

Law Enforcement of Criminal Acts in the Misuse of Subsidized 1 Solar Oil in Indonesia

by lidya uinsa

Submission date: 13-Dec-2023 06:10PM (UTC+0700)

Submission ID: 2257776388

File name: 8.pdf (170.53K)

Word count: 6329

Character count: 33988



Law Enforcement of Criminal Acts in the Misuse of Subsidized Solar Oil in Indonesia

Reza Oktiananta Hadyan Putra^{1*}, Subekti², Yoyok Ucuk Suyono³

¹reza.oktiananta97@gmail.com, ²subekti@unitomo.ac.id, ³yoyok.ucuk@unitomo.ac.id

^{1, 2, 3}Universitas Dr. Soetomo Surabaya

ABSTRACT

The Oil and Gas Law provides a legal basis for steps to renew and realign Oil and Gas business activities. In accordance with the Oil and Gas Law, Pertamina's function is a business entity, as an operator, by implementing the applicable laws and regulations. The government has established a government agency which in conducting its functions, duties, and authorities is independent, called the regulatory agency for the supply and distribution of fuel which was formed based on Government Regulation Number 67 of 2002 and Presidential Decree Number 86 of 2002, which referred to Government Regulation. This research aims to improve the supervision of the distribution of subsidized oil. Pertamina has collaborated with the Indonesian National Police through Pertamina Joint Agreement Letter (SKB) and National Police Headquarters No. Pol. KEP/34/VII/2004 and Number KPTS-035/C00000/2004-S0 concerning on the Security of Kerosene and Diesel Fuel. Based on research result, the law enforcement on criminal act in the misuse of the trading system of subsidized diesel by the Police through investigations and investigations with the conclusion that the fulfillment of the elements of the article referred to in Article 55 of the Oil and Gas Law. Based on the Oil and Gas Law, the subjects are people and business entities. It can be seen in CHAPTER XI regarding criminal provisions.

Keywords: Law Enforcement, Crime of Misuse, Subsidized Diesel Oil Trading System

INTRODUCTION

Oil and Gas and non-renewable natural resources are vital commodities that control the lives of many people and have an important meaning in national economic activities. Therefore, the management must be conducted in a professional and sustainable manner in order to provide maximum benefits in the form of welfare for the people as a whole. Based on the notion, oil and gas are controlled by the State, and the the Government on behalf of the State controls all rights contained in oil and gas resources, including property rights, mining rights, and economic rights. Article 1 paragraph (1) of Law Number 22 of 2001 concerning Oil and Gas (UU Migas) states that Petroleum is the product of natural processes in the form of hydrocarbons which under atmospheric pressure and temperature conditions are in the form of liquid or solid phases, including asphalt, mineral wax, or ozokerite, and bitumen obtained from the mining process, excluding coal or other solid hydrocarbon deposits obtained from activities not related to Oil and Gas business activities. Article 1 point 4 of the Oil and Gas Law states that fuel oil (BBM) is fuel that originates and is produced from petroleum. Fuel filling stations (SPBU) are places where motorized vehicles or cars can get fuel. According to Article 1 Number 14 of the Oil and Gas Law, trading is the activity of buying, selling, exporting, importing Crude Oil and its processed products, including trading natural gas through pipes.

The Oil and Gas Law which was ratified and promulgated on November 23, 2001 is a new history in the management regulations regarding oil and natural gas. The Oil and Gas Law provides a legal basis for steps to renew and realign Oil and Gas business activities, which consist of downstream and upstream business activities. In the downstream business activities which consist of processing, transporting and storing, and trading, there are fuel storage and distribution activities, then the supply and distribution of fuel can be conducted throughout the territory of Republic Indonesia (NKRI), these activities must receive regulation and supervision from the authorized agency.

In accordance with the Oil and Gas Law, Pertamina's function is a business entity, as an operator, by implementing the applicable laws and regulations. For the implementation of regulation and supervision of business activities (regulator) is the authority of the Government, including elements of the Police and Regional Governments. Pertamina has supervisory authority down to the official distribution agency, in this case the Pertamina Gas Station. With an official channeling agency, Pertamina has the right to impose administrative sanctions, according to the contract with the channeling agency.

