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## JURIDICIC REVIEW ON PUNISHMENT FOR HARD DRINKERS (KHAMR) BY POSITIVE CRIMINAL LAW AND ISLAMIC CRIMINAL LAW

Safaruddin Harefa

e-mail: safaruddinharefa1993@gmail.com

Magister Ilmu Hukum Fakultas Hukum Universitas Gadjah Mada

Jalan Bulaksumur, Caturtunggal, Kec. Depok, Kabupaten Sleman, Daerah Istimewa Yogyakarta

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### Article Info

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#### Article history:

Received Jan 09<sup>th</sup>, 2020

Revised July 02<sup>th</sup>, 2020; Sept 15<sup>th</sup>  
2020; Nov 12<sup>th</sup> 2020

Accepted Des 16<sup>th</sup>, 2020

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#### Keyword:

**Booze,  
Punishment,  
Islamic Criminal**

**Abstract:** In the current millineal era, society is very fast because of the many shifts from what was once a manual, now more to the era of digitization. But technological advances do not always have a positive impact, sometimes even a negative impact. . This is a challenge for law enforcement officials to be able to create a response, especially in the liquor case. The problem of liquor is now hotly discussed in the community because of the negative impact that damages the drinker and damages the community, as well as causing more criminal crimes. . This paper is an analysis of how the criminal law is able to achieve the legal goals aspired to be analyzed from the study "Juridical Review of Punishment for Drinking Liquors (Khamr) According to Positive Criminal Law and Islamic Criminal Law. The research method used is Normative Juridical. The results of the study are as follows that the sentence for alcoholic acts through Positive Criminal Law is not proportional to the consequences of his actions with the punishment (sanctions) that are given, because the consequences caused by this liquor are very dangerous. Because the danger posed by alcohol is very dangerous both drinkers themselves and others who are around. That the penalty for criminal acts khamr in Islamic criminal law is twofold, namely forty lashes and eighty lashes. According to the author this is a punishment worth the time when other people commit the crime of alcohol must be comparable with what he did. In Islam that is what is referred to as sanctions that witnesses are given in accordance with the level of the crime committed.

**Abstrak:** Pada era milineal saat ini masyarakat sangatlah cepat sebab banyaknya pergeseran dari yang dahulunya manual sekarang lebih kepada era digitalisasi. Namun kemajuan teknologi tidak selalu berdampak positif, bahkan ada kalanya berdampak negatif. . Hal tersebut merupakan tantangan bagi aparat penegak hukum untuk mampu menciptakan penanggulangannya, khususnya dalam kasus Minuman keras. Masalah minuman keras kini hangat dibicarakan dalam kalangan masyarakat karena berdampak negatif yang merusak peminumnya dan merusak masyarakat, serta lebih menimbulkan berbagai kejahatan kriminal. . Tulisan ini merupakan analisa bagaimana hukum pidana itu mampu mencapai tujuan hukum yang dicita-citakan citakan yang di analisa dari kajian

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“Tinjauan Yuridis Tentang Hukuman Bagi Peminum Minuman Keras (Khamr) Menurut Hukum Pidana Positif dan Hukum Pidana Islam. Metode penelitian yang digunakan ialah Yuridis Normatif. Adapun Hasil penelitian sebagai berikut Bahwa hukuman bagi tindak pidana minuman keras melalui Hukum Pidana Positif tidak sebanding dengan akibat dari perbuatannya dengan hukuman (sanksi) yang diberikan, sebab akibat yang ditimbul oleh minuman keras ini sangatlah berbahaya. Sebab bahaya yang ditimbulkan oleh minuman keras sangatlah membahayakan baik peminum sendiri maupun orang lain yang ada disekitarnya. Bahwa hukuman bagi tindak pidana khamr di dalam hukum pidana islam ada dua, yaitu empat puluh kali cambukan dan delapan puluh kali cambukan. Menurut penulis ini adalah hukuman yang setimpal sebab ketika orang lain melakukan tindak pidana minuman keras harus sebanding dengan apa yang dilakukannya. Di dalam islam itulah yang disebut dengan sanksi bahwa sanksi diberikan sesuai dengan kadar tindak pidana yang dilakukannya.



