
**IMPLEMENTATION OF CRIMINAL SANCTIONS FOR ABUSE OF GOVERNMENT SUBSIDIZED FUEL
(BBM) TRANSPORTATION AND TRADE**

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ABSTRACT

Fuel oil (BBM) is one of the vital elements needed to serve the needs of the general public. Basically, the government has policies regarding the use of fuel oil. One of them is the existence of subsidized fuel oil. The existence of subsidized fuel oil is due to the consideration that fuel oil is a vital commodity which can cause price increases for other commodities. Subsidized fuel oil is actually given to people from the middle to lower economic groups with the aim of getting fuel oil at cheap prices. However, this subsidized fuel oil sometimes does not meet the government's intended targets. This misuse of subsidized fuel oil is commonly carried out by commercial transport. It is stated in Law Number 22 of 2001 concerning Oil and Natural Gas that processing, transportation, storage and trading business activities can be carried out if a business permit has been obtained from the government. Proven as in case no. 123/Pid.Sus-LH/2022/PNKpg which violates Article 55 of Law Number 22 of 2001 in conjunction with Paragraph 5 number 9 Article 55 of Law Number 11 of 2020 concerning Job Creation by smuggling subsidized kerosene fuel. and diesel. The criminal act of misuse of commercial transportation of fuel oil is regulated in Article 55 of Law No.2/2001. Based on the description above, the problem that can be studied in this paper is identifying the unlawful nature of the criminal act of misuse of commercial transportation of subsidized fuel oil and how criminal sanctions are applied for this act.

Keywords: subsidized fuel; transportation; commerce; criminal sanctions

INTRODUCTION

Fuel oil is one of the vital elements needed to serve the needs of the general public. The use of fuel oil currently has implications for a country's foreign policies which have a significant influence on the country's own economic growth, but also have global impacts.¹

The government has policies regarding the use of fuel oil, one of which is subsidized fuel oil. The subsidy referred to in this case is the government selling oil to the public at a price below world oil. The existence of subsidized fuel oil is due to the consideration that fuel oil is a vital commodity which can cause price increases for other commodities.

Subsidized fuel oil is actually given to people from the lower middle economic group with the aim that lower economic groups do not have difficulty getting fuel oil. However, fuel oil is often misused so that the use of subsidized fuel oil sometimes does not meet the targets intended by the government.

This misuse of subsidized fuel oil is commonly carried out by commercial transport. It is stated in Law Number 22 of 2001 concerning Oil and Natural Gas that processing, transportation, storage and trading business activities can be carried out if a business permit has been obtained from the government. This transportation is the ability to move petroleum, natural resources, and/or their processed products, from the working area to the processing product storage area, including the transportation of natural gas through transmission and distribution pipelines. Meanwhile, trade itself is the activity of buying, selling,

¹ Anggi Zidan Romatua Sagala, Syarifusin, Muhammad Faisal Rahendra Lubis, Analisis Yuridis Penerapan Hukum Pidana Terhadap Pelaku Tindak Pidana Niaga Bahan Bakar Minyak Jenis Bensin Secara Ilegal (Studi Putusan Nomor 310.Pid.Sus/2019/PN Sgl), *Jurnal Hukum dan Kemasyarakatan Al-Hikmah*. Vol. 3 No. 2, 2022, hal 1-20.

exporting, importing petroleum and/or its products.²

The criminal act of misuse of commercial transportation of subsidized fuel oil is regulated by Article 55 of Law Number 2 of 2001 which states that anyone who misuses the transportation and/or trading of subsidized fuel oil by the government will be punished with a maximum imprisonment of 6 (six) years and a maximum fine of IDR 60,000,000,000 (sixty billion rupiah).

Although the prohibition on criminal acts of misuse of commercial transportation has been regulated in Law no. 2 of 2001 and the threat of severe penalties for these criminal acts, but in reality there are still many cases of criminal acts of misuse of commercial transportation.

As in case no. 123/Pid.Sus-LH/2022/PN Kpg on behalf of Romli Mone violated Article 55 of Law Number 22 of 2001 in conjunction with Paragraph 5 number 9 Article 55 of Law Number 11 of 2020 concerning Job Creation by smuggling fuel oil subsidized kerosene of 420 liters and subsidized diesel of 840 liters using a motorboat in the Kupang Bay area. It is believed that the smuggling of subsidized kerosene and diesel fuel provided large profits to the defendant.³

Based on the background description above, the problem that can be studied in this paper is identifying the unlawful nature of the criminal act of misuse of commercial transportation of subsidized fuel oil and how criminal sanctions are applied for this act.

