

Law Enforcement on Criminal Acts of Fuel Oil Distribution Illegally Subsidized

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ABSTRACT

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Misuse of distribution of fuel oil (BBM) often occurs illegally, to gain individual or business entity benefits by harming the interests of the general public and the state. This act is against the law and can be subject to criminal penalties as regulated in Law Number 22 of 2001 concerning Oil and Gas. This type of research is empirical law using primary data obtained directly from the field through interviews with related parties, while secondary data obtained through library data in the form of primary legal materials, namely binding regulations, secondary and tertiary materials. Research results show, law enforcement against the illegal distribution of subsidized fuel oil (BBM) has never been carried out by the Central Aceh Resort Police, due to the absence of reports from the public. The efforts of police investigators in overcoming the crime of distributing subsidized fuel oil (BBM) in Central Aceh Regency. First, Supervise the distribution of subsidized fuel in cooperation with local governments, as well as coordinate with owners of Public Fuel Filling Stations (SPBU). Second, urge the public to report to the police if it is found that the distribution of subsidized fuel is illegal



Introduction

The Constitution of the Republic of Indonesia in Article 33 paragraph (3) states that the Earth and water and the natural resources contained therein shall be controlled by the State and used for the greatest prosperity of the people. The formulation of Article 33 of the 1945 Constitution, according to Bagir Manan quoted by Suyanto Edi Wibowo, does not merely provide guidance regarding the structure of the economy and the authority of the state to regulate economic activity and the natural resources contained therein, but reflects ideals and a belief that is firmly held and fought for. consistently by the leaders of the nation.¹

This means that the State has absolute sovereignty over the wealth of natural resources and the legal ownership rights to natural wealth are the people of Indonesia. "The right of state control is an instrument while the greatest prosperity of the people is the ultimate goal of natural wealth management".² The state's right to control over natural resources does not mean that it is owned by the state, but instead gives authority to the state to:

1. Regulate and administer the allotment, use, supply and maintenance of earth, water and space.
2. Determine and regulate legal relations between people and the earth, water and space.

¹ Suyanto Edi Wibowo. "Memahami Makna Pasal 33 Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 Perihal Penguasaan Oleh Negara Terhadap Sumber Daya Alam". *Jurnal Legislasi Indonesia*, Vol. 14, No. 2, (Desember 2015): p. 2

² Clara C. M. U. Rusyuniardi. "Kekuatan Mengikat Izin Usaha Pertambangan Dalam Hukum Pertambangan di Indonesia" *Lex Et Societatis* Vol. 8.1.(2020):148-155

3. Determine and regulate legal relations between people and actions regarding earth, water and space.³

That oil and natural gas are strategic non-renewable natural resources controlled by the state and are vital commodities that control the livelihood of many people and have an important role in the national economy so that their management must be able to maximize the prosperity and welfare of the people. In addition, Oil and Gas (Oil and Gas), which are Natural Resources controlled by the state, play an important role in the supply of industrial fuel, meeting important needs, so management needs to be carried out as much as possible so that it can be utilized for the greatest possible prosperity and welfare of the people.⁴

People's need for fuel oil (BBM) is increasing along with the increase in the number of motorized vehicles. This need for fuel oil (BBM) can be obtained by the public through Public Fuel Filling Stations (SPBU). In order to help the community's need for fuel oil (BBM), the government implements a policy by way of subsidizing fuel oil (BBM). Subsidies are budget allocations that are channeled through companies/institutions that produce, sell goods and services, which meet the needs of many people in such a way that the selling price can be reached by the community.⁵

The provision of subsidized fuel oil (BBM) is a government program aimed at helping people with low economic capacity in running their businesses and activities of daily living, so that the selling price of fuel oil (BBM) can be reached by the public, by issuing a regulation of the Minister of Energy and Mineral Resources. Mineral Resources Number 36 of 2016 concerning the Acceleration of the Enforcement of One Price for Certain Types of Fuel Oil and Special Types of Fuel Oil for National Assignments. Dingtji Munawar stated that the concept of subsidized fuel oil (BBM) is:⁶

1. Fuel subsidy is the difference between the fuel price determined by the Presidential Regulation (retail price) and the benchmark fuel price;
2. Subsidized fuel is provided to help stabilize the price of goods (BBM) which has a broad impact on the community;
3. Subsidized fuel is a fuel that concerns the livelihood of many people and has a specificity due to certain conditions, such as its type/packaging and its users so that it still has to be subsidized and designated as Specific Fuel (BBT);
4. In subsidized fuel, an administered price policy is applied for the types of Premium BBM, Kerosene, and Diesel, so that the selling price of the commodity is cheaper than the market price; and
5. Channeled through state companies (Pertamina) and strived to be more targeted.

