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Legal Aspects of the Transportation of Crude Oil Without a Business License by Certain Individuals in Central Bangka Regency

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ABSTRACT

Geographically, the Bangka Belitung Archipelago Province is an archipelago consisting of 2 main islands, namely Bangka Island and Belitung Island. Central Bangka Regency is one of the regencies with the largest tin mining and marine products producer on Bangka Island. Oil and natural gas are non-renewable strategic natural resources controlled by the state. However, unscrupulous residents in Central Bangka Regency are instead taking advantage of this fuel subsidy for personal gain. This research was conducted to find out about the legal arrangements for the crime of transporting subsidized fuel without a permit and criminal liability if the transporter of subsidized fuel without a permit is categorized as a criminal offender. The method used is a normative juridical approach, the data source obtained is secondary data. From the results of this study, the crime of transporting subsidized fuel without a permit has been regulated in Law Number 22 of 2001 concerning Oil and Gas. It also conveyed the

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shortcomings of the regulation and the weaknesses in eradicating the criminal act of transporting subsidized fuel without a permit.

Keywords: *Legal Aspects, Unlicensed Subsidized Fuel, Petroleum Criminal Cases.*

INTRODUCTION

Geographically, the Bangka Belitung Islands Province is an archipelago consisting of two main islands: Bangka Island and Belitung Island. Consequently, the distribution of fuel is highly dependent on weather conditions, which creates challenges in delivering fuel to the Bangka Belitung Islands region, leading to delays and fuel shortages in the market. The geographical conditions of the Bangka Belitung Islands also influence the population's education level, as the education level in the Bangka Belitung Islands remains relatively low, with illiteracy still found in some areas. The Bangka Belitung Islands Province is divided into 1 city and 6 regencies, where much of the population earns a living as tin miners, fishermen, and farmers. Central Bangka Regency is one of the regencies with the largest tin mining and marine product output on Bangka Island; this factor is exploited by a number of residents in Central Bangka Regency who lack steady employment to make a living by purchasing large quantities of subsidized fuel and transporting it without a permit to resell it at a higher price to small-scale tin miners. The presence of individuals engaging in such activities has caused long lines at several Public Fuel Filling Stations (SPBU) and has become a problem in Bangka Tengah Regency.

Oil and natural gas (Migas) are strategic, non-renewable natural resources controlled by the state, and are vital commodities that are essential to the livelihood of its citizens. Given that oil and natural gas play an indispensable role in the national economy, their management must be fully carried out possible for the prosperity and welfare of the Indonesian people. Based on this reasoning, oil and natural gas are controlled by the State. Rudi M Simamora argues in his book that the term "control" means the Government, on behalf of the State, controls all rights contained within oil and gas resources, namely property rights, usage rights, and economic rights. [1]

In the current situation faced by the government due to the rising demand for subsidized petroleum products and the increase in global petroleum prices

[1] Simamora, Oil and Natural Gas Law, Djambetan Jakarta, 2000, page.6

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certain individuals and corporations are engaging in irresponsible actions regarding subsidized petroleum products, such as adulteration, hoarding, smuggling, transportation, and sale to industries. These acts are intended to generate profit for themselves or their corporations at the expense of the public interest or the public.

Public compliance with the law is an integral part of legal culture; the issue of legal compliance essentially concerns the process of internalizing the law that is, the law becoming deeply ingrained in each member of society. As cited in his book "The Social Order", Robert Biersted argues that an individual's compliance with the law results from factors including:

1. Indoctrination (the deliberate instillation of compliance) refers to a legal rule being deliberately instilled as a doctrine within society. This is done to ensure that the law is applied uniformly across all segments of society, thereby achieving the desired level of legal compliance.
2. Habituation (Behavioural Habit Formation) refers to a person complying with a legal rule due to a routine they follow. For example, someone who routinely wears a helmet when riding a motorcycle.
3. Utility (Benefit Derived from Compliance) refers to a person complying with a legal rule because they can derive substantial benefit from it.
4. Group Identification (Identifying with a Specific Group): This refers to a person complying with the law when they observe or align with a group that has already implemented it. [2]

In his book titled Introduction to Administrative Law, Ernst Utrecht outlines several factors that lead people to obey the law, namely:

