

Law Enforcement Against Criminal Acts of Subsidized Liquefied Petroleum Gas Abuse in Indonesia

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Abstract

Income generated from the oil and gas industry plays a pivotal role in national development. This research adopts a deductive approach, incorporating both the Statute Approach and the Case Approach. The primary objective of this study is to examine the legal aspects of enforcing regulations related to the misuse of subsidized Liquefied Petroleum Gas (LPG) in Jakarta. In response to the significant public demand for oil and natural gas, the government has implemented measures to replace Kerosene with LPG, aiming to reduce fuel subsidies and ease the financial burden on the state. This research is rooted in the Law Enforcement Theory and Punishment Theory, employing a normative juridical approach supplemented by empirical data. The findings reveal that instances of criminal misuse of subsidized LPG gas often involve willing perpetrators without coercion. Consequently, legal consequences are administered in accordance with Article 55 of the Oil and Gas Law and Article 113 of the Trade Law. In a societal context, these actions have adverse consequences, particularly affecting disadvantaged individuals and small-scale businesses, potentially limiting their access to government-regulated subsidized 3-kilogram LPG gas. Therefore, the enforcement of criminal law is deemed an essential measure to address this social issue and ensure compliant distribution of subsidized LPG gas in accordance with prevailing regulations..

Keywords

Law Enforcement, Misuse, LPG, Criminal Act, Oil Industry

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1. Introduction

The wealth and diversity of natural resources in the Republic of Indonesia are vast, including the abundance of natural oil and gas resources spread across several regions. From 2010 to 2014, the oil and gas sector contributed no less than IDR 250 trillion, comprising oil and gas tax revenue and non-tax state revenue (*Penerimaan Negara Bukan Pajak* or PNBP). However, in 2015, this contribution sharply decreased to only IDR 127.8 trillion. Focusing solely on the PNBP from petroleum natural resources during the period 2010 to 2014, the average annual contribution to the state budget was IDR 132.8 trillion. In 2015, this contribution decreased to only IDR 48 trillion (Kurniawan & Amir, 2016).

The state income obtained from the oil and gas industry is crucial to support national development. It is used to meet energy needs, supply industrial raw materials, and, importantly, serves as foreign exchange revenue to meet basic national requirements (Najicha, 2021). Since oil and gas are non-renewable natural resources, their management must be closely monitored and executed with utmost care. This aligns with the mandate of Article 33, paragraphs (2) and (3) of the 1945 Constitution, which stipulates that branches of production vital to the state and affecting the livelihoods of many must be under state control. Similarly, the earth, water, and the natural resources they contain are fully under state control and should be utilized to promote the prosperity and well-being of the Indonesian people.

Sutoyo et al. (2021) emphasize the importance of realizing national development to enhance the quality of life for all Indonesians, in accordance with the principles of Pancasila and the 1945 Constitution as articulated in the fourth paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia. This includes safeguarding the entire Indonesian nation, promoting the well-being of its citizens, nurturing the nation's growth, and contributing to the establishment of global order (Saputra & Emovwodo, 2022). National economic development entails fostering economic activities that benefit the populace as a whole while also aligning with global trends that can impact these activities within the context of national economic progress.

To address the substantial public demand for oil and natural gas, which are essential for household and micro-enterprise consumption, the government has taken measures to ensure a stable supply of fuel domestically (Plante, 2014). Additionally, to alleviate the financial burden on the state due to fuel subsidies, there is a need to transition from kerosene to liquefied petroleum gas (LPG). This transition has been regulated under Presidential Regulation No. 104 of 2007, which pertains to the supply, distribution, and pricing of 3 kilogram cylinders of liquefied petroleum gas.

The government, in accordance with its authority to regulate the supply and distribution of fuel oil, has established the selling price of LPG for the public and micro-enterprises, especially for the subsidized 3 Kilogram LPG, as stipulated in Article 1, No. (9) of the Minister of Energy and Mineral Resources Regulation No. 26 of 2009 concerning the Supply and Distribution of LPG. This article defines certain liquefied petroleum gas as LPG with specific conditions, including its users, packaging, volume, and price, for which subsidies must continue.

