



Law enforcement of the abuse of subsidized fuel based on law number 22 of 2001 concerning oil and natural gas

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ABSTRACT

Misuse of subsidized fuel is an illegal act that can harm others. The research objective is to analyze law enforcement strategies against the abuse of subsidized fuel based on Law Number 22 of 2001 concerning Oil and Gas. This research is normative legal research with a case approach. The misuse of subsidized fuel based on Law Number 22 of 2001 concerning Oil and Gas is carried out in a preventive and repressive manner referring to Article 53 and Article 55 of Law Number 22 of 2001 concerning Oil and Gas. The police as investigators in cases of criminal acts of misuse of subsidized fuel take steps including receiving reports/complaints; Report Development (BAP Making); Summoning Witnesses and Evidence; Examination of Suspects; and Delegation of the suspect's case files and evidence to the Attorney General's Office and the Court as regulated in the Criminal Procedure Code.

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1. Introduction

Indonesia is an archipelagic country that has abundant natural wealth solely used to improve the standard of living of the Indonesian people, as well as realizing a just and prosperous society based on Pancasila and The 1945 Constitution of the Republic of Indonesia hereinafter referred to as the 1945 Constitution. Oil and Gas are strategic natural resources that are renewable (exhausted) and one of Indonesia's largest natural wealth (Buwana et al., 2020; Sipayung et al., 2018). Being a vital commodity that controls the livelihood of many people and plays an important role in the national economy, oil and natural gas are included in the natural resources controlled by the state as stipulated in Article 33 paragraph (2) of the 1945 Constitution which states that "Production branches that important for the State and affect the livelihood of the people controlled by the state" and Article 33 paragraph (3) of the 1945 Constitution which states that "Earth, water and the wealth contained therein are controlled by the state and used for the greatest prosperity of the people".

The management of oil and natural gas must be carried out optimally in order to provide prosperity and welfare for the people (Nosela et al., 2020). One of the efforts made by the Indonesian government is to establish Law Number 22 of 2001 concerning Oil and Natural Gas

a legal basis for renewal and regulation of oil and gas business activities. The monopoly on oil and gas management has led to various deviations, one of which is related to the misuse of fuel oil (BBM) subsidized by the government. Apart from being regulated in Law Number 22 of 2001 concerning Oil and Gas, the misuse of subsidized fuel is also regulated in Article 17 paragraph (1) Law Number 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition which states "business actors are prohibited from exercising control over the production and marketing of goods or services which may result in monopolistic practices or unfair competition".

Subsidized fuel is fuel oil that is assisted by the government through the use of State Revenue and Expenditure Budget (APBN) funds, so that its use is limited and quotas are regulated (Maulana & Nurcahyono, 2023). Quoted from <https://indonesiabaik.id>, currently the Indonesian government stipulates two types of subsidized fuel in Indonesia, namely gasoline with octane 90 (Pertalite) and diesel with cetane 48 (Biosolar). Unfortunately, subsidized fuel, which has a cheaper commodity selling price compared to other types of fuel, is the target of many 'naughty' people to use it outside the applicable regulations.

Misuse of subsidized fuel is still common in Indonesia. There were at least 786 cases of subsidized fuel abuse throughout 2022 as disclosed by the Downstream Oil and Gas Regulatory Agency (BPH Migas). Quoted from the press release of the Ministry of Energy and Mineral Resources of the Republic of Indonesia Number: 003.Pers/04/Sji/2023 Date: January 3 2023, BPH Migas and the Indonesian National Police (Polri) admit that they have made various efforts to overcome the abuse of subsidized fuel starting from socializing the Memorandum of Understanding and PKS between BPH Migas and the National Police in several cities such as North Sumatra, South Sumatra, East Kalimantan, South Sulawesi and Central Java; law enforcement on the misuse of subsidized fuel, among others, in South Sumatra 114.8 Tons, West Java 22 Tons, Jambi 700 liters and Central Java 40 tons; consultation and provision of expert information, to legal counseling with the National Police for consumer-user communities. For this effort, BPH Migas and the National Police admit that they have succeeded in securing the misuse of ±1,422,263 Liters of subsidized fuel during 2022 (<https://www.esdm.go.id>).