1. People perceive these regulations as law. This means that they genuinely have a stake in the enforcement of these regulations or laws.
2. An individual must accept them to maintain a sense of peace. This means that people choose to obey the law to avoid facing many difficulties in their lives.
3. An individual or society genuinely desires it, because generally, people only recognize the existence of law when their interests are limited by existing legal regulations.
4. An individual complies with the law due to social coercion (sanctions). People generally feel ashamed or worried about being labeled as antisocial if they break the law. [3]

Criminalization is the process by which acts that were not originally criminal offenses are established as such under the law. Once an act is designated as a criminal offense, it becomes a prohibited act, and anyone who violates that prohibition is subject to criminal penalties. Criminal law and criminal law enforcement are part of criminal policy; criminal policy is part of law enforcement policy, which also encompasses civil law enforcement and administrative law

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[2] Biersted, The Social Order, McGraw-Hill Kogaskusha, Tokyo, 1970.

[3] Utrecht, Introduction to Administrative Law, Faculty of Law and Social Sciences, Padjadjaran University, Bandung, 1960.

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enforcement; and law enforcement policy is part of social policy, which is an effort to improve the welfare of citizens. The designation of certain acts as criminal offenses or criminalization marks the beginning of criminal policy regarding specific acts in society that must be protected from deviant behaviour by individuals or corporations. This is followed by law enforcement aimed at achieving societal prosperity or well-being as the goal and as part of social policy.

For residents in certain regions, the term "unlicensed fuel transporter" refers to someone who purchases large quantities of subsidized fuel and then resells it to others for profit. This is evident in Central Bangka Regency, Bangka Belitung Islands Province, where hundreds of unlicensed fuel transporters have crowded several public gas stations (SPBU).

This unauthorized transportation of petroleum products continues to occur frequently due to the high demand for subsidized petroleum products ordered by small-scale tin miners in Central Bangka Regency, Bangka Belitung Islands Province, to reduce their financial expenses. Fuel prices in Indonesia are divided into two categories: subsidized and non-subsidized. However, the prices differ, with non-subsidized fuel being more expensive than subsidized fuel, as non-subsidized fuel is intended for industrial use, whereas subsidized fuel is specifically intended for the public and not for industrial purposes.

The presence of these unlicensed oil transporters has never been eliminated; residents have reported such issues to Pertamina, but the responses have always been unsatisfactory, and Pertamina has offered no solutions. The Bangka Tengah Regency police have also remained silent; in fact, quite a few local police and military personnel have taken advantage of the situation by attempting to transport oil without a permit themselves, providing capital and backing to certain individuals to work as unlicensed oil transporters. Moreover, those in charge at every gas station are police and military personnel, ostensibly to maintain order in the queues, yet they are simultaneously managing the distribution of fuel quotas to these unauthorized transporters.

Based on the background outlined above, the research problem can be formulated as follows: the legal framework regarding the unauthorized transport of subsidized fuel, and the criminal liability if such unauthorized transport is classified as a criminal offense.

METHOD

This paper employs a normative legal research method. In his book, Suryono Soekanto argues that normative legal research involves a literature review in which legal materials for the study are drawn from general readings that provide an overview and knowledge of the topic under discussion.[4] The normative legal approach is also understood as a scientific research procedure to discover the truth

[4] Soekanto, Normative Legal Research, PT Raja Grafindo Persada. Jakarta, 2004, page.41

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based on scientific logic viewed from a normative perspective (Ibrahim, 2005, p. 46) Furthermore, normative legal research is also defined as research that seeks to align legal provisions with other legal norms or regulations in relation to the application of those legal regulations in practice.[5]

To ensure the collection of up-to-date and accurate data, this study is based on secondary data obtained through a literature review using descriptive data analysis methods. Analytical research describes facts about the research object within a framework of systematization and synchronization based on legal and analytical aspects, with the aim of addressing the issues that constitute the research object.[6]

RESULT & DISCUSSION

1. Legal provisions regarding the unauthorized transportation of subsidized fuel

Transportation is the activity of loading passengers or goods onto a vehicle, moving passengers or goods to their destination using a vehicle, and delivering them to the agreed-upon destination.

The functions of transportation are as follows:

a. To distribute and equalize the distribution of resources among various regions or countries.
b. To enhance the prosperity of a country and its people.
c. To facilitate the distribution of the population and the distribution of goods to various regions.
d. To increase the value of goods and/or passengers

Transportation arises due to the following factors:

a. Uneven population density across various regions or countries.
b. Uneven distribution of human needs across various regions.
c. Differences in produce and soil fertility, resulting in an imbalance of surplus in certain regions.
d. Advances in technology and trade.
e. Development and progress in various regions.