The government has established a government agency which in conducting its functions, duties, and authorities is independent, called regulatory agency for the supply and distribution of fuel which was formed based on Government Regulation Number 67 of 2002 and Presidential Decree Number 86 of 2002, which referred to

in this Government Regulation. It is stated in Article 41 paragraph (3) of Oil and Gas Law that supervision is implemented by government whose operational costs are described in Article 48 paragraph (2) of the Oil and Gas Law, namely that for the first time it is financed by the State Budget, but henceforth it is financed by outflows from the Business Entities it regulates. In Article 50 of the Oil and Gas Law, the supervision is also conducted by National Police and Oil and Gas Civil Servant Officials that report to the National Police when doing an investigation into reports or findings of irregularities in the distribution of fuel and henceforth. The results of the investigation are submitted to National Police for reinvestigation before being handed over to the Attorney General.

Apart from investigators from the state police of Republic Indonesia, certain civil servant officials within the department whose scope of duties and responsibilities cover Oil and Gas business activities are given special authority as investigators as referred to in the Law Number 8 of 1981 concerning Criminal Procedure Code (KUHAP) to conduct the criminal investigations in Oil and Gas business activities. The existence of 3 supervisory agencies, called regulatory agency, the National Police and Oil and Gas Civil Servant Officials without implementing regulations, will in turn be interpreted by referring to Article 14 of Law Number 2 of 2002 concerning Indonesian National Police (Police Law) as the institution that has the authority to conduct fuel distribution supervision. The other two institutions remain subordinate to the National Police.

To improve supervision of the distribution of subsidized oil, Pertamina has collaborated with Indonesian National Police through Pertamina Joint Agreement Letter (SKB) and National Police Headquarters No. Pol. KEP/34/VII/2004 and Number KPTS-035/C00000/2004-S0 concerning Security of Kerosene and Diesel Fuel. It can be said that the National Police has the authority to supervise the distribution of diesel oil in order to prevent the occurrence of criminal acts related to the distribution of diesel oil or the distribution of illegal diesel oil. Distribution of illegal diesel oil is the distribution of diesel oil that is contrary to the Oil and Gas Law. The criminal sanction for someone who distributes illegal diesel oil as stipulated in Article 55 of Oil and Gas Law which states that anyone who misuses the transportation or trading of government-subsidized fuel oil is subject to imprisonment for a maximum of 6 (six) years and a maximum penalise of IDR. 60,000,000,000.00 (sixty billion rupiah).

Furthermore, it is stated in Article 56 of Oil and Gas Law that crime is committed by or on behalf of a business entity or permanent establishment, prosecution and punishment shall be imposed on the business entity or establishments is in the form of penalized. The unlawful acts of alleged criminal acts of jointly committing, ordering to commit and participating in acts that lead to an Oil and Gas crime, of any person who misuses the transportation and trading of oil fuel, gas fuel and liquified government subsidized petroleum gas as regulated in Article 55 of the Oil and Gas Law. This research aims to improve the supervision

of distribution on subsidized oil, and Pertamina has collaborated with Indonesian National Police through the Pertamina Joint Agreement Letter (SKB) and the National Police Headquarters No. Pol. KEP/34/VII/2004 and Number KPTS-035/C00000/2004-S0 concerning the Security of Kerosene and Diesel Fuel.

RESEARCH METHODOLOGY

This research is a normative legal research that refer to legal norms to understand the application of legal norms to the facts presented which in this case exist to change circumstances and offer potential solutions to resolve any concrete problems. Normative legal certainty occurs when a rule is created and implemented with assurance because it governs logically and clearly.¹ A normative research initiates by conducting a search on legal materials as a basis for making legal decisions on legal cases.² This research analyze based on law and regulation applied in Indonesia, along with judge decision in court regarding the discussed case.

RESULT AND DISCUSSION

Law enforcement is the effort to conduct legal norms practically to guide parties to legal disputes in society and the state.³ In criminal law, law enforcement, as stated by Kadri Husin, is a crime control system conducted by police, prosecutors, courts, and penal institutions. Criminal law enforcement is also an activity to realize the operationalization of restoring individual, social, and community welfare balances from violations of criminal law principles. Criminal law enforcement policy is a set of procedures with three stages, including legislative and policy-making that involves creating and stipulating criminal law, judicial and policy-making that involves judges applying criminal law, executive and policy-making that involves in conducting criminal acts in correctional facilities.⁴ The criminal justice system has structural instruments to create an integrated working mechanism. Law enforcement also associated with public protection against crimes related to criminal politics for public protection which is also known as social defense. The effectiveness of law enforcement is determined by the following factors:

1. Legal Factors

¹ Achmad Subagyo, Moh Saleh, and Saiful Abdullah, "Legal Protection for Taxpayers Participants of Voluntary Disclosure Program in the Law on Harmonization of Tax Regulations," *IUS POSITUM (Journal of Law Theory and Law Enforcement)* 1, no. 4 (2022).