Several significant issues arise from the misuse of subsidized fuel oil and LPG distribution. Firstly, there are limitations on the allocation of fuel oil and LPG to appointed agents and/or bases, prompting business actors to seek ways to obtain larger quotas than those designated by the government. Secondly, the improper distribution of fuel oil and subsidized LPG, including

adulteration, results in substantial profits for wrongdoers at the expense of the community. This poses a grave concern, as improper LPG filling processes can lead to cylinder explosions within the community. Thirdly, the blending of oil and natural gas creates a shortage of LPG, especially in the 3 Kg size, as these cylinders are often targeted due to government subsidies. Lastly, the actions of those who mix oil and natural gas impose a financial burden on the state, as the substantial subsidies intended for the public benefit are misappropriated by unscrupulous base entrepreneurs (Budya & Arofat, 2011). To address the increased demand for 3 Kg LPG fuel and natural gas due to their scarcity, the government must allocate additional state expenditure.

The threat of punishment for individuals involved in criminal activities related to the misuse of transportation and/or trading of LPG has been tightly regulated under Law No. 11 of 2022 concerning Job Creation, which has amended several provisions in Law No. 22 of 2001 concerning Oil and Natural Gas. This regulation falls under Chapter XI, focusing on Criminal Provisions and categorizing alleged criminal actions regarding the misuse of Oil and Natural Gas Fuels. Specifically, article 55 of these provisions outlines the criminal penalties for those involved in the misuse of transportation and/or trading of government-subsidized oil, gas, and/or LPG. Offenders may face a maximum prison sentence of 6 (six) years and a maximum fine of IDR 60 billion. To date, numerous individuals involved in transportation and/or trading abuse have faced legal consequences. However, it remains possible that there will be an increase in individuals attempting to engage in such activities, especially regarding 3 Kilogram LPG, which receives subsidies from the government.

The imposition of punishment on individuals who commit criminal acts serves more than just retribution; it serves specific beneficial purposes (Maculan & Gil, 2020). Retaliation itself lacks inherent value; rather, it serves as a means of safeguarding societal interests. The fundamental rationale behind criminal law lies in its objective to reduce the occurrence of criminal activities. Punishment is not solely administered because someone has committed a crime but, instead, to deter the offender from repeating the offense. This theory is commonly referred to as the goal theory or utilitarian theory.

The Panel of Judges at the East Jakarta District Court, responsible for examining and adjudicating the primary case, legally sentenced the convicts and found them guilty of committing a criminal act as defined by Article 40 point 9 of Law no. 11 of 2020 concerning Job Creation, which pertains to Amendments to the Provisions of Article 55 of Law no. 22 of 2001 concerning Oil and Natural Gas, in conjunction with Article 55 paragraph (1) and Law No. 8 of 1981 concerning the Criminal Procedure Code, along with other relevant legal provisions. They were found to be legally and convincingly guilty of committing a criminal act of 'jointly and simultaneously misusing government-subsidized gas fuel trade' and were each sentenced to one year of imprisonment, along with a fine of IDR 10 million. It was stipulated that failure to pay the fine would result in a three-month imprisonment term. Considering the significant number of individuals involved in criminal activities related to the misuse of government-subsidized LPG transportation and/or trading, this topic is closely connected to several prior studies. Consequently, researchers are motivated to review and analyze this research topic..

2. Research Methods

This research employs normative juridical methods to examine the application of normative legal principles to individuals involved in criminal activities associated with the misuse of government-subsidized LPG transportation and/or trading. The approach utilized includes the statute approach and a deductive case approach. The primary legal sources for this study encompass the criminal code, relevant legislation, and court rulings. Furthermore, secondary and tertiary legal materials are employed to elucidate and provide guidance on primary legal sources. Data collection methods involve a comprehensive literature review, and qualitative analysis is applied to unveil pertinent facts and phenomena concerning the research problem.

The primary objective of this research is to address legal issues arising within the context of subsidized liquefied petroleum gas misuse. The chosen research methodology provides a robust theoretical foundation for examining primary data derived from field investigations. This approach ensures that the research attains results that are objective and verifiable. Qualitative analysis is deployed to interpret data gathered from various legal resources, thus yielding a profound comprehension of the issues linked to these criminal behaviors.