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*Corresponding Author:* Email: safaruddinharefa1993@gmail.com

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## Introduction

In the current millineal era, people are shifting quickly because of the move from manual to digitalisation now. This development always continues in a process that sometimes doesn't happen. In other words, opposing the norms is more frequent and increasing, the better the type and form of the pattern is more complex. The community is trying to make updates in all fields. However, technological progress does not always have a positive impact, some are even negative. The point is that with technological advances there is also an increase in motivation issues. This is a challenge for law enforcers to encourage its response, especially in the case of liquor. Based on the Ministerial Decree<sup>1</sup> there are 3 classes of alcoholic liquor<sup>1</sup>, namely class A; ethanol content of 1% -5% (beer), class B; ethanol content of 5% -20% (grapes) and class C; ethanol content of 20% -45% (Whiskey, Vodca, TKW, Manson's House, Johny Walker, Kamput).

The effects caused after consuming alcohol can be felt immediately within a few minutes, but the effect varies, depending on the amount or level of alcohol consumed. In small amounts, alcohol causes feelings of calm, and users will more easily express emotions, such as feeling happy, feeling sad and angry. When consumed in excess will appear the following effects: feel more free to express yourself, without any feelings of being inhibited to be more emotional (sad, happy, angry excessively), arises due to physical staggering, blurred vision, until unconscious. Mental ability will experience obstacles that are distractions to focus attention and impaired memory.<sup>2</sup>

The problem of liquor is now hotly discussed in the community because of the negative impact that damages the drinker and damages the community, as well as causing more criminal crimes.<sup>3</sup> Many victims fell due to this hard drink, because of the

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<sup>1</sup>Keputusan Menteri Kesehatan Nomor: 22/MENKES/SK/II/1998

<sup>2</sup>Ifrah Aisyah Nasution, 2009 “Sangsi Pidana Minuman Keras ditinjau dari Hukum Pidana Indonesia dan Hukum Pidana Islam”(Skripsi Fakultas Hukum Universitas Andalas, Padang, p. 1.

<sup>3</sup>Ali Hasan, 2000, *Perbandingan Mazhab Fiqih, Cetakan Kedua*, Jakarta, Raja Grafindo Persada, p. 173

unnatural. However, this liquor is often used as a drink for traditional events or as a fun drink. Because this drink turns out to cause addictive effects and alcohol if consumed in excess can cause a disease.<sup>4</sup>

Besides consuming excessive alcoholic drinks until the loss of consciousness for the wearer can be said as the beginning of actions that violate the applicable legal rules, be it traffic accidents, rape, mistreatment, theft, murder even to acts of violence in the families of alcoholic drink users. . Acts in the form of criminal acts or negative acts of a person such as: traffic violations, theft, abuse, rape, etc. can be done by people who have drunk alcohol because after drinking it will cause drunk (loss of control). This act is a criminal act (violating the Act), As revealed by Moeljatno, a criminal act is an act that is prohibited by a rule of law, a prohibition which is accompanied by threats (sanctions) in the form of certain crimes, for those who violate the prohibition.<sup>5</sup>

On the other hand the Government also pays very serious attention to the manufacture, distribution, sale of soft drinks and their classification. In Article 300 and Article 536 of the Indonesian Criminal Code (KUHP) it actually regulates the prohibition on drinking alcohol, and the government also issues Presidential Regulation of the Republic of Indonesia No. 74 of 2013 concerning controlling and supervising alcoholic drinks and issuing Regulation of the Minister of Health No. 86 / MENKES / PER / IV / 77 concerning Liquor or alcoholic drinks to apply the highest health principles for all citizens.

Furthermore, in Islam there is also a prohibition to drink liquor as in one of the traditions of the Prophet Muhammad SAW said: "every drink that intoxicates is haram" (H.R. Bukhari). This means that any intoxicating drink or medicine is haram. In another hadith the Prophet SAW said: "All intoxicating is unlawful: and whatever is intoxicating is many, then at least it is forbidden."<sup>6</sup>

Based on the aforementioned background description, this study wants to understand more deeply about the penalties (sanctions) imposed by Criminal Law in Indonesia and Islamic Criminal Law on the basis of this, the authors are interested in conducting research as outlined in the form of a paper entitled "Juridical Review Regarding Punishment for Drinking Liquors (Khamr) According to Positive Criminal Law and Islamic Criminal Law.