Subsidies are the government's efforts by channeling the budget to producers of goods and services in the framework of public services so that people can fulfill their daily needs at a more affordable purchase price for these subsidized public goods and services. So it can be

³ Akhmad Zulkifli. "Analisis Yuridis Tentang Konsep Hak Menguasai Negara Sumber Daya Alam Di Laut Dalam Wilayah Hukum Indonesia". *Belom Bahadat*, Vol. 9, No. 2, (Desember 2019): p. 5-6

⁴ Reyhard Jonathan Illey, Deassy Jacomina Anthoneta Hehanussa, and Lionie Lokollo. "Teknik dan Taktik Penimbunan Bahan Bakar Minyak (Studi Kasus Pada Direktorat Krimsus Polda Maluku)". *TATOH: Jurnal Ilmu Hukum*, Vol. 1, No. 7, (Oktober 2021): p. 697-707.

⁵ Petrus Pidi Seda Supriyadi, and Samsul Wahidin. "Kedudukan Program Subsidi Bahan Bakar Minyak Dan Penghapusannya Dalam Perspektif Teori Negara Kesejahteraan". *Merdeka Law Journal*, Vol. 1, No. 2, (May 2022): p. 112-124.

⁶ Janita S. Meliala. "Upaya Optimalisasi Penghematan Subsidi Bahan Bakar Minyak (BBM) Agar Tepat Sasaran". *Binus Business Review*. Vol. 5 No. 1 (Mei 2014): 333-343

concluded that subsidies are government assistance in the form of financial assistance paid to producers and consumers of a business or economic sector for certain goods/services.⁷ In the midst of difficult conditions faced by the Government, due to the increasing demand for subsidized fuel oil and rising fuel prices on the world market, certain parties, both individuals and corporations, have committed irresponsible acts in the form of: copying, stockpiling, smuggling, transportation and sales. to the Subsidized Fuel Oil (BBM) industry. The act aims to gain profit for oneself or the corporation at the expense of the interests of the people (society).⁸

As is the case in the case of misuse of distribution of fuel oil (BBM) illegally at the Lemah Burbana gas station, Jl. Lebe Kader, Bebesen Sub-district, Takengon City, as much as 1,000 (one thousand) liters by car, to obtain individual or business benefits by harming the interests of the community and the state. When referring to the provisions of Article 55 of Law Number 22 of 2001 concerning Oil and Gas, the illegal distribution of subsidized fuel oil is actually qualified as a crime and the perpetrators can be subject to criminal sanctions with imprisonment for a maximum of 6 (six) years and a maximum fine of Rp. 60,000,000,000.00 (sixty billion rupiah). Based on the description above, the problems that will be investigated and discussed in this study can be formulated, namely: First, how is law enforcement against perpetrators of criminal acts of distributing subsidized fuel oil (BBM) illegally in Central Aceh Regency. Second, the Efforts of Police Investigators in Law Enforcement of Criminal Acts of Illegally Distributing Subsidized Fuel Oil (BBM) in Central Aceh District?

Research Methods

This type of research is empirical law using primary data obtained directly from the field through interviews with related parties, while secondary data obtained through library data in the form of primary legal materials, namely binding regulations, secondary and tertiary materials.⁹ The method of data collection is done by: 1). Observation Namely collecting data needed in this study by direct observation of the object of research; 2). Interviews are holding a direct question and answer process to respondents with structured questions related to problems; and 3). Literature review to complete the data needed in this research. Furthermore, the data that has been collected will be analyzed descriptively qualitatively, the researcher in analyzing intends to provide an overview or explanation of the object of research by using sentence descriptions to explain the relationship between the existing theory and the reality in the field.