3. Results and Discussion

3.1 General Overview of Penal Law Enforcement and Liquefied Petroleum Gas

Law enforcement theory involves understanding its meaning and role in the legal system. The definition of law enforcement encompasses the administration of law by law enforcement officers and individuals, each acting within their authority based on applicable legal regulations. Criminal law enforcement, for instance, encompasses processes ranging from investigation, arrest, detention, defendant trials, to the corrective treatment of convicted individuals (Sukardi & Purnama, 2022). The objective of law enforcement is to align the values embedded in the rule of law with actual human behaviors to establish and sustain societal peace. The concept of law enforcement also involves translating abstract values into concrete guidelines through legal rules (Aspan, 2017). Law enforcement is not merely the repressive action of law enforcement officials against criminals; it also encompasses endeavors to materialize ideas of justice, legal certainty, and social benefits. To accomplish this, law enforcement must prioritize the principles of legal certainty, societal welfare, and justice in the execution of the law (Rahayu et al., 2020).

In the context of law enforcement, the subject and object have both broad and narrow interpretations. Broadly, law enforcement involves all legal subjects in every legal relationship, with each individual adhering to the applicable legal rules. In a narrower sense, law enforcement is defined as the efforts of specific law enforcement officials to ensure that legal rules are implemented in accordance with written formal provisions. Concerning objects, law enforcement can encompass the values of justice specified in formal legal rules as well as the values of justice prevalent in society (Selznick, 2020). Additionally, the three key elements in law enforcement are legal certainty, societal benefits, and justice. The effectiveness of law enforcement significantly relies on law enforcement institutions, the work culture of their officers, and regulatory instruments supporting institutional performance and governing legal materials used as work standards. Effective law enforcement endeavors must concurrently consider these three

aspects to guarantee the equitable and efficient application of law and justice in society (Tyler, 2003).

Punishment in the context of criminal law involves the stage of determining and imposing sanctions for violations of the law. In criminal law, two doctrines distinguish the material and formal aspects of criminal law. Material criminal law encompasses regulations concerning criminal acts, the general regulations applicable to these criminal acts, and the sanctions imposed on perpetrators of criminal acts. Meanwhile, formal criminal law regulates procedures for conducting criminal proceedings and the rules that must be followed in the criminal justice process (Stuntz, 1997).

Punishment is also connected to the objectives of criminal law. In Indonesia, the purpose of punishment has not been explicitly formulated in positive law (Andriansyah et al., 2021). However, there are several views on the purpose of punishment, including deterring potential criminals from repeating their offenses (preventive) and educating or rehabilitating criminals so they can reintegrate into society and become productive members (rehabilitative). Views on the purpose of punishment can be categorized into three main theories: retribution theory, utility theory, and a combination theory. Retribution theory emphasizes the retaliatory aspect of criminal acts, while utility theory places greater emphasis on protecting society and preventing further crimes. The combination theory attempts to merge elements of these two theories to achieve a more balanced sentencing objective.

Lockwood (2015): In addition to criminal law issues, the Indonesian government also confronts challenges in managing subsidies for subsidized natural gas (LPG). Subsidized LPG is utilized as an energy source for cooking and various domestic purposes, and the government provides subsidies to keep LPG prices affordable for the public. However, managing this subsidy is complex because it necessitates a significant budget allocation. The government has taken steps to reduce untargeted subsidies by replacing kerosene with LPG as a cooking fuel. This conversion program aims to alleviate the pressure on the government budget spent on fuel subsidies. Although these programs have commendable goals, their implementation is not always effective and may encounter resistance from the community.

The kerosene-to-gas conversion program also faces challenges related to ineffective public awareness campaigns, inappropriate distribution, and a lack of rigorous oversight. The government needs to engage in meticulous planning to ensure the success of this conversion program in achieving its objectives and reducing the burden of kerosene subsidies. Furthermore, enhancing transparency in the program's implementation process is essential to maximize the benefits for those in need (Jeanty & Huggins, 2019).

