

THE SUBSTANCE OF THE PROHIBITION OF ALCOHOLIC BEVERAGES IN THE MANIFESTATION OF THE MAQASID AL-SHARI'A IN LAND OF PAPUA

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Abstract: This paper elaborated on the Substance of the Prohibition of Alcoholic Beverages in the Provincial Regulation of Papua Number 15 of 2013 concerning the Prohibition of the Production, Distribution, and Sales of Alcoholic Beverages in the Manifestation of Maqasid al-Shari'a in Papua. This type of research was qualitative empirical legal research with a normative theological approach, statute approach, and sociological approach. The results showed that the substance of the prohibition of alcoholic beverages in the Provincial Regulation of Papua Number 15/2013 which totally prohibited the production, distribution, sales, and consumption of alcoholic beverages was legally contrary to Presidential Decree Number 74 of 2013. Based on the principle of "Lex Superiori Derogad Lege Inferiori", the Provincial Regulation of Papua Number 15 of 2013 could be ruled out by the Presidential Decree Number 74 of 2013. Therefore, the Ministry of Home Affairs canceled the Provincial Regulation Number 15 of 2013 because it violated the principle of the hierarchy of laws and regulations. Based on the perspective of maqasid al-shari'a, the regulation of alcoholic beverages in the Provincial Regulation of Papua was a necessity of daruriyyat. Thus, everything to make it happen was also daruriyyat.

Keywords: Alcoholic Beverages; *Maqasid al-Shari'a*; Land of Papua

I. INTRODUCTION

As of today, law enforcement regarding alcoholic beverages is still sectoral and partial and only relying on several existing laws, so that law enforcement regarding the abuse of alcoholic beverages is still very weak. As a consequence, granting administrative permits that have been tightened still cannot prevent irresponsible parties from committing fraud in order to avoid complicated administrative permits, such as by selling illegal alcoholic beverages, selling mixed alcoholic beverages, even selling and buying alcoholic beverages without paying attention to the age limit of the buyer.¹

In Indonesia, based on the records of the National Movement for Anti Alcoholic Beverages (GENAM), the number of victims who died from alcoholic beverages reaches 18,000 people annually.² Meanwhile, in land of Papua, according to the Governor of Papua, Lukas Enembe, the largest number of death of Papuans is due to consuming

¹Okky Husain, https://www.kompasiana.com/okkyhusain/realita-hukum-miras-di-indonesia-yang-mematikan-yang-terlupakan_54f34e7c745513a32b6c6fdd (April 2, 2018)

²<http://sp.beritasatu.com/home/tiap-tahun-18000-orang-tewas-karena-miras/41095> (May 5, 2018)

alcoholic beverages. “From Sorong to Merauke, 22 percent of Papuans die from alcohol every year.”³

A study conducted by the Institute for the Study of Women and Children of Papua (LP3AP) states that excessive alcoholic beverages are one of the main triggers for the emergence of domestic violence (KDRT) in Papua. Many reports from the community and cases handled by LP3AP, as an advocacy institution for women and children, show that most cases of domestic violence that occur are caused by a husband who is drunk of alcohol, thus hurting his partner. Of the 10 existing domestic violence reports, it was recorded that seven to eight cases were caused due to the influence of alcoholic beverages.⁴

In accordance with the results of a study conducted in 2014, one of the reasons for the high rate of divorce at the Religious Court of Jayapura City is due to domestic violence (KDRT), which is up to 15% committed by husbands to wives due to the influence of alcoholic beverages.⁵ Meanwhile, based on the report of the Legal Aid Post (POSBAKUM) of the Religious Court of Jayapura City, in the period 2015 to 2017, divorce cases due to domestic violence (KDRT) under the influence of alcoholic beverages reached 195 cases.⁶

In line with the results of observations, traffic accidents, murder, bullying and other crimes in Papua often occur as a result of consuming alcoholic beverages. In social cohesion, there is anxiety, fear, worry, and discomfort of community members in carrying out activities and leaving the house at certain times. For example, many Muslim communities hesitate to pray in the congregation at dawn in the mosque because they are afraid if someone is drunk on the side of the road.