RESEARCH METHODS

A method is a way to find answers to something. The way to find an answer is arranged in certain systematic steps. Meanwhile, research is the main means of developing science which aims to reveal the truth systematically, methodologically and consistently, by carrying out analysis and construction.⁴ This research is a type of qualitative descriptive research. Data collection techniques using library research or library studies, namely using data sourced from literature which can be in the form of books, journals, theses, dissertations, and written sources whose validity can be verified in accordance with the problem to be discussed.⁵To analyze the data obtained, this research uses inductive analysis techniques. Inductive analysis techniques were used in this research, with the results obtained representing a general view of a phenomenon.⁶By the process of describing a phenomenon, then explaining the phenomenon through the theory/concept established by the author.

RESULTS AND DISCUSSION

FACTORS THAT CAUSE CRIMINAL ACTS OF MISUSE OF SUBSIDIZED FUEL TRANSPORTATION AND TRADING

Misuse of subsidized fuel is a criminal offense as regulated in Law no. 22 of 2001 concerning Oil and Natural Gas, Articles 53 to Article 58, and are threatened with a maximum imprisonment of 6 (six) years and a maximum fine of Rp. 60,000,000,000.00 (sixty billion rupiah), as well as additional penalties in the form of revocation of rights or confiscation of goods used for or obtained from criminal acts in oil and natural gas business activities.

In its implementation, This law has not been able to effectively tackle these criminal acts. This is caused by the existence of loopholes in the law and is a weakness of Law Number 22 of 2001. Loopholes that can be used by perpetrators to commit criminal acts include provisions governing the maximum amount of subsidized fuel. which can be sold freely to the public so that it can be misused by certain

² Rini Anggriani M. Dan Adi Hermansyah, Tindak Pidana Penyalahgunaan Pengangkutan dan Niaga Bahan Bakar Minyak (BBM) Bersubsidi Jenis Minyak Tanah di Simeulue, *JIM Bidang Hukum Pidana*. Vol. 2 No. 2, 2018, hal 408-419.

³ Putusan Nomor 123/Pid.Sus-LH/2022/PN Kpg

⁴ Soerjono Soekanto, *Penelitian Hukum Normatif*, (Jakarta: Rajawali Press, 2013), hal 1.

⁵ Peter Mahmud Marzuki, *Penelitian Hukum Edisi Revisi, Cetakan Ke Sembilan*, (Jakarta: Kencana Prenada, 2014), hal 35.

⁶ Sugiyono, *Metode Penelitian Kuantitatif, Kualitatif dan R&D*, (Bandung: Alfabeta, 2020), hal 29.

parties in various ways or modes in buying subsidized fuel in large quantities to be resold at large profits, both to the general public and to companies (industry) or even smuggled to outside the area.

In 2022, there will be 2 criminal cases of misuse of the transportation and trade of subsidized fuel oil (BBM) such as Kerosene and Diesel in Kupang. The crime of misuse of the transportation and trading of subsidized kerosene fuel (BBM) in Kupang is of course very detrimental to the state because the subsidies provided by the government are not on target.

Economic factors are often the basis for someone to commit a crime, including the misuse of transportation and trade in subsidized fuel oil (BBM), a type of kerosene. Meanwhile, in the Solar type, the factor that becomes the basis for a person to commit a crime is seeking profit. In cases of other crimes such as theft and embezzlement, generally economic factors and profit factors are very important points. In terms of economic factors, the background is being forced by all the limitations of economic conditions, which results in someone committing a crime. Meanwhile, the profit-seeking factor is the human nature of wanting to get more income without looking at the actions that a person performs as long as the person makes a big profit for himself and this is not done because of circumstances that force a person to do this but is done with full awareness.

