



## **Disparity in Criminal Convictions Against Perpetrators of Criminal Acts of Circulation of Alcoholic Beverages Without Distribution Permits**

**Anthony Simarmata<sup>1\*</sup>, Iyah Faniyah<sup>1</sup>**

<sup>1</sup> Universitas Ekasakti, Padang, Indonesia

\*Corresponding author: [simarmataantonius08@gmail.com](mailto:simarmataantonius08@gmail.com)

### **Article Info**

#### **Article History**

Revised : 2023-04-03

Accepted : 2023-05-27

Published : 2023-08-30

#### **Keywords:**

Disparity in Criminal Verdicts, Alcoholic Beverages, Unlicensed Distribution

### **Abstract**

Supervision and Control of Alcoholic Beverages is regulated in Presidential Regulation Number 74 of 2013 concerning Control and Supervision of Alcoholic Beverages. For the area in this case in Padang City, Control and Supervision of Alcoholic Beverages is regulated in Padang City Regional Regulation Number 8 of 2012 concerning Supervision, Control and Prohibition of Alcoholic Beverages. Based on the Regional Regulation that every circulation of alcoholic beverages must have a permit. In the case reviewed in 2 rulings, the perpetrator distributed alcoholic beverages without a distribution permit. The case has been decided by Decision Number 125/Pid.Sus/2020/PN.Pdg and Decision Number 245/Pid.Sus/2020/PN.Pdg. In the judge's decision, there is a disparity in the verdict. The problem studied is First, What is the Disparity in Criminal Verdicts Against Perpetrators of Criminal Acts of Circulation of Alcoholic Beverages Without Distribution Permits in Decisions Number 125/Pid.Sus/2020/PN.Pdg and Number 245/Pid.Sus/2020/PN.Pdg? Second, How is the judge's consideration in sentencing the perpetrators of the crime of circulating alcoholic beverages without a distribution permit in Decisions Number 125/Pid.Sus/2020/PN.Pdg and Number 245/Pid.Sus/2020/PN.Pdg? The specifics of this study are descriptive analytical. The approach used in this study is a normative juridical approach by conducting in-concreto legal research. The data used in this study are secondary data. All secondary data in the form of primary, secondary and tertiary legal materials obtained from the results of literature research / document studies are then compiled and analyzed qualitatively, and presented in qualitative descriptive form. Based on the results of the study, the discussion and analysis concluded, First, the Criminal Disparity of Judgments Number 125/Pid.Sus/2020/PN.Pdg and Number 245/Pid.Sus/2020/PN.Pdg is illustrated through the similarity in the indictment articles given to the defendants in both judgments and there are differences in the prison sentences imposed on each defendant. Second, the judge's consideration in sentencing the perpetrators of the crime of circulating alcoholic beverages without a distribution permit in Decisions Number 125/Pid.Sus/2020/PN.Pdg and Number 245 / Pid.Sus / 2020 / PN.Pdg includes juridical considerations, namely: relating to the elements of the article charged, witness statements, statements of the defendant evidence, and expert statements and non-judicial considerations, namely: matters related to the history and condition of the defendant.

## INTRODUCTION

Disparity in criminal convictions is an issue that has long been at the center of attention among academics and legal practitioners. Disparity in criminal convictions is considered a troubling issue in the integrated criminal justice system, and the practice of disparity is not unique to Indonesia. This practice is universal and is found in many countries. Disparity in verdicts can affect the way people view and judge the judiciary. Disparity can be seen by ordinary people as a manifestation of the injustice of disturbing judges' rulings. Andrew Ashworth, said that the disparity in verdicts could not be separated from the discretion of judges in sentencing in a criminal case. One criminal case that often illustrates the disparity in its verdicts is a criminal case related to liquor. The problem of liquor in Indonesia is increasingly rife and concerning, it can be seen from the number of victims who died due to liquor either due to high doses or due to mixed liquor or more often called oplosan. Many liquor sellers who distribute liquor do not have a business distribution permit to sell liquor. The distribution permit is not owned by the seller because various things such as complicated procedures and costs that are not cheap are the reasons for liquor sellers do not have a distribution permit.<sup>12</sup>