This paper elaborates on the Substance of the Prohibition of Alcoholic Beverages in the Provincial Regulation of Papua Number 15 of 2013 concerning the Prohibition of the Production, Distribution, and Sales of Alcoholic Beverages in the Manifestation of *Maqasid al-Shari'a* in Papua.

II. RESEARCH METHODOLOGY

This type of research was qualitative empirical legal research with a normative theological approach, statute approach, and sociological approach. The data sources of this study were religious leaders, traditional leaders, the Regional Government of Jayapura City, the Regional Government of Jayapura Regency, the Regional Government of Keerom Regency, and the Provincial Government of Papua. The data collection methods used were observation, interviews, documentation, and reference searching. Besides, the data processing and analysis techniques were carried out in three stages, including data reduction, data presentation, and drawing conclusions.

³Gubernur Papua Lukas Enembe. *Tiap Tahun 22 Persen Orang Papua Mati Akibat Miras*. KabarPapua.co June 11, 2016. <https://kabarpapua.co/gubernur-papua-tiap-tahun-22-persen-orang-papua-mati-akibat-miras/> (April 2, 2018)

⁴<http://tabloidjubi.com/16/2015/06/12/perda-miras-provinsi-papua-dan-kotajayapuraberbeda/> (April 2, 2018)

⁵Baitur Rohman, *Analisa Terhadap Penyebab Tingginya Angka Cerai Gugat di Pengadilan Agama Kota Jayapura* (Penelitian Kompetitif Individu STAIN Al Fatah Jayapura, 2014), pp. 14

⁶Nur Sinta, Legal Aid Post of the Religious Court of Jayapura City, *Interview*, April 3, 2018.

III. RESULTS AND DISCUSSION

1. Philosophical Foundation, Sociological Foundation, and Juridical Foundation for the Prohibition of Alcoholic Beverages in the Provincial Regulation of Papua Number 15 of 2013.

a. Philosophical foundation

The philosophical foundation for the prohibition of alcoholic beverages⁷ in land of Papua is that the granting of special autonomy to the Papua Province and the administration of government in the regions is essentially aimed at improving the standard of living and welfare of the people in accordance with the lofty ideals of the Indonesian nation and people as stated in the 1945 Constitution of the Republic of Indonesia and Pancasila. In line with these goals, the Provincial Government of Papua and the City Government/Regency Government throughout Papua Province have the obligation to protect Papuans and community in general from various threats, both potential and factual, caused by the abuse of alcoholism.⁸

It can be seen that the drafters of the constitution are fully aware of this by putting it in the body of the 1945 Constitution of the Republic of Indonesia, which is in Article 28H paragraph (1) that "Each person has a right to a life of well-being in body and mind, to a place to dwell, to enjoy a good and healthy environment, and to receive medical care." Article 28H in the systematics of the 1945 Constitution of the Republic of Indonesia is included in Chapter XA on Fundamental Human Rights. This means that a prosperous physical and spiritual life, a place to live and a good and healthy environment are human needs that are human rights that must be respected and fulfilled by the State Government in the context of protecting the lives of the entire Indonesian nation. Fulfillment of all human rights, including the right to obtain a prosperous life physically and mentally, a place to live, and a good and healthy environment is the State's obligation and the responsibility of the Government, as stated in Article 28I paragraph (4) which states: Protecting, promoting, upholding, and the full realization of human rights are the responsibilities of the state, foremost of the government."

To ensure the implementation of the human rights of citizens as stipulated in Article 28I paragraph (4), the Regional Government of Papua Province needs to make a Regional Regulation on the Prohibition of Alcoholic Beverages.

It is widely recognized that the production, distribution, and consumption of alcoholic beverages in Papua cannot be completely prohibited given the pluralistic conditions of the Papuan people. However, strict prohibition (control) is required to reduce the impact of alcoholic beverages, both on the environment and on other community groups. The interests and needs of the community for a physically and mentally prosperous life, a place to live, and a good and healthy environment that is free from the negative impacts of alcoholic beverages need to be recognized, guaranteed,

⁷Alcoholic Beverages are drinks containing ethanol 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 processed by mixing the concentrate with ethanol or by diluting drinks containing ethanol (Article 1 paragraph (5) of the Provincial Regulation of Papua Number 15 of 2013).

