

# **HOMOSEXUALITY AND DRUG ADDICTION/ALCOHOLISM**

**SENO NGUTRA, Lic. Iur.Can.**

*Dosen Hukum Gereja STPAK St. Yohanes Penginjil Ambon*

## **ABSTRAK**

“Homoseksual dan orang yang kecanduan alkohol dan obat-obat terlarang” menjadi salah satu sebab penting untuk pembatalan nikah dalam Gereja Katolik menurut ketentuan kanon 1095§3, yakni “ketidakmampuan psikologi.” Gagasan utama tulisan ini ialah kaum homoseksual dan orang yang kecanduan minuman keras dan obat-obat terlarang secara psikologis tidak mampu menjalankan tuntutan-tuntutan utama dalam perkawinan Katolik dan merugikan pasangan (pihak lain) dalam rumah tangga. Menghadapi pribadi-pribadi sedemikian, Gereja Katolik memegang prinsip yang jelas bahwa hukum harus ditegakkan tapi cinta kasih pastoral terhadap penderita tetap diperhatikan dan menjadi faktor utama dalam proses penemuan.

## **KEY WORDS:**

*Homosexuality, Drug Addiction, Alcoholism*

## **Introduction**

Homosexuality and drug addiction/alcoholism are considered in canon law as “psychological incapacity” that can be a ground for annulment as mentioned in canon 1095§3. The following are incapable of contracting marriage: “those who, because of causes of a psychological nature, are unable to assume the essential obligation of marriage.” In this paper I try to share with you “how homosexuality and drug addiction/alcoholism” can be a ground for annulment in the law of the Church.

## 1. Definition of Terms

### 1.1. Homosexuality

The word *homosexual* is a Greek and Latin hybrid with the first element derived from Greek *ὁμός* *homos*, ‘same’ (not related to the Latin *homo*, ‘man’, as in *Homo sapiens*), thus connoting sexual acts and affections between members of the same sex, including lesbianism. Homosexuality is one of the three main categories of sexual orientation, along with bisexuality and heterosexuality, within the heterosexual-homosexual continuum (with asexuality sometimes considered a fourth). Scientific and medical understanding is that sexual orientation is not a choice, but rather a complex interplay of biological and environmental factors.<sup>1</sup>

The term “homosexual” can be apply to both, men and women; 'Gay' is a term often used to refer to homosexual men, while 'lesbian' is a term often used to refer to homosexual women. In strict terms 'homosexual' pertains to the sexual attraction that most adults feel - except that attraction is to someone of the same gender. Therefore, homosexuality is romantic or sexual attraction or behavior between members of the same sex or gender. As an orientation, homosexuality refers to “an enduring pattern of or disposition to experience sexual, affectionate, or romantic attractions” primarily or exclusively to people of the same sex”.<sup>2</sup>

---

<sup>1</sup>Diperoleh dari <http://en.wikipedia.org/wiki/Bisexuality>; Internet, diakses 25 Agustus 2014.

<sup>2</sup>Diperoleh dari [http://en.wikipedia.org/wiki/Romance\\_\(love\)](http://en.wikipedia.org/wiki/Romance_(love)); Internet, diakses 14 Agustus 2014.

## 1.2. Drug Addiction/Alcoholism

Alcoholism is also known as alcohol dependence syndrome, while drug Addiction is a condition characterized by an overwhelming desire to continue taking a drug to which one has become habituated through repeated consumption because it produces a particular effect, usually an alteration of mental status.<sup>1</sup>

Drug Addiction/Alcoholism is a disease that is characterized by the following elements:<sup>2</sup>

1. **Craving:** A strong need, or compulsion, to drink.
2. **Loss of control:** The frequent inability to stop drinking once a person has begun.
3. **Physical dependence:** The occurrence of withdrawal symptoms, such as nausea, sweating, shakiness, and anxiety, when alcohol use is stopped after a period of heavy drinking. These symptoms are usually relieved by drinking alcohol or by taking another sedative drug.
4. **Tolerance:** The need for increasing amounts of alcohol in order to get “high”.
5. **Alcoholism** is a broad term for problems with alcohol, and is generally used to mean compulsive and uncontrolled consumption of alcoholic beverages, usually to the detriment of the drinker's health, personal relationships.

