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IMPLEMENTATION OF CRIMINAL SANCTIONS ARTICLE 536 SECTION (1) KUHP AGAINST DRINKS IN PUBLIC (CASE STUDY: JURIDICAL ANALYSIS OF TULUNGAGUNG ISTRICT COURT DECISION NUMBER: 1107/PID.C/2020/PN.TLG.)

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ABSTRACT

This study specifically discusses: "Implementation of Criminal Sanctions Article 536 Paragraph (1) of the Criminal Code Against Drunk Perpetrators in Public (Case Study: Juridical Analysis of the Decision of the Tulungagung District Court Number: 1107/Pid.C/2020/PN.Tlg.)". This research is based on the many cases of drunkenness in public that often occur in Tulungagung Regency. This study uses a normative juridical method. This is based on the consideration that this type of research is descriptive analytical, which describes existing legal problems based on the applicable laws and regulations associated with relevant legal principles and theories. The results of the study indicate that drunkenness in public can be subject to criminal sanctions in Article 536 Paragraph (1) of the Criminal Code. In the case of public drunkenness committed by Agus Budiyanto, the Tulungagung District Court imposed a criminal sanction of a fine of Rp. 24,000.00

(twenty four thousand rupiah) or imprisonment for 2 (two) days because it has been legally and convincingly proven guilty of committing a crime of drunkenness in public.

Keywords: Crime, Drunk, In public, Criminal Sanctions.

INTRODUCTION

Alcoholic beverages have become part of the culture and life of Indonesian society. This can be seen from the many traditional rituals as well as the social life of certain cultures that are still attached to alcoholic beverages. Drinking alcohol seems to have become a community tradition in several regions in Indonesia. The bad effects have also been realized. However, this habit is recognized or not remains sustainable. The habit of consuming alcoholic beverages can affect health, especially if consumed in excessive and continuous amounts. can affect the condition and psychic of the drinker, it can even reduce the level of awareness of the drinker's thinking and can further encourage the person concerned to behave deviate from the existing norms and live in society.

Not infrequently after drinking alcohol they do actions that disturb the surrounding environment, in the form of shouting, singing songs loudly until late at night, not infrequently even committing acts that can be categorized as crimes or other violence. As an illustration of the case, the following is one of the cases that was tried and sentenced by the Tulungagung District Court, namely the case of drunkenness in public by the Defendant Agus Budiyanto, this 22-year-old youth was sentenced to a fine of Rp. 24,000.00 (twenty four thousand rupiah) or imprisonment for 2 (two) days because it is legally and convincingly proven guilty of committing a crime of drunkenness in public as stated in the Tulungagung District Court Judge's Decision Number :1107/Pid.C/2020/PN. Pls. Based on this background, in this study what will be discussed are: how is the criminal law setting against the crime of drunkenness in public and how are the considerations of the Tulungagung District Court judge in applying Article 536 Paragraph (1) of the Criminal Code to drunken perpetrators in public.

According to Simons, a criminal act is an act (handeling) which is threatened with criminality by law, contrary to the law (onrechtmatig) carried out by mistake (schuld) by someone who is capable of being responsible (Roni Wiyanto, 2012). Meanwhile, according to E. Utrecht stated that a crime is a criminal event which he often calls an offense, because the event is an act or something that neglects and its consequences (Moeljatno, 2005).

Meanwhile, according to Moeljatno, a criminal act is an act that is prohibited and is threatened with punishment, against anyone who violates the prohibition. This act must also be felt by the community as an obstacle to the social order that the community aspires to. Based on some of the definitions above, it can be concluded that: a criminal act is an act that is prohibited and threatened with criminal law if it violates the prohibition and the violator is able to be responsible for his actions.