Results and Discussion

1. Law Enforcement Against Criminal Acts of Illegally Distributing Subsidized Fuel Oil (BBM) in Central Aceh District

Crude oil and natural gas, hereinafter referred to as Oil and Gas, are one of the most important and strategic natural resources for human life in the world today. Indonesia as a country that has various natural resources such as oil, coal, gas, nickel built in mining.

⁷ Julian Muhammad Hasan. "Dampak Pencabutan Subsidi BBM Bagi Keuangan Negara Indonesia Dalam Perspektif Good Governance". *Jurnal Renaissance*, Vol. 3, No. 1, (Mei 2018): p. 301.

⁸ Aprillani Arsyad. "Kebijakan Kriminal Penanggulangan Penyalahgunaan Bahan Bakar Minyak (BBM) Bersubsidi". *INOVATIF : Jurnal Ilmu Hukum*, Vol. 6, No.7, (Juli 2017): p. 38.

⁹ Achmad Surya and Suhartini. "Efektivitas Penyelesaian Tindak Pidana Ringan Melalui Lembaga Adat (Sarak Opat)". *Jurnal Hukum IUS QUIA IUSTUM*, Vol. 26, No. 1, (Januari 2019): p. 91-112

These sources are an important and strategic part in improving the economy in Indonesia. Based on that thought, oil and gas are controlled by the State, and the meaning of the word control is; that the Government on behalf of the State controls all rights contained in oil and gas resources, namely property rights, mining rights and economic rights.

Therefore, the establishment of Law Number 22 of 2001 concerning Oil and Gas became the basis for significant changes in the regulatory system regarding matters relating to the implementation of Oil and Gas business activities. Further Regulation of the Minister of Energy and Mineral Resources Number 16 of 2011 concerning Oil Fuel Distribution Activities, explains about Business Entities Holding General Trading Business Permits (BU-PIUNU), which are Business Entities that have obtained Business Permits to carry out General Fuel Trading Business Activities. Oil in accordance with the provisions of the legislation.

The distribution of certain types of fuel is described in Article 12 of the Regulation of the Minister of Energy and Mineral Resources Number 16 of 2011 concerning the Distribution of Oil Fuels. Explains as follows: "BU-PIUNU which gets an assignment from the Regulatory Agency and its Distributors is obliged to distribute certain types of fuel to certain consumers in a right target and right volume, at a price in accordance with the provisions of the legislation. Distribution of Fuel Oil (BBM) is the distribution of BBM to BBM consumers. The stock of fuel at the Pertamina Depot is distributed to gas stations using tank cars to gas stations in the Regency/City area.

According to M. Zohri, one of the owners of a gas station in Central Aceh Regency, before sending fuel, the gas station party went through a real request by carrying out a loading order. Furthermore, the request for fuel by the gas station waits to be distributed after the gas station makes a payment transaction to PERTAMINA. The loading order is obtained the day before the distribution of BBM. Then after the loading order is issued, new fuel is distributed to gas stations based on the realization of the gas station request which is carried out with 8000 L, 16000 L, or 24000 L tank cars.

Central Aceh Regency has 5 fuel filling stations (SPBU) operating, namely, 1 gas station operating in Jagong Jeget District, 2 gas stations operating in Bebesen District, and 1 gas station operating in Kebayakan District. According to PT Pertamina Patra Niaga's Sales Branch IV Aceh Sales Manager, Allan Cipta Wijaya, each gas station (SPBU) at three points around Takengon City receives a supply of 16,000 liters per day from Pertamina. Not infrequently the gas stations at three points in Central Aceh Regency lasted for two days.