Based on the background, it can be analyzed that the misuse of subsidized fuel is an illegal act that can harm other people. Eradicating the crime of misuse of subsidized fuel will not get a common ground if it only expects and waits for the results of investigations from the government, but also must involve all elements of society who are expected to be able to contribute to preventing the crime of misuse of subsidized fuel (Tarianto et al., 2021). The use of subsidized fuel in large quantities and not used as intended can lead to a scarcity of subsidized fuel in the field due to monopoly by certain groups. In addition, the misuse of subsidized fuel can also hinder the activities of people who are included in the list of consumers who use subsidized fuel. which is slow in years if not prevented, can disrupt the stability of the country because it creates a negative public perception of the government as the manager of fuel (Anggriani & Hermansyah, 2018). Therefore, focus and the formulation of the problem in this study is the need for a law enforcement strategy against the abuse of subsidized fuel based on Law Number 22 of 2001 concerning Oil and Gas so that justice can be upheld.

2. Method

This type of research is normative legal research (Ibrahim, 2017). Which carried out by examining theories, concepts, legal principles, laws and regulations and studying books and other documents related to the problem of this research, namely regarding the abuse of subsidized fuel reviewed based on Law Number 22 of 2001 concerning Oil and gas. Sources of data in this study secondary data include official documents, books, research results in the form of reports, journals, and so on.

3. Analysis and Results

3.1 Legal Arrangements for the Crime of Subsidized Fuel Misuse

A criminal act is an act that is prohibited by a rule of law, accompanied by threats (sanctions) in the form of certain penalties for anyone who violates the prohibition. according to Van Hamel

a criminal act or delict is an attack or a threat to the rights of others. According to Simons, a crime is an unlawful act that has been committed intentionally or unintentionally by a person who can be held accountable for his actions by law which has been declared as an act/action that can be punished (Gunadi & Efendi, 2018).

Prodjodikoro (2019:59) states that a criminal act means an act whose perpetrators can be subject to criminal law. Likewise with Van Hattum who stated that strafbaar feit is a feit that causes a person (the maker) to be punished or can be punished (Utrecht, 2018).

Oil Fuel (BBM) according to Law Number 22 of 2001 concerning oil and natural gas, Article 1 paragraph (4) fuel), namely: "fuel originating and/or processed from petroleum." Meanwhile, according to Article 1 paragraph (1) of Law Number 22 of 2001 concerning oil and natural gas, petroleum is "the result of natural processes in the form of hydrocarbons which, under conditions of atmospheric pressure and temperature, are in the form of a liquid or solid phase, including asphalt, mineral wax, or Ozokerite." and Bitumen obtained from the mining process, but does not include coal or other solid hydrocarbon deposits obtained from activities that are not related to oil and gas business activities.

Subsidies are assistance provided by the government to producers or consumers so that the goods or services produced are cheaper and accessible to the wider community. The type of fuel that is subsidized by the government is fuel oil originating and/or processed from petroleum and/or fuel derived from petroleum which has been mixed with other fuels with type, standard and quality (specifications), volume and consumer prices. certain users as referred to in Article 1 point 1 Regulation of the President of the Republic of Indonesia Number 45 of 2009 concerning the Supply and Distribution of Certain Types of Fuel.

Illegal misuse of fuel is an activity to process, buy, move and/or store fuel oil by buying fuel oil when the fuel oil is still in normal condition (Hutapea et al., 2020). The fuel oil is traded again at a price that has been increased from the normal price. The implementation of abuse without a permit (illegal) has a specific purpose and objective to benefit oneself by exploiting or taking advantage of the conditions of a place or area that has a scarcity of fuel or is far from gas stations. In Article 53 of Law Number 22 of 2001 concerning Oil and Gas it is stated that Everyone who does: a) Processing as referred to in Article 23 without a Processing Business Permit shall be subject to imprisonment for a maximum of 5 (five) years and a maximum fine of Rp. 50,000,000,000.00 (fifty billion rupiah); b) Transportation as referred to in Article 23 without a Transportation Business Permit shall be subject to imprisonment for a maximum of 4 (four) years and a maximum fine of Rp. 40,000,000,000.00 (forty billion rupiah); c) Storage as referred to in Article 23 without a Storage Business Permit shall be subject to imprisonment for a maximum of 3 (three) years and a maximum fine of Rp. 30,000,000,000.00 (thirty billion rupiahs); d) Trading as referred to in Article 23 without a Trading Business License shall be subject to imprisonment for a maximum of 3 (three) years and a maximum fine of Rp. 30,000,000,000.00 (thirty billion rupiah).

The elements of the crime of processing as referred to in Article 53 letter a Law Number 22 of 2001 concerning Oil and Gas consist of: 1. Each person; 2. Perform Processing; 3. Without Processing Permit.

In this Article, the processing referred to, both processing in the first stage and processing at a later stage, if it is not in accordance with the permit or carried out without a permit, will be punished according to the provisions stipulated in Law Number 22 of 2001 concerning Oil and Gas (Bakhri, 2013).