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[5] Ashofa, Legal Research Methods, Rineka Cipta, Jakarta, 2001, page.15.
[6] Sunggono, Legal Research Methods, 3rd Edition, Raja Grafindo Persada, Jakarta, 2001, page.116-117

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Elements of transportation:

1. Carrier: The term "carrier" refers to the entity or individual performing the transportation, whether a business entity or a private individual.
2. Means of transportation: The equipment used in the transportation process.
3. Goods or passengers: The cargo being transported, including animals, as animals are classified as goods.
4. Act: the activity of transporting people and/or goods from loading to unloading at the destination.
5. Purpose of transportation: to move goods and/or passengers from one place to a specific destination to increase the value of the goods and the quality of the passengers' experience.

Transportation law encompasses all legal regulations governing transportation services. Terms of the Rule of Law (rule of law) that encompass all provisions:

a. Transportation laws.
b. Transportation contracts.
c. International conventions on transportation.
d. Customs in rail, land, water, and air transportation.

These legal regulations also encompass the legal principles, legal norms, legal theories, and legal practices of transportation. The legal principles of transportation are the philosophical foundations (fundamental norms) that underpin transportation provisions, expressing truths, justice, and propriety accepted by all parties.

The term "commercial" is synonymous with "trade," referring to business activities involving the purchase and resale of goods, the leasing of goods, or the provision of services with the aim of generating profit or revenue. If the use of a means of transport is accompanied by the payment of a sum of money as compensation or rent, the carrier is referred to as a commercial carrier. Commercial transportation is the use of a means of transport by a passenger or shipper to transport passengers or goods to an agreed-upon destination in exchange for a payment of money as a fee or rent; the payment of money as a transportation fee proves that the carrier is conducting business operations in the transportation sector by charging a transportation fee, and such a carrier is referred to as a commercial carrier.

Petroleum products, as defined in Article 1, paragraph (4) (on fuels) of Law No. 22 of 2001 on Oil and Gas (Migas), are:

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"fuels derived from and/or processed from crude oil."

Meanwhile, crude oil, according to Article 1, paragraph (1) of Law No. 22 of 2001 on Oil and Natural Gas, is:

> "the product of a natural process in the form of hydrocarbons that, under atmospheric pressure and temperature, exist in a liquid or solid phase, including asphalt, mineral wax, or ozokerite and bitumen obtained from mining processes, but excluding coal or other solid hydrocarbon deposits obtained from activities unrelated to the oil and gas industry."

The term "crude oil" is derived from the English translation of "crude oil." The definition of crude oil is found in Section 3(i) of the Indian Petroleum Act. Section 3(i) reads as follows:

> "petroleum" means crude oil existing in its natural condotion i.e. all kinds of hydrocarbons and bitumens, both in solid and in liquid form, in their natural state or obtained fromnatural Gas by condensation or exraktion, including distillate and condensate (when commingled with the heavier hydrocarbons and delivered as a blend at the delivery point) but excluding Natural gas."

Petroleum in this definition refers to crude oil. It exists in both solid and liquid forms. Its types include hydrocarbons and bitumen. It can be obtained through condensation, extraction, and distillation.

Meanwhile, a subsidy is defined as financial assistance provided by the government to producers or consumers so that the goods or services produced become more affordable and accessible to the general public. The types of fuel subsidized by the government are petroleum products derived from and/or processed from crude oil and/or fuels derived from crude oil that have been blended with other fuels of a specific type, standard, and quality (specifications), price, volume, and specific consumer users as referred to in Article 1, Point 1 of Presidential Regulation of the Republic of Indonesia No. 45 of 2009 regarding amendments to Presidential Regulation No. 71 of 2005 on the provision and distribution of certain types of fuel.

Meanwhile, based on Government Regulation of the Republic of Indonesia No. 67 of 2002 concerning the Regulatory Agency for the Supply and Distribution of Petroleum Products and business activities related to the transportation of Natural Gas via pipelines, the definition of transportation is:

> "transportation is the activity of moving crude oil, natural gas, and/or their processed products from the operational area or from storage and processing facilities, including the transportation of natural gas through transmission and distribution pipelines."

