



LEGAL ANALYSIS OF CRIMINAL SANCTIONS AGAINST PERPETRATORS OF CRIMINALS CARRYING OUT OIL AND GAS BUSINESS ACTIVITIES WITHOUT A TRADING BUSINESS LICENSE

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ABSTRACT

In practice, there are still many people who trade in fuel oil without a trade permit in large quantities, even though Law Number 22 of 2001 and its implementing regulations have stipulated that the sale of fuel oil in the form of gasoline or diesel must have a permit first, in accordance with the provisions that have been previously determined. The factors causing the occurrence of criminal acts without a license to carry out oil business activities, there are two main factors that are the cause, namely internal factors and external factors. Internal factors are factors originating from within the perpetrator, namely in the form of intentions, economic factors and moral and educational factors. External factors are factors originating from outside the perpetrator, such as lack of supervision of illegal fuel. Based on the problems raised, it is known that efforts to prevent and overcome criminal acts without a permit to carry out petroleum business activities are through preventive, repressive and reformative measures by law enforcement officers and community leaders. It is recommended that the police and related agencies be more active in supervising the implementation of petroleum business activities.

1. Introduction

The issuance of Law Number 22 of 2001 concerning Oil and Gas brought about fundamental changes in the oil and gas industry in Indonesia. The monopolistic nature of Law Number 8 of 1971 was replaced by a spirit of liberalism and business competition. Private and foreign businesses, previously barred from engaging in downstream oil and gas business activities, were now permitted.

Oil and gas mining authority in the upstream sector was returned to the government (previously held by Pertamina). In the downstream sector, Law Number 22 of 2001 mandated the opening of sectors previously monopolized by Pertamina. Upstream business activities were established by a state-owned legal entity called the Upstream Oil and Gas Business Implementing Agency (BP Migas), which is tasked with signing cooperation contracts and overseeing the implementation of cooperation contracts previously held by Pertamina.





In the downstream sector, a Regulatory Agency (BPH Migas) was established to oversee the implementation of downstream oil and gas activities, particularly the availability and distribution of certain fuels (BBM) and natural gas distribution business activities in the domestic market. Initially, this was the responsibility of Pertamina. Pertamina became a state-owned company (Persero) and will act as a player in the oil and gas business in both the upstream and downstream sectors. Downstream business activities, as referred to in Article 5 paragraph (2), are conducted through fair, healthy, and transparent business competition mechanisms, as stipulated in Article 7 paragraph (2) of Law Number 22 of 2001. Law Number 22 of 2001 regulates downstream business activities, namely, the requirement for a management business permit, a storage business permit, a transportation business permit, and a sales or trading business permit. There are still many people in the community who trade in fuel oil without a business permit in large quantities, even though Law Number 22 of 2001 and its implementing regulations have stipulated that the sale of fuel oil in the form of gasoline or diesel must have a permit first, in accordance with the provisions that have been previously determined.

2. Research Method

The type of legal research used is normative juridical. Normative juridical research is research that places norms as the object of research, whether legal norms in legislation or legal norms derived from a statute.

This research is descriptive in nature. Descriptive research aims to provide the most accurate data possible. This descriptive research begins with collecting data related to the discussion above, then compiling, classifying, analyzing, and interpreting the data to obtain a clear picture of the phenomenon being studied.

Data collection used a library research method. In this case, data was obtained from various literature sources, including scientific books, laws and regulations, and other documentation such as magazines, journals, and other theoretical sources related to the crime of conducting oil and gas business activities without a business license.

3. Research Results And Discussion

Law Number 22 of 2001 concerning Oil and Natural Gas, as an implementation of Law Number 8 of 1971 and Law Number 44 Prp. of 1960, contains the basic substance regarding the provision that oil and natural gas, as strategic natural resources contained within the Indonesian mining jurisdiction, constitute





national assets controlled by the state. Their management is carried out by the government, as the holder of the mining concession for upstream business activities. Downstream business activities are carried out after obtaining a business permit from the government.

Oil and natural gas sales activities significantly impact national development because sales that do not comply with these procedures can certainly be detrimental and reduce state revenues through taxes. Natural resources, one of which is oil and natural gas, are fully controlled by the state, which embodies a pattern of equitable development and prosperity.

The provisions contained in the legislation contain a number of criminal provisions specifically governing criminal penalties. These provisions represent the scope of criminal offenses committed against those operating in the oil and gas processing sector. These provisions are regulated in Chapter IX of Law Number 22 of 2001 concerning Oil and Gas.

Activities involving the processing, transportation, and storage of oil and gas without government permits are subject to criminal provisions, such as those contained in Article 53 of Law Number 22 of 2001 concerning Oil and Gas.

This Government Regulation (PP) contains the main provisions regarding the establishment and status of implementing agencies, transportation, sales, assets, financing and organizational management, personnel, and the annual budget and work plan.

