

Criminal Responsibility for Criminal Acts of Misuse of Transportation and Trade of Subsidized Fuel Oil (Study of Decision Number 434/Pid.B/Lh/2022/Pn.Mgl)

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Abstract. *Natural resources are anything that comes from nature that can be used to meet human needs. Indonesia's agricultural products are used for the welfare and prosperity of the people for the development of national development in Indonesia. However, in reality there are still many people who abuse the transportation and trade of subsidized diesel fuel. The criminal act of misuse of the transportation and trade of subsidized diesel fuel is regulated in the provisions of Article 55 of Law Number 22 of 2001 concerning Oil and Natural Gas, the act of transporting, storing distribution, stockpiling and selling Fuel Oil (BBM). Therefore, this research aims to know criminal responsibility of perpetrators of criminal acts of illegal transportation and trading of subsidized fuel, and then to know to apply criminal sanctions to perpetrators of criminal acts of illegal transportation and trading of subsidized fuel in the judge's decision. The approach method used in this research is a sociological juridical approach. The research specifications used are descriptive analysis, primary and secondary data sources and using qualitative analysis. This writing analyzes the problems analyzed using the theory of responsibility and the theory of legal certainty. Based on the research results, the responsibility of perpetrators of criminal acts of illegal transportation and trading of subsidized fuel is to be held accountable for their actions which violate Indonesian criminal law or can be called criminal acts. Criminal responsibility needs to fulfill at least 3 (three) elements formulated by law and there is a criminal threat for the action. Thus, according to this act, it violates Article 40, 9, Paragraph 5, Part Four, Chapter 3 of Law of the Republic of Indonesia Number 11 of 2020 concerning Job Creation which amends Article 55 of Law of the Republic of Indonesia Number 22 of 2001 concerning Oil and Natural Gas jo. Article 55 paragraphs (1) 1 of the Criminal Code and Law Number 8 of 1981 concerning Criminal Procedure Law and other relevant laws and regulations. The application of criminal sanctions to perpetrators of the crime of illegally transporting and trading in subsidized fuel is an act of intentionally misusing the transport and/or trade in government-subsidized oil, gas and/or liquefied petroleum gas, which is a criminal offence.*

Keywords: *Criminal Liability; Crime of transportation; Trading In Subsidized Fuel Oil.*

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1. Introduction

Indonesia is a country based on law, the legal basis which states that Indonesia is a country based on law is clearly stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, Third Amendment, which states "Indonesia is a country based on law."¹

The Republic of Indonesia is an archipelagic nation rich in natural resources, including minerals. Natural resources are anything derived from nature that can be used to meet human needs.² These minerals include gold, silver, copper, oil and natural gas, coal, and others. One of Indonesia's natural resources that has brought rapid progress to the welfare of the Indonesian people is oil and natural gas, which contributes significantly to state revenues. State revenues from mining in Indonesia, including state revenues from oil and natural gas (migas) mining, contribute significantly to total state revenues.³

This is in line with what is stated in the 1945 Constitution of the Republic of Indonesia, Article 33 paragraph (2) "branches of production that are important for the State and control the livelihood of many people are controlled by the state" and paragraph (3) "Land, water and the wealth contained therein are controlled by the state and used for the greatest prosperity of the people. These two things emphasize that the natural resources of the State of Indonesia are used for the welfare and prosperity of the people for the sake of national development in Indonesia. National development is aspired to be equitable with a planning model that determines the main priorities, especially in the economic sector, to fulfill the livelihood of many people."⁴

Based on this thinking, oil and natural 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, use rights and selling rights.⁵ On November 23, 2001, Law Number 22 of 2001 concerning Oil and Natural Gas was enacted, where the basis for the enactment of this law was that Law Number 44 Prp of 1960 was no longer appropriate for the development of oil and gas mining businesses, both at the national and international levels.⁶

¹ Winarno, 2007, *New Paradigm of Citizenship Education: A Guide for Lectures at Universities*, Bumi Aksara, Jakarta, p. 122.

² Anggi Zidan Romatua Sagala, Syarifuddin, and Muhammad Faizal Rahendra Lubis, *Legal Analysis of the Application of Criminal Law to Perpetrators of the Crime of Illegal Gasoline Fuel Trade*, *Al-Hikmah Journal of Law and Society*, Vol. 3, No. 2, December 2002, p. 1.

³ Martha Grace Hutapea, Kasman Siburian, and Jusnizar Sinaga, *Criminal Liability for Perpetrators Who Transport Fuel Oil (BBM) without a Transportation Business License*, *Patik: Jurnal Hukum*, Vol. 9 No. 2, June 2020, p. 138.

⁴ Indra Ijon H. Sipayung, Lesson Sihotang, Marthin Simangunsong, *Criminal Liability of Perpetrators of Abuse of Transportation and/or Trade of Subsidized Fuel Oil (Study of Decision Number 230/Pid.Sus/2019/Pn.Pli)*, *PATIK: Journal of Law*, Vol. 07, No. 02, August 2018, p. 89.

⁵ Rudi M. Simamora, 2016, *Oil and Gas Law*, Djambatan, Jakarta, p. 6.

⁶ Adrian Sutedi, 2012, *Mining Law*, Sinar Grafika, Jakarta, p. 56.

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Based on Article 1 number (1) of Law Number 22 of 2001 concerning Oil and Natural Gas, it is explained that the definition of Crude Oil is the result of a natural process in the form of hydrocarbons which under atmospheric pressure and temperature conditions are in the form of a liquid or solid phase, including asphalt, mineral wax or ozokerite, and bitumen obtained from the mining process, but does not include coal or other hydrocarbon deposits in solid form obtained from activities not related to Oil and Natural Gas business activities.⁷ One of the laws and regulations that contains criminal sanctions in oil and gas related activities is Law Number 22 of 2001 concerning Oil and Gas. The Oil and Gas Law contains the main substance regarding the provision that Oil and Gas as strategic natural resources contained within the Indonesian mining jurisdiction are national assets controlled by the state, and their implementation is carried out by the government as the holder of the mining authority in Upstream Business Activities. Meanwhile, Downstream Business activities are carried out after obtaining a Business License from the Government. Business permits as referred to in Article 24 of Law Number 22 of 2001 concerning Oil and Natural Gas at least contains the name of the organizer, the type of business provided, obligations in organizing the business and technical requirements.

In general, the fuel distribution process begins at existing storage facilities and is then transported to storage facilities, then distributed to depots and some directly to industries and public fuel stations (SPBU) using tanker trucks. As with travel agency business activities carried out by Indonesian legal entities in the form of limited liability companies, regionally-owned enterprises, or cooperatives established specifically for travel agency companies, the legal entity in question is required to have a business permit. This business permit is granted for as long as the company in question continues its business activities.⁸

A business permit is a permit granted to a business entity by the government in accordance with their respective authorities, to carry out processing, transportation, storage and/or trade business activities, after fulfilling the necessary requirements. In matters concerning regional interests, the government issues a business permit after the business entity in question receives a recommendation from the regional government.

