



Criminal Liability for Transportation of Subsidized Diesel Oil Without Official Permission

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Abstract

In creating oil and gas business activities to realize an increase in prosperity and welfare of the people, Law number 22 of 2001 concerning Oil and Gas has been established (hereinafter Oil and Gas Law 22/2001). The law provides a legal basis for the renewal and realignment of oil and gas business activities. The government has established a government agency that in carrying out its functions, duties, and authorities is independent, namely the regulatory body for the supply and distribution of fuel, namely the Regulatory Agency, the National Police and the Oil and Gas Civil Servant Officials without accompanying the implementing rules. Oil and gas business activities experience various dynamics including related to the transportation of subsidized diesel oil without official permission from the authorities. The present study aims to elaborate criminal liability for the transportation of subsidized diesel oil without official permission from the authorities. The present research uses discourse analysis as method of the study in elaborating issues concerning criminal liability for the transportation of unlicensed diesel oil. This study concluded that there are several procedures carried out related to the transportation of subsidized diesel oil without official permission. The steps taken are investigation, investigation, prosecution, examination in court, and judgment.

Keywords: *Gasoline; Criminal Law; Illegal*

Introduction

To create oil and gas business activities in order to realize an increase in prosperity and welfare of the people, Law number 22 of 2001 concerning Oil and Gas has been established (hereinafter Oil and Gas Law 22/2001). The law provides a legal basis for the renewal and realignment of oil and gas business activities. Oil and Gas Law 22/2001 was passed and promulgated on November 23, 2001, which is a new history in the management rules on oil and gas. Oil and Gas Law 22/2001 provides a legal basis for measures to renew and realign Oil and Gas business activities consisting of downstream business activities and upstream business activities. In downstream business activities consisting of management, transportation and storage, and commerce, there are fuel storage and distribution activities, so that the provision and distribution of fuel can be carried out throughout the territory of the unitary state of the Republic of Indonesia (NKRI), these activities must obtain regulation and supervision from the authorized institutions.

According to Article 1 number 14 of the Oil and Gas Law 22/2001 states that commerce is the activity of buying, selling, exporting, importing petroleum and/or processed products, including trading natural gas through pipelines.

The government has established a government agency that in carrying out its functions, duties, and authorities is independent, namely the regulatory body for the supply and distribution of fuel which is formed based on Government Regulation Number 67 of 2002 and Presidential Decree Number 86 of 2002, which is further referred to in this Government Regulation as a Regulatory Agency. It is stated in Article 41 paragraph (3) of the Oil and Gas Law 22/2001 that supervision is carried out by a Regulatory Agency whose operational costs are described in Article 48 paragraph (2) of the Oil and Gas Law 22/2001 that is, for the first time it is financed by the State Budget, but for the next time it is financed by luran from the Business Entity it is engaged in. In article 50 of the Oil and Gas Law 22/2001 Supervision is also carried out by the National Police and the Oil and Gas Civil Servant Officer, only in its implementation, the Oil and Gas Civil Servant Official must report to the National Police if investigating reports or findings of irregularities in the distribution of fuel and henceforth the results of the investigation are submitted to the National Police for re-investigation before being handed over to the Prosecutor's Office.

Oil and Gas Law 22/2001 Article 50 states various matters related to oil and gas regulatory policies, namely: (1) In addition to investigating officials of the State Police of the Republic of Indonesia, certain Civil Service Officials within the department whose scope of duties and responsibilities include Oil and Gas business activities are given special authority as Investigators as referred to in Law Number 8 of 1981 concerning the Criminal Procedure Law to investigate criminal acts in Oil and Gas business activities. (2) The Civil Service Investigator as referred to in paragraph (1) shall be authorized to:

- a. Conducting an examination of the correctness of report or information received regarding criminal acts in oil and gas business activities;
- b. Conducting examinations of persons or entities suspected of committing criminal acts in oil and gas business activities;
- c. Summoning persons to be heard and examined as witnesses or suspects in criminal cases of Oil and Gas business activities;
- d. Search premises and/or means allegedly used to commit criminal acts in oil and gas business activities;
- e. Inspects the facilities and infrastructure of Oil and Gas business activities and stop the use of equipment suspected of being used to commit criminal acts;
- f. Harassing and/or confiscating oil and gas business activities used to commit criminal acts as evidence;
- g. Brings in the necessary experts in connection with the examination of criminal cases in the activities of the Oil and Gas business;
- h. Stop investigating criminal cases in oil and gas business activities.

(3) The Civil Service Investigator as referred to in paragraph (1) shall notify the commencement of the investigation of criminal cases to the State Police Officer of the Republic of Indonesia in accordance with the provisions of the prevailing laws and regulations; (4) The investigator as referred to in paragraph (1) shall stop his investigation in the event that the event referred to in paragraph (2) point a does not have sufficient evidence and/or the event does not constitute a criminal act; (5) The exercise of authority as referred to in paragraph (2) shall be carried out in accordance with the provisions of the applicable laws and regulations.