² Fairus Nur Fitriana and Herma Setiasih, "The Enforcement of Wanprestasi on Debt Recognition in Debt Agreements A Case Study of District Court Decision No. 9/Pdt.G.S/2021/Pn.Srl," *YURIS (Journal of Court and Justice)* 1, no. 4 (2022).

³ Aria Zurnetti, *Kedudukan Hukum Pidana Adat Dalam Penegakan Hukum Dan Relevansinya Dengan Pembaruan Hukum Pidana Nasional* (Depok: PT RajaGrafindo Persada, 2020).

⁴ Hambali Yusuf, "Policy And Criminal Law Enforcement Against The Perpetrators S Of Corruption: 'Reorientation Objective Of Condemnation,'" *International Journal Reglement & Society (IJRS)* 2, no. 3 (September 2021).

The legal factor will only be limited to statutory regulations. Regarding enacting a law, there are several principles with the aim that the law has a positive impact. It means when the law achieves its goals, it can run effectively. However, in administering law, conflicts sometimes occur between legal certainty and justice caused by the conception of justice, which is an abstract formulation. In contrast, legal certainty is a procedure that has been determined normatively. Since the administration of law is a process of harmonization between the values of norms and patterns of actual conduct that seek to promote peace, the implementation of law essentially includes law enforcement and peace preservation.

2. Law Enforcement Factors

Law enforcers are a group of societal role models with specific abilities following community aspirations. However, it is uncommon for law enforcers to conduct their duties or discretion not in accordance with statutory regulations. Law enforcement officials must also pay attention to how all law enforcement procedures can be in accordance with the principles of certainty, fairness, and humane. As well as fulfilling the principle of Equality Before the Law in the justice system in Indonesia. An equitable balance in improving the scientific quality of those involved in law enforcement and justice processes will also affect the quality of the judicial process and the quality of the legal decisions.

3. Facilities and Facility Factors

Without certain facilities, it is impossible for law enforcement to take place smoothly. These facilities include educated and skilled human resources, good organization, adequate equipment, adequate finances, and so on. In order to implement the law, facilities and means are crucial. It will be impossible for law enforcement officials to align their proper roles with their real roles without these tools or resources.

4. Community Factors

Law enforcers are members of the community who work to make society peaceful. Therefore, the community also influences the law enforcement. This is also a starting point when people obey the law, the social life will be peaceful, but when people break the law, it will become a controversy in the midst of society.

5. Cultural Factors

As a system, law includes structure, substance, and culture. The structure includes the form of the legal system which includes the arrangement of formal legal institutions and their rights and obligations. The substance includes legal norms and their formulation while culture includes the values that underlie applicable law, values are conceptualizations of what is deemed good (so it is accepted) and what is deemed bad (so it is avoided).

The actions of the judiciary as a body charged with enforcing the law are inextricably linked to the legislation passed by the legislative branch. In this case there is a difference between the judiciary and the court, the judiciary refers to the process of adjudication, while other institutions engaged in adjudication process include the police, prosecutors, advocates, and court. The judicial process is closely related to the substance being tried, in the form of civil or criminal cases, full involvement of institutions in judicial process only occurs when sentencing the criminal cases. In its development, several judicial bodies were formed within the scope of General Court, Religious Court, Military Court and State Administrative Court, Taxation Court that has the authority to try cases in accordance with the authority of each courts. The judiciary's role in establishing an independent court is impartial, professional, and has not worked as planned. This is brought on by a number of factors, including:

- a) Court rulings are influenced by the government and other parties, but they are also affected by the low morale and professionalism of law enforcement personnel. As a result, citizen used the judiciary as the final line of defense for obtaining justice.
- b) Weak law enforcement is also caused by the performance of other law enforcement personnel such as judges, police, prosecutors, advocates and civil servant investigators (PPNS) who have not shown a professional attitude and high moral integrity. The state of the legal infrastructure and facilities, which needed law enforcement authorities is still still far from adequate, which has a significant impact on how well law enforcement is implemented and how well it complies with the societal sense of justice.