With the increasing demand for Subsidized Fuel Oil (BBM) and the rising price of fuel in the world market, there are certain parties, both individuals and corporations who commit irresponsible acts in the form of: copying, stockpiling, smuggling, transporting and selling to industry. The act aims to gain profit for oneself or the corporation at the expense of the interests of the people (society). The same thing is stated by Randhya Sakthika Putra, et al, the misuse of subsidized fuel oil (BBM) is very likely to occur at the distributor or retailer level with the mode, for example subsidized fuel oil (BBM) which should be intended for household or individual users but is instead sold to industry.¹⁰

¹⁰ Randhya Sakthika Putra, Iyah Faniyah, and Adhi Wibowo. "Efektivitas Penegakan Hukum Terhadap Tindak Pidana Penyalahgunaan Bahan Bakar Minyak Bersubsidi (Studi Pada Satuan Reserse Kriminal Kepolisian Resor Pasaman Barat)". *UNES Journal Of Swara Justisia*, Vol. 2, No. 4, (Januari 2019): p. 420-431.

As happened at gas station 14-245-438 Jl. Lebe Kader Sp. Weak Burbana Kemili Village, Takengon City, there was an illegal distribution of 1,000 (one thousand) liters of fuel oil (BBM) to gain individual or business benefits by harming the interests of the public and the state. Based on the confession from the gas station officer Lemah Burbana, the mode of abuse of the distribution of subsidized fuel oil is carried out by inserting diesel fuel oil and pertalite into 10 (ten) jerry cans measuring 40 liters, then raising all jerrycans measuring 40 liters into the car tub. Then the perpetrators take them to a place for distribution to oil retailers in every village in Central Aceh Regency.

Zulfandiara added, the type of fuel oil (BBM) that is often carried out by perpetrators of the type of Pertalite and Solar, is because people still have a lot of interest in using this type of fuel. Then the price of fuel purchased by the perpetrators at gas stations is the same as the market price of the whole of Aceh in accordance with government regulations, such as pertalite of Rp. 7.650 / liter and diesel Rp. 5,150 / liter, sold to retailers is usually more expensive than the market price.

From the explanation above, the misuse of Subsidized Fuel Oil (BBM) includes the following actions:

1. Compounding: mixing fuel with water, or various other types of fuel so that the quality decreases, or with used oil and so on so that the profits obtained are greater.
2. Deviation in the allocation of Oil Fuel: namely the act of diverting the allocation of Subsidized BBM which should be distributed to the general public but is sold to industry, due to the large price difference.
3. Transportation and sales of subsidized fuel to foreign countries due to the large price difference.

The above actions can certainly be aimed at benefiting oneself or a business entity (corporation), without regard to the losses caused by their actions. Therefore, this act should be classified as a "crime" as stated in Article 57 paragraph (2) of Law Number 22 of 2001 concerning Oil and Gas as follows: "Criminal acts as referred to in Article 52, Article 53, Article 54, and Article 55 are crimes". Such acts may be subject to 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 punishment in the form of revocation of rights or confiscation of goods used for or obtained from criminal acts in oil and gas business activities. For this reason, the role of law enforcement officers, especially the police, is needed to carry out investigations and investigations of fraudulent acts for the realization of law enforcement. Talking about law enforcement, essentially we are talking about the enforcement of ideas and concepts which in fact are abstract. In another formulation, law enforcement is an attempt to make these ideas a reality. Law enforcement is one of the efforts to tackle crime rationally, fulfill a sense of justice and be efficient. In order to cope with various means as a reaction that can be given to perpetrators of criminal acts, in the form of criminal and non-criminal means, which can be integrated with one another."¹¹

According to Amran Mukhtar as the Head of the Tipiter of the Central Aceh Police, law enforcement must of course carry out legal processes when they find out that there has been a violation of the law. However, the police cannot simply carry out law enforcement processes against perpetrators of illegally distributing subsidized fuel, because there are

¹¹ Yusnanik Bakhtiar. "Kebijakan Hukum Pidana Dalam Penyelesaian Kekerasan Bullying di Sekolah". *Legitimasi*, Vol. VI No. 1. (2017): 114-127.