## **Research Method**

This research is a legal research (legal research). According to F. Sugeng Istanto, legal research is research that is applied or applied specifically to the science of law.<sup>7</sup> By type, the nature and purpose of legal research are distinguished from normative legal research and empirical legal research.<sup>8</sup> The type that will be used in this research is juridical normative legal research (juridical normative).<sup>9</sup> According to Soerjono Soekanto normative juridical approach is legal research conducted by examining literature or secondary data as a basic material to be investigated by conducting a search of

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<sup>4</sup>Hartati Nurwijaya, 2009, *Bahaya Alkohol dan Cara Mencegah Kecanduannya*, Jakarta, Elex Media Komputindo, p. 1

<sup>5</sup>Moeljatno 2008 *Asas-Asas Hukum Pidana* , Jakarta, Rineka Cipta, p. 54

<sup>6</sup>Abdur Rahman, 1992, *Tindak Pidana dalam Syariat Islam*, Jakarta, PT Rineka Cipta, p. 70

<sup>7</sup>F. Sugeng Istanto, 2007, *Penelitian Hukum*, Yogyakarta, CV. Ganda, p. 29

<sup>8</sup>Bambang Waluyo, 2002, *Penelitian Hukum Dalam Praktik*, Jakarta, Sinar Grafika, p. 13

<sup>9</sup>F. Sugeng Istanto, *Op.Cit.*, p. 29

regulations and literature- This research is a legal research (legal research). According to F. Sugeng Istanto, legal research is research that is applied or applied specifically to the science of law. By type, the nature and purpose of legal research are distinguished from normative legal research and empirical legal research.<sup>10</sup>

The type that will be used in this research is juridical normative legal research (juridical normative). According to Soerjono Soekanto the normative juridical approach is legal research conducted by examining literature or secondary data as a basic material to be investigated by conducting a search of regulations and the literature relating to the problem under study.<sup>11</sup> The normative juridical approach is carried out by examining and interpreting theoretical matters relating to the principles, conceptions, doctrines and legal norms relating to alcoholic crime

## Results and Discussion

### A. Punishment for Alcoholic Drinkers (Khamr) According to Positive Criminal Law

#### 1. Definition and Legal Basis

Elucidation of Article 300 of the Criminal Code (KUHP) provides an understanding of liquor /alcoholic drinks are intoxicants when drunk for example, Beer, Wine, etc. (Drinks containing alcohol are used as pleasure drinks), explanation of Article 300 of the Law Criminal Law (KUHP). Meanwhile, according to the explanation of Article 537 of the Criminal Code in the explanation Soesilo R said that liquor is an intoxicating drink and contains alcohol.<sup>12</sup>

Article 1 number 2 Regulation of the Minister of Health of the Republic of Indonesia No.86 / MEN-KES / PER / IV / 77 concerning liquor, namely: it is explained that liquor is all types of alcoholic drinks but not drugs, including class A liquor, class B liquor and liquor group C. According to Ellen G. White that what is meant by liquor is a type of beverage that can damage the development of the mind and make people easily offended because it can damage brain tissue.<sup>13</sup> Poerwadarmita stated that the meaning of liquor is intoxicating drink.<sup>14</sup>

Furthermore, the Decree of the Minister of Industry and Trade of the Republic of Indonesia No. 359-360 / MPP / kep / 10/1997, the definition of alcoholic liquor is stated as follows: that alcoholic drinks are drinks containing ethanol which are processed from agricultural products containing carbohydrates by means of fermentation and distillation or without distillation, either by giving the behavior beforehand or not, as well as those processed by mixing the concentrate with ethanol or by diluting the drink with ethanol.<sup>15</sup>

The Minister of Industry and Trade's Decree also explained the process of making liquor from agricultural products to being processed in a modern way through factories. The reasons people become drinkers if we pay close attention to the causes of drinkers, the main driver lies in oneself:<sup>16</sup>

<sup>10</sup>Bambang Waluyo, *Op.Cit.*, p. 13

<sup>11</sup>Soerjono Soekanto & Sri Mamudji, 2000, *Penelitian Hukum Normatif (Suatu Tinjauan Singkat)*, Jakarta, Rajawali Pers, p. 13-14

<sup>12</sup>Soesilo, R, 1985, *KUHP Beserta Komentar-Komentar*, Bogor, Jakarta Politea, p. 334

<sup>13</sup>Mustafa, 1984, *Alkohol Dalam Pemaparan Islam dan Dunia Kesehatan*, Bandung, Alam'rof., p. 135

<sup>14</sup>Poerwadarmita, 1976, *Kamus Umum Bahasa Indonesia*, Jakarta, Balai Pustaka, p. 651

<sup>15</sup>Keputusan Menteri Perindustrian dan Perdagangan RI No. 359-360/MPP/kep/10/1997.