The elements of the crime of transportation in article 53 letter b of Law Number 22 of 2001 concerning Oil and Gas consist of: 1. Each person; 2. carry out transportation; 3. Without a transport business license.

The acts committed in this article are any person or business entity that carries out the activity of moving fuel from one place to another without a transportation business permit. Likewise the storage elements in article 53 letter c of Law Number 22 of 2001 concerning Oil and Natural Gas, namely: 1. Each person; 2. Perform storage; 3. Without a storage business license.

The criminal act committed in this article is any person or business entity carrying out activities for storing fuel oil in a place or in any form without having a storage business permit. While commercial crimes against perpetrators who violate applicable trade business provisions,

the elements of Article 53 letter d Law Number 22 of 2001 concerning Oil and Gas consist of: 1. Each person; 2. Doing trade; 3. No business license.

The actions in this article are the activities of selling, buying, exporting and importing fuel. Subsidized fuel hoarding means actions taken by certain parties to collect subsidized fuel in large quantities and then resell it with the aim of obtaining multiple profits (Tarianto et al., 2021). Fuel hoarders are not only those who stockpile illegally and do not have permits, but there are also fuel agents who abuse subsidized fuel oil storage permits. The mode commonly used by subsidized fuel oil hoarders is to buy subsidized fuel oil at public refueling stations (SPBU) on a regular basis so as not to be suspected.

Provisions regarding misuse of transportation and trade crimes are strictly regulated in Article 55 of Law Number 22 of 2001 concerning Oil and Gas, which reads: "Any person who misuses government-subsidized transportation and/or fuel is subject to imprisonment for a maximum of 6 (six) years and a maximum fine of Rp. 60,000,000,000.00 (sixty billion rupiah)."

The article consists of the following elements: 1. Whoever; 2. Misusing government-subsidized fuel transportation and/or trade.

An act that can be punished in the Article above is any person or business entity that misuses the transportation and/or trading of fuel subsidized by the government and without a business license to transport fuel so that it can cause harm to other people. In this provision what is meant by misuse is the activity of mixing fuel oil, deviations from the allocation of fuel oil, transportation and sale of fuel oil abroad.

Likewise in this case what is meant by self-benefit, harming others is included in criminal acts that have been regulated in the Criminal Code (KUHP) Article 378 concerning criminal acts of fraud. Article 378 of the Criminal Code: Whoever with the intent to unlawfully benefit himself or another person, by using a false name or false dignity, with deception, or a series of lies, incites other people to surrender something to him, or to give debt or write off receivables, is subject to fraud with a maximum imprisonment of four years.

3.1 Law Enforcement Strategy Against the Misuse of Subsidized Fuel Based on Law Number 22 of 2001 concerning Oil and Gas

Energy sources that are widely used for cooking, motor vehicles and industry come from petroleum, natural gas and coal. These three types of fuel come from weathering the remains of organisms so they are called fossil fuels. Oil and natural gas come from microorganisms, dead plants and animals. The remains of these organisms settle to the bottom of the earth and are then covered with mud. The mud gradually turns into rock due to the pressure of the layers above it (Kodai & Suleman, 2023; Maulana & Nurcahyono, 2023; Mustafa et al., 2022).

In the case of misuse of subsidized fuel, business entities and dealers who do not have permits will be subject to sanctions as stipulated in Article 53 and Article 55 of Law Number 22 of 2001 concerning Oil and Gas. Likewise for those who already have permits but do not carry out as they should have also been regulated in Article 25 of Law Number 22 of 2001 concerning Oil and Gas.

Article 25: "(1) The government can deliver a written warning, suspend activities, freeze activities, or revoke business licenses as referred to in Article 23 based on: a. Violation of one of the requirements stated in the Business License; b. Repeated violations of the Business License requirements; c. Does not meet the requirements stipulated under this Law; (2) Before carrying out the revocation of business licenses as referred to in paragraph (1), the Government shall first provide business entities with the opportunity for a certain period of time to negate violations that have been committed or fulfill the specified requirements.

Administrative sanctions are more specifically regulated in the Regulation of the Minister of Energy and Mineral Resources of the Republic of Indonesia Number 13 of 2018 concerning Activities for the Distribution of Oil Fuel, Gas Fuel and Liquefied Petroleum Gas in Article 21 paragraph 2 which states that the administrative sanctions referred to in paragraph (1) are in the form of : 1. Written warning; 2. Temporary suspension of activities; and/or; 3. Revocation of Oil and Gas Trading Business License

In a criminal case, the investigator who is authorized to conduct an investigation is referred to in the Criminal Procedure Code (KUHP) Article 1 number 1 which states: "Investigators are officials of the state police of the Republic of Indonesia or certain civil servant officials who are given special authority by law to conduct investigations".