---

<sup>1</sup>Diperoleh dari <http://alcoholism.about.com/cs/alerts/1/blnaa06.htm>; Internet, diakses 15 Agustus 2014.

<sup>2</sup>Ibid.

## 2. Homosexuality and Drug Addiction/Alcoholism in the Code of Canon Law

Homosexuality and drug addiction/alcoholism are understood in the law of the Church as “psychological incapacity” that can cause either a party or both parties incapable “to assume their essential obligation of marriage.” The psychological incapacity is a defect due to the inability to actually assume the essential obligations of marriage. A person may have sufficient reason, even sufficient discretion, but have a psychic condition that incapacitates them for fulfilling marriage’s essential obligations (the conjugal act, the community of life and love, providing mutual help, and procreating and educating children). As noted by Pope John Paul II regarding the lack of reason, it must be an incapacity not just a difficulty, and it must be present at the time of exchanging consent. And, it is clearly mentioned in Canon 1095 §3 can invalidate the marriage. This condition is important at the moment of contracting marriage between two parties. In other words, if its absence is revealed later, the evidence can serve to prove that there was no marriage at all in the first place.

Related to the capacity of the person to give his/her consent in contracting marriage, we can say that matrimonial consent is a human act, elicited by a person, which is the efficient cause of marriage. As a human act it necessarily involves the faculties of intellect and will. In other words, it is a product of the interaction between a person’s reason and will. In a human act one can distinguish between the *essential*, that is to say, those elements which constitute the act, and *accidental*, which are added to the act after its constitution. Similarly one can distinguish between *subjective* element, that is to say, the very activity of the agent,

and *objective* element, that is, the object (i.e., the end or good) considered in its totality with all those elements pertaining to it. The *entire subjective* element is *essential*. It should consist of three components: a). *reasoned deliberation*, i.e., *previous knowledge* on the part of the intellect which proposes the good, because nothing is willed except what is fore-known, and indeed this knowledge is *deliberate*, and without this reasoned deliberation a person would not be master of his/her acts; b). The *movement of will* toward the good proposed by reason (intellect); and c). The *freedom* of this movement. Without this *freedom* the will would not choose nor act in a manner proper to human beings.

Therefore, the essence of the human act is to be *voluntary* and *free*. On the other hand, the *objective* element is twofold: a). some *essential*, namely the very object or end or good toward which the agent tends; and b). some *accidental*, namely circumstances, which are added to the object and affect it. Therefore, it presupposes in those persons entering marriage, a human act, that is, formally human, composed of the use of intellect and will. Thus, one who lacks the use of reason is not capable of placing such act, and, consequently, of eliciting matrimonial consent.

Now, we may ask, is there any possibility that a person who is in the state of alcohol dependence/drug addiction and homosexual at the time of exchanging consent may validly contract a marriage? Before dealing with the question, it is proper to first define what alcoholism/drug addiction and homosexuality according to the Code of Canon Law.

### **2.1. Homosexuality**

Homosexuality is a strong preferential erotic to members of one's own sex. The law does not regard homosexuality in itself as a disorder. It

is considered a disorder only when it is “ego-dystonic”, that is to say, in the case of a person who experiences persistent and marked distress about his or her sexual orientation. Therefore, within the context of marital jurisprudence, however, the issue is not whether homosexuality is a disorder; the only issue is whether a particular homosexual was capable of sustaining a heterosexual relationship like marriage.

Kinsey in his associates in 1948 suggested the following scale that would describe points on a heterosexual-homosexual continuum:

1. exclusively heterosexual
2. predominantly heterosexual, only incidentally homosexual
3. predominantly heterosexual but more than incidentally homosexual
4. equally heterosexual and homosexual
5. predominantly homosexual, only incidentally heterosexual
6. exclusively homosexual

Therefore, the people who are 1 and 2 on the scale are sometimes referred to as “facultative homosexual”; those who are 3 and 4 are “bisexual”; and those who are 5 and 6 on the scale are “obligatory homosexual”.

