



Legal Criminal Policy Analysis Against Perpetrators in The Crime of Murder Under The Alcohol Influence

M. Rizal Bagaskoro¹⁾ & Irda Nur Khumaeroh²⁾

¹⁾ Faculty of Law, Sultan Agung Islamic University, Semarang, Indonesia, E-mail: mrizalbagas@unissula.ac.id

²⁾ Faculty of Law, Kartamulia University of Purwakarta, E-mail: irdakhumaeroh@univkartamulia.ac.id

Abstract. Alcohol can cause intoxication (poisoning, numbing) of the brain. Drinks seem to cause psychoseacuut, with signs including euphorie (feeling great, happy), loss of moral control, lack of self-criticism, feeling great, trivialising danger, little concentration. This writing aims to know and understand the criminal policy towards the perpetrators of the crime of murder under the influence of alcohol and the form of criminal liability by the perpetrators of the crime of murder under the influence of alcohol. The research method used is normative juridical with statutory approach method. 24The results showed that the criminal policy against the perpetrators of the crime of murder influenced by liquor in force at this time, there is no provision that prohibits a person to drink liquor. Criminal responsibility by the perpetrator of the crime of murder influenced by alcohol can be held accountable for the perpetrator who deliberately brings himself into a state of intoxication (action libera in causa), with the intention of being more courageous in committing a crime.

Keywords: Alcohol; Murder; Policy.

1. Introduction

Indonesia is a state of law as stated in Article 1 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945). The logical consequence of this predicate is that the Indonesian state in organising the life of society, nation and state must be based on law. A state of law is a state whose administration of government power is based on law and aims to implement legal order and the government's elements of institutions in it in carrying out their duties and authorities are bound by applicable law.¹

¹ Febriansyah, F. I. (2017). Keadilan berdasarkan Pancasila sebagai dasar filosofis dan ideologis bangsa. *DiH: Jurnal Ilmu Hukum*, 13(25), p. 17.

Law for Indonesians is a superior, meaning the forefront or leader so that other interests must be based on law. Law is not only regarded as legislation, but furthermore it includes cultural values that live and are recognised as true by the Indonesian people.²

One of the criminal offences committed by the community is the crime of murder. The crime of murder is one of the deviant behaviours that is essentially contrary to legal and religious norms, as well as harmful to the livelihood and life of the community. In the crime of murder, the target of the perpetrator is the life of a person who cannot be replaced with anything.³ This criminal offence is very contrary to the 1945 Constitution of the Republic of Indonesia Article 28A which reads:

"every person has the right to life and the right to defend his or her life and livelihood".

The Criminal Code, hereinafter abbreviated as "KUHP", regulates criminal provisions on crimes against life in Book II, Chapter XIX of the Criminal Code, which consists of thirteen articles, namely Articles 338 to 350 of the Criminal Code.⁴

A person who commits an act that is contrary to the law, then juridically the person must be prosecuted based on the mistakes he has made. But the problem is now the extent to which a person can give his responsibility, because this responsibility has to do with the state of a person's soul, because and this mental state can be realised by the actions taken. In the situation found in society, it is often found that there are actions that are contrary to the law due to drunkenness, the influence of alcohol-containing liquor.⁵

It is a question of how to judge a person's actions committed while intoxicated. Alcohol can cause intoxication (poisoning, numbing) of the brain. Drinking seems to cause psychoseacuut, with signs including euphoria (feeling great, happy), loss of moral control, lack of self-criticism, feeling great, underestimating danger, lack of concentration, which means that the state of the soul does not have the ability to take responsibility. The influence of alcohol on crime is dominant, even to the point of murder. Many people who consume end up in trouble with the law because of the uncontrollability of the human being when he or she has consumed to excess.

Based on the description above, the author formulates a problem that discusses the criminal policy against the perpetrators of the crime of murder under the influence of alcohol and the form of criminal liability by the perpetrators of the crime of murder under the influence of alcohol.

² Bo'a, F. Y. (2018). Pancasila sebagai sumber hukum dalam sistem hukum nasional. *Jurnal Konstitusi*, 15(1), p. 29.