Law enforcement officials who assist in administering justice to create legal certainty include:

- a) Police as regulated in Law Number 2 of 2002 concerning Indonesian National Police (Police Law) that has the duties and functions of maintaining public order and security, law enforcement, protection and service to the community. In chapter I, article 1 point (1), that the police are law enforces relating to the functions and institutions of police in accordance with laws and regulations. Meanwhile, article 1 point (2) stipulates: Members of Indonesian National Police are civil servants in Republic Indonesia Police. The role of Police in law enforcement is clearly regulated in Police Law, namely Article 2, which states that the function of the police is one of the functions of the state government in the field of maintaining public order and security, law enforcement, protection and service to the community. Based on the elucidation of article 2, the function of the police must pay attention to the spirit of upholding human rights, law and justice. Article 5 paragraph (1) of Police Law reaffirms the role of the Police, called Indonesian National Police as state instrument that plays a

role in maintaining public order and security, enforcing the law, and providing protection and service to the community in maintaining internal security. One of the important tasks stated in Police Law is to conduct an investigations. Based on article 1 point (8) of this provision, it is said that investigators are Indonesian National Police who are authorized by law to conduct the investigations. Whereas in Article 1 point (9) it is explained that investigation is a series of investigative actions to search for and find an event that is suspected of being a criminal act in order to determine whether an investigation can be conducted according to the method stipulated in the law or not. An investigation pursuant to paragraph 13 is a series of investigative actions according to methods regulated by law to examine and collect the evidence in finding the suspect.

- b) The Attorney General's Office was regulated in Law Number 16 of 2005 concerning Attorney General's Office of Republic Indonesia (Prosecutor's Law). The Attorney General's Office of Republic Indonesia is a government agency in the field of prosecution and other powers based on laws which are conducted independently. The Prosecutor's Office has the following duties:
- 1) Conduct the prosecutions; ¹⁰
 - 2) Implement the decisions of judges and court decisions that have obtained permanent legal force;
 - 3) Supervise the implementation of conditional criminal decisions, supervisory criminal decisions and parole decisions.
 - 4) Conducting investigations into certain criminal acts based on the law;
 - 5) Completing certain case files, conducting additional examinations before being delegated to court; ¹⁵
 - 6) In the field of civil and state administration, the prosecutor's office with special powers can act both inside and outside the court on behalf of the government;
 - 7) In the field of order and peace, it conduct the activities to increase public legal awareness, safeguard law enforcement policies, control the circulation of printed materials, control beliefs that can harm the state, prevent misuse and defamation of the state. ¹⁴

Advocates in criminal justice system play a role in helping suspects and defendants to understand the legal process they are undergoing, including the pre-trial, adjudication and post-adjudication stages. In addition, advocates also supervise and assist investigators and public prosecutors in the process of maintaining a balance between public interest and all rights and guarantees provided by law to suspects and defendants. According to Law Number 18 of 2003 concerning Advocates (Advokat Law), advocates have an important position in criminal justice system. One of them is to maintain a balance between the large role of law enforcers such as police, prosecutors and the weak condition of defendants. Free advocates are required, despite the fact that they are not appropriate for this position in law enforcement procedures. A fair process must be followed to determine the truth about whether or not a suspect or defendant is guilty. In this context, the criminal justice system must also consider the position of a witness in order to obtain assistance from an advocate based on his own choice.

