

***Law Enforcement Against Production
And Circulation of Alcoholic Drinks
(Oplosan)
(Case Study of Court Decision Number:
284/Pid.B/2020/PN.Gsk)***

By:

¹ Hamid Rusdi , ² Suwarno Abadi , ³ Joko Ismono

^{1,2,3} Master of Laws at Wijaya Putra University, Surabaya

Email: ¹ hamidrusdi86@gmail.com, ² suwarnoabadi@uwp.ac.id, ³ jack.fhua@gmail.com

Abstract

One of the problems in the circulation of liquor is the increasingly widespread circulation of adulterated liquor, which can spur the emergence of crime in the community. This criminal act is because people who consume bootleg liquor will feel braver than usual after consuming the drink. So those people who consume these drinks will do things that can harm others such as fights, murders, traffic accidents, duping, beatings, vandalism. This study aims to enforce the law on the production and circulation of adulterated liquor and analyze and find the concept of regulation regarding the production and distribution of adulterated liquor that provides legal protection for the community. The expected benefits of this research are to be a reference for other researchers about the dangers of adulterated alcohol and the steps that must be taken by the government in combating its circulation and to emphasize the important role of the State in taking action for the perpetrators of production and distributors of adulterated alcohol to be given the toughest sanctions. Law enforcement by the judge in case Number: 284/Pid.B/2020/PN Gresik has been based on the facts contained in the trial, the judge's decision in this case is lower than the demands of the public prosecutor. One of the judges' arguments which eased the defendant's sentence was that the action taken by the defendant AGUS HARIYANI had a background where the defendant only went to school, only graduated from elementary school and economic factors caused the defendant to choose to sell liquor at his home because the defendant supported his 2 young children alone after being divorced and left by her husband. The judge himself in the trial did not find things that could abolish criminal liability, either as a justification or excuse for forgiveness, then the defendant must be held accountable for his actions.

Keywords: Law Enforcement. Producer, Distribution, Mixed Liquor.

A. INTRODUCTION

1. Background

Alcoholic beverages are included in the high-grade category, which is a type of NAZA (Narcotics, Alcohol and Addictive Substances) in the form of alcoholic beverages, regardless of the alcohol content in them. Alcohol is an addictive substance, meaning that it can cause addiction, *namely* addiction and dependency.

Drug abuse/dependence of this type of alcohol can cause organic mental disorders, namely disturbances in the functioning of thinking, feeling and behaving. This Organic Mental Disorder is caused directly by alcohol on the neurotransmitters of the central nervous cells (brain). Alcoholic Arak-type liquor is now widespread by mixing it with other ingredients known as "oplosan", Oplosan itself is a mixture of alcoholic Arak-type drinks mixed with other ingredients that are not recommended to be mixed or added to the ingredients. - materials containing alcohol.¹

Realization of the right to work and a decent living is a constitutional obligation of the state. The main task of the state is clearly stated in the constitution (UUD 1945), namely to promote general welfare and provide freedom to all people in carrying out their business to support the economy for the survival of their lives. The constitution mandates the government as the organizer of the state to be responsible for fulfilling the civil, political and economic rights of its citizens.

The obligation to protect means that the state must stipulate legislation as legal protection instruments relating to the fulfillment of public safety and health in general, not only benefiting certain individuals or groups, and implementing them consistently. The state must play an active role in assisting its citizens in fulfilling their right to food, without reducing the right to food of other citizens. The state must ensure that every individual within its jurisdiction has equal opportunities to make ends meet, if they cannot do this on their own.

The rapid development of the economy makes people innovate in their lives, to be able to adjust to economic developments. To be able to make ends meet, people must be able to compete to meet their economic needs. One way is by trading or selling. In reality, trading is sometimes carried out in a fraudulent manner. An example is selling alcoholic beverages or often referred to as liquor.

¹ Dadang Hawari, Drug Abuse & Addiction (Narcotics, Alcohol & Addictive Substances), Publishing House FKUI, Jakarta, 2005, h. 52

Regulation of the Minister of Trade Number 10/M- Dag/Per/1/2015 of 2015 concerning the Second Amendment to Regulation of the Minister of Trade Number 20/MDag/Per/4/2014 concerning Control and Supervision of the Procurement, Distribution and Sales of Alcoholic Beverages and finally according Regulation of the Minister of Trade of the Republic of Indonesia Number 97 of 2020 stipulates that if you want to carry out business activities in the trade of alcoholic beverages, you must first have a SIUP-MB (a permit to be able to carry out business activities in trading specifically alcoholic drinks). As explained in Article 1 paragraph (16) which reads "Trading Business Permit, hereinafter abbreviated as SIUP, is a permit to be able to carry out trading business activities." and paragraph (17) which reads "Alcoholic Beverage Trading Business Permit, hereinafter abbreviated as SIUP-MB, is a license to be able to carry out trading business activities specifically for Alcoholic Beverages."