The police have the authority to investigate and investigate all criminal acts according to procedural law and together with investigators determined by other laws. Law enforcement or parties authorized to conduct investigations if there is a criminal act committed by a business actor is regulated in Article 50 of Law Number 22 of 2001 concerning Oil and Natural Gas.

Article 50: (1) In addition to Investigators from the Police of the Republic of Indonesia, certain Civil Servant Officials within the department whose scope of duties and responsibilities includes Oil and Gas business activities are given special authority as Investigators as referred to in Law No. 8 of 1981 concerning Criminal Procedure Code to carry out investigations into crime in Oil and Gas business activities; (2) Civil Servant Investigators as referred to in paragraph 1 have the authority to: a. Examine the correctness of reports or information received regarding criminal acts in Oil and Gas business activities; b. Examine persons or entities suspected of having committed criminal acts in the Oil and Gas business activities; c. Summon people to be heard and examined as witnesses or suspects in cases of criminal acts of Oil and Gas business activities; d. Searching places and/or facilities suspected of being used to commit criminal acts in Oil and Gas business activities; e. Examine facilities and infrastructure for Oil and Gas business activities and stop the use of equipment suspected of being used to commit criminal acts; f. Sealing and/or confiscating the Oil and Gas business activity tools that are used to commit criminal acts as evidence; g. Bring in the necessary experts in connection with the examination of criminal cases in Oil and Gas business activities; h. Stop the investigation of criminal cases in Oil and Gas business activities; (2) Civil Servant Investigators as referred to in paragraph (1) notify the start of a criminal case investigation to the Police Officers of the Republic of Indonesia in accordance with the provisions of the applicable laws and regulations; (3) The investigator as referred to in paragraph (1) is obliged to stop his investigation in the event that the event as referred to in paragraph (2) letter a does not contain sufficient evidence and/or the incident does not constitute a crime; (4) The implementation of the authority referred to in paragraph (2) is carried out in accordance with the provisions of the applicable laws and regulations.

A law enforcer must carry out legal proceedings when aware of a violation of the law that has been committed. However, the police cannot just carry out the law enforcement process because there are reasons that make it easier for the community and accommodate the fuel needs of the community (Mustafa et al., 2022). Regarding law enforcement against perpetrators of criminal acts of misuse of subsidized fuel, the police generally take steps including:

Acceptance of Reports/Complaints, In the event that an assistant investigator receives a report/Complaint, if possible, immediate action is required, then after receiving the police report, the officers present immediately take action, namely going to the scene of the case such as making an arrest, confiscating evidence, if any, and so on.

Report/Complaint Development, It is a series of activities by Criminal Investigation officers after receiving reports, examining evidence and examining witnesses. The purpose of developing this report is to seek the truth of the reported criminal incidents so that it is easy to find the perpetrators, this is of course useful in making Minutes of Case Examination (BAP).

Calling of Witnesses and Evidence, The witnesses summoned in this case are those who really know about the criminal incident that occurred, the purpose of calling witnesses is to check whether the report made by the complainant agrees or not with the testimony of existing witnesses. If the report is appropriate, then the report will be followed up immediately as follows: a. make arrests; b. make arrests; c. do a search; d. to confiscate evidence that is strongly suspected of being related to the crime that occurred.

Suspect Examination, Examination of suspects can be carried out if the statements of witnesses and evidence are complete, then in order to cross-check the events that occurred, the suspect's statements must be heard. Because the suspect's statement is evidence of an admission of guilt or criminal acts committed by the suspect.

In carrying out examinations of suspects, criminal investigators are given the authority to take several actions such as detention. Basically detention is a form of restraining the freedom of someone who is suspected of having committed a crime, so that detention is not considered a violation of human rights. However, in the criminal justice process, detention may be carried out by officials who have authority by taking into account the legal requirements and the necessity of detention as determined by law.

Detention is declared valid if certain conditions are met. Theoretically, a distinction is made between the lawfulness of detention (*rechtsvaardigheid*) and the need for detention (*noodzakelijkheid*). The legality of detention is objective and absolute, meaning that it can be read in the law on criminal acts where suspects can be detained. Absolute because it is certain, cannot be regulated by law enforcement. While the need for detention is relative (subjective) because what determines when it is deemed necessary to hold detention depends on the assessment of the official who will carry out the detention.

Article 20 of the Criminal Procedure Code determines: (1) For the purposes of investigation, the investigator or assistant investigator on the order of the investigator as referred to in Article 11 has the authority to make detentions; (2) For the purposes of prosecution, the public prosecutor has the authority to make detention or further detention; (3) For the purposes of examining the judge at trial court with the decision authorized to make detention.