Finding justice and harmony in the law is neither difficult nor simple. When the parties to a disagreement or those dealing with the law feel satisfied or gracefully accept the outcome of the decision, that is when the ideal legislation is most difficult to achieve. In addition, the law is expected to develop rapidly following the current development of the times to regulate all actions that have the potential for disputes, both small and large disputes. The effectiveness of the legislation will be impacted when the theory or practice are allowed to develop separately without interacting with one another. The existence of law which the public trusts the rule of law will both be impacted when the law falls behind the times. When judges can make choices by focusing on three crucial factors, it can help to increase the caliber of their judgments and the professionalism of the judiciary, called justice (*gerechtigheit*), certainty (*rechsecherheit*) and expediency (*zwachmatigheit*). Every decision issued by the court must represent the people in seeking justice. The judge's decision is needed to examine, resolve, and decide cases submitted to court. The decision should not exacerbate the problem or even cause controversy for the public or other legal practitioners. The thing that might cause controversy in judge's decision is because the judge lacks mastery of various fields of science which are currently developing rapidly along with the changing times and their thoroughness.⁵ A good judge's decision contains several elements, called:

1. The judge's decision is the process of social life as part of social control.
2. The judge's decision is an embodiment of the applicable law and is useful for every individual, group or country.
3. The judge's decision is a balance between legal provisions and the reality.
4. The judge's decision is a ideal awareness between law and social change.
5. The judge's decision must benefit everyone who is in litigation

⁵ Rommy Haryono Djojarahardjo, "Mewujudkan Aspek Keadilan Dalam Putusan Hakim Di Peradilan Perdata," *Jurnal Media Hukum dan Peradilan* 5, no. 1 (2019): 88–100.

6. The judge's decision should not create new conflicts for the litigants and the community.

The outcome of trial procedure in court is the judge's ruling that should be able to satisfy the demands of justice seekers since it become final refuge for those seeking justice. In order to combat this, the judge must consider three factors while making a decision in a case, called fairness, legal clarity, and expediency.⁶ The judge's decision that reflects legal certainty has a role to find the right law. Judges are necessary to examine legal values such as customary law and unwritten law that exist in society because it is conceivable that the law does not govern explicitly while making decisions. In this case, the judge is obliged to explore and formulate it in a decision as a part of law enforcement process which has one goal, namely legal realization of legal certainty.

Law enforcement based on court facts that are legally relevant from the outcomes of the case settlement procedure in court is a product, and the judge's ruling outlines the legal certainty that resulted from this. The application of law must be in accordance with the cases that occur, then the judges are required to interpret the meaning of laws and other regulations that are used as the basis for decisions. The application of the law must be in accordance with the case that occurred, then the judge can construct the case being tried wisely and objectively. The judge's decisions that contain elements of legal certainty will contribute to the development of knowledge in law. This is because the judge's decision which has permanent legal force is no longer the opinion of the judge himself, but is the opinion of the court institution which will become a reference for the community.

Law enforcement based on court facts that are legally relevant from the outcomes of the case settlement procedure in court is the source of the legal certainty as specified in the judge's ruling. The judge's ruling is a law that must be upheld to keep society balanced and restore the public's entire confidence in law enforcement. While making a judgement in a case, judges should have compelling reason to both the interests of justice and the need for legal certainty. The principle of expediency is between justice and legal certainty, that the judges value the purpose or use of the law in the interests of society. A subtle economic element is put emphasis on the expediency concept. The fundamental tenet is that because law is for society or the people, it follows that humans must benefit from life in order for it to have any meaning.⁷ Thus, the judge's decision in an ideal civil court must fulfill these three principles. However, in every judge's decision, sometimes there are certain emphases on one of the dominant aspects. This does not mean that the decision has ignored other relevant principles. It is clear that these three principles are closely related to each other in order to make the law a guideline for behavior

⁶ Margono, *Asas Keadilan, Kemanfaatan, Dan Kepastian Hukum Dalam Putusan Hakim* (Jakarta: Sinar Grafika, 2019).

⁷ Amir Ilyas and Muhammad Nursal, *Kumpulan Asas-Asas Hukum* (Jakarta: Rajawali Pres, 2016).

in every legal action. Additionally, when these three principles are related to the fact that justice and legal certainty frequently clash or when legal certainty clashes with expediency.⁸

Correctional Institution

Since the paradigm shift from prisons to correctional facilities is one of the components of the criminal justice system, it must work in unison with other subsystem components to form a coherent framework or unified frame in an integrated criminal justice system in order to fulfill its obligations and perform its functions. The criminal justice system should be based on a systematic, consistent and interdependent relationships between elements of other law enforcement subsystems, within the criminal justice system in Indonesia (Police, Prosecutors, Courts and Correctional Institutions).⁹ In the implementation of correctional system, both in coaching and mentoring of correctional inmates (convicts, correctional students, and correctional clients) as regulated through the previous regulation, called Law Number 12 of 1995 concerning Corrections which was replaced by Law Number 22 of 2022 regarding Corrections (Prison Law). The Correctional Law, which has been in force since August 2022 as a substitute for Law Number 12 of 1995 concerning Corrections, mandates basic improvements in the implementation of Correctional functions, including service, coaching, guidance, community, care, security by upholding respect, protection, and fulfillment of human rights. The basis for issuance consideration of the Correctional Law is the investigation of suspects, defendants, and convicts who have been deprived of their liberty that must be based on the principles of legal protection and respect for human rights based on Pancasila and the 1945 Constitution of the Republic of Indonesia.