One of the problems in the circulation of liquor is the increasingly widespread circulation of bootleg liquor, which can spur crime in the community. This criminal act is because people who consume bootleg liquor will feel braver than usual after consuming the drink. So that people who consume these drinks will do things that can harm other people such as fights, murders, traffic accidents, duping, beatings, vandalism. And this is a problem because many people consume bootleg liquor. One of the forms of the state's obligation to regulate the distribution of alcoholic beverages (oplosan liquor) which are widely circulating in society, is to prohibit the production and distribution of Arak and Tuak. Both of these liquors are considered by the government to be intoxicating drinks and are strictly prohibited from being circulated.

Arak is a type of distilled alcoholic beverage which is usually produced in Southeast Asian and South Asian countries. Arak is made from fermented coconut sap, sugar cane, grains (eg rice, brown rice) or fruit, depending on the country or region of origin. Distilled arak ingredients may be mixed, stored longer in wooden casks, or repeatedly distilled and filtered depending on the flavor and color the maker desires.²

The term "oplosan" itself means "mixture". Where the mixed alcohol is liquor consisting of various mixtures, including mixed with industrial alcohol

² [https://id.wikipedia.org/wiki/Arak_\(liquor_drink\)](https://id.wikipedia.org/wiki/Arak_(liquor_drink)).

(methanol) or with herbal medicines such as strong drugs or health supplements. Mixed alcohol is usually made and sold illegally.³

There are various mixtures used as mixed liquor, one of which is methanol. Methanol is often used as a mixture of mixed drinks because the price of methanol is relatively cheaper, products like this are called denatured alcohol. Methanol is commonly used as an organic solvent, is a type of alcohol that has the simplest structure, but is the most toxic to humans. Poisoning due to methanol usually occurs due to intentional or unintentional overdose causing metabolic acidosis.

Based on the existing positive legal norms, there is a need for legal certainty governing sanctions, so that supervision as a form of law enforcement against the circulation of alcoholic beverages is not clear. The phrase "alcoholic drink" is considered different from "mixed liquor". The phrase "oplosan liquor" is not found in positive law explicitly.

In terms of law enforcement, the lack of clarity on this norm in tackling bootleg liquor is not only focused on law enforcement but also on preventing the perpetrators of the crime of bootleg liquor. Prevention of perpetrators of this crime of drinking is where Law Enforcement Officials have the authority to conduct investigations and investigations of all sellers of liquor who sell without a permit or not in accordance with what is regulated in the Decree of the Minister of Health and Regional Regulations.

2. Formulation of the problem

Based on the background above, the author draws the formulation of the problem: How is law enforcement against producers and dealers of bootleg liquor (case study Decision Number: 284/Pid.B/2020/PN Gsk)?

Research methods

The type of research method used in writing this article is a normative juridical method by conducting a literature study on legal materials, both primary legal materials, namely related laws and regulations and secondary legal materials, namely literature related to the topic of the problem.

The research method used consists of various methods and activities carried out in order to collect data from legal materials needed in order to complete the preparation of this article.

B. DISCUSSION

³ Risna Yekti Mumpuni, **Procedure for Poisoning Mixed Liquor (Methanol and Ethylene Glycol with Fomepizole, Ethanol, Haemodialysis)** , Journal of Nursing Care and Biomolecular, 2017.

1. Legal Arrangements for Production and Distribution of Mixed Alcoholic Beverages (Popped Liquor).

Indonesia has faced an extraordinary situation due to the problem of circulation of alcoholic beverages (oplosan liquor). Many people have fallen victim to the effects of drinking "mixed liquor" alcohol. The government cannot enforce the rules because the existing rules are no longer valid. This regulation is based on Presidential Decree No. 3 of 1997 which was later annulled through Supreme Court Decree No. 42 P/HUM/2012 dated June 18, 2013. Therefore, the government needs to issue new regulations to prevent and punish the circulation and production of alcoholic beverages (liquor). oplosan) which is illegal. There are several reasons for the Government to issue new regulations regarding bootleg liquor, including:

1) Philosophical Reasons.

The Unitary State of the Republic of Indonesia (NKRI) is a constitutional state and makes Pancasila the source of all sources of law. This means that all forms of activities and actions both individually and socially as a social order should reflect social patterns and lifestyles, behavior that is realized by legal regulations and norms that are realized by the philosophy and foundation of the Pancasila State.

The current behavior and habit of consuming liquor can be seen everywhere, at parties or anything that opens opportunities for young people to gather, usually accompanied by activities involving drinking, not only carried out by teenagers or teenagers . young people and even old people participate in celebrating the drinking party so that it ends with the drinker getting drunk. Usually the end of all that ends with disputes, fights and actions that disturb other people or the peace and tranquility of society.

This is very concerning, because among teenagers today, liquor tends to be familiar to them and of course has negative consequences. and will slowly shape the negative habits and culture of the younger generation of the Indonesian nation as well. This situation easily occurs because the flow of information and the phenomenon of globalization is so strong that it has had an influence on the attitudes and behavior of imitating western foreign culture without any effort to filter it.

According to Islamic Law on the Distribution of Liquor (*khamr*) is a type of drink that is intoxicating and forbidden. Drinks that belong to the *khamr group* are all types of drinks that have the same characteristics as *khamr* , namely intoxication. So the definition of a drink is said to be *khamr* based on its characteristics, not on the type and material. Drinks that are classified as *khamr* are unlawful and are heinous and satanic acts.