The criminal provisions for misuse of transportation and trade are expressly regulated in Article 55 of Law Number 22 of 2001 concerning Oil and Gas. Any person who misuses the transportation and/or trade of fuel, whether petroleum, gas fuel, or processed fuel subsidized by the government, without a transportation permit and/or trade permit from the competent authority, is subject to criminal penalties in accordance with applicable provisions.

According to the explanation of Article 55 of Law Number 22 of 2001 concerning Oil and Gas, misuse is defined as any activity aimed at obtaining personal or corporate profit in a manner detrimental to the interests of the public and the state, such as fuel adulteration, misappropriation of fuel allocations, transportation and sale of fuel, and transportation and sale of fuel abroad.

The principal criminal provisions governing misuse and/or trade also include additional penalties in the form of revocation of rights or confiscation of goods used for or obtained from criminal acts in oil and gas business activities.

Article 23 paragraph (1) of Law Number 22 of 2001 concerning Oil and Gas explains that downstream business activities carried out by business entities must obtain a business permit from the government, which includes the following activities: transportation, trade, processing, and storage of fuel.



Likewise, upstream business activities include exploration and exploitation. If the four types of business activities mentioned above do not have a business permit to carry out these activities, then the business activities are considered illegal.

Perpetrators of criminal acts without a permit who carry out petroleum business activities must be subject to sanctions for their actions. Conceptually, the core and meaning of law enforcement lies in the activity of harmonizing the relationship between values outlined in established rules and attitudes as a series of final-stage value elaborations to create, maintain, and preserve peaceful social interactions.

These rules then serve as guidelines or benchmarks for appropriate or proper behavior or attitudes. These behaviors or attitudes aim to create, maintain, and preserve peace.

Law is the foundation of societal hope and trust for regulating social interactions. Law is the embodiment or manifestation of values of trust. Law enforcement is expected to be trustworthy and uphold the authority of the law, which essentially means upholding values of trust within society.

The policies to be implemented will encompass law enforcement activities primarily aimed at improving order and legal certainty in society, thereby strengthening the coordination system and harmonizing the duties of law enforcement agencies. This is accomplished, among other things, by streamlining the functions, duties, powers, and authorities of institutions tasked with enforcing the law according to their respective professional scopes and based on a sound system of cooperation.

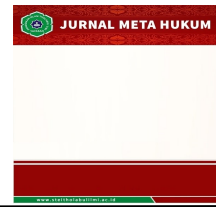
According to Soerjono Soekanto, law enforcement as a process is essentially the application of discretion involving decision-making that is not strictly regulated by legal rules but contains elements of personal judgment. Discretion essentially lies between law and morality (ethics in the narrow sense).

Law enforcement in this article is limited to those directly involved in the field of law enforcement, which encompasses not only law enforcement but also peacekeeping. This group includes those serving in the judiciary, prosecutors, police, legal services, and correctional services.

Sociologically, each law enforcer has a status and a role. A social status is a specific position within the social structure, which may be high, medium, or low. This status is essentially a framework containing rights and obligations that constitute a role. Therefore, a person holding a specific position is commonly called a role occupant.

Data obtained by a business entity or permanent establishment in its working area may be used by the business entity or permanent establishment during the term of the cooperation contract. Upon termination of the cooperation contract,





the business entity or permanent establishment is required to submit all data obtained during the cooperation contract to the minister through the implementing agency.

Confidentiality of data obtained by a business entity or permanent establishment in a work area is valid for a specified period. The government regulates, manages, and utilizes data to plan and prepare for the opening of the work area. Implementation of provisions regarding data ownership, duration of use, confidentiality, management, and utilization are further regulated by Government Regulation.

The criminal offense referred to is that any person conducting a general survey without authorization shall be punished with a maximum of 1 (one) year's imprisonment or a maximum fine of Rp. 10,000,000,000.00 (ten billion rupiah) as intended to support the preparation of a work area for a general survey conducted by or with the permission of the Government.

Any person sending, submitting, or transferring data without authorization in any form shall be punished with a maximum of 1 (one) year's imprisonment or a maximum fine of Rp. 10,000,000,000.00 (ten billion rupiah). Data obtained from general surveys and/or exploration and exploitation are state property controlled by the government. Data obtained by a business entity or permanent establishment in its working area may be used by the business entity or permanent establishment during the term of the cooperation contract.

Crimes occur due to various economic and social factors, which are the main factors influencing crime. Crime can be overcome if the economic or social conditions that influence a person towards criminal behavior can be restored to a better direction. Improvements to the economic and social environment are essential to reduce the number of criminal acts.

Incidents of crime or criminal activity in society dominate daily news coverage in Indonesia, both in print and electronic media. These crimes include the illegal misuse of subsidized fuel, an activity that involves collecting, storing, and storing fuel without a permit in a location that is not based on or in accordance with a management business permit recommended by the regional government, as stipulated in Article 23 paragraph (1) of the Fuel and Fuel Law.