Transportation as a process consists of a series of actions starting from loading into the carrier, then being taken by the carrier to the designated destination, and unloading or unloading at the destination. Prohibiting misuse in the transportation and/or trade of fuel oil which should follow the procedures or regulations of the permit.

Transportation is of course accompanied by criminal sanctions for anyone who violates it.

The crime of misusing the transportation and trade of subsidized diesel fuel is regulated in Article 55 of Law Number 22 of 2001 concerning Oil and Gas, which covers the transportation, distribution, storage, storage, and sale of fuel oil (BBM). However, in reality, many people still misuse the transportation and trade of subsidized diesel fuel.

⁷ HS. Salim, 2015, Mining Law in Indonesia, RajaGrafindo Persada, Jakarta, p. 278.

⁸ Abdulkadir Muhammad, 2012, Commercial Transportation Law, Citra Aditya Bakti, Bandung, p. 80.

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The criminal act of misusing the transportation and trade of subsidized diesel fuel, in the provisions of Article 55 of Law Number 22 of 2001 concerning Oil and Natural Gas, states that "Any person who misuses the Transportation and/or Trade of government-subsidized Fuel Oil shall be punished with a maximum imprisonment of 6 (six) years and a maximum fine of IDR 60,000,000,000.00 (sixty billion rupiah)."

Even though the law has prohibited and threatened with severe penalties against perpetrators of criminal acts of misusing the transportation and trade of subsidized diesel fuel, these criminal acts still occur frequently, one of which is an example of a case that is the object of the researcher's study in this writing in the Mengala District Court area with decision number 434/Pid.B/LH/2022/PN Mgl, that there has been a criminal act of misusing the Transportation and/or Trade of Fuel Oil, gas fuel, and/or liquefied petroleum gas which subsidized by the Government. It started with defendant 1 and defendant 2 transporting diesel fuel using 1 (one) car, that the defendants were ordered by AY to transport 20 (twenty) jerry cans (640 liters) of diesel fuel. That AY in carrying out transportation and commercial business activities (Downstream Oil and Gas Business) without having a Business License from the government and not in the form of a Business Entity. When the defendants were transporting diesel, they were stopped by witnesses JUJ and SD who were members of the West Tulang Bawang Police Criminal Investigation Unit who received information from the public that the defendants were transporting subsidized fuel without a permit, then witnesses JUJ and SD conducted an examination of the defendants. As a result of their actions, the perpetrators had to undergo a trial at the Mengala District Court and be held accountable for their actions.

Based on the description of the background of the problem above, the author is interested in researching and studying it in the form of a scientific thesis entitled "Criminal Responsibility for Criminal Acts of Misusing Transportation and Trading of Subsidized Fuel Oil (Study of Decision Number 434/Pid.B/Lh/2022/Pn.Mgl)".

2. Research Methods

The approach used in this research is a normative legal approach. The normative legal approach is an approach carried out based on primary legal materials by examining theories, concepts, legal principles, and laws and regulations related to this research. This is also known as a library approach, namely by studying books, laws and other documents related to this research.⁹

3. Results and Discussion

3.1. Criminal Liability for Perpetrators of Illegal Transportation and Trading of Subsidized Fuel

When discussing accountability, it cannot be separated from criminal acts, although criminal acts are not defined as criminal liability. A criminal act simply refers to the prohibition of an act. The basis for a criminal act is the principle of legality, while the basis for punishing the

⁹ Zainudin Ali, 2014, Legal Research Methods, Sinar Grafika, Jakarta, p.105.

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perpetrator is the principle of fault. This means that the perpetrator of a criminal act will only be held accountable for a criminal act if they are at fault in committing it.

Hans Kelsen in his theory of legal responsibility states that: "a person is legally responsible for a certain act or that he bears legal responsibility, subject means that he is responsible for a sanction in the event of a contrary act."¹⁰

In order to impose a penalty on a perpetrator for committing a crime, legal regulations regarding criminal liability serve to determine the conditions that must be met by a person in order to be legally sentenced. Criminal liability concerns the perpetrator of a crime, and regulations regarding criminal liability are regulations regarding how to treat those who violate obligations. So Acts prohibited by society are held accountable to the perpetrator, meaning that the objective punishment for that punishment is then passed on to the defendant. Criminal liability cannot be imposed without fault on the part of the violating party. Therefore, a person cannot be held accountable and punished if they have not committed a crime. However, even if they have committed a crime, they cannot always be punished.

To determine the criminal responsibility that results in a person being punished or convicted, several conditions must be met:

- 1) Committing a criminal act, an act that is against the law;
- 2) Able to take responsibility;
- 3) Doing the act intentionally or due to negligence/lack of care;
- 4) There is no excuse for it.¹¹

Subsidized fuel oil is the negative difference between the proceeds from fuel sales and the costs incurred for the procurement and distribution of fuel domestically by the government as referred to in Article 1 number 1 of Presidential Decree of the Republic of Indonesia Number 45 of 2009 concerning amendments to Presidential Decree Number 71 of 2005 concerning the Provision and Distribution of Certain Types of Fuel. The subsidy for certain types of fuel per liter is state expenditure calculated from the difference between the costs of providing and distributing subsidized fuel and the net retail selling price (excluding tax) calculated based on the benchmark price for the provision of fuel.

Subsidized fuel is in accordance with the market index price in the Southeast Asia region plus margins and costs of distributing subsidized fuel throughout the Republic of Indonesia.

Law Number 22 of 2001 concerning oil and natural gas does not mention at all whether a person should be held accountable or not when that person conducts illegal fuel oil trade. So if a person who buys and uses illegal retail fuel oil, he cannot be held criminally responsible. This is in line with the provisions in Article 1 paragraph (1) of the Criminal Code

¹⁰ Hans Kelsen (a), 2007, as translated by Somardi, General Theory of Law and State, Basics of Normative Legal Science as Empirical Descriptive Legal Science, BEE Media Indonesia, Jakarta, p. 81

¹¹ Rachmat Setiawan, 1982, Elementary Review of Unlawful Acts, Alumni, Bandung, p. 44.

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which states that "An act cannot be punished, except based on the power of existing criminal law provisions", or in Criminal Law often known as the Principle of Legality.

However, the crime of misusing transportation and trade crimes is strictly regulated in Article 55 of Law Number 22 of 2001 concerning MGB, where anyone who misuses the transportation and/or trade of fuel, whether petroleum, gas fuel or processed products subsidized by the government, without a transportation permit and/or trade permit from the authorized party can be punished in accordance with the applicable provisions.

Based on the explanation of Article 55 paragraph (1) of Law of the Republic of Indonesia No. 22 of 2001 concerning MGB, what is meant by misuse is an activity aimed at obtaining personal or business entity profits in a way that is detrimental to the interests of the wider community and the State, such as activities such as:

fuel adulteration, deviations in fuel allocation, transportation and sale of fuel, transportation and sale of fuel abroad.