The rules for prohibiting alcoholic beverages (*khamr*) apply to all Muslims and there are no exceptions for certain individuals. What is prohibited in Islam is the act of drinking *khamr* itself, regardless of whether the drinker is drunk or not. Allah says in QS Al Maidah verse 90:

“O you who believe, Verily (drinking) *khamr*, gambling, (sacrifice to) idols, drawing fate with arrows is one of the devil's deeds. So stay away from those actions so that you will get good luck.

2) Juridical reasons.

Article 29 paragraph 1 of the 1945 Constitution of the Republic of Indonesia states that the state is based on Belief in One Almighty God, but in responding to developments regarding alcoholic beverages, the government cannot do anything about it. Meanwhile, the right to a healthy environment in human life is a Human Right (HAM) guaranteed in Article 28 H paragraph (1) of the 1945 Constitution of the Republic of Indonesia (hereinafter abbreviated as the 1945 Constitution of the Republic of Indonesia) which states: "Everyone has the right to live in physical and spiritual prosperity, to have a place to live, and to have a good and healthy living environment and the right to obtain health services". This basic right may not be violated by anyone and must be upheld and respected so that everyone can enjoy a prosperous life.

The importance of regulating the circulation of alcoholic beverages (*oplosan liquor*) in the form of laws (national) or regional regulations (provincial, district/city) is felt to be very urgent considering:

- a. Health is a human right and one of the elements of welfare that must be realized in accordance with Pancasila and the 1945 Constitution;
- b. Whereas every activity in an effort to maintain and improve the highest degree of public health is carried out based on non-discriminatory, participatory and sustainable principles in the framework of forming Indonesian human resources, as well as increasing the nation's resilience and competitiveness for national development;
- c. That every thing that causes health problems in the Indonesian people will cause huge economic losses for the country, and every effort to increase the degree of public health also means investment for the country's development;
- d. That every development effort must be based on health perspectives in the sense that national development must pay attention to public health and is the responsibility of all parties, both the Government and the community;

Not only that, the negative impact of alcoholic beverages on human health includes GMO (Organic Mental Disorders), memory damage, brain edema (swelling and blood stoppage in brain tissues, cirrhosis of the liver,

heart problems, gastritis (addiction to alcohol in which causing inflammation), paranoia (psychiatric disorders).

Based on these negative impacts, it is only natural that a (national) regulation is needed that specifically regulates the circulation and use of alcoholic beverages in order to prevent more victims from occurring. The state in this case has the function of regulating its citizens and implementing social welfare.

The absence of laws that specifically regulate alcoholic beverages at the national level does not mean that local governments do not have the authority to regulate them in regional regulations. Article 18 of the 1945 Constitution in conjunction with Article 17 paragraph 1 of Law Number 23 of 2014 concerning Regional Government which states that Regions have the right to establish Regional policies to carry out Government Affairs which are the authority of the Regions.

In the absence of a law that specifically regulates this alcoholic drink, it does not mean that there are no regulations under it that regulate it. Presidential Decree No. 3 of 1997 concerning the Supervision and Control of Alcoholic Beverages is the basis used in regulating the supervision and control of alcoholic beverages, including one of which is the Salatiga Regional Regulation No. 15 of 1998. However, in its development Presidential Decree No. 3 of 1997 was declared invalid and illegal has legal force through Supreme Court Decision Number 42 P/HUM/2012 dated 18 June 2013. Therefore, the Government deems it necessary to issue regulations for the control and supervision of alcoholic beverages as a substitute for Presidential Decree Number 3 of 1997, namely through Presidential Regulation Number 74 of 2013. 2013 concerning Control and Supervision of Alcoholic Drinks which was then followed up by the Ministry of Trade through the Minister of Trade Regulation Number 20/M-DAG/PER/4/2014 concerning Control and Supervision of the Procurement, Distribution and Sales of Alcoholic Drinks.

Thus, this research, wants to describe the practice of circulation of alcoholic beverages and also wants to describe the urgency of regulating alcoholic drinks based on the negative impact, it is only natural that a (national) regulation is needed that regulates the circulation and use of alcoholic beverages in order to prevent more victims from occurring. . The state in this case has the function of regulating its citizens and implementing social welfare.

Analysis of Related Laws and Regulations In Law Number 36 of 2009 concerning Health, the issue of alcoholic beverages is not explicitly regulated. In Article 113 it says:

- 1) Safeguarding the use of materials containing addictive substances is directed so as not to disturb and endanger the health of individuals , families, communities and the environment.
- 2) (1) Addictive substances referred to in paragraph (1) include tobacco, products containing tobacco, solids, liquids and gases which are addictive, the use of which can cause harm to themselves and/or the surrounding community.
- 3) Production, distribution and use of materials containing addictive substances must comply with established standards and/or requirements.

In his elucidation (Article 113 paragraph 3) it is said that standard setting is directed so that the addictive substances contained in these materials can be suppressed to prevent the circulation of counterfeit substances.

If we read carefully, the norms governing these addictive substances are less clear (implicit), because they are still regulated in general. Because of this, Law Number 22/1997 concerning Narcotics was born (which was later replaced by Law Number 35/2009) and Law Number 5/1997 concerning Psychotropics with various implementing regulations, while the law concerning the Prohibition of Alcoholic Beverages is no less dangerous. with Narcotics, and Psychotropics, until now it has never been published.