³ Hidayah, C., & Soponyono, E. (2014). Kebijakan sistem pemidanaan dalam upaya penanggulangan tindak pidana pembunuhan dalam keadaan mabuk. *Jurnal Law Reform*, 9(2), p. 2.

⁴ Lamintang, P. A. F., & Lamintang, T. (2012). *Delik-delik khusus: Kejahatan terhadap nyawa, tubuh, dan kesehatan* (2nd ed.). Jakarta: Sinar Grafika, p. 11.

⁵ Mulkan, H., et al. (2022). Tanggung jawab pelaku tindak pidana yang dipengaruhi alkohol. *Disiplin: Majalah Civitas Akademika Sekolah Tinggi Ilmu Hukum Sumpah Pemuda*, 28(1), p. 20.

2. Research Methods

This research uses normative juridical research methods by examining library materials or secondary data.⁶ Normative juridical research methods use secondary data such as laws and regulations, court decisions, legal theories and opinions of scholars. So that in this study using a statutory approach.

3. Result and Discussion

3.1. Criminal Policy on the Perpetrator of the Crime of Murder Influenced by Alcohol

The policy of punishment system is closely related to criminal law enforcement, namely how to implement criminal law in society when a criminal offence occurs. The policy of punishment system has been regulated in the Criminal Code and also regulated in the Criminal Procedure Code. In relation to the problem in this research, namely the criminal offence of murder committed in a state of intoxication, the Criminal Code expressly does not regulate murder in a state of intoxication, this is if it is related to the principle of criminal law, namely the principle of legality, then every action or deed that has no criminal law governing it cannot be punished.⁷

The principle of legality in its practical development, has experienced an expansion of meaning, which initially the principle of legality was only interpreted in a formal sense, namely limited to written laws and regulations, but in its development the principle of legality has also been interpreted in a material sense, meaning that it also includes laws that live and develop in society, such as customs and other laws that exist in Indonesian society so that the principle of legality in its development can be interpreted as every action or act can be punished based on laws and regulations and laws that live in Indonesian society.⁸

Judges in deciding a case must explore the values that develop in society, so in this case the judge does *rechtsvinding* or legal discovery by the judge. This rule has directly reinforced that criminal law enforcement should not only be based on written laws and regulations, but must also be based on the values that develop in Indonesian society.⁹ A criminal act such as murder in a state of intoxication sometimes in practice causes problems because there are no rules that strictly regulate it. However, based on the above arguments, criminal law can be strictly enforced in the criminal offence of drunken murder.

A person who is under the influence of alcohol will certainly find it very difficult to use his common sense and mind in controlling his desires and desired actions. If what is done is a crime formulated in the criminal offence law, then it can be said that the person commits a crime under the influence of alcohol. In this case, the position of alcohol in relation to the crime

⁶ Benuf, K., & Azhar, M. (2020). Metodologi penelitian hukum sebagai instrumen mengurai permasalahan hukum kontemporer. *Jurnal Gema Keadilan*, 7(1), p. 24.

⁷ Waskito, A. B. (2018). Implementasi sistem peradilan pidana dalam perspektif integrasi. *Jurnal Daulat Hukum*, p. 291.

⁸ Apriyanto, T., et al. (2022). Analisis kebijakan pidana pada tindak pidana pembunuhan dalam keadaan mabuk. *Jurnal RechtIdee*, 17(1), p. 139.

⁹ Manan, B. (2007). *Kekuasaan kehakiman Indonesia dalam UU Nomor 4 Tahun 2004*. Jakarta: FH UI Press, p. 32.

committed by a person is an accessory, which means that a person who does not have the intention or desire to commit a crime, but because of the influence of Aethanol through the liquor he drinks, it causes the person to commit a crime.

Liquor abuse is a cause of murder, rape, fights, traffic accidents and other criminal offences. In relation to the criminal offence of murder based on drunkenness or under the influence of alcohol, it can be classified as follows:¹⁰

1. The drunken killer committed involuntary manslaughter because he was so drunk that he did not realise he was killing another person.
2. The drunken killer committed the murder deliberately, preceded by the intention to kill the victim, namely so that the perpetrator had the courage to kill.
3. A drunk killer is not actually drunk, so his state of mind is still conscious (although not 100%) but he is still aware that he has killed another person.