⁸The preamble considers letters a and b of the Provincial Regulation of Papua Number 15 of 2013 concerning the Prohibition of the Production, Distribution, and Sales of Alcoholic Beverages

protected, and given legal certainty through regional regulations as a form of justice and equal treatment before law given by the State, as stated in Article 28D paragraph (1) that “each person has the right to recognition, security, protection and certainty under the law that shall be just and treat everybody as equal before the law”.

Therefore, for the broader and long-term interests of the nation and based on shared knowledge that alcoholic beverages are basically a form of disturbance to the life and livelihoods of the Papuan people, philosophically, the formulation of the Provincial Regulation concerning the Prohibition of Alcoholic Drinks, besides being part of the fulfillment of human rights in accordance with Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia, is also part of an effort to manifest *Maqasid al-Shari'a* or benefits in land of Papua.

b. Sociological foundation

The sociological foundation for the prohibition of alcoholic beverages in Papua are based on the reality that the distribution, sales, and consumption of alcoholic beverages in Papua Province is carried out in such a way that it is not controlled within reasonable limits and causes negative impacts that tend to threaten the lives and existence of native Papuans and Papuans in general.⁹

Consuming alcoholic beverages is part of the lifestyle of some Papuans. Starting from only tasting, many are finally addicted to this type of beverage. Alcoholic beverages are available at different levels. For example, beer and soda alcohol (1-7% alcohol), wine (10-15% alcohol), and liquor or so-called spirit (35-55% alcohol). The concentration of alcohol in the blood is reached within 30- 90 minutes after drinking. All this way, the negative impact of excessive alcohol consumption that most people recognize is drunkenness, and it can be recovered without any treatment. However, it turns out that the negative effects persist. Not only causes drunkenness, but alcohol also has other negative effects on the body, such as damaging the metabolism system of the human body which then causes addiction and damages some elements of the brain.

People who get drunk because alcohol can cause many social problems and social security if it is not controlled. Drunk people tend to have uncontrolled emotions. The feeling of drunks is easily offended. For example, when they are at music concerts and get drunk, only a little nudge can trigger an incident. Under the influence of alcohol, people tend to be courageous and aggressive, not even afraid of death. Some mass violence occurred because they drank alcoholic beverages before they rioted, rampaged, or committed a brutal action.

The place to sell alcoholic beverages is quite easy to reach, including for immature adolescents, such as minimarkets or supermarkets, so that many adolescents under 21 years old buy alcohol without paying attention to the impact on their health but for the sake of relationships. This requires further regulation, particularly for those who sell alcoholic beverages illegally or to those under age to be subjected to stricter sanctions so as to make a deterrent effect.

On the other hand, sales of alcoholic beverages are currently increasing following the development of the tourism industry due to the increased consumption of alcohol by foreign tourists. Alcoholic beverages are items that have an impact on the lives of the

⁹The preamble considers letters c of the Provincial Regulation of Papua Number 15 of 2013 concerning the Prohibition of the Production, Distribution, and Sales of Alcoholic Beverages

Papuan people because Papua is one of the producers of alcoholic beverages with their traditional types of alcoholic beverages.

c. Juridical foundation

The juridical foundation is a consideration or reason that illustrates that the Provincial Regulation which was formed to handle alcoholism in land of Papua must take into account existing regulations to ensure legal certainty and a sense of justice for the Papuan people. The juridical foundation is also a review of the substance of the Provincial Regulation by considering the hierarchy of laws and regulations, with its top point in the 1945 Constitution of the Republic of Indonesia.