The rampant cases of bootleg alcohol are clearly a concern for the government. Kabareskrim Polri Comr. General of Police, Ari Dono Sukmanto, said that the producers and distributors of bootleg liquor could be subject to Article 340 of the Criminal Code (KUHP) concerning premeditated murder. The reason is, this case has claimed many lives.

Not only Article 340 of the Criminal Code, the perpetrators will also be charged with Article 204 of the Criminal Code concerning unlawful acts for selling goods that endanger life and health. In the case of the circulation of counterfeit liquor so far, the police have charged the perpetrators with violations of Law Number 18 of 2012 concerning Food.

The circulation of alcohol must be minimized as quickly as possible, both through regulation and enforcement. "Legal apparatus at the level of the police unit who function as Kamtibmas partners who often go around in the community actually already know, but because they seem 'silent' to each other they are less concerned with their function as law enforcement or must have a preventive function from an event in the community.

As a result of this type of apparatus or there may be other people or certain apparatus who can become a protector for the seller or the maker of the mixed drink. "This is related to big money, eternal mafia players and legal

officials are sometimes vulnerable to the virus by getting certain compensation from the activities of sellers or production of these mixed drinks.

Therefore, he said, the right step is in addition to strengthening the function of the community's environmental role with maximum punishment so that the criminal justice system is optimal and synergistic so that there is the same unity of action between the police, prosecutors and judges. So that the perpetrators of selling and producing adulterated drinks are punished as high as possible to be a deterrent.

The reason is, the presence of adulterated drinks is very dangerous to national security and is related to the quality of Indonesia's human resources, so a maximum penalty is needed plus multiple and optimal charges for threats of premeditated murder, selling without a permit, tax manipulation, and snares under the food law.

With this decisive action, the goal is for sellers and producers to think about carrying out these activities. "So it is necessary to make new regulations and sanctions in the form of life imprisonment and maximum fines for sellers and those who produce these mixed drinks because they see the impact that causes greater crime and damages the nation's generation. What's more, many victims have had to be hospitalized, some were disabled and some died so sanctions other than criminal and fines should be imposed.

3) Sociological Reasons

In terms of social life, alcoholic beverages greatly affect social life. Usually someone consumes mixed drinks from several chemical substances that can immediately threaten the lives of users. They drink it proudly without taking their own lives into account. Mixed liquor has circulated massively both at the provincial and city/district levels.

Mixed liquor is liquor made from various ingredients that contain alcohol and mixed together, and has varying levels of alcohol. The ingredients used for the bootleg liquor are palm wine, Balinese brem/Balinese arak, medicines, energy drinks and other hazardous substances.

It seems that human deaths caused by bootleg alcohol are not a strange thing anymore. Even though it doesn't happen too often, victims of bootleg liquor are quite a lot. Some became blind and even died. To some extent, alcohol can actually help maintain health. However, if it is excessive, this drink can cause poisoning. The risk increases when alcohol or liquor is mixed with various dangerous ingredients.

Our people are actually already aware and know that consuming alcoholic beverages or mixed alcohol will only incur a lot of losses, for this reason local governments are expected to find the best solutions for cases of alcoholic beverages including adulterated drinks which are still rife. Consumption of alcoholic beverages has become a complex problem, not only related to problems in the health sector but also regarding issues related to employment and taxation, and not infrequently also problems that have a psychological impact.

In Indonesia, alcohol abuse is also a serious health problem. The frequent emergence of news about the trade system for alcoholic beverages is at least an indication that alcoholic beverages are widely consumed by people in this country with a majority Muslim population. It has often been revealed that alcoholic beverages will only have a negative effect (drunkenness) on the drinker, even in some cases it actually results in death, but every year the number of alcoholic drink addicts is not decreasing, but increasing. For some circles, drinking alcohol is considered as a means to show gallantry or virility. WHO data for 2011 stated that the number of deaths due to the influence of alcohol worldwide reached 2.5 million people, including cases of accidents and illnesses caused by it. This number is greater than deaths due to HIV/AIDS and tuberculosis worldwide.

Data from the 2012 National Police Research and Development Center found that junior high school, high school and college students occupied the highest number of drug and alcohol users, namely 70% of users. Adolescent alcohol users range from 14-16 years (47.7%), 17-20 years (51.1%), and 21-24 years (31%).

The Public Prosecutor's Indictment The defendant was brought to trial by the public prosecutor who was charged based on the indictment number Reg. Perk : PDM/M.5.27/Epp.2/11/2020 dated 19 August 2020 which was read out on 3 September 2020 as follows:

That he was the defendant AGUS HARIYANI on a day and date that cannot be determined with certainty around the end of March 2020 or at least at a certain time which is still 2020 at the grocery store/warung owned by the defendant having the address at Wire Environment, RT 03 RW 07 Ds Kedung Ombo, Kec. Semanding, Kab. Tuban, based on Article 84 paragraph (2) of the Criminal Procedure Code the a quo case still includes the authority to try the Gresik District Court on the grounds that most of the witnesses live in Gresik Regency, have sold, offered, delivered or distributed goods which they know are dangerous to life or health people, even though the dangerous nature was not notified.