The rampant transportation of subsidized diesel oil by oil businesspeople without using an official license is a violation of the criminal law that has been regulated by the Indonesian government. To increase supervision of subsidized oil distribution, Pertamina has basically collaborated with the

Indonesian Police through a Letter of Mutual Agreement (SKB) of Pertamina and the Police Headquarters No. Pol. KEP/34/VII/2004 and Number KPTS-035/C00000/2004-S0 concerning The Security of Kerosene Fuel and Diesel Oil. So it can be said that the National Police has the authority to supervise the distribution of diesel oil in order to prevent and overcome the occurrence of criminal acts related to the distribution of diesel oil or better known as the distribution of illegal diesel oil. Illegal diesel oil distribution is the distribution of diesel oil in contravention of the Oil and Gas Law 22/2001. Furthermore, it is stated in Article 56 of the Oil and Gas Law 22/2001 that if a criminal act is committed by or on behalf of a business entity or permanent business form, charges and criminals are imposed against the business entity or permanent business form and/or its management. The penalty imposed on a business entity or permanent form of business is in the form of a fine, the amount of which is increased by one-third.

Criminal acts allege that any person who abuses the transportation and/or trade of fuel oil, fuel gas, and/or liquefied petroleum gas subsidized by the government as referred to in article 55 of RI Law No. 11 of 2020 concerning Job Creation jo article 55 of RI Law No. 22 of 2001 concerning Oil and Gas jo article 55 jo article 480 of the Criminal Code. The case of Misuse and/or Commercial Transportation of Subsidized Fuel Oil Type of Diesel is a violation of Article 55 of the Oil and Gas Law 22/2001, evidence of the diesel being subsidized by the government is as stated in the Presidential Regulation of the Republic of Indonesia Number 55 of 2005 Jo Presidential Regulation of the Republic of Indonesia Number 9 of 2006, then for the price of each city or regency area refers to these regulations and then poured in the Decree of the City Government or Respective Counties. Criminal liability leads to the conviction of an accuser, if he has committed a criminal act if he has committed a criminal act and meets its elements specified in the law. From the point of view of an act that is prohibited (required), a person will be held accountable for these actions if the act is unlawful for it. Viewed from the point of view of the ability to be responsible, only a person who can take responsibility can be criminalized (Farid, 2010). The term "Criminal Event" or "Criminal Act" is as a translation of the Dutch term "*strafbaar feit*" (Kansil, 2002). In Indonesian addition to the term "criminal event" for the translation of *strafbaar feit* or delict is also known as several other translations of Criminal Acts, Criminal Acts, Punishable Acts, and Punishable Acts.

Methods

The present study uses a normative legal research method that is conducted in finding solutions for legal matters (Isnaini & Utomo, 2019). The research approach used is the statute approach and conceptual approaches.

Discussion

Violations of the loading of subsidized diesel oil without an official permit will receive action from an institution designated by the Indonesian government. The actions taken by the agency include various procedures, namely: investigation, investigation, prosecution, court examination, and judgment. This action is a form of the government in supervising, regulating the provision and distribution of fuel.

The first step taken by the government through the designated Institution is to investigate process. The definition of investigation as stated in the Criminal Procedure Code (KUHP) CHAPTER I general provisions of article 1 point (5) which reads:

"An investigation is a series of investigative actions to search for and find an event suspected of being a criminal offense in order to determine whether or not an investigation can be carried out in the manner provided for in this law."

From the explanation above, the investigation is the first method or action taken by law enforcement officials before the presence of fingerprints or investigations (Isnaini & Wanda, 2017). The purpose is to examine the extent of the truth of information in the form of reports or complaints or direct events that are caught directly by the authorities to legally strengthen the subsequent enforcement. Because authorities cannot arrest, detain, search, confiscate, examine mail, summons, and submit files to the public prosecutor if sufficient evidence or evidence has not been done at the beginning (Utomo, 2020). This can be a mistake in arresting the perpetrator if the authorities do not first test the existing information so as not to degrade human dignity and dignity. The definition of investigation is a series of investigative actions to search for and find an event that is suspected of being a criminal act to determine whether an investigation can be carried out according to the method regulated in the Law (Harun, 1991). In his book M. Yahya Harahap SH, entitled "discussion of the Problems and Application of the Criminal Procedure Code" he stated that before the Criminal Procedure Code took effect "*opsporningh*" or in English terms called "investigation" was a word used to signify investigation. Perhaps an investigation can be equated with an act of expulsion (*opsporing*). What is followed by the act of prosecution is an effort to find and find traces in the form of information and evidence of an event that is suspected of a criminal act. However, during the HIR period, the notion of investigation (*opsporningh*) or investigation was always used chaotically. It is unclear the limitations of the investigation function. So that it often causes indecisiveness in terms of understanding and action (Harahap, 2005).