<sup>16</sup>*Ibid.*

- a. A great curiosity to try, unconsciously or think long about the consequences.
- b. The desire to have fun.
- c. The desire to follow trends or styles.
- d. Desire to be accepted by the environment or group
- e. Run away from boredom, problems or the hardships of life.
- f. The mistaken notion is that occasional use is not addictive.
- g. Not able or dare not face pressure from the environment or social groups
- h. Cannot say "no" to alcohol.

As for the legal basis governing liquor can be stated as follows:

- a. The Criminal Code (KUHP)
- b. Presidential Decree No. 3 of 1997 dated January 31, 1997 concerning the Supervision and Control of Alcoholic Beverages.
- c. Regulation of the Minister of Trade of the Republic of Indonesia Number 15 / MDAG / PER/3/2006 concerning Supervision and Control of Imports, Distribution and Sales, and Licensing of Alcoholic Beverages.
- d. RI Minister of Health Regulation No. 86/Menkes/Per/IV/77 concerning Liquor. This regulation specifically regulates liquor licenses.

## 2. Elements of Criminal Liquor

In his book Hari Sasongko explained that in the Criminal Code the problem of alcoholic acts is regulated in 3 articles, namely Article 300, Article 492, and Article 536. Referring to the provisions in these Articles, the elements of criminal acts contained in criminal acts of liquor are as follows:<sup>17</sup>

- a. Deliberately selling or handing out intoxicating drinks to people who are drunk (article 300 paragraph (1) to 1).
- b. Intentionally drunk a child under the age of 16 years (article 300 paragraph (1) to 2).
- c. With violence or with the threat of violence deliberately forcing people to drink intoxicants (article 300 paragraph (1) to 3).
- d. In a state of being drunk on a public road (article 536 paragraph (1)) A person who is truly drunk cannot do anything. Against people who commit criminal acts are considered responsible for their actions because before drunk someone can already think of the consequences of what can happen to someone who is drunk.

## **B. Penalties (Sanctions) of Hard Drinking Crimes**

Based on the Criminal Code or Penal Code (Sanctions) given for the perpetrators of alcoholic acts spread in several articles, including Article 300; Article 492; Article 536; Article 537; Article 538; Article 539 of the Criminal Code. The sound of the article is as follows:

Article 300 of the Criminal Code:

- (1) With a maximum prison sentence of one year or as much as IDR 4500 is imprisoned:
  - a. Who deliberately sells or orders intoxicating drinks to someone who looks drunk.
  - b. Whoever intentionally makes someone drunk a child who is generally under 18 years.

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<sup>17</sup>Hari Sasongko, 2003, *Narkotika dan Psicotropika Dalam Hukum Pidana*, Bandung, Mandar Maju, p. 117.

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c. Anyone who deliberately with violence or threats intentionally forced people to drink intoxicating drinks.

(2) If the act causes bodily injury, the offender is punished for seven years.

(3) If the deed causes the person to die, the offender is sentenced to prison for nine years.

(4) If the offender causes the crime in office, he may be fired from the job

Article 492 of the Criminal Code:

(1) Anyone who is drunk, either in a public street or disturbs public order, both threatens the safety of others or an act that must be carried out carefully and correctly so that no danger to the life or health of another person is punishable forever six days or a maximum fine of Rp 375.

(2) If at the time of committing the violation it is not yet one year after the sentence of the previous sentence for the offender for similar violations or if the violation was applied in article 536, he shall be sentenced to confinement for two weeks at the most.

Article 536 of the Criminal Code:

(1) Anyone who is drunk on the public road is liable to a maximum fine of Rp. 225.

(2) If at the time of committing the violation has not been one year, since the previous legal provisions for the guilty of similar violations or violations explained in article 492, then the fine sentence can be replaced with a sentence of up to three days.

(3) If the second repetition occurs within one year after the first criminal sentence has ended and becomes permanent, then the imprisonment is imposed for a maximum of two weeks.