That starting around December 2019 the defendant, who was at the grocery store at the address mentioned above, was approached by a man claiming to be WANTO (DPO) offering the defendant to buy arak-type liquor, after the defendant saw it it turned out to be arak-type liquor. The bottles are packaged in used plastic mineral drink bottles and without any brands and labels, then WANTO says the price per 12 (twelve) bottles is IDR 500,000, so the retail price is IDR 42,000 per bottle and can be resold for IDR 50,000. - per bottle and the defendant can get a profit of IDR 8,000 per bottle. The defendant felt interested without asking any further information including the contents of the drink in the bottle, then the defendant handed over Rp. 500,000 to WANTO and received 12 (twelve) bottles of arak type liquor from WANTO, then the defendant put them in the stall his grocery store with the aim of reselling it for IDR 50,000 per bottle.

Then at around the end of March 2020, a man came who was none other than the witness INDRA IRAWAN Als BOGANG (prosecuted separately) to the defendant's grocery store to buy 2 (two) bottles of the branded arak tana liquor each for @Rp. 50.000,-. Regarding this sale and purchase transaction, the defendant handed over 2 (two) bottles of unbranded wine to the witness INDRA IRAWAN Als BOGANG and the defendant received money to buy it in the amount of Rp. 100,000. told the witness INDRA IRAWAN that the drink could endanger health because there was no permit from BPOM and it was not clear about the alcohol content.

Furthermore, on April 20 2020, the Menganti Sector Police found reports from the public about several people being poisoned as a result of consuming illegal liquor in the Grogol Hamlet area, Laban Village, Menganti District, Gresik Regency. Joint officers from the Menganti Police and Gresik Police immediately investigated the circulation of the alcohol through the statements of a number of victims. at RSU Randegansari Husada, Randegansari Village, Kec. Driyorejo, Gresik Regency, the source of which was finally discovered to be from witness INDRA IRAWAN Als BOGANG and from the results of interrogation, witness INDRA IRAWAN Als BOGANG himself admitted that he obtained it from witness AGUS HARIANI, so officers brought witness INDRA IRAWAN Als BOGANG to go straight to the location of the defendant's residence in the wire environment. , RT 03 RW 07 Ds Kedung Ombo, Kec. Semanding, Tuban Regency, after a search was carried out, evidence was found and secured in the form of 4 (four bottles) of arak type liquor with used plastic mineral water bottles without any labels, then the defendant and the evidence were taken to the Gresik Police Station for an examination process Furthermore.

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Next, the evidence was wrapped and sealed and labeled as evidence, then 2 (two) bottles were taken for the evidence to be examined in a Criminalistic Laboratory at the Forensic Laboratory of the East Java Regional Police, and based on the Minutes of Criminalistic Laboratory Examination Lab Number : 4467/NNF/2018, dated May 5, 2020 drawn up and signed by ARIF ANDI SETIAWAN, S.Sc., MT, KURNIAWATI, S.Sc., and ANISWATI ROFIAH, A.Md as examiners.

Whereas based on expert testimony Susilo Ari Wardani S.Si., Apt., M.Kes., the ethanol contained in the drink as evidenced above, namely 41.91% and 51.76%, is in the category of high levels which can endanger health including damage to the brain, lungs and other organs, as well as organic mental disorders that result in behavioral changes, impaired memory, brain edema, cirrhosis, liver, heart problems, gastritis and paranoia. So that the defendant's actions are regulated and subject to criminal penalties in Article 204 paragraph (1) of the Criminal Code.

The two defendants AGUS HARIYANI on a day and date that cannot be determined with certainty around the end of March 2020 or at least at a certain time which is still 2020 at a grocery store/warung owned by the defendant having the address at Wire Environment, RT 03 RW 07 Ds Kedung Ombo, Kec. Semanding, Tuban Regency, based on Article 84 paragraph (2) of the Criminal Procedure Code the a quo case still includes the authority to try the Gresik District Court on the grounds that most of the witnesses live in Gresik Regency, have produced and traded food that deliberately does not meet food safety standards , the act was committed by the defendant in the following way.

That starting around December 2019 the defendant, who was at the grocery store at the address mentioned above, was approached by a man claiming to be WANTO (DPO) offering the defendant to buy arak-type liquor, after the defendant saw it it turned out to be arak-type liquor. The bottles are packaged in used plastic mineral drink bottles and without any brands and labels, then WANTO says the price per 12 (twelve) bottles is IDR 500,000, so the retail price is IDR 42,000 per bottle and can be resold for IDR 50,000. - per bottle and the defendant can get a profit of IDR 8,000 per bottle. The defendant felt interested without asking any further information including the contents of the drink in the bottle, then the defendant handed over Rp. 500,000 to WANTO and received 12 (twelve) bottles of arak type liquor from WANTO, then the defendant put them in the stall his grocery store with the aim of reselling it for IDR 50,000 per bottle.

