data collection is the collection of data using literature study and reviewing written information about the law that comes from various sources and is also widely published. The writing of this research was carried out with literature study, which is a way of collecting data by conducting searches and

examining library materials. In secondary data collection, the scope of library material referred to is in the form of official documents, library books, legislation, articles, literature, research results, scientific magazines, scientific bulletin, scientific journals and documents related to the material. research. The secondary legal material consists of three parts, namely:

- 1) Primary legal materials, namely legal materials which include statutory regulations and all official documents containing legal provisions (Apeldoorn, 2005).
- 2) Secondary legal materials, namely legal materials that assist or support primary legal materials in research that will strengthen the explanation therein, such as books, articles, journals, research results, and papers related to the protection of personal data plus search activities. data using the internet.
- 3) Tertiary legal materials, namely legal materials that provide instructions or explanations for primary and secondary legal materials such as legal dictionaries and encyclopedias (Ibrahim, 2006)

The type of approach used is the statutory approach (statue approach). The statutory approach (statue approach) was carried out to examine and analyze the provisions regarding the Bill on the Prohibition of Minol (Alcoholic Drinks) in the midst of the Covid-19 pandemic by using a legal and human rights perspective as the basis.

The data analysis used is the normative analysis method, by interpreting and discussing the research results based on legal understanding, legal norms, legal theories and doctrines related to the subject matter discussed. Legal norms are needed as major premises, then correlated with relevant facts used so that conclusions can be drawn on the problem. This data analysis is descriptive qualitative by describing it in the form of systematic explanation so that it has meaning and draws conclusions.

Results and Discussion

Draft Bill on the Prohibition of Alcoholic Drinks

The State of Indonesia is a constitutional state, this provision is stated in Article 1 paragraph (3) of the fourth amendment to the 1945 Constitution, which states "Indonesia is a state of law". If we look at these provisions, all aspects of life whether in the social, political, cultural, economic fields are regulated and limited by applicable legal norms (Ali, 2010). Therefore all problems that arise in people's lives must be resolved according to the applicable law, as well as the criminal acts committed.

As a consequence, in every legal state, whatever type it adheres to, the law must be the basis for every action, law has the highest position in the state, while in the understanding of people's sovereignty, it is the people who are considered sovereign above everything which then gives birth to a democratic system.

With regard to the Bill on the Prohibition of Minol (Alcoholic Drinks) where the freedom to use alcoholic drinks for sale and purchase and for consumption, this bill might become very controversial if it was passed because almost the majority of the people in Indonesia consume alcoholic drinks as well as for medical activities, entertainment and When eliminating stress, if you look at the draft that is being

discussed by the DPR, it can be seen that in fact this bill can create enormous crime, when the Bill on the Prohibition of Minol (Alcoholic Drinking) was included in the draft discussion by the DPR it immediately generated a lot of controversy, especially among young people where they probably consume alcohol to relieve stress, or are usually consumed to release all unbearable thoughts.

The contents of the draft Law on the Prohibition of Minol (Alcoholic Drinks) are as follows:

CHAPTER I GENERAL PROVISIONS

Article 1 In this Law what is meant by:

1. Alcoholic Beverages are drinks containing ethanol (C₂H₅OH) which are processed from agricultural products containing carbohydrates by fermentation and distillation or fermentation without distillation, either by giving prior treatment or not, adding other ingredients or not, or being processed by mixing the concentrate with ethanol or by diluting ethanol-containing drinks.

2. Each person is an individual or business entity with legal entity or not

3. Central Government, hereinafter referred to as the Government, is the President of the Republic of Indonesia who holds the power of the Government of the Republic of Indonesia as referred to in the 1945 Constitution of the Republic of Indonesia.

4. Regional Government is the governor, regent or mayor and regional apparatuses as an element of regional government administration.

Article 2 Prohibition of Alcoholic Drinks is based on:

- a. Protection;
- b. Order and Legal Certainty;
- c. Continuity; and
- d. Cohesiveness.

Article 3 Prohibition of Alcoholic Drinks aims to:

- a. Protecting the community from the negative impacts caused by Alcoholic Beverages
- b. raise public awareness about the dangers of Alcoholic Drinks; and
- c. create order and peace in society from the disturbance caused by drinking alcoholic beverages.