Illegal misuse of fuel has the specific intent and purpose of profiting by exploiting or profiting from a location or region experiencing fuel shortages. Illegal misuse of fuel without a permit is the activity of processing, purchasing, moving, and/or storing fuel by purchasing fuel when it is still in good condition. The fuel is stored and then resold at a price that has been inflated from the original normal price, when a location or region experiences a fuel shortage.



The frequent occurrence of fuel misuse is due to police delays and a lack of coordination with gas stations, the fuel suppliers, in solving these cases. This is due to numerous obstacles faced by the relevant parties. These include limited personnel on duty, inattentive service providers, and a lack of customer oversight. These factors allow perpetrators to exploit the opportunity to freely misuse fuel without strict oversight from the relevant parties.

These business activities require a permit or procedure to be fulfilled. According to Article 2 of Government Regulation No. 36 of 2004 concerning Downstream Oil and Gas Business Activities, Downstream Business Activities are carried out by Business Entities that have a Business License issued by the Minister and are organized through a fair, healthy, and transparent business competition mechanism. Business Entities conducting Downstream Business Activities must first obtain a business license. Business Entities submit a Business License application to the Minister of Energy and Mineral Resources through the Director General of Oil and Gas, attaching administrative and technical requirements. Applications will be further processed if they have been completed and meet the specified administrative and technical requirements. All application documents will be returned if the administrative and technical requirements are incomplete. If the application is rejected, the Business Entity may reapply with all required documents. Completed administrative and technical requirements will be assessed and evaluated by the Directorate General of Oil and Gas.

The high number of criminal acts involving unlicensed petroleum business activities is due to several influencing factors. In addition to internal factors, the perpetrators are also influenced by environmental factors and external influences. These two factors are the primary causes of the rise in criminal acts involving unlicensed petroleum business activities. The factors causing criminal acts involving unlicensed petroleum business activities will be further broken down into two main factors: internal and external factors.

The high demand for fuel has led unscrupulous perpetrators of unlicensed oil business operations to sell illegal fuel to industry. This is one factor contributing to the rise in unlicensed oil business operations.

The high demand for fuel for industry means that supervision should not only focus on perpetrators but also on prevention by reducing demand for this illegal fuel. This has resulted in the ineffectiveness of the maximum oversight conducted by the police and Pertamina. Preventing the demand for illegal fuel requires cooperation between several government agencies.

Efforts to address unlicensed oil business operations must be implemented. Any effort to achieve effective long-term social order must be based on a theory of legitimate human behavior. This social order must be implemented through





crime prevention, the development of lawbreakers, and the prosecution of those who violate the law.

Crime prevention efforts are part of criminal policy. This criminal policy can be defined in the narrow, broader, and broader sense. Crime prevention, in the narrow sense, is described as the overall principles and methods that underlie responses to criminal violations. Prevention, in the broadest sense, encompasses the entire function of law enforcement officials, including the workings of the courts and the police. In its broadest sense, it encompasses the entirety of policies implemented through legislation and official bodies, aimed at upholding central societal norms.

For crimes involving unlicensed petroleum business activities committed by individuals, an integrated team must be formed within the law enforcement bureaucracy, comprised of experts from various disciplines, such as psychology, anthropology, criminology, sociology, criminology law, and community leaders. This is due to the numerous causal factors that contribute to unlicensed petroleum business activities, which involve various aspects.

Preventing or addressing unlicensed petroleum business activities, as well as other crimes, is not solely the responsibility of the police but also the community. With the integration between the formal and informal figures mentioned above, it is hoped that legal awareness will increase, that criminal acts involving oil business activities without a permit are truly prohibited and are subject to punishment by the state (Criminal Code), religion and prevailing customs.

4. Conclusion

Legal regulations regarding oil and gas business activities without a business license are regulated in Law Number 22 of 2001 concerning Oil and Gas, Government Regulation Number 36 of 2004 concerning Downstream Oil and Gas Business Activities. Based on the provisions of Article 53 letter (d) of Law Number 22 of 2001 concerning Oil and Gas, trading as referred to above without a business license is punishable by a maximum of 3 (three) years' imprisonment and a maximum fine of Rp. 30,000,000,000.00 (thirty billion rupiah).

There are two main factors contributing to the occurrence of criminal acts of conducting oil and gas business activities without a business license: internal and external factors. Internal factors are factors originating from within the perpetrator, such as intent, economic factors, moral factors, and education. External factors are factors originating from outside the perpetrator, such as a lack of supervision of illegal fuel.





Obstacles faced in overcoming criminal acts of conducting petroleum business activities without a permit are the absence of provisions governing the maximum amount of subsidized fuel that can be sold freely to the public, the absence of a minimum criminal limit, the implementation of criminal fines against corporations, licensing procedures. Efforts to prevent and overcome criminal acts of conducting petroleum business activities without a permit are through preventive, repressive and reformative measures by law enforcement officials and community leaders.

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