There are currently no legal provisions in the Criminal Code (KUHP) specifically addressing the criminal offense of transporting subsidized fuel without a permit. This is because regulations governing the transportation of fuel are

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established outside the scope of the Criminal Code; they are subject to special provisions that govern both substantive and procedural law separately, deviating from the general principles set forth in Book I of the Criminal Code. Therefore, specific regulations were established through Law No. 22 of 2001 on Oil and Natural Gas to regulate the actions of those transporting subsidized fuel without a permit so as not to cause harm to the state.

In addition to stipulating penalties of imprisonment and fines as set forth in Articles 53, 54, and 55 of Law No. 22 of 2001 on Oil and Gas, the law also provides for additional penalties. According to the provisions of Article 58 of Law No. 22 of 2001 on Oil and Gas, the additional penalties in question consist of the revocation of rights or the confiscation of property used for or obtained from criminal acts in oil and gas business activities.

Commercial activities related to the distribution of fuel are not automatically considered a criminal offense as long as such activities have been authorized by the relevant authorities. The business referred to here is: "The act of purchasing goods from one place or at one time and selling those goods in another place or at a later time with the intent to make a profit". [7]

Regulations regarding the unauthorized transport of subsidized fuel are also established by the government through Regulation of the Downstream Oil and Gas Regulatory Agency No. 6 of 2015 on the Distribution of Certain Types of Petroleum Products and Special Assigned Fuel Types in Areas Without Distributors, as stipulated in Article 1, letters b and c. They are also found in Presidential Regulation of the Republic of Indonesia No. 43 of 2018 Amending Presidential Regulation No. 191 of 2014 on the Provision, Distribution, and Retail Prices of Petroleum Products, specifically in Article 3(a), (b), and (c). The regulations above govern which types of petroleum products may be purchased at gas stations using jerry cans for public use. Although the Criminal Code itself does not yet contain specific provisions regarding this criminal offense, it does contain provisions regarding persons who participate in committing such a crime.

In fact, regulations regarding the unauthorized transport of subsidized fuel already exist, but these regulations still have many shortcomings. Namely, there is no regulation prohibiting the resale of subsidized fuel; this regulation is crucial because it would allow the government to take immediate and decisive action against those transporting subsidized fuel without a permit. Furthermore, this would deter members of the public from attempting to transport subsidized fuel without a permit, as it would be clear that there is a regulation prohibiting the resale of subsidized fuel. Additionally, there must be regulations limiting the purchase of subsidized fuel strictly to public needs. If the public is allowed to purchase subsidized fuel at will, this could be exploited by unauthorized fuel transporters to sell the fuel to small-scale tin miners for personal profit even though subsidized

[7] Sunarya, Introduction to Indonesian Oil and Gas Law, Indorecht Publisingm Depok, 2017, page.34

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fuel is actually intended for transportation, households, fishermen, micro-enterprises, public services, and agricultural enterprises not for small-scale mining operations.

The coordination efforts between BPH Migas and the Central Bangka Regency Police will inevitably be hindered by the extremely limited number of personnel available for the entire territory of Indonesia. Given the current number of BPH Migas PPNS officers, there remains a shortage of skilled personnel for the oversight process. Therefore, BPH Migas is prioritizing the monitoring of fuel volume quotas distributed across Indonesia and the prevention of fuel hoarding. This makes it impossible to monitor the sale of petroleum products without a license. Combating crime, which is part of law enforcement, is also an effort to address various social issues arising in society. Efforts to resolve social issues can be undertaken using various approaches, including both legal and social approaches. All approaches employed must be oriented toward delivering justice in accordance with the principles of law and, ultimately, the well-being of the community itself.

These regulations are necessary to ensure that the government's fuel subsidies reach their intended recipients, as the government has allocated a substantial budget for these subsidies with the aim of improving public welfare. However, these fuel subsidies are instead being exploited by a small group of people for their own personal gain. This is done because of the price difference between subsidized and non-subsidized fuel; therefore, they purchase subsidized fuel from individuals who transport it without a license at a price lower than that of non-subsidized fuel to reduce their expenses and maximize their profits. In the absence of regulations prohibiting the resale of subsidized fuel, the practice of transporting subsidized fuel without a permit has become increasingly widespread, as the public is lured by the substantial profits they can make.