Then at around the end of March 2020, a man came who was none other than the witness INDRA IRAWAN Als BOGANG (prosecuted separately) to the defendant's grocery store to buy 2 (two) bottles of the branded arak tana liquor each for @Rp. 50.000,-. Regarding this sale and purchase transaction, the defendant handed over 2 (two) bottles of unbranded wine to the witness

INDRA IRAWAN Als BOGANG and the defendant received money to buy it in the amount of Rp. 100,000. witness INDRA IRAWAN that the drink can be dangerous to health because there is no permit from BPOM and it is not clear about the alcohol content.

Furthermore, on April 20, 2020, the Menganti Sector Police found reports from the public regarding several people being poisoned due to consumption of illegal liquor in the Grogol Hamlet area, Laban Village, Menganti District, Gresik Regency. Joint officers from the Menganti Police and Gresik Police immediately investigated the circulation of the alcohol through the statements of a number of victims. at RSU Randegansari Husada, Randegansari Village, Kec. Driyorejo, Gresik Regency, the source of which was finally discovered to be from witness INDRA IRAWAN Als BOGANG and from the results of interrogation, witness INDRA IRAWAN Als BOGANG himself admitted that he obtained it from witness AGUS HARIANI, so officers brought witness INDRA IRAWAN Als BOGANG to go straight to the location of the defendant's residence in the wire environment, RT 03 RW 07 Ds Kedung Ombo, Kec. Semanding, Tuban Regency, after a search was carried out, evidence was found and secured in the form of 4 (four bottles) of arak type liquor with used plastic mineral water bottles without any labels, then the defendant and the evidence were taken to the Gresik Police Station for an examination process Furthermore.

Next, the evidence was wrapped and sealed and labeled as evidence, then 2 (two) bottles were taken for the evidence to be examined in a Criminalistic Laboratory at the Forensic Laboratory of the East Java Regional Police, and based on the Minutes of Criminalistic Laboratory Examination Lab Number : 4467/NNF/2018, dated May 5 2020 made and signed by ARIF ANDI SETIAWAN, S.Sc., MT, KURNIAWATI, S.Sc., and ANISWATI ROFIAH, A.Md as examiners knowing HARIS AKSARA, SH. , as the Head of the East Java Regional Police Headquarters.

That the unbranded arak type liquor that the defendant traded as evidence above did not meet the food safety standards as referred to in Government Regulation of the Republic of Indonesia Number 86 of 2019 concerning food safety, because based on expert testimony Susilo Ari Wardani S.Sc., Apt., M. Kes., the ethanol contained in it, namely 41.91% and 51.76%, is included in the category of high levels which can endanger health, including damage to the brain, lungs and other organs, as well as organic mental disorders that result in changes in behavior, damage to memory, brain edema, cirrhosis, liver, heart problems, gastritis and paranoia, as well as the arak type of liquor are packaged without a label stating the alcohol content. The defendant's actions are regulated and criminally punishable in Article 140 Jo. Article 86 paragraph (2) Law of the Republic of Indonesia Number 18 of 2012 concerning Food.

Third, that he was the defendant AGUS HARIYANI as a stall/grocery business actor, on a day and date that cannot be determined with certainty around the end of March 2020 or at least at a certain time which is still 2020 at the grocery store/warung owned by the defendant's address is at Wire Environment, RT 03 RW 07 Ds Kedung Ombo, Kec. Semanding, Kab. Tuban, which based on Article 84 paragraph (2) of the Criminal Procedure Code still includes the authority to try the Gresik District Court on the grounds that most of the witnesses live in Gresik Regency, they deliberately did not have permission for processed food made domestically, this act was carried out by the defendant by the following way:

That starting around December 2019 the defendant, who was at the grocery store at the address mentioned above, was approached by a man claiming to be WANTO (DPO) offering the defendant to buy arak-type liquor, after the defendant saw it it turned out to be arak-type liquor. The bottles are packaged in used plastic mineral drink bottles and without any brands and labels, then WANTO says the price per 12 (twelve) bottles is IDR 500,000, so the retail price is IDR 42,000 per bottle and can be resold for IDR 50,000. - per bottle and the defendant can get a profit of IDR 8,000 per bottle. The defendant felt interested without asking any further information including the contents of the drink in the bottle, then the defendant handed over Rp. 500,000 to WANTO and received 12 (twelve) bottles of arak type liquor from WANTO, then the defendant put them in the stall his grocery store with the aim of reselling it for IDR 50,000 per bottle.

Then at around the end of March 2020, a man came who was none other than the witness INDRA IRAWAN Als BOGANG (prosecuted separately) to the defendant's grocery store to buy 2 (two) bottles of the branded arak tana liquor each for @Rp. 50.000,-. Regarding this sale and purchase transaction, the defendant handed over 2 (two) bottles of unbranded wine to the witness INDRA IRAWAN Als BOGANG and the defendant received money to buy it in the amount of Rp. 100,000. witness INDRA IRAWAN that the drink can be dangerous to health because there is no permit from BPOM and it is not clear about the alcohol content.