## **2.2. Alcoholism/Drug Addiction**

The essential feature of alcoholism/drug Addiction is a cluster of cognitive, behavioural, and physiological symptoms that indicating that individual continues use of the substance despite significant alcohol-related problems.

The law defines alcoholism/drug Addiction as a cluster of three or more of the following symptoms occurring at any time in the same twelve month period.

- 1) Tolerance – as defined either;
  - a. a need for markedly increased amounts of alcohol to achieve intoxication or the desire effect.
  - b. a markedly diminished effect with continued use of the same amount
- 2) Withdrawal – as manifested by either;
  - a. The characteristic withdrawal syndrome for alcohol, namely two or more of the following, developing within several hours to a few days after cessation of or reduction in alcohol use that has been heavy and prolonged:
    - 1) autonomic hyperactivity (e.g., sweating or pulse rate greater than 100)
    - 2) increased hand tremor
    - 3) insomnia
    - 4) nausea or vomiting
    - 5) transient visual, tactile or auditory hallucination or illusions
    - 6) Psychomotor agitation
    - 7) anxiety
    - 8) grand mal seizures
  - b. The use of alcohol to relieve or avoid withdrawal symptoms

- 3) Increased amount – alcohol is taken in larger amounts or over a longer period of time than was intended.
- 4) Desire to Control – there is a persistent desire or unsuccessful efforts to cut down or control alcohol abuse.
- 5) Time Expended - a great deal of time is spent in activities necessary to obtain, use, or recover from the effects of alcohol.
- 6) Activities Curtailed – important social, occupational or recreational activities are given up reduced because of alcohol abuse.
- 7) Continued Drinking Despite Problems – the alcohol abuse is continued despite knowledge of having a persistent or recurrent physical or psychological problem that is likely to have been caused or exacerbated by the use of alcohol.

Now, we deal with the question mentioned above; “Is there any possibility that a person who is in the state of alcohol dependence/drug addiction and homosexual at the time of exchanging consent may validly contract a marriage?” There are some guidelines must be considered in the case of homosexuality and alcoholism/drug addiction as the ground for nullity, such as:

*a. Homosexuality:*

- Homosexuality is always to be understood as a genuine homosexual, which is defined apart from any overt acts, simply as **“a strong preferential erotic attraction.”** Therefore, those are categorized as “obligatory homosexual and bisexual” (number 3,4,5 and 6) would be probably incapable of marriage, whereas “facultative homosexuals” would be probably be capable of contracting marriage.



- When a person is known to be homosexual, the homosexuality may always be presumed antecedent to marriage since a person's psychological preference is always fixed at least by early adolescence.
- Whenever homosexuality does, in fact, destroy a marriage, even if it be some years into the marriage, then the person may be regarded as having been incompetent for marriage at the time of the exchange of consent since he or she was, at that time, incapable of assuming the perpetual obligations.
- The choice of marriage partner by a homosexual can sometimes be significant. A female homosexual, for example, might function less well with an aggressive husband than with a gentle, passive man. In other words, it is always possible that a homosexual condition not invalidating in itself could, given the wrong partner, result an inability of the two parties to relate.

***b. Drug Addiction/Alcoholism***

- Marriage cases in which Alcohol Dependence is the only diagnosis are rare. Expert and evidence in this case are always needed to help the judges in making decision.
- To determine whether Alcohol Dependence is invalidating of a marriage, the usual four areas must be investigated;
  - Alcohol Dependence is profoundly disruptive of marriage life. In other words, the alcoholic lacks the capacity for those specifically marital acts of self revelations, understanding and loving.

- Those who hid their alcohol habits in order to contract marriage, even it would be found after giving contract but can be considered as the ground for nullity.
- If there is shown at the time of the exchange consent 1) that the person suffered at least virtually or causally from Alcohol Dependence at the time of marriage and 2) that the cumulative effect of the drinking eventually deprived the person of the ability to fulfil the essential marital obligations, then the person is considered to have lacked due competence.