In more detail, several factors that cause someone to commit criminal acts of misuse of transportation and trading in subsidized fuel oil (BBM) are caused by internal and external factors. Internal factors are factors that exist within the individual. These internal factors consist of individual factors and psychological factors. The individual factors that cause the crime of misuse of subsidized fuel oil are deviant behavior or social deviations that are not in accordance with the values of decency and propriety both from an individual perspective and as part of a social being. According to him, the cause of deviant behavior is because the perpetrator is unable to adapt to the will of society and the perpetrator is considered to be carrying out an activity that is looked down upon in society. Meanwhile, psychological factors are used by criminology to explain the causes or sources of crime based on personality problems and psychological pressures that can encourage someone to commit crimes. Psychological factors have an important role in a person committing a crime, these factors arise because of an urge or pressure which can come from the problem of needs faced, one form of effort to fulfill these needs is by committing a crime and the low level of education results in a way of thinking. superficial means that someone with low education is more likely to commit a crime than an educated person, adding that crime arises because of curiosity and trial and error and also the demands of needs or life problems experienced so that it can continue and become a habit that is carried out repeatedly. repeat.⁷

There are also external factors, namely factors that have their roots in the environment outside humans (external), especially things that are related to the emergence of crime, the influence of these factors is what determines whether a person will lead to crime, causing the misuse of subsidized fuel oil. The factor that causes the crime of misuse of fuel oil is the economic factor because if studied or looked at fundamentally, this factor has a big influence on the emergence of various types of criminal acts, because economic needs are often used by perpetrators as the main reason. Individuals seek multiple profits by hoarding for personal gain and there are no sanctions or warnings, thus giving perpetrators or individuals the freedom to do so.

However, in the misuse of transportation and trading in subsidized fuel oil (BBM), economic factors are not among the factors behind the crime. If you look at the perpetrator of this crime from an economic background, he is not someone who has economic limitations. Subsidized Fuel Oil (BBM) provided by the Government, especially to fishermen in Kupang City, costs IDR 5,150.00 (five thousand one hundred and fifty rupiah) per liter for diesel, while subsidized Fuel Oil (BBM) is given for kerosene. by the Government in Kupang City which is indicated by the letter of Agreement for the Appointment of Kerosene Road Number 12/PKL.1/JPP/2022 at a price of IDR 4,000.00 (four thousand rupiah) per liter.

⁷ Andi Herwin Herfendy Nasdar, Ruddy R. Watulingas, Harly Stanly Muaya, KEBIJAKAN HUKUM DALAM MENANGGULANGI TINDAK PIDANA PENYALAHGUNAAN BAHAN BAKAR MINYAK SUBSIDI PEMERINTAH, *Lex Privatum*. Vol. 10 No. 3, 2022, hal 1-7.

Based on Decision No. 123/Pid.Sus-LH/2022/PN Kpg, the perpetrator of the criminal act of misuse of subsidized fuel oil carried out the mode of crime by putting subsidized fuel oil types of diesel and kerosene into jerry cans with 24 (twenty four) each. jerry cans with one jerry can measuring 35 (thirty five) types of diesel and 12 (twelve) jerry cans with one jerry can measuring 35 (thirty five) liters of kerosene which were then loaded on his motorboat. The total of each subsidized fuel oil transported was 420 liters of soil oil and 840 liters of diesel which were found by members of the NTT Regional Police Directorate of Air and Water and Air and Water and Air Forces along with the KP Adonara 3010 crew and the KP.2002 crew who were carrying out patrols in the Kupang Bay area.

The criminal committed the crime of misuse of transporting and trading in subsidized fuel such as diesel and kerosene to resell it to the public at a profit of IDR 2,350.00 per liter for diesel and IDR 1,500.00 for kerosene. The arrest was made because the perpetrator did not have documents related to the source of the oil in the form of a DO (delivery order) or LO (loading order) from the business entity selling the fuel or a travel document addressed to the final consumer, whereas the agent or transporter must have a transportation permit issued by The government through the Minister of Energy and Mineral Resources (ESDM) and Downstream Oil and Gas Business Activities consisting of processing, transportation, storage and/or trading activities after fulfilling business permits from the central government as stipulated in Article 9 and Article 23 of Law Number 22 of 2001 about Oil and Gas.

The criminal act of misuse of transporting and trading subsidized fuel oil (BBM) types of diesel and kerosene violates Article 55 of Law Number 22 of 2001 concerning Oil and Gas in conjunction with Paragraph 5 point 9 of Article 55 of Law Number 11 of 2020 concerning Job Creation shall be sentenced to a maximum imprisonment of 6 (six) years and a maximum fine of IDR 60,000,000,000.00 (sixty billion rupiah).