According to Clement Bartolas, maintaining criminals in society is crucial because incarceration might result in their dehumanization. The objectives and success of training the facility's inmates will be greatly influenced by the degree of affinity between the correctional facility and the local community. This presumption is founded on the notion that since the criminals are incarcerated and having their freedom taken away, they no longer have a reliable work. They are isolated from their family, which makes it seem as though they are free to engage in any behavior, including criminal activity. Hence, facilities are required to help inmates reach outsiders or the society when they are in this position. The objectives of correctional system implementation as emphasized in Correctional Law in Article 2 are as follows:

⁸ Irma Indriyani, "Pengaruh Aliran Hukum Positivisme Dan Rasa Keadilan Di Indonesia," *AHKAM* 1, no. 1 (2022): 193–204.

⁹ Violita Citra Kusuma Dewi, Ali Muhammad, and Cahyoko Edi Tando, "Koordinasi Antara Institusi Penegak Hukum Dalam Hal Menangani Masalah Penahanan Berdasarkan KUHAP Sebagai Upaya Mewujudkan Sistem Peradilan Pidana Terpadu Di Indonesia," *Jurnal Pendidikan dan Konseling (JPDK)* 4, no. 6 (2022).

1. Providing guarantees for the protection of the rights of prisoners and children;
2. Enhancing the independence and personality traits of assisted citizens will help them learn from their mistakes, become better people, and avoid committing new crimes, which will help them regain community acceptance, live normal lives as law-abiding citizens, take responsibility for their actions, and actively participate in development.
3. Provide protection to the public from repetition of criminal acts.

With the enactment of Correctional Law, its implementation will impact in Correctional System that are more humane by providing guidance and services prioritizing the guarantee and fulfillment of human rights. The correctional facilities have only been defined as correctional institutions in the last phase (after adjudication) of a criminal law enforcement process. With the issuance of the Correctional Law as a substitute for Law Number 12 of 1995 concerning Corrections, it will become a guideline for all law enforcement officials to have the same perspective that Correctional is a system as an integral part of an integrated criminal justice system, covering the phases pre-adjudication, adjudication, and post-adjudication, and not only provide guarantees for the protection of correctional inmates and clients but also conduct the management of state confiscated goods and stated spoils (*basan dan baran*).

Acts that are prohibited by the law regarding the trading system of subsidized diesel fuel are referred to as irregularities in the system. Regardless of the losses resulting from their acts, which were borne by citizens and the Government (State), since the purpose of providing subsidies was not on target, the aforementioned actions are undoubtedly intended to benefit oneself or a business organization (corporate). The Oil and Gas Law is known for the types of criminal acts that will be imposed on perpetrators who commit crimes in the Oil and Gas sector. The forms of criminal acts regulated in Oil and Gas Law are processing without a business license, transportation without a transport business license, storage without a storage business license, and trading without a trading business license. In addition, there are four types of criminal sanctions in the oil and gas sector, including prison sentence, criminal penalize, imprisonment and additional punishment. The criminal sanctions that can be imposed on legal subjects related to individuals or legal entities have been determined in various articles in the Oil and Gas Law, such as:

- 1) Conducting general surveys without permission from the government. The general survey is "Field activities which include collecting, analyzing and presenting data that estimates the location and potential of Oil and Gas resources outside the work area (Article 1 paragraph 6 of Oil and Gas Law).
- 2) Send or transfer State-owned data without permission from an authorized official who is controlled by the government.
- 3) Exploration or exploitation without government license.