The difficulty of obtaining a distribution permit is what makes liquor sellers not seek a distribution permit. The provision of services to the community is related to business licenses which must later be fulfilled by the community so that a distribution permit is issued, in this case it is a liquor seller who must comply with the rules of the Government. The act of selling liquor without a license is an act that violates the law and can be punished if it has been declared wrong. In public life, liquor or alcoholic beverages are a form of disorder. Basically, there is a need for the implementation of regional regulations on supervision in the sale of alcoholic beverages as well as the regulation and enforcement of laws from parties involved in these regional regulations. People who use liquor have made drinking or alcohol a habit that is difficult to overcome. Users of alcoholic / hard drinks include old, young, teenagers, even children have begun to try to drink it because of curiosity and environmental factors. Alcoholic beverages are now one of the big problems in Indonesia. Many victims fell as a result of this drink. This drink is often used as a drink for traditional events or as a fun drink because this drink turns out to cause addictive effects. Alcohol if consumed in excess, can cause disease.<sup>345</sup>

Alcoholic beverages are identified as close to criminals because the alcohol content can trigger deviations in the behavior of their consumption, perpetrators can behave spontaneously without control of the mind, making them vulnerable to committing criminal acts. As an effort to prevent and minimize health threats posed by <sup>6</sup>consuming alcoholic beverages, regulations are needed that function as controls of the circulation of alcoholic beverages. Presidential Decree Number 3 of 1997 concerning Supervision and Control of Alcoholic Beverages which has subsequently been replaced by Presidential Regulation Number 74 of 2013 concerning Control and Supervision of Alcoholic Beverages is the first regulation in terms of regulating the circulation of alcoholic beverages in Indonesia. Meanwhile, Padang City Regional Regulation Number 8 of 2012 against Supervision, Control and Prohibition of Alcoholic Beverages has also been made to further clarify the regulation of the circulation of alcoholic beverages in the city of Padang. Clearly on:

---

<sup>1</sup> Ashworth Andrew, *Sentencing And Criminal Justice*, Journal Pandecta UNNES/Vol.7/No.2/July 2012, p. 9.

<sup>2</sup> Adrian Sutedi, *Licensing Law in the Public Service Sector*, Sinar Grafika, Jakarta, 2011, p. 3.

<sup>3</sup> Siti Kotijah, *Licensing Law*, Printout to-I CV. MFA, Yogyakarta, 2020, p. 2.

<sup>4</sup> Steven Darmawan, *Understanding Liquor and Its Impact*, Teen Rosdakarya, Bandung, 2010, p. 21.

<sup>5</sup> Hartati Nurwijaya, *Dangers of Alcohol and How to Prevent Its Addiction*. PT. Elex Media Komputindo. Jakarta, 2009, p. 1.

<sup>6</sup> Telly J. Garpenessy, *Effects of alcohol abuse on criminal acts Violence* Diponegoro University, Semarang, 2007, Pp. 37.

Article 13 ayat (1) and (2) explain as follows:

- (1) Every Direct Seller or Retailer of alcoholic beverages that sells class A alcoholic beverages must have a SIUP from the Mayor.
- (2) Every Direct Seller or Retailer of alcoholic beverages that sells class B and/or class C alcoholic beverages must have a SIUP-MB from the Mayor.

Article 62 a yat (1) *juncto* Article 8 a yat (1) letter a of Law Number 8 of 1999 concerning Consumer Protection is as follows:

Business actors who violate the provisions as referred to in Article 8, Article 9, Article 10, Article 13 a yat (2), Article 15, Article 17 a yat (1) letter a, letter b, letter c, letter e, a yat (2), and Article 18 shall be punished with a maximum imprisonment of 5 (five) years or a maximum fine of IDR 2,000,000,000.00 (two billion rupiah).

Article 8 a yat (1) letter a

Business actors are prohibited from producing and/or trading goods and/or services that: a. do not meet or are not in accordance with the required standards and provisions of laws and regulations.

Meanwhile, Article 142 of Law Number 18 of 2012 concerning Food is as follows:

Food Business Actors who deliberately do not have a distribution permit for any processed food made domestically or imported for trade in retail packaging as referred to in Article 91 a yat (1) shall be punished with a maximum imprisonment of 2 (two) years or a maximum fine of IDR 4,000,000,000.00 (four billion rupiah).