(4) On the third or more repetitions in one year, after the conviction later due to the second or more repetitions becomes permanent, due to imprisonment for a maximum of three months.

Article 537 of the Criminal Code:

"Anyone who sells or gives strong drink or wine outside the army canteen to members of the Armed Forces under the lieutenant's belt or to his wife, child or servant, is threatened with imprisonment for a maximum of three weeks or a maximum fine of one thousand five hundred rupiah"

Article 538 of the Criminal Code:

"Liquor sellers or representatives who when carrying out their work provide or sell liquor or wine to a child under the age of 16, threatened with a maximum imprisonment of three weeks or a maximum fine of four thousand and five hundred rupiahs".

Article 539 of the Criminal Code

"Anyone who provides some kind of free liquor or wine or promises as a gift when a public party is held to hold a parade for the public, is threatened with imprisonment for a maximum of twelve days or a maximum fine of three hundred and seventy-five million rupiahs.

Based on the legal rules governing punishment (sanctions) for alcoholic offenders, according to the author, the sentence given to alcoholic offenders is not

proportional to the consequences of his actions with penalties (sanctions) given, because the consequences arising from alcoholism this is very dangerous like:

- 1) Consuming alcohol can cause paranoid reactions (biological illnesses, mental illnesses that make people think weird, and are imaginary like feeling themselves big or famous) that is real, it may seem rather saner, tire from the outside, the liquor that is drunk someone will be absorbed in the blood and over time will suppress the activity of the nervous system while in large numbers will cause intoxication, speaking unclear, digressing, and impaired memory ability.<sup>18</sup>
- 2) In addition to the above effects The following are the effects caused by addictive substances:<sup>19</sup>
  - a. Broken personality,
  - b. Behavior (lying, manipulation),
  - c. The typical mindset (fast-paced),
  - d. Violation of the norm, Physical shaking (day and night vibrating).
- 3) Physical disorders: Many alcoholic drinks will cause damage to the liver, heart, pancreas, and inflammation of nerves, nerve muscles, metabolic disorders, impotence and sexual disorders. Mental disorders: As a result of alcohol data permanently damage brain tissue, causing impaired memory, assessment skills, learning ability. Disturbances to society: Consumers of alcohol will ease one's feelings of being easily offended and attention to the environment is disturbed, pressing the self control center so that the person becomes brave and aggressive, if not controlled will lead to actions that violate the norms that exist in the community. What will be even worse is giving rise to criminal or criminal acts.<sup>20</sup>

### **C. Punishment for Liquor Drinkers (Khamr) According to Islamic Criminal Law**

#### **1. Definition and Legal Basis of Criminal Drinking Khamr**

One of the scholars, Al-Qurthubi said that the word khamar comes from the word khamara or satara which means to close. Therefore, there is the term female veil. Every object that closes something else, is always called khamr, as in the phrase "close your containers". So, khamr can close the mind, clog, and wrap it.<sup>21</sup>

In general, the fuqaha have different opinions regarding the definition of drinking alcohol. One of them according to Imam Malik, As-Syafi'i, and Ahmad bin Hanbal argues that drinking intoxicating drinks is the same, whether called khamr (liquor) or not, derived from the juice of wine and other types of ingredients, such as dates, raisins, wheat, barley, or rice, intoxicating in small or large quantities.<sup>22</sup>

While Imam Abu Hanifah, stated that khamr is the name for some of the drinks mentioned below:<sup>23</sup>

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<sup>18</sup>Rajamuddin. A., "Tinjauan Terhadap Timbulnya Kejahatan Yang Diakibatkan Oleh Minuman Keras di Kota Makassar", *Jurnal Hukum*, Vol. 3, No. 2, 2014, Dosen Ilmu Hukum UIN Alauddin, Makassar, p. 1.

<sup>19</sup>Anang Syah, 2000, *INABAH (Metode Penyadaran Korban Penyalahgunaan NAPZA)*, Tasikmalaya, Podok Pesantren Suryalaya, p. 8-9

<sup>20</sup>M. Arif Hakim, 2004, *Bahaya Narkoba Alkohol*, Cetakan Mail, Bandung, p. 76.