- 4) In terms of processing in the petroleum business without license from the government (Article 53 of Oil and Gas Law).
- 5) Transportation without a license from the government (Article 53 of Oil and Gas Law).
- 6) Storage without license from the government (Article 53 of Oil and Gas Law).
- 7) Trading without a trading business license (Article 53 of Oil and Gas Law).
- 8) Falsifying Oil and Natural Gas Fuel determined by the government.
- 9) Misusing the transportation or trading of fuel oil subsidized by the government.

Based on the Oil and Gas Law, the subjects are people and business entities. It can be seen in CHAPTER XI regarding criminal provisions. Corporation/a person as the subject of a crime against the misuse of fuel is emphasized in the formulation of Article 55 of the Oil and Gas Law which stated that "Anyone who misuses the transportation or trading of fuel oil subsidized by the government shall be punished with imprisonment for a maximum of 6 (six) years and or a penelize of up to IDR. 60.000.000.000,00 (sixty billion)." Regarding the perpetrators of the crime above, it is regulated in Article 55 and Article 56 of the Criminal Code in the formulation:

1. The perpetrators of criminal acts that will be punished are:
 - a. Those who did, ordered to do, or took part in the act.
 - b. They are by ability, abuse of power, by coercion, threats or deception, or deliberately persuaded to commit such acts.
2. Regarding those people in (sub-2) who have been held responsible for the actions that they deliberately committed, and the consequences that can be observed as assistants committing crimes will be punished:
 - a. Those who intentionally help when a crime is committed.
 - b. Those who deliberately provide opportunities, means, or information to commit crimes.

Based on the formulation of Article 55 paragraph (1) of the Criminal Code above, what is meant by the perpetrator of a crime are:

- a) The maker is who commits the crime personally. It means that no other person is involved both physically (objectively) and psychologically (subjectively). The condition is that the act has fulfilled all the elements of a criminal act formulated by law.
- b) The perpetrator referred to in the formulation of Article 55 paragraph (1) does not commit the crime personally, but with other people in realizing the crime, each act has its own spine, which action only fulfills some of the requirements/elements of the criminal act.
- c) The maker (*mededader*) is not a *dader*, the participants in the *mededader* do not fulfill the same requirements as a *dader*. The same thing is that the criminal responsibility for those involved in the *mededader* has the same

responsibility for a *dader*. In the development of criminal law, it is not only humans who are considered subjects, but also legal entities (corporations).

The deviations in Indonesia's trading system for subsidized diesel fuel are rife due to the difference between the subsidized selling price and the market price. Moreover, the difference is quite significant for the industrial market, then an individual will try to take advantage of the subsidized diesel trade system. The various types of fraud committed in the subsidized diesel oil trading system are:

1. Mixing

Is the activity of mixing subsidized diesel oil with lower quality/cheaper materials to produce a combined product with a high price difference. Mixing various other types of fuel for decreasing the quality to get the high benefit.

2. Deviation of Subsidized Solar Allocation

Subsidized solar is actually intended for the underprivileged, MSMEs, agriculture, fisheries, public facilities such as crematoriums, health centers, etc. The diversion of subsidized diesel oil by buying subsidized diesel oil and distributing it to the industries or large ships will get the big profits.

3. Smuggling of Subsidized Diesel Oil Abroad

Diesel oil will be smuggled abroad using any ways necessary because the price of selling diesel oil is comparatively high compared to the price of subsidized diesel oil.

4. Stockpiling Subsidized Solar

Hoarding is collecting subsidized diesel from shunters for stockpiling and distribution at a higher price to people or companies who need it.

CONCLUSION

There are various kinds of subsidized diesel fuel diversion to get the most significant possible profit by utilizing subsidized diesel fuel in the form of blending, deviations from subsidized diesel fuel, smuggling subsidized diesel oil abroad, and hoarding subsidized diesel fuel. Due to the disparity between the subsidized selling price and the market price, there are numerous variances in Indonesia's diesel fuel trading system. Therefore, law enforcement on the misuse of the trading system of subsidized diesel by Police through investigations conclude that the fulfillment of the elements of the article referred to in Article 55 of Oil and Gas Law subjected to an individual and business entities that can be seen in CHAPTER XI regarding criminal provisions.