Decision Number 125/Pid.Sus/2020/PN. Pdg, regarding the criminal act of disseminating alcoholic food without a distribution permit, has stated that the defendant Ernayetti Pgl Yet has been legally and conclusively proven guilty of committing the crime of "food business actors who deliberately do not have a distribution permit for any processed food made domestically or imported for trade in retail packaging" as alleged in the First Indictment of the Public Prosecutor. The verdict sentenced the defendant to imprisonment for 5 (Five) months. Meanwhile, Decision Number 245/Pid.Sus/2020/PN. Pdg, regarding the same crime stated that the Defendant Erdanelly Pgl Taci mentioned above, was legally and conclusively proven guilty of the Crime of "Selling Food with processed alcohol not having a distribution permit" as in the First Alternative indictment, In the Verdict, the panel of judges sentenced the Defendant to imprisonment for 1 (one) month.

Based on the above background, the author is interested in conducting research by raising the problem: What is the Disparity in Criminal Verdicts Against Perpetrators of Criminal Acts of Circulation of Alcoholic Beverages Without Distribution Permits in Decision Number 125/Pid.Sus/2020/PN.Pdg and Decision Number 245/Pid.Sus/2020/PN.Pdg? and What is H Akim's Consideration in Giving a Verdict Against Perpetrators of the Crime of Circulating Alcoholic Beverages Without a Distribution Permit in Decision Number 125/Pid.Sus/2020/PN.Pdg and Decision Number 245/Pid.Sus/2020/PN.Pdg?

## RESEARCH METHODS

Spesification of research is *descriptive analysis*, with the method of normatic juridical approach. This research is Inkonkrito's research which was carried out in two court decisions Number 125/Pid.Sus/2020/PN.Pdg and Number 245/Pid.Sus/2020/PN.Pdg. The type of data used is secondary data. Secondary data are obtained from the study of documents. The data obtained by the ministry were analyzed qualitatively.

## RESULTS AND DISCUSSION

### Case Position Decision Number 125/Pid.Sus/2020/PN.Pdg and Number 245/Pid.Sus/2020/PN.Pdg)

#### 1. Decision Number 125/Pid.Sus/2020/PN.Pdg

One of the case decisions analyzed in writing this article is case Number: 125/Pid.Sus/2020/PN.Pdg, which has been heard by the First Instance at the Padang District Court Class I-A, which concerns the issue of Criminal Acts of Circulation of Alcoholic Beverages Without a Distribution Permit, as regulated and threatened with crime in Article 142 of Law Nomor 18 of 2012 concerning Food. The crime of Circulation of Alcoholic Beverages Without a Distribution Permit was committed by the defendant named Eko Erna Yetti Pgl Yet, 51 years old, female, working as an entrepreneur. The accused was detained by the Public Prosecutor from January 30, 2020 to February 9, 2020. The defendant was charged with the First charge, violating Article 142 of Law of the Republic of Indonesia No. 18 of 2012 concerning Food; Second, it violates Article 62 paragraph (1) *juncto* Article 8 paragraph (1) letter a of Law Number 8 of 1999 concerning Consumer Protection. The defendant has been charged by the Public Prosecutor with an alternative charge, so that the Panel of Judges taking into account the above legal facts, directly chose the first alternative charge, namely Article 142 of Law Nomor 18 of 2012 concerning Food, whose elements are as follows:

- a. Everyone;
- b. Food business actors who deliberately do not have a distribution permit for any processed food made domestically or imported for trade in retail packaging.

Once all the elements of Article 142 of the Law of the Republic of Indonesia No. 18 of 2012 concerning Food have been fulfilled, the accused is declared to have been legally and convincingly proven to have committed a criminal act as charged to him in the First alternative. The defendant was sentenced to imprisonment for 5 (Five) months.

#### 2. Decision Number 245/Pid.Sus/ 2020/PN.Pdg.

The decision of the second case analyzed in writing this article is case Number: 245/Pid.Sus/2020/PN.Pdg, which has been heard by the Padang District Court Class I-A which concerns the issue of Criminal Circulation of Alcoholic Beverages Without a Distribution Permit, as regulated and threatened with crime in Article 142 of Law of the Republic of Indonesia No. 18 of 2012 concerning Food defendant named ERDANELLY Pgl. TACI, 51 years old, female, housekeeping (owner of three daughters tavern). The defendant was detained by the Public Prosecutor from February 13, 2020 to March 3, 2020. The defendant was charged with the First charge, violating Article 142 of Law of the Republic of Indonesia No. 18 of 2012 concerning Food; Second, it violates Article 62 paragraph (1) *jo* Article 8 paragraph (1) letter a of the Republic of Indonesia Law Number 8 of 1999 concerning Consumer Protection. The defendant has been charged by the Public Prosecutor with an alternative charge, so that the Panel of Judges by taking into account the legal facts mentioned above, directly chose the first alternative charge, namely Article 142 of the Law of the Republic of Indonesia No. 18 of 2012 concerning Food, whose elements are as follows:

- a. Everyone;
- b. Food business actors who deliberately do not have a distribution permit for any processed food made domestically or imported for trade in retail packaging.