Under the current law, there is no provision that prohibits a person from drinking alcohol. Even if there is a provision in Article 492 of the Criminal Code, it is normal that the article prohibits a person who is drunk from obstructing traffic, disturbing order or threatening others. The norm in the article that is prohibited is that a person becomes drunk and commits the acts mentioned. Whereas in Article 536 of the Criminal Code, it prohibits a person who is obviously on a public road in a drunken condition. So it is clear that the article does not prohibit drinking alcohol. What is prohibited in the two articles is the condition or consequences of drinking alcohol such as drunkenness.

In the following, the author presents a legal comparison regarding the criminal offence of murder committed by a person who is drunk:

1. UK Penal Code

Taking the life of another person (murder) in a state of intoxication is included in involuntary manslaughter, which is a murder without malice aforethought (the perpetrator does not have malicious intent) caused by an unlawful act causing death.

In the UK, drunkenness can be used as a defence if it results in insanity. A person who is medically sighted is not a sufficient basis for defence. The insanity must be such that it affects his liability under the law. The Homicide Act 1957 confirms that if the "mitigating factors" are proven in a first-degree murder case, the accused is only guilty of manslaughter which is punishable by a term of imprisonment up to a maximum of life. Thus, the accused can be sentenced to less than the maximum.

2. Texas Penal Code

¹⁰ Huda, C. (2006). *Dari tiada pidana tanpa kesalahan menuju kepada tiada pertanggungjawaban pidana tanpa kesalahan*. Jakarta: Kencana. p. 97.

Regarding intoxication causing death of another person in section 49.08. Intoxication Manslaughter is an unlawful killing committed without malice aforethought while intoxicated. In the prosecution under Section 49.08 the state of intoxication cannot be used as a defence.

3. Criminal Code Australia

The issue of drunkenness (state of intoxication) is that if the state of intoxication is self-inflicted then it cannot be considered as a defence for the commission of a criminal offence and if the intoxication is caused by others or due to force and pressure from others then the state of intoxication can be used as a defence in accordance with the applicable provisions of the Australian Criminal Code.

4. Penal Code of India

The state of drunkenness committed by oneself in criminal charges is equated to a person who is in a normal state, unless the state of drunkenness is made by another person. If in the case of self-inflicted intoxication and killing another person then the person will be charged with murder in accordance with the Indian Penal Code, the formulation of intoxication in India is almost the same as the formulation of intoxication in Indonesia, however, the explanation of the state of intoxication is not explicitly explained in the current Criminal Code.

5. Penal Code Canada

Only explaining the problem of drunkenness caused by oneself is not an element of defence and if the drunkenness disturbs the mental state of others to the point of causing death, the drunkenness factor is included in the element of attack which can lead to aggravation of criminal punishment.

6. California Penal Code

Intoxication Manslaughter is murder committed by a person who is riding a motorbike while intoxicated and thereby causing the loss of life of another person, which carries a maximum imprisonment of 10 years.

3.2. Criminal Responsibility by the Perpetrator of the Crime of Liquor-Influenced Murder

According to J. M. Van Bemmelen, the acts described in Dutch law contain not only physical behaviour (acting or neglecting), but also, especially in crimes, a spiritual element that is sometimes aimed at finality. According to J. M. Van Bemmelen, the acts described in Dutch law, contain in addition to physical behaviour (acting or neglecting), also especially in crime contains a spiritual element which is sometimes aimed at the final (intent or intention), sometimes showing a spiritual state that is not aimed at the final (carelessness, lack of care, lack of attention), which is accounted for as a mistake against the perpetrator.¹¹

¹¹ Maramis, F. (2012). *Hukum pidana umum dan tertulis di Indonesia*. Jakarta: PT Raja Grafindo Persada. p. 60.

A drunk person who commits an act of murder must be classified as to whether or not he or she committed the act intentionally. This means that the following aspects must be considered:¹²

1. The drunken killer committed involuntary manslaughter, because he killed while drunk so that his state of mind did not realise that he was killing another person.
2. The drunk killer committed intentional murder, because even though he killed the victim while drunk, he had previously planned to kill the victim (for example, he had prepared tools that could be used to kill others) so that even though his state of mind was not aware that he was killing another person when he was drunk, the perpetrator prepared himself and had the intention to kill the victim.
3. The drunk killer committed murder intentionally, because even though he killed while drunk so that his state of mind was not aware that he was killing another person, but in killing the victim, the intention to kill the victim had been preceded by the intention to kill the victim, namely so that the perpetrator had the courage to kill, so the perpetrator made himself heavily drunk and then killed the victim.
4. Drunken killers are not really drunk but they are still aware that they are killing another person and the perpetrator commits drunken murder to avoid punishment.