no reports from the public. The same thing was stated by Ibrahim as the Head of Criminal Investigation of the Central Aceh Police, in accordance with the duties and obligations of the police as investigators, the investigator must first receive a report from the public about the occurrence of a criminal act of misuse of subsidized fuel oil (BBM), after a report has been received. The police will take action against the perpetrators in accordance with applicable laws and regulations. However, when we have received no reports from the public regarding the crime of misuse of subsidized fuel oil, we have received no reports from the public. Based on the explanation above, law enforcement against the illegal distribution of subsidized fuel oil (BBM) has never been carried out by the Central Aceh Resort Police, because in carrying out legal action against the perpetrators of distributing subsidized fuel illegally, there needs to be a report from the public in advance, as stated above. emphasized in Article 108 paragraph (2) of the Criminal Procedure Code (KUHAP) that anyone who knows of evil conspiracy/or commits a crime against public peace and security or against life or property rights must immediately report the matter to the public. investigator. Therefore, investigators from the Aceh Resort Police are experiencing obstacles in law enforcement of the criminal act of distributing subsidized fuel oil (BBM).

2. *The Efforts of Police Investigators in Law Enforcement of Criminal Acts of Illegally Distributing Subsidized Fuel Oil (BBM) in Central Aceh District*

The essential problem in law enforcement in Indonesia is not only about unresponsive legal products, but also comes from the factors of law enforcement officers. To lay the foundation for law enforcement, the main pillar is law enforcers who are able to carry out good commitment and dedication. Because as long as the dirty broom has not been cleaned, then any talk of justice will be empty, *as long as the dirty broom is not cleaned, any talk of justice will be empty.*¹²

The Police of the Republic of Indonesia, hereinafter referred to as Polri, are law enforcement officers in tackling criminal acts. As we know that the National Police is a sub-system in realizing the goals of the criminal justice system, especially in the context of crime control. Crime control or prevention is one of the targets that gets attention in the working of the criminal justice system.¹³

The existence of the police agency as one part of law enforcement whose existence is legally regulated in Law Number 2 of 2002 concerning the State Police of the Republic of Indonesia, especially in Article 5 it is stated that the State Police of the Republic of Indonesia is a State instrument that plays a role in maintaining security and public order. enforce the law, and provide protection, protection, and services to the community in the context of maintaining domestic security. As an effort to tackle crime, Barda Nawawi Arief said that crime prevention efforts can be taken in several ways, namely: 1). Criminal law application; 2). Prevention without punishment; and 3). Influencing public views on crime

¹² Mukhidin. "Hukum Progresif Sebagai Solusi Hukum Yang Mensejahterakan Rakyat". *Jurnal Pembaharuan Hukum*. Volume 1. No.3.(2014): 267.285

¹³ Achmad Budi Waskito. "Implementasi Sistem Peradilan Pidana Dalam Perspektif Integrasi". *Jurnal Daulat Hukum*. Vol. 1. No. 1. (2018): 287-304

and punishment through mass media (influencing views of society on crime and punishment/mass media).¹⁴

The law enforcement process against the perpetrators of the illegal distribution of subsidized fuel oil (BBM) should be carried out strictly, considering that the Police have signed a Joint Agreement (SKB) with Pertamina and the National Police Headquarters No. Pol. KEP/34/VII/2004 and Number KPTS-035/Co000/2004-So concerning Safeguarding Kerosene and Diesel Oil. However, in reality, the perpetrators of the criminal act of distributing subsidized fuel oil (BBM) illegally in Central Aceh Regency have not yet been tried and imposed sanctions in accordance with the provisions of Law Number 22 of 2001 concerning Oil and Gas. Therefore, the Central Aceh District Police will carry out several efforts to overcome the criminal act of distributing subsidized fuel, including:

a. Supervise the Distribution of Subsidized Fuel

The distribution and supervision of Fuel Oil is basically the responsibility of the Government in this case the Central Government through the Regulatory Body which is a government institution which in carrying out its functions, duties and authorities is independent, in accordance with Government Regulation of the Republic of Indonesia Number 67 of 2002 concerning the Regulatory Agency for the Provision and Distribution of Oil Fuel and Natural Gas Transportation Business Activities Through Pipes¹⁵.

Regarding the supervision of the distribution of fuel oil, BPH Oil and Gas has entered into an MoU and a cooperation agreement with the Provincial Government as well as the Regency/City Government. In addition, the authority of the Regional Government in supervision is confirmed in Article 18 of the Presidential Regulation of the Republic of Indonesia Number 71 of 2005 concerning the Provision and Distribution of Certain Types of Oil Fuel, namely: (1) The Regional Government may assist the Directorate General in supervising the fulfillment of safety aspects in the distribution of Oil Fuel; (2) The Regional Government may assist the Regulatory Body in supervising the implementation of the distribution of certain types of fuel¹⁶.