Based on the facts revealed and evidence found, the defendant was sentenced to imprisonment for imprisonment for 1 (one) month.

## **Disparity in Criminal Verdicts for Perpetrators of the Crime of Circulating Alcoholic Beverages Without a Distribution Permit in Decision Number 125/Pid.Sus/2020/PN.Pdg and Decision Number 245/Pid.Sus/ 2020/PN.Pdg**

The problem of criminal *disparity* (*disparity of sentencing*) is a common problem that often occurs in various countries including Indonesia. Criminal Disparity in the crime of alcoholic beverages without a distribution permit occurs because it is caused by several internal factors (from the perpetrator) namely aggravating things and things that relieve the perpetrator and the role of the perpetrator in the criminal act, factors derived from the judge, the quality factor of the crime itself, and factors of conditions or conditions of society, besides that criminal disparity also occurs because it is influenced by the theory of punishment adopted by the judge. The disparity in criminal convictions against perpetrators of the crime of circulating alcoholic beverages without a distribution permit in Decision Number 125/Pid.Sus/2020/PN.Pdg and Decision Number 245/Pid.Sus/2020/PN.Pdg is clearly illustrated by the difference in prison time decided on the defendants. In Decision Number 125/Pid.Sus/2020/PN.Pdg, the panel of judges sentenced the defendant to imprisonment for 5 (Five) months, while in Decision Number 245/Pid.Sus/2020/ PN.Pdg, the panel of judges sentenced the defendant to imprisonment for 1 (one) month. In other words, there is a gap of 4 months of confinement between the defendants even though the defendants both committed the crime of circulating alcoholic beverages without a distribution permit. According to Article 10 of the Criminal Code, the types of punishment/crime are:

- a) Principal crime, consisting of:
  - (1) Death penalty;
  - (2) Imprisonment;
  - (3) Criminal confinement;
  - (4) Criminal fines;
  - (5) Criminal cover-up.
- b) Additional penalties, consisting of:
  - (1) Deprivation of certain rights;
  - (2) Collecting the judge's decision;
  - (3) Deprivation of certain objects.

If discussed in terms of the types of crimes that exist, the panel of judges is indeed not wrong in choosing the crime given to the defendant. However, if we look in detail into the two judgments, it can be said that both cases are on the same level. The perpetrators are both small-scale dilution traders. If one of the traders is a large-scale distributor or producer, then the term disparity cannot be applied to Decision Number 125/Pid.Sus/2020/PN.Pdg and Decision Number 245/Pid.Sus/2020/PN.Pdg. Furthermore, when viewed at the amount of evidence, indeed the evidence found in cases decided with larger crimes is more. The evidence in Decision Number 125/Pid.Sus/2020/PN.Pdg is as follows:

1. 18 (eight) bottles of TKW Brother beverage size 620 (six hundred twenty) ml.
2. 2 (two) bottles of Empty Berlakohol Brand TKW Brother contains 620 (six hundred twenty) ml.
3. 2 (two) bottles of Empty Berlakohol Brand TKW Brother containing 300 (three hundred) ml.
4. 144 (one hundred forty four) bottles of TKW Brothers Brand Alcoholic Beverages containing 620 (six hundred twenty) ml.
5. 36 (thirty-six) bottles of TKW Brothers Brand Alcoholic Beverages containing 300 (six hundred twenty) ml.
6. 14 (fourteen) Bottles of Brandy Brand Alcoholic Beverages containing 650 (six hundred and fifty) ml.
7. 19 (nineteen) Bottles of SWC Red Wine Brand Alcoholic Beverage containing 620 (six



- hundred twenty) ml.
8. 30 (thirty) bottles of W&N Brand Alcoholic Beverages containing 650 (six hundred and fifty) ml.
  9. 24 (twenty four) bottles of New Port Brand Alcoholic Beverages containing 620 (six hundred twenty) ml.
  10. 24 (twenty four) empty bottles of TKW Brothers Brand Alcoholic Beverages containing 620 (six hundred twenty) ml.
  11. 35 (thirty-five) empty bottles of TKW Brothers Brand Alcoholic Beverages containing 300 (three hundred) ml.
  12. 18 (thirty-five) Empty Bottles of New Port Brand Alcoholic Beverages containing 620 (six hundred twenty) ml.
  13. 4 (four) Empty Bottles of Brandy Brand Alcoholic Beverages containing 650 (six hundred and fifty) ml.
  14. 12 (twelve) Empty Bottles of SWC Red Wine Brand Alcoholic Beverages containing 620 (six hundred twenty) ml.