CHAPTER II CLASSIFICATION

Article 4 (1) Alcoholic Drinks that are prohibited from being classified based on the class and their levels are as follows:

- a. Group A Alcoholic Drinks are Alcoholic Drinks with a level of ethanol (C₂H₅OH) of more than 1% (one percent) to 5% (five percent);
- b. Group B Alcoholic Beverages are Alcoholic Drinks with ethanol (C₂H₅OH) content of more than 5% (five percent) to 20% (twenty percent); and
- c. Group C Alcoholic Beverages are Alcoholic Drinks with ethanol (C₂H₅OH) content of more than 20% (twenty percent) to 55% (fifty five percent).

(2) Apart from Alcoholic Drinks based on the group as intended in paragraph (1), Alcoholic Drinks are prohibited which includes:

- a. Traditional Alcoholic Drinks; and
- b. Mixed or mixed alcoholic beverages.

CHAPTER III PROHIBITION

Article 5 Everyone is prohibited from producing class A, class B, class C Alcoholic Beverages, and mixed or concocted Alcoholic Beverages as referred to in Article 4.

Article 6 Everyone is prohibited from importing, storing, distributing, and / or selling Alcoholic Beverages of class A, group B, group C, traditional Alcoholic Drinks, and mixed or concocted Alcoholic Drinks as referred to in Article 4 in the territory of the Republic of Indonesia.

Article 7 Everyone is prohibited from consuming class A, class B, class C Alcoholic Beverages, and mixed or concocted Alcoholic Beverages as referred to in Article 4.

Article 8 (1) The prohibition as referred to in Article 5, Article 6 and Article 7 does not apply to limited interests.

(2) Limited interest as referred to in paragraph (1) includes:

- a. Customary interests;
- b. Religious rituals;
- c. Traveler;
- d. Pharmacy; and
- e. Places permitted by statutory regulations.

(3) Further provisions regarding limited interests as referred to in paragraph (2) shall be regulated in a Government Regulation.

Article 9 (1) The government is obliged to allocate funds originating from excise revenue and tax on Alcoholic Drinks originating from limited interests as referred to in Article 8 for the following activities:

- a. socialization about the dangers of Alcoholic Drinks; and
- b. rehabilitation of Alcoholic Drink victims

(2) The amount of funding allocation as referred to in paragraph (1) is 20% (twenty percent) obtained from the excise and tax on Alcoholic Drinks every year.

(3) Further provisions regarding the procedures for the use of funds as referred to in paragraph (1) and paragraph (2) shall be regulated in a Government Regulation.

CHAPTER IV SUPERVISION

Article 10 (1) The Government and Regional Governments have the authority to supervise Alcoholic Drinks starting from producing, importing, storing, distributing, selling and consuming Alcoholic Drinks.

(2) Supervision of Alcoholic Drinks as intended in paragraph (1) is carried out by an integrated team formed by the Government and Regional Governments.

Article 11 The integrated team formed by the Government as referred to in Article 10 paragraph (2) shall at least consist of:

- a. the ministry that organizes government affairs in the industrial sector;
- b. the ministry that organizes government affairs in the trade sector;
- c. the ministry that organizes government affairs in the financial sector;
- d. government agencies that carry out government affairs in the field of food and drug control;
- e. the Indonesian National Police; f. Attorney General's Office; dang. representatives of religious figures / community leaders.

Article 12 The integrated team formed by the Regional Government as referred to in Article 10 paragraph (2) shall at least consist of:

- a. a regional work unit that administers government affairs in the industrial sector;
- b. a regional work unit that administers government affairs in the trade sector;
- c. government agency that administers government affairs in the field of Food and Drug Control according to its working area;
- d. a regional work unit that administers government affairs in the field of security and order;
- e. The State Police of the Republic of Indonesia according to their working area;
- f. Prosecutors according to their working area; and
- g. representatives of religious figures / community leaders.

Article 13 (1) The implementation of supervision by an integrated team as referred to in Article 11 and Article 12 is coordinated by:

- a. National Police of the Republic of Indonesia for the national level;
- b. governor for the province; and
- c. regent / mayor for regency / city areas.

(2) Further provisions regarding the implementation of supervision by an integrated team as referred to in paragraph (1) shall be regulated in a Government Regulation.

Article 14 (1) The Integrated Team as referred to in Article 11 and Article 12 carry out periodic supervision.

(2) Regular supervision as referred to in paragraph (1) shall be carried out at least 4 (four) times a year.

(3) The results of periodic monitoring as referred to in paragraph (1) shall be published to the public through print and / or electronic media.

Article 15 (1) Funding for the activities of the Integrated Team at the national level comes from the State Budget.

(2) Funding for the activities of the Integrated Team at the provincial and district / city levels shall be sourced from the Regional Budget.

Article 16 In the event that the results of the supervision as referred to in Article 14 paragraph (3) show initial evidence that a criminal act has occurred, the investigation shall be carried out immediately by the authorized investigator in accordance with the provisions of the Legislation.