1) Punished as perpetrators of criminal acts: Those who commit, who order to commit, and who participate in committing acts; Those who by giving or promising something by abusing power or dignity, with violence, threats or deception, or by providing opportunities, means or information, intentionally encourage others to commit acts. Any person who misuses the Transportation and/or Trade of Fuel Oil subsidized by the Government shall be punished with a maximum imprisonment of 6 (six) years and a maximum fine of Rp. 60,000,000,000.00 (sixty billion rupiah).

In criminal liability, there is a principle that no punishment is given if there is no fault (*Geen straf zonder schuld*; *Actus non facit reum nisi mens sit rea*). Criminal liability, based on the perspective of the occurrence of a criminal act, means that a person is criminally responsible if his actions are against the law. In addition, the criminal act committed also does not have a justification or elimination of the unlawful nature. Then, from the perspective of the perpetrator's capacity to be responsible, only a person who is capable of being responsible and fulfills the requirements for the capacity to be responsible can be criminally responsible for his actions.

a. Committing a criminal act, an act that is against the law.

A criminal act (delict) is an act of a person who has fulfilled the elements of an offense regulated in criminal law. If the law has prohibited an act and the act is in accordance with the prohibition, it can be said that the act is unlawful. In the study of the decision that is the object of research, Mr. Parisol Bin Minak Sejati (deceased) and Mr. Apriyadi Bin Badri have committed a criminal act of misusing the transportation and trade of government-subsidized fuel oil. Where this act violates Article 40, paragraph 9, paragraph 5, part four, chapter 3 of the Republic of Indonesia Law Number 11 of 2020 concerning Job Creation which amends Article 55 of the Republic of Indonesia Law Number 22 of 2001 concerning Oil and Natural Gas in conjunction with Article 55 Paragraph (1) Ke-1 of the Criminal Code.

b. Able to take responsibility

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Moeljatno concluded that for there to be the ability to be responsible there must be the ability to distinguish between good and bad actions in accordance with the law and those that are against the law. The ability to determine one's will according to the awareness of the good and bad of the action, the first is the reason factor, namely being able to distinguish between actions that are permitted and those that are not. The second is the feeling or will factor, namely being able to adjust one's behavior to the awareness of what is permitted and what is not, as a consequence, of course, a person who is unable to determine his will according to the awareness of the good and bad of the action, he is not has an error. Such people cannot be held accountable.¹²

That in this case objectively, according to the statements of witnesses connected with the Defendant and evidence in court, it was found that Parisol Bin Minak Sejati (late) and Apriyadi Bin Badri, the identities as mentioned above and have been confirmed and acknowledged in court, it turns out that the Defendant is a man who is an adult according to the law and is in a healthy physical and mental state, while subjectively the Defendant Parisol Bin Minak Sejati (late) and the Defendant Apriyadi Bin Badri as legal subjects are not in a state of being prevented from being responsible as referred to in Article 40, 9, Paragraph 5, Part Four, Chapter 3 of the Republic of Indonesia Law Number 11 of 2020 concerning Job Creation which amends Article 55 of the Republic of Indonesia Law Number 22 of 2001 concerning Oil and Natural Gas in conjunction with Article 55 Paragraph (1) 1 of the Criminal Code, therefore in accordance with the above identity and the existence (existence) of the Defendant.

c. Doing the act intentionally or due to negligence/lack of care

In criminal law, intent and negligence are known as forms of wrongdoing. The perpetrator is considered guilty if he/she commits an act criminal acts that are against the law, whether intentionally or due to negligence.

That based on the defendant's statement, the defendant committed a crime, namely misusing the transportation and/or trade of government-subsidized fuel oil, gas fuel, and/or liquefied petroleum gas. The defendant explained that in carrying out the said act.

d. There is no excuse for forgiveness

The absence of a justification means there is no reason to remove the defendant's guilt. If, during the trial, the Panel of Judges found no justification or excuse for the defendant, the defendant must be held accountable for his actions.

In accordance with the explanation above, both in theory and legal facts in the trial, the Defendant Parisol Bin Minak Sejati (late) and the Defendant Apriyadi Bin Badri, must be responsible for the actions they have committed, Parisol Bin Minak Sejati (late) and Apriyadi Bin Badri mentioned above, were legally and convincingly proven guilty of committing the crime of misusing the transportation and trade of government-subsidized fuel oil. Then the second sentence was imposed on Defendant 1 Parisol Bin Minak Sejati (late) therefore with a prison sentence of 5 (five) months and Defendant II. Apriyadi Bin Badri by Therefore, the

¹² Ibid, p. 181.

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penalty is imprisonment for 5 (five) months and a fine of Rp. 50,000,000.00 (fifty million rupiah) with the provision that if the fine is not paid, it will be replaced with imprisonment for 1 (one) month.

To be able to impose a penalty on a perpetrator for committing a crime, legal regulations regarding criminal liability serve as determinants of the conditions that must be met by a person for a valid sentence to be imposed. Criminal liability concerns the perpetrator of a crime; rules regarding criminal liability are regulations regarding how to treat those who violate obligations. Therefore, an act prohibited by society is accountable to the perpetrator, meaning that the objective punishment for that punishment is then passed on to the defendant. Criminal liability without fault on the part of the violating party cannot be accounted for. Therefore, a person cannot be held accountable and punished if they have not committed a crime. However, even if they have committed a crime, they cannot always be punished.

In the research in decision number 434/Pid.B/LH/2022/PN.Mgl, the defendant, Parisol bin Minak Sejati (deceased), was charged by the public prosecutor with committing the criminal act of misusing the transportation and trade of government-subsidized fuel oil. This act violates Article 40, paragraph 9, part four, chapter 3 of Law of the Republic of Indonesia Number 11 of 2020 concerning Job Creation, which amends Article 55 of the Republic of Indonesia Law Number 22 of 2001 concerning Oil and Natural Gas in conjunction with Article 55 Paragraph (1) Ke-1 of the Criminal Code.

The perpetrators who committed the crime in this case were humans, as we know that humans are subjects of criminal law who can be held accountable for their actions. Being responsible means that the perpetrator has the capacity to take responsibility. Where the crime committed is a mistake (*dollus and culpa*). In this case, the perpetrators, Parisol Bin Minak Sejati (deceased) and Defendant II Apriyadi Bin Badri, committed a crime in which the perpetrators intended their actions and knew the consequences of their actions.

3.2. Implementation of Criminal Sanctions against Perpetrators of the Illegal Transportation and Trade of Subsidized Fuel in the Judge's Decision in Case Number 434/Pid.B/LH/2022/PN.Mgl

The illegal transportation and trade of subsidized fuel is a common crime in society and is detrimental to the state. The widespread publicity surrounding this crime indicates a lack of control over public behavior.