<sup>21</sup>Abu Abdullah Muhammad Bin Yazid Al-Qazwini, 1995, *Sunan Ibnu Majah*, Beirut, Dar Al-Fikr, Jilid II, p. 34

<sup>22</sup>Abd al-Qadir 'Audah, 1992, *Al-Tasyri' al-Jina-iy al-Islamiy Muqaranan bi al-Qanuni al-wad'iy*, Bairut, Muassasah al-Risalah, Cet, Ke-2, jilid 1, p. 498-499

<sup>23</sup>*Ibid.*

- a. Boiling wine, bubbly and bubbly and then scum removed. But according to Abu Yusuf and Muhammad is boiling wine, bubbly and bubbly wine is khamr, no matter whether the foam is thrown or not.
- b. The wine is boiled until it is reduced by two thirds and it is intoxicating.
- c. The dates of boiling dates and raisins are bubbly and bubbly and the foam is thrown away. Abu Yusuf and Muhammad did not question whether the foam was discarded or not because the law remained the same regardless of whether the drink was made from rutab dates (young dates), busr (dates before ripening), or tamr (dried dates)

Imam Abu Hanifah further explained that besides these three drinks were not considered khamr, they would still be called muskir. Drinking khamr is haram either a little or a lot. Drinking the deceased is prohibited because of its intoxicating levels. So, if someone drinks three drinks and is not drunk then drinks the fourth glass and is drunk, then the unclean is the fourth glass.<sup>24</sup>

The distinctive difference between khamr (liquor) and muskir (intoxicating drinks) makes Imam Abu Hanifah have to distinguish between the penalty of drinking liquor and the punishment of intoxication. According to him, there are two hudud punishments. First, hudud punishment for drinking alcohol. This hudud punishment is given regardless of whether the drinker is drunk or not, drink a little or a lot. Second, the hudud penalty for being drunk, which is given to people who drink drinks other than khamr (liquor) which if taken in certain amounts can make you drunk. If he drinks and is not drunk, he is not punished.<sup>25</sup> Intellect is one of the joints of human life that must be protected and nurtured. In the context of maintaining that mind, all actions which can damage it are prohibited. At the beginning of the development of Islam, it was still justified to drink khamr until the time the Prophet Muhammad migrated from Mecca to Medina. The Islamic Ummah wondered about khamr and gambling, because it damaged the crime and damage caused by these two acts.<sup>26</sup>

In Islam there is a prohibition on khamr (liquor), because khamr is considered one of the ugliness of the mother (Ummul khabais), because it destroys the mind, soul, health, and property. Islam forbid khamr drinks gradually, because at that time liquor had become a habit that was hard to leave. Allah SWT explains about the benefits and harms about the two actions above, as in the word of God in surah al-Baqarah verse 219, QS an-Nisa 'verse: 43:QS al-Maidah verse 90.

Referring to the arguments of the verses of the Qur'an above clearly explains that drinking khamr is an act that must be shunned. The scholars agreed to say that consuming khamr is unlawful. Allah SWT in the verse, which is a bad and heinous act and includes one of the acts of shaitan.<sup>27</sup>

In addition to the arguments above there are also a number of hadiths which strengthen the prohibition of these khamr and at the same time explain the law, including the following:

عَنْ ابْنِ عُمَرَ رَضِيَ اللَّهُ عَنْهُمَا أَنَّ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ: كُلُّ مُسْكِرٍ خَمْرٌ وَكُلُّ مُسْكِرٍ

<sup>24</sup>Ibid., p. 499

<sup>25</sup>Ibid.

<sup>26</sup>Sayyid Sabiq, 2006, *Fiqh al-Sunnah*, Bairut, Dar al-Fikr, Cet, Ke-1, p. 644

<sup>27</sup>Amir Syarifuddin, 2003, *Garis-Garis Besar Fiqh*, Jakarta, Kencana, , p. 290





During the reign of Umar bin Khattab the drinkers of the khamr were sentenced with eighty volumes, because at that time many drinkers began to drink. During the reign of Ali ibn Abi Talib, the drinker of khamr was also bound eighty times, by letting out the accuser of adultery.<sup>35</sup>

From the description above according to Ahmad Wardi Muslich concluded that in fact the scholars agreed that the punishment of forty times was clearly God's right, that is, the law of hadith, so that the sentence should not be forgiven or aborted. However, the forty flags were disputed by the ulama. Some consider it to have had to be carried out together with the forty times, and some consider it to be takzir whose application is left to the consideration of ulil amri (judge) deemed it necessary.<sup>36</sup>