Meanwhile, in Decision Number 245/Pid.Sus/2020/PN.Pdg, the evidence determined was only 9 (nine) bottles of TKW Brother brand alcoholic beverages containing 620 (six hundred twenty) ml. According to Indonesian law, judges have the freedom to decide on any of the crimes they deem most appropriate. In addition, judges also have the freedom to determine the severity of the crime (*strafmaat*) to be imposed, because what is specified in the law is the maximum and minimum. In other words, the judge's consideration is an absolute right inherent in the judge himself. The most plausible thing in relation to the disparity that occurred in these two rulings was because the panel of judges considered that the actions of one defendant were considered to have a greater impact on society. The impact can be estimated through the amount of evidence found on the defendant. In other words, logically, the panel of judges argues that defendants with greater evidence are sentenced to longer because their actions have a greater impact on society. Then, if there is a question or sense of injustice in the defendant who gets a more severe sentence, in this case the defendant in Decision Number 125/Pid.Sus/2020/PN.Pdg, it should be answered through the difference in the amount of evidence found between himself and the defendant Decision Number 245/Pid.Sus/2020/PN.Pdg. In addition, Indonesia has been oriented to the *negative* proof system or the statutory system of evidence. The system has provisions namely:

1. Errors are proven with at least "two pieces of valid evidence"
2. With this minimum valid evidence, the judge obtains a conviction that a criminal act has occurred and the accused is the perpetrator.

According to the above provisions, it can also be assumed that other evidence in these two cases has also influenced the difference in the verdict given by the judge. Then, the disparity in criminal verdicts studied can also be discussed in terms of criminal and criminal theory and criminal liability theory. According to criminal and criminal theory, there are three theories that can be used as a basis for imposing crimes on criminal offenders, namely absolute/retributive / retaliatory *theory (lex talionis)*, relative/objective (*utilitarian*) and combined. The disparity in prison sentences imposed by the panel of judges in the two cases under study has illustrated the fulfillment of the purpose of punishment stated in absolute theory. The absolute theory holds that the person who has committed the offense must receive the punishment and the punishment must be balanced with the severity of the delict. Meanwhile, the principle of relative theory is not entirely fulfilled in the conviction of these two cases because the prison sentence that has been imposed is only preventive, not guiding and treating (*treatment*).

According to the theory of criminal liability, the basis of criminal liability is the existence of guilt contained in the soul of the perpetrator in relation (that mistake) to

punishable behavior and based on the psychology that can be punished and based on that psychology the perpetrator can be reproached, because his behavior for the wrongdoing of the perpetrator must be achieved and determine in advance several things that concern the perpetrator, namely:<sup>7</sup>

- 1) Ability to be responsible;
- 2) Relationship, psychology between the perpetrator and the consequences caused (including behavior that is not contrary to the law in everyday life);
- 3) *Dolus* and *culpa*, guilt is a subjective element of the criminal act. This was as a consequence of his opinion linking (uniting) *strafbaarfeit* with error.

When connected with the provisions regarding perpetrators described above, it can be said that the disparity in judgment that occurs is not affected by these provisions because the two defendants in the case are both people who have fulfilled the provisions of criminal liability.