The Application of Criminal Sanctions to Perpetrators of the Illegal Transportation and Trade of Subsidized Fuel in Decision Number 434/Pid.B/LH/2022/PN.Mgl. The results of the research reviewed in the legal analysis of this case, the author used a case study approach. The case study comes From the English translation "A Case Study" or "Case Studies". The word case is taken from the word case, which according to the Oxford Advanced Learners Dictionary of Current English, is defined as 1). Instance or example of the occurrence of sth, 2). Actual state of affairs situation, 3). Circumstances or special conditions relating to a person or thing. In sequence, the meaning is 1) an example of something happening, 2) the actual condition of a state or situation, and 3) a certain environment or condition about a

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person or thing.¹³Based on this, in this case, we describe the decision of case number 434/Pid.B/2022/LH/2022/PN.Mgl through a case study method. In essence, a case study of the criminal act of misusing the transportation and trade of subsidized fuel oil means studying examples of real events, in the form of legal events that clearly become legal facts after the collection of evidence and information by criminal investigators, then the transfer of the criminal case is continued to the case examination at the Semarang District Court.

Based on the investigation and inquiry by law enforcement, the following description of the legal incident was obtained:

1. Position Case

That starting on Friday, August 19, 2022, Defendant 1 Parisol Bin Minak Sejati (Alm) and Defendant II Apriyadi Bin Badri were ordered by Witness Andriyanto Bin Saparin (separate case file) to transport SOLAR type fuel using 1 (one) unit of brand car / Type Daihatsu / S401RP-PMREJJHA Pick Up Grand Max Silver Metallic with Plate: BE 8392 ST Noka: MHKP3BA1JMK169125 Nosin: K3MJ04323 with wages given by Witness Andriyanto Bin Saparin amounting to Rp. 200,000.00 (two hundred thousand rupiah) for Defendant I Parisol Bin Minak Sejati (deceased) and Rp. 100,000.00 (one hundred thousand rupiah) for Defendant II Apriyadi Bin Badri.

That Defendant I Parisol Bin Minak Sejati (Alm) and Defendant II Apriyadi Bin Badri were ordered by Witness Andriyanto Bin Saparin to transport 20 (twenty) jerry cans (640 liters) of SOLAR type fuel oil which Witness Andriyanto Bin Saparin bought from Yadi for Rp. 5,150.00 (five thousand one hundred fifty) and resold by Witness Andriyanto Bin Saparin for subsidized Solar type fuel oil for Rp. 215,000.00 (two hundred and fifteen thousand rupiah) per jerry can with a profit of Rp. 45,000.00 (forty five thousand rupiah).

That Witness Andriyanto Bin Saparin in carrying out transportation business activities and commercial business activities (Downstream Oil and Gas Business) without having a Business License from the government and not in the form of a Business Entity. That 20 Drigens (640 Liters) containing SOLAR type Fuel Oil belonging to Witness Andriyanto Bin Saparin were transported using a Daihatsu Brand / Type Car / S401RP-PMREJJHA Pick Up Grand Max Silver Metallic with Plate: BE 8392 ST Noka: MHKP3BA1JMK169125 Nosin: K3MJ04323 by Defendant I Parisol Bin Minak Sejati (Alm) and Defendant II Apriyadi Bin Badri from the house of witness Andriyanto Bin Saparin whose address is Jl Lintas Asia B. Latak Lk Ugi Rt 002 Rw 003 Kel Ujung Gunung Kec. Menggala Kab. Tulang Bawang to the Retailer in the HTI area of Tiuh Gunung Agung, Gunung Terang District, West Tulang Bawang Regency.

That on Saturday, August 20, 2022, at around 01:00 WIB, when Defendant I Parisol Bin Minak Sejati (Alm) and Defendant II Apriyadi Bin Badri delivered 20 Drigens (640 Liters) containing SOLAR type fuel oil belonging to Witness Andriyanto Bin Saparin, which were transported using a Daihatsu / S401RP-PMREJJHA Pick Up Grand Max Silver Metallic car with Plate: BE 8392 ST Noka: MHKP3BA1JMK169125 Nosin: K3MJ04323, at that time it was stopped by witness Jaka Umbara Jaya Bin Sudarsono and witness Suhendro Bin Sumiyanto

¹³ Mudjia Raharjo, 2017, Case Studies in Qualitative Research: Concepts and Procedures, Maulana Malik Ibrahim State Islamic University, Malang, p. 3.

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who are members of the West Tulang Bawang Police Criminal Investigation Unit who received information from the public that Defendant I Parisol Bin Minak Sejati (Alm) and Defendant II Apriyadi Bin Badri were transporting subsidized fuel oil without a permit, then the witness Jaka Umbara Jaya Bin Sudarsono and witness Suhendro Bin Sumiyanto conducted an examination of Defendant I Parisol Bin Minak Sejati (Alm) and Defendant II Apriyadi Bin Badri and found 20 dri-cans (640 liters) containing subsidized SOLAR fuel in a Daihatsu / S401RP-PMREJJHA Pick Up Grand Max Silver Metallic car with license plate: BE 8392 ST Noka: MHKP3BA1JMK169125 Nosin: K3MJ04323 without being accompanied by a valid permit for the discovery, then witness Jaka Umbara Jaya Bin Sudarsono and witness Suhendro Bin Sumiyanto took Defendant I Parisol Bin Minak Sejati (Alm) and Defendant II Apriyadi Bin Badri to the West Tulang Bawang Police for further investigation.

2. Public Prosecutor's Indictment

The defendant's actions as regulated and threatened with criminal penalties in Article 40, paragraph 9, paragraph 5, part four, chapter 3 of the Republic of Indonesia Law Number 11 of 2020 concerning Job Creation which amends Article 55 of the Republic of Indonesia Law Number 22 of 2001 concerning Oil and Natural Gas in conjunction with Article 55 Paragraph (1) 1 of the Criminal Code. The legal facts collected during the investigation and inquiry process by investigators can be described as follows:

That Defendant I Parisol Bin Minak Sejati (Alm) together with Defendant II Apriyadi Bin Badri and witness Andriyanto Bin Saparin (separate case file) on Saturday, August 20, 2022 at around 02:00 WIB or at least at some time in August 2022 at Jalan Raya Unit 6 (six) which is located in Lambu Kibang District, West Tulang Bawang Regency or at least in a place that is still included in the jurisdiction of the Menggala District Court which has the authority to examine and try this case, "those who did, who ordered to do, and who participated in doing the act Every person who misuses the Transportation and/or Trade of Fuel Oil, gas fuel, and/or liquefied petroleum gas subsidized by the Government". That the Defendant in the Transportation and/or Trade of Fuel Oil subsidized by the Government in the form of 20 Drigens (640 Liters) containing subsidized SOLAR type Fuel Oil without having a permit from an authorized official to issue it in accordance with Article 9 of Law Number 22 of 2001 concerning Oil and Natural Gas as amended in part by Law Number 11 of 2020 concerning Job Creation, which can carry out Downstream Oil and Gas Business Activities are State-Owned Enterprises, Regionally-Owned Enterprises, Cooperatives or Small Businesses, Private Business Entities.