According to the Big Indonesian Dictionary (KBBI), drunkenness is feeling dizzy or losing consciousness so that it can trigger the perpetrator to do something outside his consciousness or out of control. Drunk in a general sense, is a state of poisoning due to alcohol consumption to a

condition where there is a decline in mental and physical abilities. A person who habitually gets drunk is sometimes referred to as an alcoholic, or "drunker." Meanwhile, drunkenness is the conscious behavior of a person or group of people to drink alcoholic beverages or consume intoxicating goods to reduce the burden and pressure of their lives and or only to seek pleasure. (<http://amrdiab00.blogspot.com/2014/11/pengertian-mabuk-dan-tipe-minuman.html>)

According to R. Soesilo, the notion of "in public" means where the public can see it. Meanwhile, according to S.R. Sianturi, what is meant by "open place" or "open" or "in public" is a place where other people can see, hear, or witness it (R. Soesilo, 1976). According to the Jurisprudence of the Supreme Court No. 10 K/Kr/1975 dated March 17, 1976, stated that the word "openlijk" in the original text of article 170 Wetboek van Strafrecht is more accurately translated "openly", which term has a different meaning from "openbaar" or "in public". By "open" means not secretly, so it doesn't need to be in public, it's enough if it's not needed whether there is a possibility that other people can see it.

Meanwhile, according to Article 1 number (2) of Law Number 9 of 1998 concerning Freedom of Expressing Opinions in Public (UU KMPMU), that the definition of "in public" is in front of many people, or other people, including in places that can be visited and or seen by everyone. This research was made specifically to find out how the regulation of criminal law against the crime of drunkenness in public and the application of the law

RESEARCH METHODS

This study discusses and analyzes the Tulungagung District Court Decision Number: 1107/Pid.C/2020/PN. Pls. This type of research is a normative juridical research, which describes the laws and regulations as a starting point for reviewing the subject matter and is associated with theories, principles, concepts and doctrines of legal science. This study uses a statutory approach, namely to examine the laws and regulations relating to the subject matter discussed in this study, and uses a conceptual approach so that there are similarities in thinking about several concepts in this study, namely: criminal acts, drunkenness, and in public. While the case approach is used to find out the judge's considerations in applying the law.

This study uses primary legal materials in the form of applicable laws and regulations relating to the problems and the Tulungagung District Court Decision Number: 1107/Pid.C/2020/PN.Tlg., as well as secondary legal materials obtained from the literature, and tertiary legal materials. , such as: legal dictionaries, encyclopedias, etc., are useful for providing instructions or explanations so that the term / word has meaning. The existing legal materials are systematized according to the subject matter of the research, then systematic interpretation is carried out, so that the legal materials have meaning, then analyzed to obtain answers to the main problems raised in the study.

RESULTS AND DISCUSSION

Regulation of Criminal Law Against Perpetrators of Crime of Drunkenness in Public.

Crime is one form of "deviant behavior" which is always present and inherent in every form of society, so that no society is free from criminal acts. The deviant behavior is a real threat or threat to social norms that underlie social life or order, can cause individual tensions and social tensions and is a real or potential threat to the ongoing social order (Barda Nawawi Arief, 2010).

Various crimes that occur cause unrest in social life. An act that violates the law and social norms, makes society against it. One form of crime is the crime of drunkenness due to the influence of liquor / alcoholic beverages. The influence of alcohol alcohol can cause a lack of self-control. It is believed that liquor is not only harmful to the user, but can also have a very bad impact in the social environment, although consuming liquor is the right of every individual as long as it does not disturb the order. In the Criminal Code, there are several articles of elements of the crime of drunkenness as regulated in Article 300, Article 492, and Article 536 as formulated as follows:

Article 300 of the Criminal Code:

- (1) Threatened with a maximum imprisonment of one year or a maximum fine of four thousand five hundred rupiah:
 1. any person who knowingly sells or gives an intoxicating drink to someone who is already visibly drunk;
 2. any person who intentionally intoxicates a child who is not yet sixteen years of age;
 3. any person who by force or threat of violence compels a person to drink intoxicating drinks.
- (2) If the act results in serious injury, the guilty person shall be punished by a maximum imprisonment of seven years.
- (3) If the act results in death, the guilty shall be punished by a maximum imprisonment of nine years.
- (4) If the guilty person commits the crime in carrying out his search, his right to carry out the search may be revoked.

Article 492 of the Criminal Code:

- (1) Any person who is drunk in public obstructs traffic, or disturbs order, or threatens the safety of others, or does something that must be done carefully or by taking certain precautions in advance so as not to endanger the life or health of others. otherwise, shall be punished by a maximum imprisonment of six days, or a maximum fine of three hundred and seventy five rupiahs.
- (2) If at the time of committing the offense one year has not elapsed since the sentence which became permanent due to the same offense, or because of the matters defined in Article 536, a maximum imprisonment of two weeks shall be imposed.