To enforce laws that are fair to society and create public security and tranquility, the government in law regulates the threat of punishment for perpetrators of criminal acts in accordance with the crime committed by the defendant with the authority of the judge to give and determine the amount of punishment imposed on the perpetrator. In giving and determining the amount of sentence imposed, the judge considers several of the defendant's behavior at trial after committing the crime.⁸

APPLICATION OF CRIMINAL SANCTIONS FOR CRIMINAL ABUSE OF TRANSPORTATION AND TRADE OF SUBSIDIZED FUEL

Fuel oil is one of the vital elements needed to serve the needs of the community. The 1945 Constitution regulates the management of natural resources, the provisions of which are in Article 33. To fulfill these provisions, the government issued Law Number 22 of 2001 concerning Oil and Natural Gas where the state is responsible for protecting the country's oil and natural gas from fraud. that would be carried out by criminals.

This regulation not only includes provisions for the use of oil and natural gas but also provides the threat of legal sanctions in the form of penalties. Criminal provisions are regulated in CHAPTER XI Article 51 to Article 28 of the Oil and Gas Law. Where the criminal provisions aim to regulate actions regarding business activities that can be qualified as criminal acts with criminal threats such as reduced penalties, imprisonment and fines.

Criminal sanctions themselves are a cause and effect punishment, which means that if a crime is committed, there will be consequences.⁹ If the defendant is proven to have committed a criminal act of misusing transportation, with the aim of obtaining a profit/profit by systematically harming related parties, both individuals, business entities, with a loss to related parties or the public, then the State needs

⁸ Boy Muhammad Putra, Ardiansah, Bagio Kadaryanto, Tinjauan Normatif Penjualan BBM Subsidi Berdasarkan Undang-Undang republik Indonesia Nomor 22 Tahun 2022 Thun 2001 Tentang Minyak dan Gas Bumi, *Jurnal JAPS*. Vol. 2 No. 1, 2021, hal 57-67.

⁹ Andrio Jackmico Kalensang, Hubungan Sebab Akibat (Causaliteit) Dalam Hukum Pidana dan Penerapannya Dalam Praktek, *Lex Crimen*. Vol. 5 No. 7, 2016, hal 12-19.

to control, as is the case with oil and gas mixing in this activity. often in Indonesian society.¹⁰

The elements of the crime of transporting and trading in subsidized fuel according to the Oil and Gas Law contained in Article 53 read, "that every person who carries out business activities:

Processing as intended in Article 23 without a processing business permit is punishable by a maximum imprisonment of 5 (five) years and a maximum fine of Rp. 50,000,000,000.00 (fifty billion rupiah)

Transport as in Article 23 without a transport business permit is punishable by a maximum imprisonment of 4 (four) years and a maximum fine of Rp. 40,000,000,000.00 (forty billion rupiah)

Storage as intended in Article 23 without a storage business permit is punishable by a maximum imprisonment of 3 (three) years and a maximum fine of Rp. 30,000,000,000.0,- (thirty billion rupiah)

Trading as intended in Article 23 without a commercial business license is punishable by imprisonment for a maximum of 3 (three) years and a fine of a maximum of Rp. 30,000,000,000.00,- (thirty billion rupiah)."¹¹

Actions that can be punished in this article are 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 losses to other people.¹²

Determining the application of sanctions for the crime of misuse of transportation and trading of subsidized fuel oil (BBM) is determined by fines and criminal penalties in lieu of fines for perpetrators of these criminal acts, including:¹³

Refer to the Law

Article 55 of the Oil and Gas Law states that: "Everyone who misuses the transportation or trading of government-subsidized fuel is punished with a maximum prison sentence of 6 (six) years and a maximum fine of Rp. 60,000,000,000.00 (sixty billion rupiah)." In this law it can be seen that a maximum fine of IDR 60,000,000,000.00 (sixty billion rupiah) so that the Public Prosecutor or judge may not demand or hand down a decision that exceeds the provisions already determined by law. The demands of the Public Prosecutor must be in accordance with the provisions of existing legislation.