That the Defendant can be declared to have committed the crime charged against him by the Public Prosecutor with a single charge as regulated in Article 351 of the Criminal Code with the following elements:

- a. Each person
- b. Misusing government-subsidized transportation and/or trading of fuel oil, gas fuel and/or liquefied petroleum gas
- c. Doing, ordering to do, helping to do

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3. Public Prosecutor's Demands

- a. Declaring that Defendant I Parisol Bin Minak Sejati (deceased) and Defendant II Apriyadi Bin Badri have been legally and convincingly proven to have committed the crime of “participating in misusing the Transportation and/or Trading of Fuel Oil, gas fuel, and/or liquefied petroleum gas subsidized by the Government” which violates Article 40 point 9 Paragraph 5 Part Four Chapter 3 of the Republic of Indonesia Law Number 11 of 2020 concerning Job Creation which amends Article 55 of the Republic of Indonesia Law Number 22 of 2001 concerning Oil and Natural Gas in conjunction with Article 55 Paragraph (1) Point 1 of the Criminal Code as we have charged;
- b. Sentencing the defendant to 7 (seven) months imprisonment minus the time the defendant has been in detention;
- c. Imposing a fine on the Defendant of IDR 50,000,000.00 (fifty million rupiah) subsidiary to imprisonment for 1 (one) month;
- d. Determine that the Defendant be burdened with paying court costs of Rp. 5,000.00 (five thousand rupiah).

The application of criminal sanctions in the A quo case, the author of the analysis begins with a study of legislative policies (statutory policies) which contain the formulation of criminal provisions in the Criminal Code (KUHP) of the Republic of Indonesia concerning subsidized fuel oil. The analysis is in Article 55 paragraph (1) of Law of the Republic of Indonesia No. 22 of 2001 concerning MGB. 1) Those who commit, order, and participate in committing the act shall be punished as perpetrators of the crime; Those who by giving or promising something by abusing power or dignity, with violence, threats or deception, or by providing opportunities, means or information, intentionally encouraging others to commit acts. Any person who abuses the Transportation and/or Trade of Fuel Oil subsidized by the Government shall be punished with imprisonment for a maximum of 6 (six) years and a maximum fine of Rp. 60,000,000,000.00 (sixty billion rupiah).

Furthermore, a study of the application of criminal sanctions against perpetrators of criminal acts of misusing the transportation and trade of government-subsidized fuel oil in case Number 434/Pid.B/LH/2022/PN.Mgl, which describes the process of proving a legal event to be a criminal act and the application of criminal articles through the decision of the panel of judges.

Based on the above understanding, the systematic construction of Article 55 paragraph (1) of Law of the Republic of Indonesia No. 22 of 2001, point 1 of the Criminal Code can be explained, the legal formulation as previously formulated, the pattern of punishment or the arrangement or formulation of criminal penalties in this article explains;

- a. Legal Subject; Every person
- b. Criminal acts: misusing the transportation and trade of government-subsidized fuel oil

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c. Criminal sanctions: shall be punished with imprisonment for 5 (five) months and a fine of Rp. 50,000,000.00 (fifty million rupiah) and a fine of paying court costs of Rp. 5,000.00 (five thousand) rupiah.

d. It seems that the systematic construction of Article 55 paragraph (1) of Law of the Republic of Indonesia No. 22 of 2001, point 1 of the Criminal Code has a formulation pattern: the address is formulated as follows: every new person then alternatively cumulatively criminal sanctions in the form of imprisonment and/or fines. The elements of intentionally committing, ordering, participating in misusing the transportation and/or trade of fuel oil, gas fuel, and/or liquefied petroleum gas subsidized by the government. knowing consciously that his actions were carried out without rights, in other words the perpetrator consciously wanted and knew that his actions were prohibited in the Law.

Judges are an instrument in the law enforcement process, Article 1 of Law Number 48 of 2009 concerning Judicial Power, explains that judicial power is the power of an independent state to administer justice in order to uphold law and justice based on Pancasila and the 1945 Constitution of the Republic of Indonesia, for the sake of implementing the rule of law of the Republic of Indonesia.¹⁴

Judges are the personification of the judicial institution. In making decisions on a case, they are required to possess not only intellectual ability but also high morals and integrity, reflecting a sense of justice, ensuring legal certainty, and providing benefits to society. Judges must base their decisions on various factors considerations that are acceptable to all parties and do not deviate from existing legal rules, which is called legal reasoning.

Legal reasoning Legal reasoning is defined as the search for "reason" regarding the law or the basis for how a judge decides a legal case. Legal reasoning is part of the court's decision-making process. A judge's legal reasoning can be based on philosophical, juridical, sociological, or theological aspects that reflect the principles of legal certainty, justice, and benefit for the parties. It can utilize several methods of legal interpretation.

Judges in formulating and compiling and deciding a case with legal considerations or Legal reasoning must be careful, systematic and in correct and good Indonesian. Considerations are compiled carefully meaning that the legal considerations must be complete containing facts of events, legal facts, formulation of legal facts, application of legal norms both in positive law, customary law, jurisprudence and legal theories and others, based on aspects and methods of legal interpretation that are appropriate in compiling arguments (reasons) or legal basis in the Judge's decision.

After a judge has examined and reviewed an event or incident, it means the judge has "solved legal problems" and is obliged to find a solution or answer. This is because similar problems exist in society. However, a judge, as someone competent to provide an answer/rule, must be able to finding the law. Therefore, a judge must first be able to identify the problem and then formulate the law. After finding the law for the event/incident, a judge must then conduct legal problem-solving.

¹⁴ Law of the Republic of Indonesia Number 48 of 2009 concerning Judicial Power

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However, many of the same judges have different decisions. Although the prosecutor from the Attorney General's Office who brought the case has charged him with multiple charges, for example related to alleged corruption, alleged gratification, and money laundering. In essence, Indonesia adheres to a legal system that includes the Anglo-Saxon Legal System (Common Law). Where judges in Indonesia adhere to the principle of "The Binding Force of Precedent". A principle that requires judges to follow the decisions of other judges in similar cases or in the same case or in other terms is the principle of *Similia Similibus* (in the same case must be decided with the same thing). Regarding court decisions, the theory of *Stare Decisis Et Queita Nonmovere* states that the current court decision for the same case must decide the same as those that have been decided in the past. If a judge wants to deviate from the previous judge's decision on the same case, then it can be done by stating a clear and logical reason (Legal Reasoning).

However, in its application, jurisprudence in Indonesia is different from the jurisprudence of the Anglo Saxon legal system (Common Law) in general, because Indonesia adheres to the *rechtsvinding* school, in addition to having an attachment to Under the law, a judge also has the freedom to discover his or her own law (*rechtsvinding*). Indonesian judges must base their decisions on statutory regulations and are free to interpret and interpret said law.¹⁵

Judges in examining, deciding and adjudicating cases must be based on the law and their beliefs, not based on legal logic.) In cases where the law or statute is clear, the judge only applies the law (the judge becomes the trumpet of the law). In cases where the law and statute are not or are not yet clear, the judge must interpret the law or statute, through the means or methods of interpretation that apply in legal science. In cases where there is a violation/application of the law that is contrary to the applicable law/statute, the judge will use the right to test it in the form of *formele toetsingrecht* or *materiele toetsingrecht*.