Regarding the sanctions against the drinkers of the Khamr it is confirmed in the Prophet's hadith as follows:

عَنْ أَنَسِ بْنِ مَالِكٍ أَنَّ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ إِذَا شَرِبَ الْخَمْرَ فَجَلَدَهُ بِجَرِيدَتَيْنِ نَحْوِ أَرْبَعِينَ (رواه مسلم)<sup>37</sup>

"From Anas bin Malik, that the Prophet Muhammad SAW. visited by a person who had drunk khamr. He then whipped him with two date palm fronds forty times (HR. Muslim)

In the hadith above the lottery tools used for whipping are two dates of the palm leaf. Imam Nawawi said that the terms of these two dates support different palms. twenty times. Meanwhile some are determined as numbers, not limited to tools. Thus, the number of whips that are forty times multiplied by two midribs so that more than twenty times (40x2 palm fronds = 80 times the whip).<sup>38</sup>

In another hadith narrated by Imam Abu Daud Rasulullah SAW said:

عَنْ عَلِيِّ رَضِيَ اللَّهُ عَنْهُ قَالَ جَلَدَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فِي الْخَمْرِ وَأَبُو بَكْرٍ أَرْبَعِينَ وَكَمَلَهَا عُمَرُ ثَمَانِينَ وَكُلُّ سَنَةٍ (رواه أبو داود)<sup>39</sup>

"From Ali, ra, he said: Prophet Muhammad SAW whipped the perpetrator of the finger of syurb khamr forty times, as did Abu Bakr. Meanwhile Umar perfected it to be eighty times. Both are sunnah. "(H.R: Abu Daud)

In connection with the explanation above, an analysis of criminal sanctions for drinking khamr can be taken, there are two forty lashes and eighty lashes. The explanation above is one of the reasons why the scholars disagree. Nevertheless the scholars argue, that sanctions for criminals drinking khamr are eighty lashes, while the Shafi'i group believes sanctions are forty lashes.<sup>40</sup>

## Conclusion

That from the results of the discussion carried out by the author, the author comes to the conclusion, which is as follows:

1. That the punishment for alcoholic acts through Positive Criminal Law is not proportional to the consequences of his actions with the sanctions (sanctions) given, because the consequences caused by alcoholism are very dangerous. Because the

<sup>35</sup>Abu Muhammad Abdullah bin Abdurrahman bin al-Fadhli bin Bahrami ad-Darimi, *Op.Cit.*, p. 176

<sup>36</sup>Ahmad Wardi Muslich, 2005, *Hukum Pidana Islam*, Jakarta, Sinar Grafika, Cet, ke-1, h. IX p. 77

<sup>37</sup>Muslim, *Shahih Muslim*, Semarang, Toha Putra, t.th, Jilid II, p. 56-57

<sup>38</sup>M.Nurul Irfan, dan Masyrofah, 2014, *Fiqh Jinayah*, Jakarta, Amzah, , p. 52

<sup>39</sup>Sualaiman bin Al-Asy-Ats Al-Sijistani Al-Azdi, *Sunan Abi Daud*, Indonesia, Maktabah Dahlan, [t.th]), Jilid.IV, p. 164

<sup>40</sup>Wahbah Al-Zuhailiy, 1997 *Al-Fiqh Al-Islamiy Wa Adillatuhu*, Beirut, Dar Al-Fikr, Jilid VII, Cet, Ke-4, p. 5488-5489

danger posed by liquor is very dangerous both drinkers themselves and others who are around.

2. That the penalty for criminal acts khamr in Islamic criminal law is twofold, forty lashes and eighty lashes. According to the author, this is a punishment worth the time when another person commits a crime of alcohol must be comparable to what he did. In Islam that is what is referred to as sanctions that witnesses are given in accordance with the level of the crime committed.

## **Suggestion**

From the results of the discussion and conclusions of the author, the authors have the following suggestions:

1. There is a need for legal reform in the field of alcoholic offenses so that these crimes will no longer undermine the continuity of society.
2. There needs to be a synchronization of positive law making by taking good legal principles from Islamic criminal law so that the applicable law is able to provide a benefit that is generally accepted in society.

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