The next step regarding the problems that arise related to the loading of subsidized diesel without using the applicable permit is the investigation process. In processing a person who is suspected of committing a criminal act, the legal process starts from the investigation stage, in the process of investigation the person authorized to do this is the investigator, the duties and authorities of the investigator, one of which is to receive a report or complaint from someone about the existence of a criminal act in accordance with Article 5 of the Criminal Procedure Code. The investigator in this case the police in accordance with the provisions of Article 1 number 4 of the Criminal Procedure Code, on the report or complaint searches and finds an event that is suspected of being a criminal act to determine whether an investigation can be carried out. Furthermore, after the investigation process is complete, an investigation can be carried out. According to de Pinto, *opsporing* means a preliminary examination by officials for whom the law is appointed as soon as they in any way hear the news that merely argues that there has been a violation of the law (Tresna, 2005). Investigation is a preliminary or preliminary examination activity (*vooronderzoek*) that should be focused on searching or collecting factual evidence of arrests and searches, even, if necessary, it can be followed by detention measures against suspects and confiscation of goods or materials that are suspected to be closely related to the criminal act that occurred. Investigation is a follow-up to investigative activities with strict requirements and restrictions on the use of coercive efforts after the collection of sufficient preliminary evidence to shed light on an event that is reasonably suspected of being a criminal offense (Hatta Isnaini Wahyu Utomo, 2019).

After the investigation process ends, the development of the case continues at the prosecution stage. The definition of prosecution in the Criminal Procedure Code is explained in Article 1 number 7 which reads as follows:

"Prosecution is the act of the public prosecutor to transfer a criminal case to the competent District Court in the case and in the manner provided for in this law with a request to be examined and decided by a judge at the trial court".

To prosecute a defendant before a criminal judge is to submit the case of a defendant with his case file to the judge, with a request that the judge examine and then decide the criminal case against the defendant. The purpose of prosecution is to obtain an injunction from the public prosecutor about the existence of sufficient grounds to prosecute a defendant before a judge (Prodjodikoro, 2008).

The development of the next process is that the trial examination begins with the determination of the day of trial conducted by a judge appointed by the chief justice to hear the case, this is regulated in Article 152 paragraph (1) of the Criminal Procedure Code (Hamzah, 2005). In this case, the judge ordered the public prosecutor to summon the accused and witnesses to appear at the trial court stipulated in Article 152 paragraph (2) of the Criminal Procedure Code. The Criminal Procedure Code distinguishes three types of court hearings. First, the examination of ordinary matters, secondly, the brief examination, and thirdly, the quick examination. Rapid checks are subdivided into minor criminal and traffic violation cases.

The court examination process is followed by evidence in criminal justice. Proof is to convince the judge of the truth of the arguments or arguments put forward in a dispute. Thus, proof is only needed in disputes or cases before a judge or court (Subekti, 2002). The evidentiary process in criminal justice presents several pieces of evidence, namely: witness statements, expert statements, letters, instructions, and statements of the accused. This evidence is important, therefore the judge should not sentence a person unless at least two pieces of evidence are valid and based on the judge's belief that a criminal act actually occurred and the defendant committed the act (Hamzah, 2005).

The final procedure for the liability for the transportation of subsidized diesel oil without a permit is a criminal conviction/sanction. The use of the term criminal itself is interpreted as criminal sanctions. For the same sense, other terms are often used, namely punishment, punishment, punishment, criminal punishment, and criminal punishment. Moeljatno said the term punishment derived from "*straf*" and the term "punished" derived from "*wordt gestraf*" are conventional terms (Moeljatno, 2005). He disagreed with these terms and used unconventional terms, namely criminal to replace the word "*straf*" and threatened with criminal to replace the word "*wordt gestraf*". According to Moeljatno, if "*straf*" means "punishment" then "*strafrecht*" should be interpreted as "law of punishment". The term "punishment" which is a general and conventional term can have a broad and capricious meaning because the term can connote a fairly broad field.

Conclusion

The act of transporting subsidized diesel oil without the permission of the applicable government agency or agency is an unlawful act. The consequences for these violations are regulated by criminal law so that individuals who commit violations must be processed through various procedures, namely investigation, investigation, prosecution, examination in court, and judgment. The procedure is carried out in accordance with applicable regulations. In addition, the procedure aims to carry out the functions of government agencies in charge of supervising the rampant transportation of subsidized diesel oil without being equipped with a permit. Transportation of subsidized diesel oil without a permit is an activity that encourages misappropriation not only related to price but also the distribution flow of the diesel oil. The scarcity and soaring selling price of diesel oil is one of the impacts of subsidized diesel oil transportation activities without being equipped with a permit.

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