Article 20 of the Criminal Procedure Code stipulates that officials have the authority to make detentions. The officials referred to are investigators or assistant investigators on the orders of investigators, public prosecutors and judges at each level of the court. This provision emphasizes the purpose of detention, namely for the purposes of investigation, prosecution and trial in court. Detention provisions in Article 20 of the Criminal Procedure Code are classified as objective conditions. That is, the new detention is legal, if the detaining official has the authority to make the detention. If the detention is carried out by an unauthorized official, then the detention is illegal. Furthermore, the terms of detention are emphasized in Article 21 of the Criminal Procedure Code which stipulates: (1) An order for detention or further detention shall be made against a suspect or defendant who is strongly suspected of having committed a crime based on sufficient evidence, in the event that there are circumstances that raise fears that the suspect or defendant will run away, destroy or destroy evidence and or repeat the crime; (2) Further detention or detention is carried out by investigators or public prosecutors against suspects or defendants by providing a detention order or judge's decision stating the identity of the suspect or defendant and stating the reasons for detention as well as a brief description of the crime case being suspected or charged and the place where he is being detained; (3) A copy of the order for detention or further detention or the judge's decision as referred to in paragraph (2) must be given to his family; (4) Such detention can only be imposed on a suspect or defendant who commits a crime and/or attempts or provides assistance in said crime in terms of: a. The crime is punishable by imprisonment for five years or more; b. criminal acts as referred to in Article 282 paragraph (3), Article 296, Article 335 paragraph (1), Article 351 paragraph (1), Article 353 paragraph (1), Article 372, Article 378, Article 379a, Article 453, Article 454, Article 455, Article 459, Article 480 and Article 506.

Delegation of the suspect's case files and evidence, This is the last action taken by the investigator. The basis for the transfer of cases of suspects and evidence is carried out by investigators if the cases handled by investigators by the public prosecutor are considered complete or P21.

Law enforcement as a process is the application of discretion which involves making decisions that are not strictly regulated by the rule of law but have an element of personal judgement. In essence, discretion is between law and morals (ethics in the narrow sense). Because of this, disruption to law enforcement may occur, if there is a mismatch between the "trinity" of values, rules and patterns of behavior (Kodai & Suleman, 2023). Disturbance occurs when there is a mismatch between paired values that manifest in confusing rules and undirected behavior patterns that disturb the peace of social life (Wola, 2019). Therefore it can be said, that law enforcement does not merely mean the implementation of legislation.

Various criminal acts can be committed by anyone, including the crime of misuse of subsidized fuel (Putra et al., 2021; Ronaldi, 2020). Therefore, efforts must be made to deal with it in earnest, in the sense that the handling is complete, both from BPH Migas officers, the Attorney General's Office and the Police. The effort referred to is an activity that must be realized in a professional manner according to applicable regulations. Preventive efforts are preventive actions before committing a crime or violation.

In preventive efforts the emphasis is on eliminating elements of opportunity to commit crimes or violations. So in preventive efforts, related parties close the opportunity for violations or crimes to occur as follows: 1. Carry out supervision arrangements for the supply and distribution of fuel, such as determining volume allocation and developing a fuel distribution system; 2. Supervise subjects deemed prone to stockpiling fuel; 3. Raids at the base or on ferries that are suspected of being a crime of transporting illegal subsidized fuel.

Overcoming the Misuse of Subsidized Fuel is not enough with only an integral approach, but must also be supported by increasing public legal awareness. Community legal awareness is one part of the legal culture. It is said to be one part because so far there has been a perception that legal culture only includes legal awareness. Whereas legal culture also includes legal awareness on the part of business actors, parliament, government and law enforcement officials. This needs to be emphasized because it is the law enforcers who are considered the most taboo of the law and are obliged to enforce it, but sometimes it is the law enforcers who have violated the law.

4. Conclusion

The law enforcement strategy against the misuse of subsidized fuel is carried out in a preventive and repressive manner referring to Article 53 and Article 55 of Law Number 22 of 2001 concerning Oil and Gas. This is done with the stages of receiving reports, preparing BAPs, summoning witnesses and collecting evidence, examining suspects, and submitting case files to the Attorney or Court as regulated in the Criminal Procedure Code. In this case, it is recommended that the government provide full support for law enforcement on abuse subsidized fuel, which is not only carried out at the central level, but also in line with the regional level, supported by the participation of the community as an external supervisor so that the misuse of subsidized fuel can be prevented.

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