3.2 Criminal Act of Misuse of LPG Gas is Subsidized

The criminal act of misusing subsidized LPG gas constitutes a violation of existing legal provisions in Indonesia. The Trade Law and Consumer Protection Law play crucial roles in enforcing the law in cases of this nature. Article 1, paragraph (1) of the Criminal Code stipulates that all criminal acts must have a clear legal basis. This means that a person can only be punished if their actions have been defined in advance as a criminal offense. In the case of misusing subsidized LPG gas, the offender can face imprisonment and fines in accordance with the provisions outlined in Article 113 of the Trade Law.

Furthermore, the Consumer Protection Law, governed by Law No. 8 of 1999, plays a vital role in safeguarding consumer interests. This law establishes a consumer protection system that ensures open access, information, and legal certainty. Consumer protection encompasses rights such as the right to comfort, security, and safety when consuming goods and services, the right to choose goods and services, the right to accurate and honest information, and the right to receive compensation if the goods or services received do not conform to the agreement or statutory standards. In the context of misusing subsidized LPG gas, the Consumer Protection Law regulates the prohibition on business entities producing and trading goods that do not comply with the standards set by statutory regulations. Violating this provision may lead to imprisonment or fines as prescribed by the law.

The Indonesian government bears the responsibility of safeguarding consumer rights and ensuring legal certainty in consumer protection matters. By fulfilling this duty, the government can cultivate a healthy business environment and shield consumers from detrimental business practices. Furthermore, regulations prohibiting the blending of LPG gas that fails to meet standards are also established in related laws and regulations, such as Presidential Regulation No. 104 of 2007. This prohibition aims to safeguard consumers and ensure that the LPG gas they use adheres to safety standards stipulated by the government. Consequently, the misuse of subsidized LPG gas constitutes a criminal offense that may incur penalties in accordance with applicable legal provisions in Indonesia, encompassing both trade and consumer protection. In executing its responsibilities, the government must guarantee the equitable and resolute enforcement of these laws to protect societal interests and uphold legal certainty (Braithwaite, 2002).

The criminal act of mixing subsidized LPG gas cylinders in sales and storage business activities without the necessary permit is regulated under Law No. 22 of 2001 concerning Oil and Natural Gas. Article 23, paragraph (1), specifies that downstream business activities conducted by business entities require a government-issued business permit, encompassing activities such as transportation, trade, processing, and storage of subsidized gas. Furthermore, the elements of trading activities carried out without a trading permit are further detailed in Article 53, letter (d), of Law No. 22 of 2001 concerning Oil and Natural Gas. These elements include: 1) Any person; 2) Engaging in business; 3) Without a business license. The actions outlined in this article encompass the sale, purchase, export, and import of subsidized gas without engaging in commercial business.

In connection to the production and trade of goods and services, or the act of selling LPG to the public, business actors are prohibited from conducting actions as stipulated in Article 8, paragraph (1), of Law No. 8 of 1999 concerning Consumer Protection, which states: Business actors are prohibited from producing and/or trading goods and/or services that: 1) do not meet or comply with the required standards and provisions of laws and regulations; 2) do not match the net weight, net content, or net amount and the calculated quantity as stated on the item's label or packaging; 3) do not correspond to the measurements, measures, scales, and quantities in calculations according to actual measurements.

The crime of selling outside the designated zone occurs when an individual commits the criminal act of distributing, selling, and trading subsidized 3 Kg LPG outside the specified zone. Subsidized 3 Kg LPG should be sold within the designated zone, and the perpetrator often carries out sales outside this zone to gain additional profit from the price difference of 3 Kg LPG gas.

According to the Regulation of the Governor of DKI Province of the Special Capital Region of Jakarta No. 4 of 2015 concerning the highest retail price of LPG at the base level, traders are mandated to adhere to the price set in DKI Jakarta as outlined in Article 1 of the Governor's Regulation No. 4 of 2015 (3) regarding the Highest Retail Price (HET) of Liquefied Petroleum Gas (LPG) Cylinders 3. Kilogram (Kg) at Base Level in the Special Capital Region of Jakarta Province per cylinder, including Value Added Tax (VAT), fees, and base margin (sub-distributors per region). These regions include the Administrative City areas of Central Jakarta, North Jakarta, West Jakarta, South Jakarta, and East Jakarta, as well as the Seribu Islands Administrative Regency areas of South Seribu Islands District and North Seribu Islands District. In cases where business actors do not comply with zoning regulations, the perpetrator has violated RI Presidential Decree No. 71 of 2015 concerning essential goods, Article 1, Subsidiary 3E, Article 6, paragraph (1), letter b of Emergency Law No. 7/7/1955 concerning investigations, prosecution, and trial of economic crimes, and Article 106 of Republic of Indonesia Law No. 7 of 2014 concerning trade. Article 106 states that business actors engaged in trading activities without the required trading license issued by the Minister, as specified in Article 24, paragraph (1), shall be subject to a maximum imprisonment of 4 (four) years or a maximum fine of IDR 10,000,000,000.00 (ten billion rupiah).