REFERENCES

- Dewi, Violita Citra Kusuma, Ali Muhammad, and Cahyoko Edi Tando. "Koordinasi Antara Institusi Penegak Hukum Dalam Hal Menangani Masalah Penahanan Berdasarkan KUHAP Sebagai Upaya Mewujudkan Sistem Peradilan Pidana Terpadu Di Indonesia." *Jurnal Pendidikan dan Konseling (JPDK)* 4, no. 6 (2022).
- Djojarahardjo, Rommy Haryono. "Mewujudkan Aspek Keadilan Dalam Putusan Hakim Di Peradilan Perdata." *Jurnal Media Hukum dan Peradilan* 5, no. 1 (2019): 88–100.
- Fitriana, Fairus Nur, and Herma Setiasih. "The Enforcement of Wanprestasi on Debt Recognition in Debt Agreements A Case Study of District Court Decision No. 9/Pdt.G.S/2021/Pn.Srl." *YURIS (Journal of Court and Justice)* 1, no. 4 (2022).
- Ilyas, Amir, and Muhammad Nursal. *Kumpulan Asas-Asas Hukum*. Jakarta: Rajawali Pres, 2016.
- Indriyani, Irma. "Pengaruh Aliran Hukum Positivisme Dan Rasa Keadilan Di Indonesia." *AHKAM* 1, no. 1 (2022): 193–204.
- Margono. *Asas Keadilan, Kemanfaatan, Dan Kepastian Hukum Dalam Putusan Hakim*. Jakarta: Sinar Grafika, 2019.
- Subagyo, Achmad, Moh Saleh, and Saiful Abdullah. "Legal Protection for Taxpayers Participants of Voluntary Disclosure Program in the Law on Harmonization of Tax Regulations." *IUS POSITUM (Journal of Law Theory and Law Enforcement)* 1, no. 4 (2022).
- Yusuf, Hambali. "Policy And Criminal Law Enforcement Against The Perpetrators S Of Corruption: 'Reorientation Objective Of Condemnation.'" *International Journal Reglement & Society (IJRS)* 2, no. 3 (September 2021).
- Zurnetti, Aria. *Kedudukan Hukum Pidana Adat Dalam Penegakan Hukum Dan Relevansinya Dengan Pembaruan Hukum Pidana Nasional*. Depok: PT RajaGrafindo Persada, 2020.

Law Enforcement of Criminal Acts in the Misuse of Subsidized 1 Solar Oil in Indonesia

ORIGINALITY REPORT

20%

SIMILARITY INDEX

19%

INTERNET SOURCES

10%

PUBLICATIONS

8%

STUDENT PAPERS

PRIMARY SOURCES

1	ejournal.mandalanursa.org Internet Source	2%
2	journal.uniku.ac.id Internet Source	2%
3	Submitted to Sunway Education Group Student Paper	2%
4	Mailinda Eka Yuniza, Marsudi Triatmodjo, Rizkia Evania. "Gas governance in Indonesia", The Journal of World Energy Law & Business, 2016 Publication	2%
5	ejournal.undiksha.ac.id Internet Source	2%
6	en.mkri.id Internet Source	2%
7	repository.unsri.ac.id Internet Source	1%
8	isiem.net Internet Source	

1 %

9

Submitted to Fakultas Ekonomi Universitas
Indonesia

Student Paper

1 %

10

jurnal.untan.ac.id

Internet Source

1 %

11

journal.trunojoyo.ac.id

Internet Source

1 %

12

lppm-unissula.com

Internet Source

1 %

13

journal.um-surabaya.ac.id

Internet Source

1 %

14

www.antikorupsi.org

Internet Source

1 %

15

www.jurnal-umbuton.ac.id

Internet Source

1 %

16

Zarul Arifin. "The Distribution Mechanism of
Subsidized Liquid Petroleum Gas in Sajad
District West Kalimantan: An Investigation
Based on Islamic Law", Al-Manahij: Jurnal
Kajian Hukum Islam, 2021

Publication

1 %

Exclude quotes Off

Exclude matches Off

Exclude bibliography Off

Law Enforcement of Criminal Acts in the Misuse of Subsidized 1 Solar Oil in Indonesia

GRADEMARK REPORT

FINAL GRADE

GENERAL COMMENTS

/0

PAGE 1

PAGE 2

PAGE 3

PAGE 4

PAGE 5

PAGE 6

PAGE 7

PAGE 8

PAGE 9

PAGE 10

PAGE 11

PAGE 12

PAGE 13

PAGE 14