The juridical foundation for the prohibition of alcoholic beverages in the Provincial Regulation Number 15 of 2013 is as follows:¹⁰

First; Law Number 12 of 1969 concerning the Establishment of the Autonomous Province of West Irian and Autonomous Regencies in West Irian Province (State Gazette of the Republic of Indonesia of 1969 Number 47, Supplement to the State Gazette of the Republic of Indonesia Number 2907)

Second; Law Number 21 of 2001 concerning Special Autonomy for Papua Province (State Gazette of the Republic of Indonesia of 2001 Number 135, Supplement to State Gazette of the Republic of Indonesia Number 4151) as amended by Law Number 35 of 2008 concerning the Stipulation of Government Regulations in Lieu of Law Number 1 of 2008 concerning Amendment to Law Number 21 of 2001 concerning Special Autonomy for Papua Province into Law (State Gazette of the Republic of Indonesia of 2008 Number 112, Supplement to the State Gazette of the Republic of Indonesia Number 4884)

Third; Law Number 32 of 2004¹¹ concerning Regional Government (State Gazette of the Republic of Indonesia of 2004 Number 125, Supplement to the State Gazette of the Republic of Indonesia Number 4437) as amended several times, most recently by Law Number 12 of 2008 concerning Regional Government (State Gazette of the Republic of Indonesia of 2008 Number 59, Supplementary State Gazette of the Republic of Indonesia Number 4844)

Fourth: Law Number 36 of 2009 concerning Health (State Gazette of the Republic of Indonesia of 2009 Number 144, Supplement to the State Gazette of the Republic of Indonesia Number 5063). This law regulates the provisions regarding alcoholic beverages in Article 160. The provisions of Article 160 paragraph (1) and paragraph (2) explain that the government, local governments, together with the community are responsible for proper communication, information, and education about non-contagious disease risk factors covering all phases of life. These risk factors include an unbalanced diet, lack of physical activity, smoking, alcohol consumption, and improper traffic behavior. The Law on Health has also stipulated provisions concerning standards and/or requirements for food and beverages for the community as stated in Article 111 and Article 112 which stipulate that food and beverages used for the community must be based on health standards and/or requirements. Besides, food and beverages can only be circulated after obtaining a distribution permit in accordance with the provisions of laws and regulations.

¹⁰The preamble considers the Provincial Regulation of Papua Number 15 of 2013 concerning the Prohibition of the Production, Distribution, and Sales of Alcoholic Beverages

¹¹Law Number 32 of 2004 concerning Regional Government has been replaced by Law Number 23 of 2014 concerning the Regional Government.

Fifth; Law Number 12 of 2011 concerning the Establishment of Laws and Regulations (State Gazette of the Republic of Indonesia of 2011 Number 82, Supplement to the State Gazette of the Republic of Indonesia Number 5234)

Sixth; Government Regulation Number 38 of 2007 concerning the Sharing of Government Affairs between the Government, Provincial Government, and Regency/City Government (State Gazette of the Republic of Indonesia of 2007 Number 82, Supplement to the State Gazette of the Republic of Indonesia Number 4737)

Seventh; Presidential Decree Number 3 of 1997 concerning Supervision and Control of Alcoholic Beverages¹², Regulation of the Minister of Home Affairs Number 4 of 1997 concerning Civil Servant Investigators in the Regional Government, Regulation of the Minister of Trade Number 43/M-DAG/PERI9/2009 concerning Procurement, Distribution, Sales, Supervision, and Control of Alcoholic Beverages, and Regulation of the Minister of Home Affairs Number 53 of 2011 concerning the Establishment of Regional Legal Products (State Gazette of the Republic of Indonesia of 2011 Number 694).

Satjipto Raharjo likens legal principles to the heart of legal regulations for two reasons, including; *First*; the principle of law is the broadest foundation for the emergence of legal regulation. This means that the application of legal regulations can be returned to its legal principles. *Second*; because containing ethical demands, the principle of law is likened to a bridge between legal regulations and social ideals and ethical views of society.

Based on Satjipto Raharjo's opinion, the researcher considers that the three foundations above (philosophical foundation, sociological foundation, and juridical foundation) are the foundations of the Provincial Regulation of Papua Number 15 of 2013 in regulating the prohibition of alcoholic beverages in Papua. This foundation gives ethical meaning to the Provincial Regulation of Papua Number 15 of 2013 so that the prohibition of alcoholic beverages through the Provincial Regulation of Papua Number 15 of 2013 is eventually in line with the social ideals and ethical views of the Papuan people.