Article 536 of the Criminal Code:

- (1) Anyone who is found to be in a drunken state is on a public road, is threatened with a maximum fine of two hundred and twenty-five rupiahs.
- (2) If at the time of committing the offense one year has not elapsed since the sentence which has become permanent due to the same offense or as defined in Article 492, the fine may be replaced with a maximum imprisonment of three days.
- (3) If there is a second repetition within one year after the first sentence ends and becomes permanent, a maximum imprisonment of two weeks is imposed.

(4) At the third repetition or more in one year, after the sentence which was later due to a second or more repetition becomes permanent, a maximum imprisonment of three months shall be imposed.

Based on the provisions of Article 300, Article 492 and Article 536 of the Criminal Code mentioned above, it can be seen that if a drunk person does nothing, then there is no criminal sanction. However, if he is drunk when he disturbs order or threatens the safety of others, he can be punished. Moreover, if while drunk he commits a crime, he can be subject to a criminal offense under several articles in the Criminal Code.

Application of Article 536 Paragraph (1) of the Criminal Code Against Perpetrators of the Crime of Drunkenness in Public in the Tulungagung District Court Judge's Decision Number: 1107/Pid.C/2020/PN. Pls.

In classical criminal law, punishment is retaliation for mistakes that have been made by the maker. Punishment focuses on the act and the consequences caused by the act itself. Crime is suffering / unpleasant treatment by a legitimate power against a person who commits a crime. The application of criminal sanctions and actions is basically to maintain a monodualistic balance between the interests of the community and individuals and the balance between efforts to achieve community welfare and community protection.

People who are drunk on public roads are considered by the community to be impolite, we will see if someone who is drunk on public roads will act and act like people who are insane (abnormal) and sometimes disturb the people around them, not even infrequently. the actions of the drunk person can lead to crime (Wempie J.H. Kumendong, 2012). He threatens to punish a person who is actually drunk in the criminal provisions regulated in Article 536 paragraph (1) as follows: "Anyone who is clearly drunk on a public road, is threatened with a maximum fine of two hundred and twenty five. rupiah".

In order to be subject to Article 536 paragraph (1) of this Criminal Code, there are 2 (two) elements that must be met. First, the perpetrator must be in fact drunk or visibly drunk. This can be evidenced by breathing that smells of liquor, staggering, falling helplessly on the street, talking erratically, or even not being able to speak at all. Second, the perpetrator must be on the street or in a public place (R. Soesilo, 1991).

The application of material criminal law to cases of drunkenness in public carried out by the Defendant Agus Budiyanto, namely the Judge of the Tulungagung District Court in his decision Number: 1107/Pid.C/2020/PN.Tlg., imposed a criminal sanction of a fine of Rp. 24,000.00 (twenty four thousand rupiahs) provided that if the fine is not paid, it will be replaced with imprisonment for 2 (two) days because the Defendant Agus Budiyanto is legally and convincingly proven guilty of committing a crime of drunkenness in public as regulated in Article 536 paragraph (1) Criminal Code. In the decision, why did the Judge use the element of "public drunkenness" as in the investigator's indictment and not "drunk on the public street" as stated in the provisions of Article 536 paragraph (1) of the Criminal Code. In the author's opinion, the terms "in public" or "in public" are not much different in meaning because the most important element is the "general element".

CONCLUSION

- a. The crime of drunkenness in the Criminal Code is regulated in Article 300, Article 492, and Article 536.
- b. The consideration of the Tulungagung District Court Judge applied Article 536 paragraph (1) in the criminal case number: 1107/Pid.C/2020/PN.Tlg., because the Defendant Agus Budiyanto, who was drunk in public, did not commit any other crime.

If someone is in a drunken state, it is necessary to supervise and pay attention so that they do not take other actions that can harm others and can be threatened with other articles of the Criminal Code. If the defendant in a drunken state commits another crime, then other criminal sanctions must be given according to the articles in the Criminal Code as a burden because it is a concurrent crime.

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