CHAPTER V ROLE AND COMMUNITY

Article 17 (1) The public can participate in the supervision of Alcoholic Drinks.

(2) Participation as referred to in paragraph (1) shall be carried out by providing a report to the competent authority in the event of a violation against the prohibition on the production, distribution, trade and / or consumption of Alcoholic Drinks.

(3) Community participation as referred to in paragraph (2) shall be carried out by individuals and / or community groups.

(4) Public participation as referred to in paragraph (2) shall be entitled to guaranteed protection in accordance with the provisions of the Legislation.

CHAPTER VI CRIMINAL PROVISIONS

Article 18 (1) Every person who violates the provisions referred to in Article 5 shall be sentenced to imprisonment of at least (2) years and a maximum of 10 (ten) years or a fine of at least Rp. 200,000,000, - (two hundred million) and a maximum of Rp1,000,000,000.00 (one billion rupiah).

(2) In the event that the violation as referred to in paragraph (1) results in the loss of the life of another person, the punishment shall be the principal sentence plus 1/3 (one third).

Article 19 Every person who violates the provisions referred to in Article 6 shall be sentenced to imprisonment of at least (2) years and a maximum of 10 (ten) years or a fine of at least Rp. 200,000,000, - (two hundred million) and a maximum of Rp1,000,000,000.00 (one billion rupiah).

Article 20 Every person who consumes Alcoholic Drinks as referred to in Article 7 shall be punished with imprisonment of at least (3) three months and a maximum of 2 (two) years or a fine of at least Rp. 10,000,000, - (ten million) and a maximum of Rp.50,000,000.00 (fifty million rupiah).

Article 21 (1) In the case of an act as referred to in Article 20 disturbing public order or threatening the security of other people, the punishment shall be imprisonment for at least 1 (one) year and a maximum of 5 (five) years or a fine of at least Rp. 20,000,000, -and a maximum of Rp. 100,000,000.00 (one hundred million rupiah).

(2) In the event that the act as referred to in paragraph (1) results in the loss of the life of another person, the punishment shall be the principal sentence plus 1/3 (one third).

CHAPTER VII CLOSING PROVISIONS

Article 22 At the time this Law comes into effect, all laws and regulations that regulate Alcoholic Drinks are declared to remain valid as long as they do not conflict with the provisions of this Law.

Article 23 Implementing regulations of this Law must be stipulated no later than 1 (one) year from the promulgation of this Law.

Article 24 This Law comes into force on the date of promulgation.

The Bill on the Prohibition of Minol (Alcoholic Drinks) during the Covid-19 Pandemic from a Legal and Human Rights Perspective

Human rights in various aspects of life according to Eko Hidayat (2016) can be explained as follows:

- a. Political rights (political right), namely the right to participate in government, the right to vote and be elected in elections, the right to establish a party and so on.
- b. Economic human rights (property right), the right to own something, buy and sell it, and use it.
- c. Legal human rights (right of legal equality), namely the right to receive equal treatment in law and government. As well as the right to receive equal treatment in judicial procedures and protection (procedural right). For example regulations in, arrest, search, trial and so on.
- d. Social and cultural rights (social and culture right), for example the right to choose education, develop culture and so on.

- e. Personal right, which includes freedom of expression, freedom to embrace religion and so on

Judging from this aspect, the existence of human rights gives everyone to have freedom of opinion then the Bill on the Prohibition of Minol (Alcohol Drinking) can be detrimental to some people, especially for areas experiencing water shortages, sometimes they use liquor to quench thirst, taking one example. that is, people in the Bangli district in Asongan village where the place uses traditional liquor wine to replace water, unconsciously this bill is detrimental to some people due to lack of water in the area.

Conclusion

From the explanation above, it can be concluded that the Bill on the Prohibition of Minol (Alcoholic Drinks) can be detrimental to several parties, if everyone who violates using liquor and is subject to articles 18,19,20 and 21 then there will be a very drastic increase in crime in Indonesia.

Suggestion

In this case, the enforcement of human rights against the Bill on the Prohibition of Minol (Alcoholic Drinks) must be reviewed again by the DPR in terms of their rights who have several obstacles to consuming liquor as a substitute for water due to a lack of water sources in a place, because if this happens if this happens or the Ruu is legalized, the increase in crime in Indonesia will increase drastically, which due to circumstances, a person has the right to fight for the rights they want together because law is the hope of a way to guide the country and the people to the desired state. A flawed law will only lead to the destruction of the people.

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