The unauthorized transportation of subsidized fuel mostly constitutes licensing violations including violations related to the management, transportation, storage, and trade of fuel in general as well as criminal offenses involving the counterfeiting or forgery of fuel and natural gas. In fact, these unauthorized transporters of subsidized fuel could carry out their activities legally by applying for or obtaining the necessary permits from the relevant government agencies. However, they do not do so due to their lack of knowledge regarding how to obtain these permits, the requirements they cannot meet to secure them, and the lengthy time it takes for the permits to be issued.

Even though they do not have the necessary permits, they continue to carry out these activities because they are tempted by the large profits; this can be seen from the large number of unlicensed subsidized fuel transporters queuing at gas stations in Central Bangka Regency, numbering in the hundreds of motorcycles and cars.

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2. Criminal liability for the unauthorized transportation of subsidized fuel is classified as a criminal offense

The demand for petroleum products is steadily increasing in line with the growing number of motor vehicles. Since this need, which affects the livelihood of many people, is regulated by the state, petroleum products are governed by Law No. 22 of 2001 on Oil and Gas. Under this law, the public has the right and obligation to achieve prosperity and well-being, specifically the right to fully access and use petroleum products.

Business entities or distributors without a license will be subject to sanctions as stipulated in Law No. 22 of 2001 on Oil and Natural Gas, specifically in Articles 53 and 55. [8]

It must be understood once again that the concept of fundamental rights being directly proportional to fundamental duties must continue to be applied, in accordance with the provisions of Article 28j. These fundamental duties are inherent to state institutions, including the police as investigators, who are tasked with maintaining legal order in the enforcement of the law. In the context of law enforcement, there is a desire to uphold the law so that the values championed in legal instruments can be realized. However, when the law is applied, the ideals enshrined in it are not necessarily genuinely pursued, as the law is often used to legitimize actions taken.

Those involved in the unauthorized transportation of subsidized fuel must be held criminally liable, including all individuals associated with this criminal act, such as:

a) Persons transporting subsidized fuel without a permit

The criminal liability of persons transporting subsidized fuel without a permit who act as principal offenders in this case is based on:

1) Article 53(c) of Law No. 22 of 2001 on Oil and Gas regarding the unauthorized storage of subsidized fuel constitutes a principal offense, namely:
    a. Imprisonment for a maximum of 3 (three) years
    b. A fine of up to Rp.30,000,000,000.00 (thirty billion rupiah)
2) Section 53(d) of Law No. 22 of 2001 on Oil and Gas regarding the trade of fuel without a permit is punishable by the following principal penalties:
    a. Imprisonment for a maximum of 3 (three) years

[8] Prof. Dr. Sutan Remy Sjahdeini, S.H, Law Enforcement in Indonesia,, Prestasi Pustaka Publisher. Jakarta, 2006, page.215.

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b. A fine of up to Rp.30,000,000,000.00 (thirty billion rupiah)

3) Article 55 of Law No. 22 of 2001 on Oil and Gas regarding the trade and transportation of subsidized petroleum products without a permit is a principal offense, namely:

a. Imprisonment for a maximum of 6 (six) years

b. A fine of up to Rp.60,000,000,000.00 (sixty billion rupiah)

4) An additional penalty, namely: forfeiture of the confiscated goods, namely subsidized fuel.

b) Collectors of subsidized fuel who purchase from unauthorized transporters of subsidized fuel

Collectors, as purchasers of subsidized fuel from unauthorized transporters of subsidized fuel, commit a criminal offense and violate Law No. 22 of 2001 on Oil and Gas; their actions fulfill the elements of a criminal offense, and therefore, the financial liability of those involved in the criminal act of transporting subsidized fuel without a permit may be imposed based on:

1) Article 55 of the Criminal Code, namely: punishment in accordance with the maximum principal penalty.