In relation to the judge's obligation to explore, follow, and understand the legal values and sense of justice that exist in society, the use of theories of legal discovery and interpretation can be carried out in deciding a case for cases where the law/statute is not/is not yet clear. However, the use of theories of legal discovery and interpretation must be carried out using the methods or interpretation methods that apply in legal science. The reasons for the use of legal interpretation theories by judges in adjudicating a case is almost impossible because the law cannot be enforced without opening the door to interpretation. Legal interpretation is an absolutely open activity, since the law is written, where the adage states that reading the law is interpreting the law. A clear legal text is simply a way for lawmakers to act pragmatically while tacitly acknowledging the difficulty of providing an explanation.¹⁶

Referring to Article 182 paragraph 1 of the Criminal Procedure Code, it is stipulated that the evidence consists of witness statements, expert statements, letters, instructions, and the defendant's statement. To determine whether a defendant is sentenced, there must be at

¹⁵ https://www.jdih.tanahlautkab.go.id/artikel_hukum/detail/legal-reasoning-dalam-putusan- court accessed on February 20, 2023 at 19.57 WIB

¹⁶ Agus Priono, Application of the Theory of Legal Interpretation by Judges as an Effort to Provide Legal Protection for Notaries (A Study of Judges' Decisions on the Criminal Act of Forgery of Authentic Deeds), UNS Postgraduate Law Journal, Vol. V No. 2, July-December 2017, p. 120

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least two valid pieces of evidence in accordance with Article 183 of the Criminal Procedure Code.

In the trial, the public prosecutor presented witnesses, including other:

- a. Jaka Umbara Jaya Bin Sudarsono
- b. Suhendro son of Sumiyanto
- c. Rachmad Desfriyadi bin Idham
- d. Andriyanto bin Sahpirin

Then the public prosecutor also presented evidence, namely:

- a. 1 (one) unit of Daihatsu brand/Type car/S401RP-PMREJJHA Pick Up Grand Max Silver Metallic with Plate: BE 8392 ST No. Ka: MHKP3BA1JMK169125 No. Sin: K3MJ04323 along with Ignition Key;
- b. 1 (one) vehicle registration certificate for a Daihatsu/S401RP-PMREJJHA Pick Up Grand Max Silver Metallic car with license plate: BE 8392 ST No. Ka: MHKP3BA1JMK169125 No. Sin: K3MJ04323 an APRIYADI;
- c. 20 (twenty) 35 liter jerry cans containing subsidized diesel fuel, each containing 32 liters.

Considering, that this element refers to the legal subject as a supporter of rights and obligations, namely every person or anyone who can be held responsible for all his actions; Considering, that in this connection, a person as a legal subject must properly fulfill the criteria of ability and capability to be legally responsible, or what is also called subjective and objective requirements; Considering, that objectively, a person who is suspected or accused of committing a crime must be legally mature, competent and capable in the sense that his mind is not disturbed, and can understand and be fully aware of what he has done and the consequences that will arise from his actions;

Considering that in this case objectively, according to the statements of the witnesses connected with the statements of the Defendant and the evidence in the trial, facts were found that Parisol bin Minak Sejati (deceased) and Apriyadi Bin Badri's identity as mentioned above and has been confirmed and acknowledged as true in court, it turns out that the Defendant is a man who is an adult according to the law and is in a healthy physical and mental state, while subjectively the Defendant as a legal subject is not in a state of being prevented from being responsible as referred to in Article 55 paragraph (1) of Law of the Republic of Indonesia No. 22 of 2001, point 1 of the Criminal Code, therefore in accordance with the above identity and the existence (existence) of the Defendant as mentioned above; Considering, that based on the description above, the Panel of Judges concludes that the "1st" element has been fulfilled.

Considering, that this element is alternative in nature where if one or more sub-elements have been proven then the other sub-elements do not need to be proven again and this element is deemed to have been fulfilled; Considering, that based on the legal facts

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revealed in the trial based on the statements of witnesses, the Defendant's statement connected with the evidence, that the Defendant's actions are qualified as a criminal act of misusing the transportation and trade of government-subsidized fuel oil, Considering that according to Article 55 paragraph (1) of Law of the Republic of Indonesia No. 22 of 2001, point 1 of the Criminal Code, the perpetrator is threatened with a maximum prison sentence of 6 (six) years and a maximum fine of Rp. 60,000,000,000.00 (sixty billion rupiah).

Considering. That based on the statements of the witnesses and the suspect in the trial, which in essence stated that it started with the Defendant the trial that on Friday, August 19, 2022, Witness Andriyanto bin Sahpirin ordered the Defendant Parisol bin Minak Sejati (deceased) to bring 80 jerry cans of fuel oil, with details of 60 jerry cans containing pertalite type fuel oil and 20 jerry cans containing diesel type fuel oil using

1 (one) unit of silver metallic DAIHATSU GRAND MAX pick up car with Police Number BE 8392 ST belonging to Witness Andriyanto bin Sahpirin. That the Defendant Parisol bin Minak Sejati (Alm) then invited the Defendant Apriyadi bin Badri so that both of them then on Saturday, August 20, 2022 brought 80 jerry cans of fuel oil to be delivered to consumers in the Industrial Park Forest (HTI) in Tiyuh Gunung, Gunung Terang District, West Tulang Bawang Regency where the Defendant Parisol bin Minak Sejati Alm) served as a driver while the Defendant Apriyadi bin Badri served as a porter. The Defendants received wages from the property of Witness Andriyanto bin Sahpirin of Rp. 200,000.00 (two hundred thousand rupiah) and Rp. 100,000.00 (one hundred thousand rupiah) respectively. At 02.00 WIB, while on the way to deliver 80 jerry cans to consumers in HTI, precisely on the Lambu Kibang highway, West Tulang Bawang Regency, the Defendants were arrested by Jaka Umbara Jaya bin Sudarsono and Witness Suhendro bin Sumiyanto who were on routine patrol.