According to the Emergency Law of the Republic of Indonesia No. 7 of 1955 concerning the investigation, prosecution, and trial of economic crimes, Article 6, paragraph (1), letter b, individuals who commit economic crimes that fall within the scope of Article 1, sub 2e, and based on sub 3e, are punishable by imprisonment for a maximum of two years and a fine of up to one hundred thousand rupiah or one of these criminal penalties.

3.3 Law Enforcement Analysis of the Abuse of Subsidized LPG Gas in Jakarta

In the context of Indonesian law, the principle of legality plays a central role in defining criminal acts. As stated in Article 1, paragraph (1) of the Criminal Code, known as the Principle of Legality, criminal acts can only be subject to punishment if they are explicitly defined in applicable legislation. This principle stipulates that a person can only face legal consequences if their actions have been previously established as criminal acts through existing legal regulations. However, in a specific case such as decision No. 969/Pid.Sus/2022/PN Jkt.Sel, a significant issue arose concerning the transfer of the contents of a 3 kg subsidized LPG gas cylinder into a 12 kg non-subsidized LPG gas cylinder carried out by the defendant Mahfuzi alias Amoy bin Tasor and Gian Luka Fialy bin Sajiman. This action disrupted the government's subsidy system and resulted in personal gains for the defendant. Consequently, such actions are subject to regulation and criminal penalties in accordance with applicable laws.

In the context of law enforcement, the act of transferring the contents of an LPG gas cylinder is subject to punishment as stipulated in Article 40, point 9, of Law No. 11 of 2020 concerning Job Creation, which amends the provisions of Article 55 of Law No. 22 of 2001 concerning Oil and Natural Gas, in conjunction with Article 55, paragraph (1), of the Criminal Code. This underscores the critical role of stringent legal regulations in safeguarding the government's subsidy system and preventing actions that harm both society and the state. During this trial, the Panel of Judges will assess whether the defendant can be found guilty of the charges brought against him. In this case, the defendant faces charges related to the use and trade of government-

subsidized fuel oil. The evidence presented during the trial demonstrated that the defendant was involved in transferring the contents of a 3 kg subsidized LPG gas cylinder into a 12 kg non-subsidized LPG gas cylinder, which was subsequently sold at an inflated price. This constitutes a violation of laws governing the use of government-subsidized fuel (Yuliyanto, 2020; Cosbey, 2011).

The defendant in this case is an individual who directly participated in the transfer and trade of fuel oil. He is accused of committing a crime that was detrimental to both society and the state by illicitly benefiting from subsidies that were intended for specific consumers in order to secure greater personal profits (Matthews & Kauzlarich, 2007). Additionally, the defendant faces charges related to violations of Indonesian National Standards (SNI) concerning domestic trade, particularly concerning components used in fuel oil. The panel of judges will carefully consider all the evidence and arguments presented during the trial before rendering a final verdict. The defendant has acknowledged his actions and expressed remorse. While defense efforts have raised justifications and requests for forgiveness, the Panel of Judges will base their decision on the facts and applicable legal provisions. The determination of the sentence for the defendant will also take into account mitigating and aggravating factors (Luginbuhl & Howe, 1995).

Furthermore, in this case, there is also a concurrent criminal offense, namely that the Defendant committed two separate legal violations, namely related to the Oil and Gas Law and the Trade Law. The Panel of Judges will decide the punishment to be imposed on the Defendant in accordance with the applicable legal provisions. The imposition of punishment must be in line with the principles of justice, propriety, and reasonableness. It is important to note that within the legal system, every individual has the right to a fair defense, including the right to present defenses and arguments during the trial. The final decision will be made by the Panel of Judges based on the law and the available evidence.