2. Analysis of *Maqasid al-Shari'a* on the Provincial Regulation of Papua Number 15 of 2013.

Maqasid al-Shari'a is the aim of Allah Almighty and His Messenger in formulating Islamic law. According to Syathibi, the ultimate goal of the law is to realize *mashlahah* or goodness and welfare of mankind. The benefits can be well realized if the five basic elements of human life can be maintained, including: Religion, Soul, Mind, Descendant, and Wealth.

For the purpose of establishing the law, these five elements are divided into three ranks, including *daruriyyat*, *hajiyyat*, and *tahsiniyyat*. This grouping is based on the level of needs and priority scale.

The first part is *daruriyyat* which means an urgent and compelling need to be fulfilled because the elements that exist in it can affect human life and existence in this world and in the hereafter, so that if neglected, the human life in the world will be

¹²Presidential Decree Number 3 of 1997 has been canceled by the Supreme Court because it is considered contrary to Law Number 36 of 2009 concerning Health, Law Number 8 of 1999 concerning Consumer Protection, and Law Number 7 of 1996 concerning Food, and Presidential Decree Number 74 of 2013 on Alcoholic Beverage Control and Supervision.

miserable (imbalance occurs because it violates religious norms) and the enjoyment that will be obtained in the hereafter will disappear. This was stated by al-Syatibi by saying: "Things that are *daruriyyat* must be realized to achieve the benefit of religion and the world, because if they are lost, the benefit of the world will not be realized properly and there will be the loss of happiness in the hereafter".¹³

The second part is *hajiyyat* whose existence is needed to enlarge and open a narrow space which usually leads to misery and difficulty. To manifest such benefits, some *rukhsahs* are prescribed to ensure leniency in the implementation of the stipulations that have been prescribed in certain circumstances to avoid difficulties. If it is related to the concept of the first part of *daruriyyat* above, there will be difficulties if *hajiyyat* is not realized correctly. Whereas if *daruriyyat* is not realized, there will be inequality and destitution.

The third part is *tahsiniyyat* which means things that complete or complement which aims for polishing and decorating. This applies to various aspects, including the recommendation to behave in a noble manner and to stay away from everything that is considered despicable based on the measurement of human nature and common sense.

In each rank, as explained above, there are things or activities that complete the implementation of *maqasid al-shari'a* in the level of *daruriyyat*, for example, the minimum limit of intoxicating to maintain the mind is determined, special places allowed to drink alcoholic beverages are determined, and so on.

Knowing the ranking order of *mashlahah* above is important when it is related to the priority scale of its implementation, when one *mashlahah* is intersected with another one. In this case, *daruriyyat* as the first rank must take precedence over the second rank, *hajiyyat*, and the third rank, *tahsiniyyat*. This provision shows that it is allowed to ignore things that are in the second and third ranks when the existence of *mashlahah* in the first rank is threatened.

The above circumstances are only limited to different ranks. For cases with the same ranks, such as those in the rank of *daruriyyat* with those in the rank of *daruriyyat*, and so on, the possible solution is: **first**, If the intersection occurs in a different order from the five main points of *mashlahah*, the priority scale is based on a fixed order, in which religion must take precedence over the soul, and the soul must take precedence over mind, and so on. In other words, the order of the five points of *mashlahah* has been considered as the standard and has its own influence or effect. Thus, an individual is allowed in drinking alcoholic beverages, which basically destroys the mind, in which if their soul is threatened, they should maintain their soul rather than maintaining the mind, **second**; If the intersection occurs in the same rank and order, such as the same in maintaining wealth or soul in the rank of *daruriyyat*, the *mujtahid* is obliged to examine in terms of the scope of the *maslahah* or the existence of other factors that strengthen one *maslahah* to be a priority.

Islam is the religion of Allah which provides guidance and guidelines for life as a whole and leads mankind to gain prosperity in this world and the happiness of the hereafter. Islamic teachings aim at preserving the safety of religion, soul, mind, descendant, and wealth. Everything that is beneficial for the achievement of these objectives is ordered, recommended, or permitted to be carried out, while those that are detrimental to the achievement of these objectives are prohibited or advised to avoid.