Considering, that the 80 jerry cans of fuel oil were obtained by the witness Andriyanto bin Sahpirin by purchasing Pertalite at a price of Rp. 7,650.00 (seven thousand six hundred and fifty rupiah) per liter at the gas station using 1 (one) unit of DAIHATSU GRAND MAX pick up car in metallic silver with No. Pol BE 8392 ST then after arriving home, Witness Andriyanto bin Sahpirin took out the pertalite from Witness Andriyanto bin Sahpirin's car and moved it to a jerry can then Witness Andriyanto bin Sahpirin went to buy more pertalite at another gas station in the same way while Witness Andriyanto bin Sahpirin got diesel by buying it from YADI at a price of IDR 5,150.00 (five thousand one hundred and fifty rupiah) per liter. That Witness Andriyanto bin Sahpirin sold Pertalite at a price of Rp. 280,000.00 (two hundred and eighty thousand rupiah) per jerry can while Witness Andriyanto bin Sahpirin sold diesel at a price of Rp. 215,000.00 (two hundred and fifteen thousand rupiah) per jerry can so that Witness Andriyanto bin Sahpirin made a profit of Rp. 35,000.00 (thirty-five thousand rupiah) per jerry can from the sale of Pertalite and Rp. 45,000.00 (forty-five thousand rupiah) per jerry can from the sale of diesel;

Considering, that in addition to transporting fuel oil belonging to Witness Andriyanto bin Sahpirin, Defendant Parisol bin Minak Sejati (Alm) has sold Pertalite and Diesel fuel oil approximately 5 times to FERI and other stalls in Tiyuh Gunung Agung, Gunung Agung District, West Tulang Bawang Regency on Andre's orders since May 2022 so that Defendant

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Parisol bin Minak Sejati (Alm) received a profit of IDR 850.00 (eight hundred and fifty rupiah) from the sale of Pertilite per liter and received a profit of IDR 1,200.00 (one thousand two hundred rupiah) from the sale of Diesel per liter.

Considering, that because all elements of Article 40 point 9 Paragraph 5 Part Four Chapter 3 of the Republic of Indonesia Law Number 11 of 2020 concerning Job Creation which amends Article 55 of the Republic of Indonesia Law Number 22 of 2001 concerning Oil and Natural Gas in conjunction with Article 55 paragraph (1) point 1 of the Criminal Code have been fulfilled, the Defendants must be declared to have been legally and convincingly proven to have committed the crime as charged in the single indictment.

Considering that, because the Defendant is being detained and the detention of the Defendant is based on sufficient grounds, it is necessary to determine that the Defendant remains in detention.

Considering, that in order to impose a sentence on the Defendant, it is necessary to first consider the aggravating and mitigating circumstances of the Defendant; Aggravating circumstances:

- a. The defendant's actions were detrimental to the state and society; mitigating circumstances;
- b. The defendant regretted his actions;
- c. The Defendants are the backbone of the family;
- d. The defendants have never been convicted.

Considering that, because the Defendant has been sentenced, he must also be burdened with paying court costs. Furthermore, in handing down a verdict, the judge must also consider mitigating and aggravating factors. In the judge's view, the aggravating factors for the defendant are:

The defendant's actions endangered other road users, and mitigating factors included the defendant's admission and regret for his actions, and the defendant had never been convicted. In the verdict, the judge sentenced the defendant as follows:¹⁷

- a. Declaring that Defendant I PARISOL bin MINAK SEJATI (deceased) and Defendant II APRIYADI bin BADRI have been legally and convincingly proven guilty of committing the crime of "misusing the transportation and trade of government-subsidized fuel oil" as per the single indictment;
- b. Sentencing the Defendants to a prison sentence of 5 (five) months each and a fine of Rp. 50,000,000.00 (fifty million rupiah) with the provision that if the fine is not paid it will be replaced with a prison sentence of 1 (one) month;

¹⁷ See case number 2/Pid.B/2023/PN.Smg

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- c. Determine that the period of arrest and detention that the Defendants have served will be deducted in full from the sentence imposed;
- d. Determine that the Defendants remain in detention;
- e. Establishing evidence in the form of:
 - a. 1 (one) unit of Daihatsu brand/Type car/S401RP-PMREJJHA Pick Up Grand Max Silver Metallic with Plate: BE 8392 ST No. Ka: MHKP3BA1JMK169125 No. Sin: K3MJ04323 along with Ignition Key;
 - b. 1 (one) vehicle registration certificate for a Daihatsu/S401RP-PMREJJHA Pick Up Grand Max Silver Metallic car with license plate: BE 8392 ST No. Ka: MHKP3BA1JMK169125 No. Sin: K3MJ04323 an APRIYADI;
 - c. returned to the most entitled person through Witness Rachmad Desfriyadi bin Idham;
 - d. 20 (twenty) 35 liter jerry cans containing subsidized diesel fuel, each containing 32 liters; confiscated for the State;
- 6. Sentencing the Defendants to pay court costs of Rp. 5,000.00 (five thousand rupiah);

An indictment is the basis or foundation for examining a case in court, while a demand letter is a letter containing the Public Prosecutor's demands for a crime. Essentially, a Public Prosecutor must prepare an indictment and a demand letter that make the perpetrator/defendant of a crime cannot escape the law. Judges in examining a case must not deviate from what is formulated in the indictment. A defendant can only be sentenced if it has been proven in court that he has committed the crime as stated or stated by the prosecutor in the indictment.

In this case, the public prosecutor's indictment was fully accepted, however, the author believes that the judge's decision and the public prosecutor's indictment were too lenient. The author, in this case, as a police officer tasked with enforcing the law, believes that in a mistake, there needs to be a lesson and efforts to prevent the act from being repeated, or that other people who have not committed a crime, in the sense of modifying a vehicle inappropriately, will not attempt such a crime.

In this case, the Panel of Judges, before handing down a verdict, considered both the legal aspects and the psychological and sociological aspects. These legal considerations regarding the criminal act charged constitute the most important context in the judge's decision and constitute the elements of a criminal act, whether the defendant's actions have fulfilled and are in accordance with the formulation of the crime charged by the Public Prosecutor. Legal considerations.

This will directly impact the Panel of Judges' verdict. Before these legal considerations are proven and considered by the Panel of Judges, the Panel of Judges will first draw conclusions from the facts of the trial that emerged and constitute the cumulative conclusion of the testimony of witnesses, the defendant's testimony, and the evidence presented at trial. Essentially, the facts in the trial are oriented towards how the crime was

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committed, the causes or background of why the defendant committed the crime, and what the direct and indirect consequences of the defendant's actions were.

The judge decided the case in this case with a criminal sentence of 5 (five) months in prison because of the consideration that in this case the elements of Article 55 were fulfilled, but by imposing a sentence of 5 (five) months in this case it was very inconsistent with what was stated in Article 55 paragraph (1) point 1 of the Criminal Code or in theory that this had already been fulfilled the elements of Article 55 paragraph (1) 1 of the Criminal Code but the decision is very far from what is stated in the Article which provides a punishment for perpetrators of criminal acts of misusing the transportation and trade of subsidized fuel with a maximum prison sentence of 6 (six) years and a maximum fine of Rp. 60,000,000,000.00 (sixty billion rupiah). Although the purpose of punishment is more focused on educational or learning goals with the intention that the defendant will repent and be aware later after completing his sentence, it is also necessary to consider the losses to the victim which resulted in the victim experiencing injuries. This means not only to uphold the educational goal but also to uphold the application of regulations that are appropriate and fair.