Law enforcement against perpetrators of criminal acts of subsidized LPG gas misuse in DKI Jakarta is a crucial step in maintaining legal integrity and preventing harm to the public. Law enforcement, as defined, aims to make legal desires a reality. In this context, the legal desire is to protect the rights of the public, especially those related to the use of subsidized LPG gas. The law enforcement process involves various parties, including the police, the prosecution, the courts, and advocacy organizations. They have a responsibility to take action against perpetrators of subsidized LPG gas misuse in accordance with applicable laws. In a legal state, all actions must be regulated by law, including business competition.

The case described is related to individuals who transfer the contents of a 3 kg subsidized LPG gas cylinder to a 12 kg non-subsidized LPG gas cylinder with the intention of gaining greater profits. Such actions violate the law and have the potential to harm individuals entitled to subsidies. Therefore, law enforcement in this case is crucial to ensure justice and prevent such illegal practices. Law enforcement is not only a means of retribution for the wrongdoers but also a tool to protect the public and prevent similar actions from recurring. Additionally, the purpose of punishment also includes efforts to change the behavior of the perpetrators so that they do not engage in illegal activities in the future (Akhavan, 2001).

Cases of subsidized LPG gas misuse should also be viewed from a safety perspective because improper gas filling can endanger users and cause concern in the community. Therefore, law enforcement in such cases can serve as a preventive measure to protect the rights of the public

and educate the perpetrators not to engage in illegal activities. Ultimately, effective law enforcement in cases of subsidized LPG gas misuse is a crucial step in ensuring justice and the safety of the public while preventing losses to the state and its citizens.

4. Conclusion

The criminal act of misusing subsidized LPG gas is a serious violation of the law that harms the public and the government. In this case, the suspect involved in the misuse of subsidized fuel oil and the trading of goods not complying with SNI (Indonesian National Standards) has committed these acts of his own volition without coercion from others. This action is not a defense of necessity that exceeds the limits, so the suspect can be held criminally liable in accordance with the applicable provisions, namely Article 55 of the Oil and Gas Law and Article 113 of the Trade Law. The application of the law against perpetrators of subsidized LPG gas misuse in DKI Jakarta has a clear purpose, which is to protect the interests of low-income individuals and small businesses. The 3-kilogram LPG gas is a subsidized commodity that is crucial for these segments of the population. The act of refilling gas by the perpetrators reduces the quota that should be received by eligible individuals. Therefore, the use of criminal law in law enforcement against cases of subsidized LPG gas misuse is the right step to address this social issue.

Criminal law in Indonesia plays a significant role in addressing criminal actions such as the misuse of subsidized LPG gas. Law No. 11 of 2020 concerning Job Creation provides a strong legal foundation for taking action against perpetrators of such crimes. Article 40 point 9 of this law regulates sanctions for those who misuse subsidized fuel oil. Additionally, Article 55 paragraph (1) point 1 of the Criminal Code and Law No. 8 of 1981 concerning the Criminal Procedure Code are also relevant in handling this case. All relevant legal provisions are used to ensure fair and firm law enforcement against perpetrators of subsidized LPG gas misuse. The use of criminal law as a tool to address the misuse of subsidized LPG gas must be accompanied by a transparent and fair legal process. This is crucial to maintain the integrity of the judicial system and provide justice to all parties involved in the case. In this regard, the judicial system in DKI Jakarta has a significant responsibility to ensure that perpetrators of subsidized LPG gas misuse receive sanctions commensurate with the level of their violations and to restore justice to those who have been negatively affected by these actions.

Suggestion

It is necessary to revise the oil and gas law in order to expand the scope of law enforcement against crimes of misuse of subsidized fuel in various models, patterns and modes that may emerge. Apart from that, it is necessary to apply heavier sanctions as a form of effectiveness in providing a deterrent effect to the perpetrators of these criminal acts. Apart from revising the law, steps are also needed such as checks, official data collection, and stricter supervision of business actors and distributors, including the retail level in the field, to prevent misuse of oil and natural gas fuels and ensure that subsidized distribution actually achieve the right targets in accordance with government policy.

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