According to Ibrahim as Head of Criminal Investigation Unit of the Central Aceh Resort Police, based on this provision, the police will cooperate with the local government in this case the relevant agencies to supervise the distribution of subsidized fuel directly at gas stations, as well as coordinate with the owners of public refueling stations (SPBU) and fuel oil pump filling officers, so as not to serve refills repeatedly by vehicles with the same police number and immediately report to the police in order to take immediate action.

b. Calling on the Public to Report to the Police if they Find the Distribution of Subsidized Fuel Illegally

The Criminal Procedure Code in Article 108 paragraph (1) (2) (3) confirms that everyone who experiences, sees, witnesses and or becomes a victim of a crime has the

¹⁴ Faisal , Muhammad Rustamaji. "Pembaruan Pilar Hukum Pidana Dalam RUU KUHP". *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)*, Vol. 10 No. 2 (Juli 2021): 291-308

¹⁵ Nur Fitriani Khairunnisa. "The International Legal Review of the Managemen of Oil and Gas in Indonesia". *Tadulako Law Review*. Volume 1 Issue 1, (June 2016): pp. 55-75.

¹⁶ Nadia Silvana Kussoy. "Pemberlakuan Ketentuan Pidana Berdasarkan Undang-Undang Nomor 22 Tahun 2001 tentang Minyak dan Gas Bumi". *Lex Privatum* Vol. 9.No. 11.(2021): 147-157.

right to report to the police (investigator or investigator)¹⁷. Therefore, reports from the public to the police regarding the discovery of the distribution of subsidized fuel oil play an important role in efforts to overcome the crime of distributing subsidized fuel oil. According to Ibrahim, with the report and sufficient preliminary evidence, an investigation can be carried out to find the perpetrators. With this report, it is hoped that cases of criminal acts of distributing subsidized fuel oil (BBM) in Aceh Tengah Regency can be uncovered, therefore the public should be able to cooperate with the police to report if there are allegations of illegal distribution of subsidized fuel oil.

Based on the description above, the efforts of police investigators in overcoming the crime of distributing subsidized fuel oil (BBM) in Central Aceh Regency, First. Supervise the distribution of subsidized fuel in cooperation with local governments, as well as coordinate with owners of Public Fuel Filling Stations (SPBU), so as not to serve refills repeatedly by vehicles with the same police number. Second, urge the public to report to the police if it is found illegal distribution of subsidized fuel, because reports from the public to the police regarding the discovery of the distribution of subsidized fuel oil play an important role in efforts to overcome the crime of distributing subsidized fuel oil.

Conclusion

Law enforcement against the illegal distribution of subsidized fuel oil (BBM) has never been carried out by the Central Aceh Resort Police, due to the absence of reports from the public. Therefore, the investigators of the Aceh Resort Police are experiencing obstacles in law enforcement of the criminal act of distributing subsidized fuel oil (BBM). The efforts of police investigators in overcoming the crime of distributing subsidized fuel oil (BBM) in Central Aceh Regency. First, Supervise the distribution of subsidized fuel in cooperation with local governments, as well as coordinate with owners of Public Fuel Filling Stations (SPBU). Second, urge the public to report to the police if it is found that the distribution of subsidized fuel is illegal.

Suggestion

The regional government needs to supervise every gas station in Takengon City, because if there is no supervision of gas stations, it is feared that irregularities will occur in terms of distribution. and It is hoped that the public, if there is an act of distributing subsidized fuel oil to report the act to law enforcement agencies, so that the act can be dealt with strictly according to the applicable laws and regulations.

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¹⁷ Danu Aryadi. "Penyidikan Tindak Pidana Penyalahgunaan Gas Elpiji Bersubsidi Pada Satuan Reserse Kriminal Polres Sawahlunto". *UNES Journal of Swara Justisia*, Vol.4.1 (2020): 25-32

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