¹³Al-Syathibi, *Al-Muwafaqat fi Ushul al Ahkam* (Beirut: Dar al Ma'rifah, no date) Juz 2, pp. 4.

Alcoholic beverages are intoxicating drinks. Regardless of the alcohol content in alcoholic beverages, they are still called alcoholic beverages. The negative impact of alcoholic beverages outweighs the positive effects, for example: adverse effects on physical and spiritual health, crime, juvenile delinquency, also social security and national security disturbance.

Drinking alcoholic beverages, a little or a lot, is forbidden. Likewise, the activities of producing, distributing, selling, buying, and enjoying the income/profits from the alcoholic beverage trade is forbidden.

The legal foundation for the prohibition of alcoholic beverages in Islam is as follows:

- a. Drinking alcoholic beverages is *muskir* (intoxicating). Every intoxicant is khamr, and every khamr is forbidden. Thus, drinking alcoholic beverages is forbidden. The proposition for this includes the following:

Allah Almighty said in QS al-Ma'idah/5: 90 as follows:

يَا أَيُّهَا الَّذِينَ ءَامَنُوا إِنَّمَا الْخَمْرُ وَالْمَيْسِرُ وَالْأَنْصَابُ وَالْأَزْمَجُ رِجْسٌ مِّنْ عَمَلِ الشَّيْطَانِ فَاجْتَنِبُوهُ لَعَلَّكُمْ تُفْلِحُونَ .

Translation:

“O you who have believed, indeed, intoxicants, gambling, [sacrificing on] stone alters [to other than Allah], and divining arrows are but defilement from the work of Satan, so avoid it that you may be successful.”

لَعَنَ اللَّهُ الْخَمْرَ وَشَارِبَهَا وَسَاقِيَهَا وَمُبْتَاعَهَا وَبَائِعَهَا وَعَاصِرَهَا وَمُعْتَصِرَهَا وَحَامِلَهَا وَالْمَحْمُولَةَ إِلَيْهَا (رواه أبو داود وابن ماجه عن ابن عمر)

Translation:

“Allah has cursed wine, its drinker, its server, its seller, its server, its seller, its buyer, its presser, the one for whom it is pressed, the one who conveys it, and the one to whom it is conveyed. (Narrated by Abu Dawud and Ibnu Majah from Ibnu Umar)”

كُلُّ مُسْكِرٍ خَمْرٌ وَكُلُّ خَمْرٍ حَرَامٌ

Translation:

“Every intoxicant is khamr, and every khamr is forbidden (Narrated by Muslim from Ibnu ‘Umar)”

مَا أَسْكَرَ كَثِيرُهُ فَفَلْيَلْهُ حَرَامٌ

Translation:

“Whatever intoxicates in large quantities, a little of it is haraam (Narrated by Ahmad, Ibn Majah, and ad-daruquthni from Ibnu ‘Umar)”

- b. Alcoholic drinks make people forget Allah and are a source of all kinds of crimes because alcohol can have a negative impact on personal life, family, community, nation, and state.

اجتنبوا الخمر فاءنها مفتاح كل شر

Translation:

“Avoid khamr because it is the key to all badness (Narrated by Al-Hakim from Ibnu ‘Abbas)”

- c. Alcoholic beverages damage health because alcohol can damage the liver, digestive tract, circulatory system, and eventually can lead to death. With regard to this, Allah said in Surah al-Nisa’/4:29 as follows:

وَلَا تَقْتُلُوا أَنْفُسَكُمْ إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيمًا

Translation:

“And do not kill yourselves [or one another]. Indeed, Allah is to you ever Merciful.”

- d. Alcoholic beverages destroy socio-economic potential because the productivity of the drinker will decrease, as the Holy Prophet said:

لَا ضَرَرَ وَلَا ضِرَارَ

Translation:

“Do not make harm to yourself and others (Narrated by Ibn Majah and ad-Daraquthni)”

- e. Alcoholic beverages can damage the security and order of society because alcoholic drinkers often commit criminal acts that disturb and distract the public, and frequent traffic accidents occur due to drunk driving. Allah said in QS al-Qashash/28: 77

وَلَا تَتَّبِعِ الْفَسَادَ فِي الْأَرْضِ إِنَّ اللَّهَ لَا يُحِبُّ الْمُفْسِدِينَ

Translation:

“... And desire not corruption in the land. Indeed, Allah does not like corrupters.”