### **Hakim Considerations in Giving a Verdict Against Perpetrators of the Crime of Circulating Alcoholic Beverages Without a Distribution Permit in Decision Number 125/Pid.Sus/2020/PN.Pdg and Decision Number 245/Pid.Sus/2020/PN.Pdg**

The judge's consideration is one of the most important factors in determining the value of a judge's decision containing justice (*ex aequo et bono*) and legal certainty, as well as benefits for the parties involved, so the judge's consideration must be addressed carefully, kindly, and carefully. Judges need evidence when examining a case, and the results of that evidence are used as a factor in deciding a case. The evidentiary stage is the most important thing in court hearings. The purpose of proof is to obtain certainty that an event or fact proposed occurred in order to obtain a correct and fair judge's decision. The juridical consideration of the judge to impose a prison sentence for the crime of circulating alcoholic beverages without a distribution permit in Decision Number 125/Pid.Sus/2020/PN.Pdg and Decision Number 245/Pid.Sus/2020/PN.Pdg based on Article 184 of the Code of Criminal Procedure cannot be separated from the prosecutor's charge in connection with proving the elements in the Article charged. In Decision Number 125/Pid.Sus/2020/PN.Pdg, the Panel of Judges by taking into account the above legal facts directly selected the first alternative charge as stipulated in Article 142 of Law Number 18 of 2012 concerning Food, the elements of which are as follows:

- 1) Everyone;
- 2) Food business actors who deliberately do not have a distribution permit for any processed food made domestically or imported to be traded in retail packaging.

The panel of judges who stated that the type of alcoholic beverage found as evidence in this case did not have a distribution permit was in accordance with the facts and applicable law. The products circulated by the defendant did not meet the three criteria described by the above article. In addition to the beverage products that do not have a distribution permit, the business owned by the defendant is also not registered with the Minister of Industry who organizes government affairs in the field of industry. If it is related to the definition of criminal liability, it can clearly be said that the defendant's actions have fulfilled the demand for criminal responsibility. Criminal liability is imposing penalties on makers for acts that violate prohibitions or give rise to prohibited circumstances. The prohibited thing that the defendant has done in this case is to sell alcohol that does not meet the criteria determined by the applicable law (does not have). Thus, the statement of the panel of judges who said the second element in the article charged was in accordance with existing legal facts. Then, non-judicial considerations described in Decision Number 125/Pid.Sus/2020/PN.Pdg refer to the

---

<sup>7</sup> Oemar Seno Adji, *Professional Ethics and Doleter Criminal Liability Law*, Erlangga, Jakarta, 1991, p. 74.

circumstances and history of the defendant who has never been convicted and the defendant's polite attitude during the legal process.

Furthermore, in Decision Number 245/Pid.Sus/2020/PN.Pdg, the author can also see the judge's considerations that have been given referring to juridical and non-juridical considerations. Similar to Decision Number 125/Pid.Sus/2020/PN.Pdg, in Decision Number 245/Pid.Sus/2020/PN.Pdg the defendant was also charged by the Public Prosecutor with Article 142 of Law Number 18 of 2012 concerning Food. In accordance with the previous explanation, juridical consideration is one that is based on juridical facts revealed during the trial and is required by law to be included in the judgment. Juridical consideration is given to decide whether the accused is found guilty of the charges given. To prove the defendant guilty or not, the first thing that will be seen is the proof of the elements of the article charged or not. The elements in Article 142 of Law Number 18 of 2012 concerning Food charged against the defendant in Decision Number 245/Pid.Sus/2020/PN.Pdg are:

- 1) Everyone;
- 2) Food business actors who deliberately do not have a distribution permit for any processed food made domestically or imported to be traded in retail packaging.

According to the facts revealed, this case originated from public information that there was an activity to sell alcoholic beverages that did not have a distribution permit located at a shop located at Jalan Dr. Sutomo No. 5, East Sawahan Village, East Padang District, Padang City, and then an investigation and search was carried out by a team from the West Sumatra Police Reskrimsus and at that time it was found in the shop in front of the cashier of the defendant's shop located at Jalan Dr. Sutomo No.5 Kel. East Sawahan Kec. East Padang Kota Padang is 9 (nine) bottles of brand alcoholic beverages. TKW Brothers contains 620 (six hundred and twenty) ml, without a distribution permit at the defendant's shop. The evidence is based on the results of tests conducted by the Center for Drug and Food Control where in the test report No.19.083.99.13.06.0469.K dated December 12, 2019 on the brownish-yellow liquid of TKW Brothers brand alcohol based on physical chemistry tests: PK Ethanol 13.29%, PK Methanol 7% with the conclusion of the results: The test results do not meet the requirements (Methanol content 7%) examples do not meet the requirements (without distribution permission).

Based on the consideration that has been given to the facts revealed, all elements of Article 142 of Law Number 18 of 2012 concerning Food have been fulfilled. The defendant must be declared to have been legally and convincingly proven to have committed the crime of "Selling processed food without a distribution permit". Furthermore, regarding non-juridical considerations, in decision Number 245/Pid.Sus/2020/PN.Pdg, the panel of judges considered the history of the defendant who had never been convicted, behaved politely during the trial, and was the backbone of the family as a matter that could reduce the defendant's sentence.