Furthermore, on April 20, 2020, the Menganti Sector Police found reports from the public regarding several people being poisoned due to consumption of illegal liquor in the Grogol Hamlet area, Laban Village, Menganti District, Gresik Regency. Joint officers from the Menganti Police and Gresik Police immediately investigated the circulation of the alcohol through the statements of a number of victims. at RSU Randegansari Husada, Randegansari Village, Kec. Driyorejo, Gresik Regency, the source of which was finally discovered to be from witness INDRA IRAWAN Als BOGANG and from the results of interrogation, witness INDRA IRAWAN Als BOGANG himself admitted that he obtained it from witness AGUS HARIANI, so officers brought witness INDRA IRAWAN Als BOGANG to go straight to the location of the defendant's residence in the wire environment. , RT 03 RW 07 Ds Kedung

Ombo, Kec. Semanding, Tuban Regency, after a search was carried out, evidence was found and secured in the form of 4 (four bottles) of arak type liquor with used plastic mineral water bottles without any labels, then the defendant and the evidence were taken to the Gresik Police Station for an examination process Furthermore.

Next, the evidence was wrapped and sealed and labeled as evidence, then 2 (two) bottles were taken for the evidence to be examined in a Criminalistic Laboratory at the Forensic Laboratory of the East Java Regional Police, and based on the Minutes of Laboratory Criminalistic Examination Lab Number: 4467/NNF/2018, dated May 5 2020 drawn up and signed by ARIF ANDI SETIAWAN, S.Sc., MT, KURNIAWATI, S.Sc., and ANISWATI ROFIAH, A.Md as examiners.

That the unbranded arak type liquor that the defendant traded as evidence above is processed food, namely food/drinks processed in a certain way or method with or without additives, which includes the category of alcoholic drinks class C, namely drinks containing ethyl alcohol (ethanol).) with levels of >20% -55% so a distribution permit is required.

The defendant's actions as the subject of a business actor selling processed food in the form of unbranded arak type liquor were without permission from the competent authority, in this case BPOM RI, as it is known that there is no license number and label for processed food in the packaging as stipulated in Government Regulation Number 69 of 1999, RI Presidential Decree Number 74 of 2013 concerning Control and Supervision of alcoholic beverages, and BPOM RI Regulation Number 31 of 2018 concerning processed food labels. The defendant's actions are regulated and criminally punishable in Article 142 Jo. Article 91 paragraph (1) Law of the Republic of Indonesia Number 18 of 2012 concerning Food.

Fourth, that he was the defendant AGUS HARIYANTI on a day and date that cannot be determined with certainty around the end of March 2020 or at least at a certain time which is still 2020 at a grocery store/warung owned by the defendant having the address at Wire Environment, RT 03 RW 07 Ds Kedung Ombo, Kec. Semanding, Tuban Regency, which according to Article 84 paragraph (2) of the Criminal Procedure Code still includes the authority to try the Gresik District Court on the grounds that most of the witnesses live in Gresik Regency, have produced and/or traded goods that do not put a label or make an explanation of the goods contains the name of the goods, size, weight/net content (net), composition, rules for use, date of manufacture, side effects, name and address of the business actor which according to the provisions must be installed, and does not include an expiration date, the act was carried out by the defendant in the following way :

That starting around December 2019 the defendant, who was at the grocery store at the address mentioned above, was approached by a man

claiming to be WANTO (DPO) offering the defendant to buy arak-type liquor, after the defendant saw it it turned out to be arak-type liquor. The bottles are packaged in used plastic mineral drink bottles and without any brands and labels, then WANTO says the price per 12 (twelve) bottles is IDR 500,000, so the retail price is IDR 42,000 per bottle and can be resold for IDR 50,000. - per bottle and the defendant can get a profit of IDR 8,000 per bottle. The defendant felt interested without asking any further information including the contents of the drink in the bottle, then the defendant handed over Rp. 500,000 to WANTO and received 12 (twelve) bottles of arak type liquor from WANTO, then the defendant put them in the stall his grocery store with the aim of reselling it for IDR 50,000 per bottle.

Then at around the end of March 2020, a man came who was none other than the witness INDRA IRAWAN Als BOGANG (prosecuted separately) to the defendant's grocery store to buy 2 (two) bottles of the branded arak tana liquor each for @Rp. 50.000,-. Regarding this sale and purchase transaction, the defendant handed over 2 (two) bottles of unbranded wine to the witness INDRA IRAWAN Als BOGANG and the defendant received money to buy it in the amount of Rp. INDRA IRAWAN that these drinks can endanger health because there is no permit from BPOM and it is not clear about the alcohol content.

Furthermore, on April 20, 2020, the Menganti Sector Police found reports from the public regarding several people being poisoned due to consumption of illegal liquor in the Grogol Hamlet area, Laban Village, Menganti District, Gresik Regency. Joint officers from the Menganti Police and Gresik Police immediately investigated the circulation of the alcohol through the statements of a number of victims. at RSU Randegansari Husada, Randegansari Village, Kec. Driyorejo, Gresik Regency, the source of which was finally discovered to be from witness INDRA IRAWAN Als BOGANG and from the results of interrogation, witness INDRA IRAWAN Als BOGANG himself admitted that he obtained it from witness AGUS HARIANI, so officers brought witness INDRA IRAWAN Als BOGANG to go straight to the location of the defendant's residence in the wire environment. , RT 03 RW 07 Ds Kedung Ombo, Kec. Semanding, Tuban Regency, after a search was carried out, evidence was found and secured in the form of 4 (four bottles) of arak type liquor with used plastic mineral water bottles without any labels, then the defendant and the evidence were taken to the Gresik Police Station for an examination process Furthermore.