- f. Alcoholic beverages endanger the life of the nation and state because alcoholic drinks can damage unity and integrity which in turn destroys national stability, the mentality and morality of the future Indonesian people. In this regard, the rules of fiqhyyah emphasize:

الضَّرَرُ يُزَالُ

Translation:

“That crime must be eliminated.”

دَرءُ الْمَفَاسِدِ مُقَدَّمٌ عَلَى جَلْبِ الْمَصَالِحِ

Translation:

“Avoid damage take precedence over acquiring the benefit.”

According to Wahbah al Zuhaili, *maqasid al-shari'a* means the values and goals of *syara'* which are implied in all or the largest part of its laws. These values and goals are seen as the aims and secrets of the sharia, which are stipulated by al-Shari' in every legal provision.

Thereby, Allah Almighty stipulates the prohibition of alcoholic beverages in the al-Qur'an because Allah Almighty intends to place the human mind in an honorable place,

in which people can think when their minds are healthy (sane). Brilliant discoveries are due to the work of the human brain as a gift from Allah. Thus, the religion of Islam instructs all people to maintain their minds, not to be damaged, so that it can prosper the earth the caliph of Allah. One way to maintain the mind is to stay away from alcoholic beverages.

In the life of the nation and state, the state must be present to protect all the blood of the Indonesian nation following the mandate of the constitution. In the context of protecting the state for its people, the aspects that must be protected should touch the most basic rights and include all citizens. Referring to *maqasid al-shari'a*, the most basic rights are the protection of the right to worship a religion, the right to live, the right to think and have the knowledge, protection of descendants, and protection of wealth. One of the efforts to protect the basic rights of citizens is by implementing and enforcing laws and regulations to provide legal certainty and protection for the community from the dangers of alcoholic beverages.

Papua Province as one of the areas where some of the people still have an indulgence for consuming alcoholic beverages drives the Provincial Government of Papua to implement the Provincial Regulation of Papua Number 15 of 2013 concerning the prohibition of the production, distribution, and sales of alcoholic beverages, as a protective measure from the Regional Government of Papua Province to save and protect Papuans from the negative impacts of alcoholic beverage abuse.

Philosophically, the formulation of the Provincial Regulation of Papua Number 15 of 2013 aims to improve the standard of living and welfare of the people in accordance with the lofty ideals of the Indonesian nation and people as stated in the 1945 Constitution of the Republic of Indonesia and Pancasila. In line with these goals, the Provincial Government of Papua and the City Government/Regency Government throughout Papua Province have the obligation to protect Papuans and community in general from various threats, both potential and factual, caused by the abuse of alcoholism.

The goal of formulating the Provincial Regulation of Papua Number 15 of 2013 is in line with the concept of *maqasid al-shari'a*, which is to realize the greatest benefit for mankind, to preserve and maintain the five basic/main needs of human life which consists of:

1. Maintaining Religion (*Hifz al-Din*)

The prohibition of alcoholic beverages is aimed at protecting people, especially the younger generation from alcoholism because alcoholic beverages are forbidden. Being prevented from drinking alcohol means having fulfilled religious obligations that are ranked as primary. If the prohibition of alcoholic beverages is ignored, the existence of their religion will be threatened.

2. Maintaining Soul (*Hifz al-Nafs*)

The prohibition of alcoholic beverages in Papua is intended to protect Papuans from death due to consuming alcoholic beverages and death due to criminal acts committed by people who are drunk under the influence of alcoholic beverages. If this prohibition is ignored, it will threaten the existence of the souls of people who consume alcoholic beverages and other people who do not consume them.