Example: On November 19, 1983, a case from Roermond, Holland, was judged coram De Lanversin at the Rota. The background of this case is of some procedural importance. It seems the petition was in fact submitted without specification of any grounds of nullity, but the tribunal of first instance of Roermond in its sentence of May 11, 1976, pronounced an affirmative decision on a very nebulous caput amounting to “relative incapacity” on petitioner’s (woman) part, and probably “absolute incapacity” on respondent’s part “to establish a marital community or to realize the essential responsibilities flowing therefrom.” Since nobody appealed against the affirmative decision, the Ordinary permitted the woman to remarry in the Church. But somehow the case reported to the Signature which remanded it to the Rota for a second instance hearing. The Rotal decision of November 15, 1980 was negative. This present sentence of De Lanversin represents an affirmative decision on the basis of lack of discretion of judgment on respondent’s part due to “chronic alcoholism.”

In the *in iure* section of his sentence De Lenversin deals at length with two main issues, namely one's incapacity to elicit valid matrimonial consent and the psychic source of that incapacity i.e., chronic alcoholism. He says that true matrimonial consent demands not only the use of reason, whether habitual or actual, but also discretion of judgment "which is the power to judge and reason, and to put together the judgments in order to deduce logically therefrom a new judgment. Therefore, they are considered incapable of contracting marriage" who suffer from grave lack of discretion of judgment concerning essential matrimonial rights and duties which are to be mutually given and accepted" (Can. 1095,2°). In regard to discretion of judgment itself, De Lanversin quoting Jarawan says:

Discretion of judgment, however, proportionate to matrimonial consent implies the capacity, through the exercise of cognoscitive and critical faculty, to weigh the special nature and force of the matrimonial contract, that is, to reason, to estimate, to judge and to deliberate about contracting marriage.

Therefore, through the full statement "they are incapable of contracting-marriage, who suffer from grave lack of discretion of judgment concerning essential matrimonial rights and duties which are to be mutually given and accepted", the author of the law sanctions a specific incapacity (flowing from a serious psychic defect which hinders discretion of judgment). This defect does not impede the person already engaged from assuming or fulfilling the essential matrimonial rights and duties, rather it hinders the contractant from understanding with sufficient knowledge and awareness, and taking n, with right spirit and

determination, the essential matrimonial rights and duties” for entire conjugal life.

### **Conclusion**

As a judge in the Church we must humbly acknowledge our limitations in marital case regarding “psychological incapacity” as the ground for annulment. The best way should be taken as a wise judge is asking opinions or making a dialogue with the psychological and psychiatric experts before making a decision in the case of psychological incapacity.

What we can say on “homosexuality and alcohol dependence” with regard to people who are categorized to suffer psychological incapacity could influence their capacity to validate their marriage, especially in assuming the essential obligations of marriage.

### **BIBLIOGRAPHY**

- Beal, John, et all (editors). *New Commentary on the Code of Canon Law*. Bangalore: Theological Publications, 2003.
- Bacareza, H.E. *Psychological Incapacity: A Gift From Heaven?* Philippines: Faculty of Canon Law University of Santo Tomas Manila, 1999.
- Mendonça, Augustine. “The Effects of Alcohol and Sedative Hypnotic Anxiolytic Drugs Intoxication on Marital Consent: A Case Study.” *Studia Canonica*, Volume 32, Number 2, 2001.
- Orsy, L. *Marriage in Canon Law: Texts and Comments – Reflections and Questions*. Dublin: Dominican Publication, 1986.
- Morris, Patrick. *Alcoholism and Marital Consent*. The Catholic Marriage Tribunal, Canada: 1999.
- Orsy, Ladislav. *Marriage in Canon Law*. USA: Michael Glazier, Inc., 1986.

Taylor, G. and E. de Bekker. *Parish Priests and Marriage Cases*. Bangalore: Theological Publications, 1980.

\_\_\_\_\_. *Parish Priests and Marriage Cases*. Bangalore: Theological Publications, 2004.