2) Article 53(c) of Law No. 22 of 2001 on Oil and Gas regarding the unauthorized storage of fuel specifies the principal penalty as follows:

a. Imprisonment for a maximum of 3 (three) years

b. A fine of up to Rp.30,000,000,000.00 (thirty billion rupiah)

3) Section 53(d) of Law No. 22 of 2001 on Oil and Gas regarding the unauthorized trade of petroleum products is a principal offense, namely:

a. Imprisonment for a maximum of 3 (three) years

b. A fine of up to Rp.30,000,000,000.00 (thirty billion rupiah)

4) Article 55 of Law No. 22 of 2001 on Oil and Gas regarding the trade and transportation of subsidized petroleum products without a permit constitutes a principal offense, namely:

a. Imprisonment for a maximum of 6 (six) years

b. A fine of up to Rp.60,000,000,000.00 (sixty billion rupiah)

5) An additional penalty is the forfeiture of confiscated goods, namely subsidized fuel.

c) Small-Scale Tin Miners

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Small-scale tin miners, as purchasers of subsidized fuel from unauthorized fuel transporters, can be considered to have participated in the criminal act of transporting subsidized fuel without a permit because they have acted as facilitators of the criminal act and violated No. 22 of 2001 on Oil and Gas; their actions fulfill the elements of a criminal offense, so criminal liability for those who participate in the criminal act of transporting subsidized fuel without a permit may be imposed based on:

1) Article 55 of the Criminal Code, namely: punishment in accordance with the maximum principal penalty.
2) Article 53(c) of Law No. 22 of 2001 on Oil and Gas regarding the unauthorized storage of fuel, the principal penalty being:
    a. Imprisonment for a maximum of 3 (three) years
    b. A fine of up to Rp.30,000,000,000.00 (thirty billion rupiah)
3) Article 53(d) of Law No. 22 of 2001 on Oil and Gas regarding the unauthorized trade of petroleum products is punishable by the following principal penalties:
    a. Imprisonment for a maximum of 3 (three) years
    b. A fine of up to Rp.30,000,000,000.00 (thirty billion rupiah)
4) Article 55 of Law No. 22 of 2001 on Oil and Gas regarding the trade and transportation of subsidized petroleum products without a permit constitutes a principal offense, namely:
    a. Imprisonment for a maximum of 6 (six) years
    b. A fine of up to Rp.60,000,000,000.00 (sixty billion rupiah)
5) An additional penalty, namely: forfeiture of confiscated goods, namely subsidized fuel

Other legal regulations governing oil and natural gas are as follows:

1. Government Regulation (PP) No. 42 of 2002 concerning the Executive Agency for Upstream Oil and Gas Business Activities.
2. Government Regulation (PP) No. 35 of 2004 concerning Upstream Oil and Gas Business Activities.
3. Government Regulation (PP) No. 34 of 2005 concerning Upstream Oil and Natural Gas Business Activities, amending PP No. 35 of 2004.
4. Government Regulation (GR) No. 1 of 2006 on the Amount and Use of Business Entity Contributions in the Supply and Distribution of Petroleum Products and the Transportation of Natural Gas via Pipelines.

A weakness in addressing the unauthorized transportation of subsidized fuel is the absence of regulations governing the maximum amount of subsidized fuel

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that can be freely sold to the public; consequently, this can be exploited by certain parties who, through various methods or schemes and in collaboration with insiders, purchase large quantities of subsidized fuel from gas stations (Public Fueling Stations) in large quantities to resell at a substantial profit, both to the general public and to small-scale miners.

This is also closely linked to the growing practice of retail vendors selling subsidized fuel, which can be found along roadsides both in areas far from gas stations and right in front of the stations themselves. In reality, these retail vendors do not have permits from the authorities. However, it cannot be denied that under certain circumstances, these vendors provide significant assistance to those in need such as when gas stations are out of fuel or closed at night even if customers must pay a higher price than at the gas station.

In addition to government regulations, there should be a greater focus on monitoring and overseeing the distribution, management, and use of subsidized fuel to ensure it reaches the intended recipients not merely enforcing strict oversight only when fuel shortages occur in the community. If the government continues to enforce strict oversight, this could deter those engaged in the unauthorized transportation of subsidized fuel from repeating their actions, as their activities are highly detrimental to the state and can negatively impact the community's economy. This is because subsidized fuel is specifically intended for the needs of the general public and to improve their welfare.

The obstacles faced by the police in combating the crime of unauthorized transportation of subsidized fuel based on Law No. 22 of 2001 on Oil and Natural Gas, the first obstacle stems from internal factors within the police force, specifically a shortage of human resources (police personnel) and inadequate facilities and equipment.