3. Maintaining Mind (*Hifz al-'Aql*)

The prohibition of alcoholic beverages aims to preserve the intellect of the Papuan people. If this prohibition is not heeded, it will threaten the existence of the intellect of those who drink alcoholic beverages. By maintaining common sense, the Papuan people will become a smart and dignified generation because they have superior human resources in terms of spirituality, intellect, hygiene, and sociality. If this prohibition is ignored, it will threaten the existence of the intellect of people who consume alcoholic beverages.

4. Maintaining Descendant (*Hifz al-Nasl*)

The prohibition of alcoholic beverages is aimed at maintaining Papua's generation from extinction due to unwanted deaths caused by consuming alcoholic beverages. People who are drunk will lose their minds. When they lose their minds, they will tend to commit immorality, such as adultery and rape which definitely affect the offspring. If the prohibition of alcoholic beverages is ignored, the existence of the descendants of Papuans will be threatened.

5. Maintaining Wealth (*Hifz al-Mal*)

The prohibition of the production, sales, and distribution of alcoholic beverages will protect Papuans from seeking unclean wealth. This is because selling goods that are forbidden is forbidden. Besides, especially in Papua, drunken people usually commit bullying and asking for a certain amount of money from anyone who passes in front of them. If they are not given what they want, they will carry out beatings/maltreatment, which certainly threatens other people's property. If the prohibition of alcoholic beverages is ignored, it will endanger the existence of wealth.

Sociologically, Papua is faced with a reality that the distribution, sales, and consumption of alcoholic beverages in Papua Province is carried out in such a way that it is not controlled within reasonable limits and causes negative impacts that tend to threaten the lives and existence of native Papuans and Papuans in general. Based on these social realities, the presence of the Provincial Regulation of Papua Number 15 of 2013 from the perspective of *maqasid al-shari'a* is a need for *daruriyyat* which means that urgent and compelling needs must be fulfilled to protect Papuans from various threats, both those that are potential or factual. If there is no Provincial Regulation regulating alcoholic beverages, the lives of the Papuan people will worsen because of the negative impact of alcoholism.

In the concept of *maqasid al-shari'a* when we have determined that something is *daruriyyat*, everything related to fulfilling the need for *daruriyyat* is essentially *daruriyyat* as well. Thus, when the issuance of the Provincial Regulation of Papua Number 15 of 2013 is *daruriyyat*, everything related to the effort to enforce or realize the Provincial Regulation of Papua Number 15 of 2013 is *daruriyyat*.

The *daruriyyat* aspect that must be fulfilled is the juridical hertum, which means that the Provincial Regulation stipulated by the region may not contradict the provisions of laws and regulations of a higher level in accordance with the hierarchy of statutory regulations. Moreover, the Provincial Regulation as part of the statutory regulatory system may not conflict with the public interest as regulated in the regulations for drafting Regional Regulations.

If the juridical hertum which is *daruriyyat* in the formulation of the Provincial Regulation is not fulfilled, so that the substance is contrary to the provisions of higher laws, then the stipulated Provincial Regulation will be canceled. When the Provincial Regulation is canceled, it cannot be applied. When the Provincial Regulation cannot be applied, the philosophical aspect or *maqasid al-shari'a* cannot be manifested. Thus, sociologically, the distribution, sales, and consumption of alcoholic beverages are getting out of control and causing negative impacts that threaten the lives and existence of native Papuans and Papuans in general.

IV. CONCLUSION

Based on the explanation above, it can be concluded that the substance of the prohibition of alcoholic beverages in the Provincial Regulation of Papua Number 15/2013 which totally prohibits the production, distribution, sales, and consumption of alcoholic beverages is legally contrary to Presidential Decree Number 74 of 2013. Based on the principle of "*Lex Superiori Derogad Lege Inferiori*", the Provincial Regulation of Papua Number 15 of 2013 can be ruled out by the Presidential Decree Number 74 of 2013. Therefore, the Ministry of Home Affairs cancels the Provincial Regulation Number 15 of 2013 because it violates the principle of the hierarchy of laws and regulations. Based on the perspective of *maqasid al-shari'a*, the regulation of alcoholic beverages in the Provincial Regulation of Papua is a necessity of *daruriyyat*. Thus, everything to make it happen is also *daruriyyat*.

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