Therefore, it must first be seen how the murder committed by the drunk perpetrator occurred:

1. What is the level of drunkenness of the perpetrator. The perpetrator of murder in a state of intoxication who argues with the loss of sound mind in committing murder so that it can be categorised as unintentional but in fact the perpetrator has the intention of deliberately killing the victim, then actually the perpetrator has killed intentionally.
2. How was the perpetrator's initial intention. Even though he was drunk but had prepared himself or had the intention to kill the victim, the perpetrator can be categorised as killing intentionally.
3. If it is true that at the beginning of the act of murder committed by the perpetrator against the victim there was no intention to kill because previously there was no meeting or relationship between the perpetrator and the victim, while the perpetrator was already drunk then suddenly met the victim and an argument occurred so that the perpetrator killed the victim, then the perpetrator can be categorised as killing unintentionally.

If a person neglects or abuses his obligations not in accordance with the provisions of the applicable law or law, then the person can be prosecuted, blamed or litigated. Which is usually for someone who has committed an offence of the law is imposed in accordance with applicable legal provisions. Every act or implementation of the role will definitely give birth to responsibility for the perpetrator, even though the implementation of the role is going well or as it should. Whether or not the responsibility is sought is a secondary issue, which of course depends on the

¹² Datau, R. F. (2019). Pertanggungjawaban pidana oleh pelaku tindak pidana pembunuhan yang dipengaruhi minuman keras. *Jurnal Lex Crimen*, 8(9), p. 79.

discretion of the interested party to decide whether or not he feels the need to demand such responsibility.¹³

Every perpetrator of criminal acts must of course be able to take responsibility for every act he commits. If it turns out that there is no adequate reason that can justify his actions or actions, then what can be made, sanctions or punishment must be imposed on him.¹⁴

An unlawful behaviour is not sufficient to impose a punishment. In addition to the unlawful behaviour there must be a guilty maker (*dader*) (*schuld hebben*). Guilt is a criminal responsibility. It is generally accepted that for a criminal offence to exist, two elements (*bertandeelen*) must be fulfilled: (1) an unlawful act (the element of unlawfulness), (2) a maker or perpetrator, who is held responsible for the act: the element of guilt (*schuld in ruime zin*).

In addition, there is a situation where a person deliberately brings himself into a state of intoxication (*action libera in causa*), with the intention of being more courageous in committing a crime. Such a person would normally not have the courage to commit the act of killing, but by drinking alcoholic beverages, he would increase his enthusiasm and courage to carry out his evil intent. Thus, if a person brings himself intoxicated only to carry out his evil intent against another person, then he can be held accountable for his actions because he does not fulfil the requirements as desired by Article 44 of the Criminal Code.

4. Conclusion

The current criminal policy towards the perpetrators of the offence of murder under the influence of alcohol, there is no provision that prohibits a person from drinking alcohol. Even if there is a provision in Article 492 of the Criminal Code, it is normal that the article prohibits a person who is drunk from obstructing traffic, disturbing order or threatening others. The norm in the article that is prohibited is that a person becomes drunk and commits the acts mentioned. Meanwhile, Article 536 of the Criminal Code prohibits a person who is obviously on a public road in an intoxicated condition. Criminal responsibility by the perpetrator of the crime of murder influenced by alcohol can be held accountable for the perpetrator who deliberately brings himself into a state of intoxication (*action libera in causa*), with the intention of being more courageous in committing a crime. The criminal offence of murder committed by a drunk person can be held criminally responsible for his actions. The act of murder has been included in the formulation of the offence of Article 338 of the Criminal Code if the act is committed spontaneously and Article 340 of the Criminal Code when the act is premeditated in which the person is deliberately drunk in order to dare to commit the crime of murder.

5. References

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