The absence of a specific minimum penalty also poses an obstacle, as the punishment for perpetrators of subsidized fuel misuse is generally perceived as very lenient, and this does not serve as a deterrent for the convicted. Since there are no specific minimum penalties stipulated in Law No. 22 of 2001 on Oil and Gas, judges rely on the general minimum penalty in the Criminal Code (KUHP) when sentencing offenders of subsidized fuel misuse, which is imprisonment for 1 (one) day. This means judges can impose a sentence ranging from a minimum of 1 (one) day to a maximum of 6 (six) years. This provision is also frequently exploited by certain law enforcement officials within district courts to offer lenient sentences to defendants in cases of unauthorized transportation of subsidized fuel in exchange for certain benefits.

Similarly, there is no specific minimum fine, and the maximum fine is Rp. 60,000,000,000 (sixty billion rupiah). This is perceived as ineffective in combating the misuse of subsidized fuel, as it does not serve as a deterrent for the perpetrators.

A judge's legal reasoning in a court decision constitutes the judge's accountability for the rulings set forth in the judgment; therefore, every aspect

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decided in the judgment must be thoroughly addressed in the legal reasoning contained within the body of the decision. Law No. 48 of 2009 on Judicial Power, Article 1, states that judicial power is the independent state power to administer justice in order to uphold the law and justice based on Pancasila, for the realization of the Rule of Law in the Republic of Indonesia.

The imposition of criminal penalties on perpetrators of criminal acts by a judge includes aggravating and mitigating factors. This is stipulated in Article 197(1) of the Criminal Procedure Code (KUHAP), which states that a sentencing decision must include the aggravating and mitigating circumstances of the defendant.

Crime prevention, which is part of law enforcement, is also an effort to address various social problems that arise in society. Efforts to address social problems can be carried out using several approaches, including both legal and social approaches. All approaches used must be oriented toward delivering justice in accordance with the principles of law and, ultimately, the welfare of society. [9]

CONCLUSION

Based on the results of the research conducted on perpetrators of the crime of transporting subsidized fuel without a permit, the researcher can draw the following conclusions:

1. Legal provisions regarding the criminal offense of transporting subsidized fuel without a permit do not yet exist in the Criminal Code (KUHP); however, such regulations have been established in Law No. 22 of 2001 on Oil and Natural Gas to regulate the activities of these transporters so as not to cause harm to the state. These provisions are found in Articles 54, 55, 58, and 53(b), (c), and (d) of Law No. 22 of 2001 on Oil and Natural Gas. Those engaged in the unauthorized transportation of subsidized fuel have also met the criminal elements outlined in Law No. 22 of 2001 on Oil and Natural Gas. However, this Law still has weaknesses in the enforcement against those transporting subsidized fuel without a permit, namely the absence of regulations prohibiting the resale of subsidized fuel and regulations limiting the purchase of subsidized fuel to only what is necessary for the public. The researcher's recommendation is that lawmakers should clarify and add further regulations within No. 22 of 2001 on Oil and Natural Gas to tighten and clarify these regulations so that the number of perpetrators of the criminal act of transporting subsidized fuel without a permit can be reduced, and to provide clarification on which types of fuel are prohibited from being stored and sold to the public.

[9] Marpaung, Principles, Theory, and Practice of Criminal Law., Sinar Grafika, Jakarta, 2005, page.2

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2. The criminal liability incurred for the unauthorized transportation of subsidized fuel applies to acts committed by more than one person or jointly, such that each perpetrator has their own role and responsibility in the criminal act of unauthorized transportation of subsidized fuel. This is referred to as an accessory offense under Article 55 of the Criminal Code. The types of penalties for the unauthorized transportation of subsidized fuel, as stipulated in Article 10 of the Criminal Code regarding principal and additional penalties, include principal penalties such as imprisonment, detention, and fines imposed on the perpetrators based on their respective roles in the criminal act of unauthorized transportation of subsidized fuel. Meanwhile, additional penalties, such as the revocation of certain rights and the confiscation of specific goods, are imposed on legal entities proven to have committed the criminal offense. Challenges in enforcing the law against the unauthorized transportation of subsidized fuel include a lack of legal awareness among the residents of Central Bangka Regency, the lack of firmness by law enforcement officials in combating this criminal act, and the still-weak regulations governing this offense. The researcher's recommendations are to increase human resources, particularly among law enforcement officials, so that continuous monitoring of subsidized fuel can be carried out to prevent further state losses resulting from these criminal acts, and to tighten supervision of Public Fueling Stations (SPBU) to prevent further fraud.

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