In both cases, it can be seen that the evidentiary process carried out to obtain the judge's conviction has been based on the theory of the negative proof system *wetelijk stelsel* or the legal proof system. This theory of evidence has explained the provisions regarding evidence, namely:

- 1) Errors are proven with at least "two pieces of valid evidence"
- 2) With this minimum valid evidence, the judge obtains a conviction that a criminal act has occurred and the accused is the perpetrator.

Based on the above provisions, it can be seen that the panel of judges in decision Number 125/Pid.Sus/2020/PN.Pdg and Decision Number 245/Pid.Sus/2020/PN.Pdg has based its considerations and beliefs on at least two pieces of evidence. Overall, in both cases the evidence available is witness statements, letters, instructions and statements of the accused. The judge's judgment in imposing a judgment against the perpetrators of the crime of



circulating alcoholic beverages without a distribution permit in Decision Number 125/Pid.Sus/2020/PN.Pdg and Decision Number 245/Pid.Sus/2020/PN.Pdg is summarized into two, juridical and non-juridical. Juridical considerations relate to the elements of the article charged, witness statements, statements of the accused, evidence, and expert statements and non-juridical considerations namely matters relating to the history and circumstances of the accused. In Decision Number 125/Pid.Sus/2020/PN.Pdg, non-juridical consideration is given regarding the circumstances and history of the defendant who has never been convicted, being polite, straightforward and straightforward in giving testimony in court, and regretting his actions and promising not to repeat them again. In Decision Number 245/Pid.Sus/2020/PN.Pdg, non-juridical consideration was given regarding the circumstances and history of the defendant who is the backbone of the family, has never been convicted, and is polite, straightforward and straightforward in giving testimony in court. According to the author, the difference is reasonable considering that the things considered are not always the same, for example in terms of the number of items of evidence found.

## CONCLUSION

The disparity in Criminal Judgments No. 125/Pid.Sus/2020/PN.Pdg and No. 245/Pid.Sus/2020/PN.Pdg is illustrated through the similarity in the indictment articles given to the defendants in both judgments and there are differences in the imprisonment imposed on each defendant.

The judge's consideration in imposing a verdict against the perpetrators of the crime of circulating alcoholic beverages without a distribution permit in Decisions Number 125/Pid.Sus/2020/PN.Pdg and Number 245/Pid.Sus/2020/PN.Pdg includes juridical considerations, namely: relating to the elements of the article charged, witness statements, statements of the accused evidence, and expert statements and non-juridical considerations, namely: matters related to the history and condition of the defendant.

## REFERENCE

- Adrian Sutedi, *Licensing Law in the Public Service Sector*, Sinar Grafika, Jakarta, 2011.
- Hartati Nurwijaya, *The Dangers of Alcohol and How to Prevent Its Addiction*. PT. Elex Media Komputindo. Jakarta, 2009.
- Siti Kotijah, *Licensing Law*, First Print CV. MFA, Yogyakarta, 2020.
- Steven Darmawan, *Understanding Liquor and Its Impact*, Remaja Rosdakarya, Bandung, 2010.
- Telly J. Garpenessy, *The Effect of Alcohol Abuse on Violent Crimes*, Diponegoro University, Semarang, 2007
- Ashworth Andrew, Sentencing and Criminal Justice, *Journal of Pandecta UNNES/Vol.7/No.2/July 2012*.
- Law Number 1 of 1946 is against the Regulation of Criminal Law (KUHP).
- Law Number 8 of 1981 concerning the Code of Criminal Procedure (KUHP).
- Law Number 2 of 1986 concerning General Courts.
- Law Number 8 of 1999 concerning Consumer Protection.
- Law Number 48 of 2009 concerning Judicial Power.
- Law No. 49 of 2009 opposes the Second Amendment to Law No. 2 of 1986 concerning General Courts.
- Law Number 18 of 2012 concerning Food.
- Regional Regulation of Padang City Number 8 of 2012 concerning Supervision, Control and Prohibition of Alcoholic Beverages.
- Presidential Decree Number 74 of 2013 concerning Control and Supervision of Alcoholic Inuman. Decision Number 125/Pid.Sus/2020/PN.Pdg.