Looking at the Facts at Trial

The facts of the trial are the facts revealed about the criminal acts or actions carried out by the perpetrator or convict. The Public Prosecutor in determining fines and penalties in lieu of fines must of course look at the facts at trial. Through the results of the investigation at the trial, the facts that were revealed during the assessment were sequentially in the form of explanations from witnesses, the convict, guidelines and evidence which were the determinants for determining the criminal fine and replacement of the fine charged.

Looking at the perpetrator's actions

The method of determining fines and penalties in lieu of fines is also seen from the defendant's actions. Whether the convict's actions are a criminal act or not, the convict's actions are acts that are not permitted by law or contained in the law or not, if the defendant's actions disturb the public then the defendant deserves to be charged with that crime. Based on the defendant's actions, the defendant deserves a fine for the losses incurred as a result of his actions.

In terms of granting criminal sanctions in cases of storage and/or trading in subsidized diesel fuel at the Pelaihari District Court, considering Article 55 of Law Number 22 of 2001 which has been amended by

¹⁰ I Dewa Gede Sastra Buwana, I Wayan Rideng, I Ketut Sukadana, INFOSANKSI PIDANA PENYALAHGUNAAN PENGANGKUTAN BAHAN BAKAR BERSUBSIDI, *Jurnal Konstruksi Hukum*. Vol. 1 No. 2, 2020, hal 281-285.

¹¹ Undang-Undang Nomor 22 Tahun 2001 tentang Minyak dan Gas Bumi

¹² Dian Sekar Sari, M. A. Razak, Karim, Penegakan Hukum Terhadap Tindak Pidana Penyalahgunaan Pengangkutan dan Niaga Bahan Bakar Minyak Bersubsidi (Studi Putusan Nomor 230/Pid.Sus/2014/PN.Bkl), *Jurnal Judiciary*. Vol. 1 No. 1, 2021, hal 8-14.

¹³ Ulfatu Hasanah dan Dahlan, Tindak Pidana Penyalahgunaan Pengangkutan dan Niaga Bahan Bakar Minyak (BBM) Bersubsidi (Suatu Penelitian di Wilayah Hukum Pengadilan Negeri Takengon), *JIM Bidang Hukum Pidana*. Vol. 6 No. 3, 2022, hal 321-329.

Law Number 11 of 2020 concerning Job Creation which is new and in It is hoped that the verdict given against the perpetrator will provide benefits for all parties in this case.

The legal traps for acts in the form of misuse of subsidized fuel in Law Number 22 of 2001 concerning Oil and Natural Gas, several articles of which have been amended in Law Number 11 of 2020 concerning Job Creation, are as follows:

Article 55 of Law Number 22 of 2001 concerning Oil and Natural Gas contains: "Every person who misuses the Transportation and/or Trading of Oil Fuel, gas fuel, and/or liquefied petroleum gas which is subsidized by the Government shall be punished by imprisonment for a maximum of 6 (six) years and a maximum fine of IDR 60,000,000,000 (sixty billion rupiah)."

From the provisions of several articles in "Law Number 22 of 2001 concerning Oil and Natural Gas, several articles of which have been amended in Law Number 11 of 2020 concerning Job Creation above, misuse of subsidized diesel fuel is only subject to Article 55 Law Number 22 of 2001 concerning Oil and Natural Gas which specifically regulates subsidized fuel oil in the form of acts of misuse of the transportation and/or trade in government-subsidized fuel oil.¹⁴"

CONCLUSION AND SUGGESTION

Criminal act Abuse of transportation and trading of subsidized fuel oil (BBM) is caused by several factors. These factors are external and internal factors. However, in this case, the factor that causes a person to commit a criminal act is the factor of reaping greater profits which is carried out with full awareness. Provisions for the criminal offense of Misuse of Transportation and/or Trading of Fuel Oil (BBM) are regulated in CHAPTER XI Article 51 to Article 28 of the Oil and Gas Law. Where the criminal provisions aim to regulate actions regarding business activities that can be qualified as criminal acts with criminal threats such as reduced penalties, imprisonment and fines.

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¹⁴ Muhammad Syahrizal Gunawan, Akhmad Munawar, Abdul Hamid, Penegakan Hukum Tindak Pidana Penyalahgunaan Penyimpanan dan/atau Niaga Bahan Bakar Minyak Bersubsidi Jenis Solar di Kecamatan Jorong Kabupaten Tanah Laut, 2022, hal 1-12.

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