Next, the evidence was wrapped and sealed and labeled as evidence, then 2 (two) bottles were taken for the evidence to be examined in a Criminalistic Laboratory at the Forensic Laboratory of the East Java Regional Police, and based on the Minutes of Criminalistic Laboratory Examination Lab Number : 4467/NNF/2018, dated May 5 2020 made and signed by ARIF ANDI SETIAWAN, S.Sc., MT, KURNIAWATI, S.Sc., and ANISWATI ROFIAH, A.Md as

examiners knowing HARIS AKSARA, SH. , as the Head of the East Java Regional Police Headquarters.

Whereas it was found that the unbranded arak type liquor that the defendant traded as evidenced above, it was found that there was no label on the packaging (plain) so that no information was given regarding the description of the goods which contained the name of the goods, size, weight/net content (net), composition, rules for use , date of manufacture, side effects, name and address of the business actor and expiration date, even though the subject of the goods belongs to the category of food and/or processed food that must have a distribution permit along with explanations regarding the above based on RI Law Number 18 of 2012 concerning Food Jo. RI Government Regulation Number 69 of 1999 concerning Food Labels and Advertisements. The defendant's actions are regulated and subject to criminal penalties in Article 62 paragraph (1) Jo. Article 8 paragraph (1) letter g and i Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection.

The role of a single judge in trying a minor criminal case is very important when a decision or verdict has been made or read out. The judge's decision really determines the value of a truth and determines whether or not an act committed by the defendant. According to Article 1 of Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHAP), that judges are officials of the state judiciary who are authorized by law to adjudicate. The word "trial" is a series of judges' actions to receive, examine and decide cases based on the principles of being free, honest and impartial in a criminal trial.

The judge as a person who upholds the law for the sake of justice when he wants to make a decision is still based on the rules in force in the law and uses judgment based on valid evidence and witnesses who have been sworn in before the trial. The judge in deciding a case is not only based on the available evidence, but it is also important to be based on the conviction as a judge in deciding the case.

Of course the judge's conviction must be supported by an indictment drawn up by the public prosecutor with the appropriate rules and articles so that a single judge can make judgments before the judge makes a legal analysis which then gains confidence to judge whether the accused is to blame and deserves punishment or not. The judge's belief must be highlighted because judges work not only for the sake of law, but higher than that is to believe that justice is based on the one and only God, seeing this in Court Decision Number: 284/Pid.B/2020/PN Gsk.

The Gresik District Court Judge Number: 284/Pid.B/2020/PN Gsk has sentenced the defendant AGUS HARIYANI to 6 (six) months in prison. The decision handed down by the judge did not agree with the length of time the defendant had been sentenced as in the demands of the public prosecutor.

The article applied by the single judge in making a decision is the first alternative indictment, namely the provisions of Article 204 paragraph 1 of the Criminal Code have been fulfilled, therefore the defendant AGUS HARIYANI has been legally proven and believes he has committed the crime of selling goods that he knows are life-threatening.

To analyze the decision of the Gresik District Court Number: 284/Pid.B/2020/PN Gsk relating to criminal responsibility against the defendant, it must be seen and whether or not the elements of the article charged by the public prosecutor have been fulfilled. If the criminal act committed by the defendant has matched the elements of the article being charged, the defendant should be held accountable, but if the intended elements cannot be proven, the defendant must legally be acquitted.

The facts revealed at trial related to the case of selling goods that he knew endangered people's lives or health, even though the defendant AGUS HARIYANI had not been notified of such dangerous nature had fulfilled the elements in Article 204 Paragraph 1 of the Criminal Code.

The Gresik District Court Judge's considerations also analyzed the results of lab testing the evidence confiscated from the defendant contained levels of 51.76% and 41.9% ethanol which according to ethanol experts are psychoactive substances that can cause brain damage if used for a long time, can also blood pressure increases if a person drinks alcohol beyond his body's tolerance threshold, blood alcohol levels will turn very toxic, the drinker is unresponsive, experiences shortness of breath and even loses consciousness. The actions taken by the Defendant AGUS HARIYANI had a background where the defendant only attended school, only graduated from elementary school and economic factors caused the defendant to choose to sell liquor at his home because the defendant supports his 2 young children alone after being divorced and left by his husband. The judge himself in the trial did not find things that could eliminate criminal responsibility, either as reasons for justification or excuses, so the defendant must be held accountable for his actions.

C. CONCLUSION

Law enforcement by the Judge in case Number: 284/Pid.B/2020/PN Gresik has been based on the facts contained in the trial, the judge's decision in this case is lower than the demands of the public prosecutor. One of the judge's arguments that reduced the defendant's sentence was that the actions committed by the Defendant AGUS HARIYANI had a background where the defendant only went to school, only graduated from elementary school and economic factors caused the defendant to choose to sell liquor at his home because the defendant supports his 2 young children alone after divorce and left by her husband. The judge himself in the trial did not find things that could

eliminate criminal responsibility, either as reasons for justification or excuses, so the defendant must be held accountable for his actions.

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