4. Conclusion

1. The responsibility of the perpetrator of the crime of misusing the transportation and trade of subsidized fuel illegally is to be responsible for his actions which violate Indonesian criminal law or can be called criminal treatment. Criminal responsibility must at least fulfill 3 (three) elements formulated by law and the existence of a criminal threat in his actions. Thus, according to the act, it violates Article 40 point 9 Paragraph 5 Part Four Chapter 3 of the Republic of Indonesia Law Number 11 of 2020 concerning Job Creation which amends Article 55 of the Republic of Indonesia Law Number 22 of 2001 concerning Oil and Natural Gas in conjunction with Article 55 paragraph (1) point 1 of the Criminal Code and Law Number 8 of 1981 concerning Criminal Procedure Law and other relevant laws and regulations. Because of his actions, the defendant must be responsible and through the trial process, the defendant was sentenced to imprisonment for 5 (five) months, then pay a fine of Rp. 50,000,000.00 (fifty million rupiah) with the provision that if the fine is not paid it will be replaced with imprisonment for 1 (one) month and the Defendants will be charged with paying court costs each in the amount of Rp. 2,500,- (two thousand five hundred rupiah). 2. The application of criminal sanctions against perpetrators of the crime of illegal transportation and trade in subsidized fuel is an act of intentionally misusing the transportation and/or trade of fuel oil, gas fuel, and/or liquefied petroleum gas subsidized by the government, which is a criminal offense. In the decision of case Number 434/Pid.B/LH/2022/PN.Mgl, the judge considered that the defendant had fulfilled the elements of the act as referred to in Article 55 paragraph (1) 1 of the Criminal Code, which is punishable by a maximum imprisonment of 6 (six) years and a maximum fine of IDR 60,000,000,000.00 (sixty billion rupiah).

5. References

Journals:

Anggi Zidan Romatua Sagala, Syarifuddin, dan Muhammad Faizal Rahendra Lubis, Analisis Yuridis Penerapan Hukum Pidana Terhadap Pelaku Tindak Pidana Niaga Bahan Bakar Minyak Jenis Bensin Secara Illegal, *Jurnal Hukum dan Kemasyarakatan Al-Hikmah* Vol. 3, No. 2, Desember 2002.

Indra Ijon H. Sipayung, Lesson Sihotang, Marthin Simangungsong, Pertanggungjawaban Pidana Pelaku Penyalahgunaan Pengangkutan Dan/Atau Niaga Bahan Bakar Minyak Bersubsidi (Studi Putusan Nomor 230/Pid.Sus/2019/Pn.Pli), *PATIK : Jurnal Hukum*, Vol. 07, No. 02, Agustus 2018.

Martha Grace Hutapea, Kasman Siburian, dan Jusnizar Sinaga, Pertanggungjawaban Pidana Terhadap Pelaku Yang Melakukan Pengangkutan Bahan Bakar Minyak (BBM) tanpa Izin Usaha Pengangkutan, *Patik : Jurnal Hukum* Vol. 9 No. 2, Juni 2020.

Books:

Abdulkadir Muhammad, 2012, *Hukum Pengangkutan Niaga*, Citra Aditya Bakti, Bandung.

Adami Chazawi, 2010, *Pelajaran Hukum Pidana Bagian 1; Stelsel pidana, teori-teori pemidanaan & batas berlakunya hukum pidana*, PT. RajaGrafindo, Jakarta.

Adrian Sutedi, 2012, *Hukum Pertambangan*, Sinar Grafika, Jakarta.

Asshiddiqie, J & Safa'at, A, 2006, *Teori Hans Kelsen Tentang Hukum*, Sekretariat Jendral dan kepaniteraan Mahkamah Konstitusi Republik Indonesia, Jakarta.

Bambang Sugono, 2006, *Metode Penelitian Hukum*, RajaGrafindo Persada, Jakarta.

Buku Pedoman Penulisan Usulan/Proposal Tesis dan Tesis Program Studi Magister Hukum Fakultas Hukum Universitas Sultan Agung Semarang, 2023.

Cahirul Huda, 2008, *Dari 'Tiada Pidana Tanpa Kesalahan' Menuju Kepada 'Tiada Pertanggungjawaban Pidana Tanpa Kesalahan'*, Kencana, Jakarta.

Djazuli, 1997, *Fiqh Jinayah*, Raja Grafindo, Jakarta.

Djoko Prakoso, 1987, *Pembaharuan Hukum Pidana Di Indonesia*, Liberty, Yogyakarta. EY Kanter dan SR Sianturi, 2002, *Asas-Asas Hukum Pidana di Indonesia*, Stora Grafika, Jakarta.

Hamzah Hatrik, 1996, *Asas Pertanggungjawaban Korporasi Dalam Hukum Pidana Indonesia*, Raja Grafindo, Jakarta.

Hilman Hadikusuma, 1992, *Bahasa Hukum Indonesia*, Alumni, Bandung.

Hoffar Ismail, 2006, *Laporan Penelitian Reguler Dosen: "Konsep Sariqah (Pencurian Dalam*

Criminal Responsibility for Criminal Acts of Misuse of Transportation and Trade of Subsidized Fuel Oil

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Master of Law, UNISSULA

Prespektif Ulama Klasik dan Kontemporer)” UMY Yogyakarta, Yogyakarta.

HS. Salim, 2015, *Hukum Pertambangan di Indonesia*, RajaGrafindo Persada, Jakarta. J.Lexy Moleong, 2018, *Metodologi Penelitian Kualitatif*, Bandung.

L. Moleong, 2002, *Metode Penelitian Kualitatif*, PT Remaja Rosdakarya, Bandung.

Martiman Prodjohamidjojo, 1997, *Memahami Dasar-Dasar Hukum Pidana Indonesia*, Pradnya Paramita, Jakarta.

Moeljatno, 2002, *Asas-Asas Hukum Pidana*, Rineka Cipta, Jakarta. Moeljatno, 2008, *Asas-Asas Hukum Pidana*, Rineka Cipta, Jakarta.

Muhammad Al-Khatib, 1998, *Mughni Al-Muhtaj*, Jilid IV, Dar Al-Fikr, Bairut. Pipin Syarifin, 2000, *Hukum Pidana di Indonesia*, Pustaka Setia, Bandung.

R. Soesilo, 1991, *Pokok-Pokok Hukum Pidana Peraturan Umum dan Delik-Delik Khusus*, Politeia, Bogor.

Rachmat Setiawan, 1982, *Tinjauan Elementer Perbuatan Melawan Hukum*, Alumni, Bandung.

Ridwan H.R., 2006, *Hukum Administrasi Negara*, Raja Grafindo Persada, Jakarta. Roeslan Saleh, 1983, *Perbuatan Pidana dan Pertanggungjawaban Pidana*, Aksara Baru, Jakarta.

Roeslan Saleh, 2015, *Sistem Pertanggungjawaban pidana Perkembangan dan Penerapan*, PT. Radjawali Press, Jakarta.

Romli Atmasasmita, 1989, *Asas-asas Perbandingan Hukum Pidana*, Yayasan LBH, Jakarta.

Setiawan Widagdo, 2012, *Kamus Hukum*, Penerbit PT. Prestasi Pustaka, Jakarta. Soeginatjo Tjokranegara, 1995, *hukum pengangkutan barang dan penumpang*, rineka Cipta, Jakarta.

Soekidjo Notoatmojo, 2010, *Etika dan Hukum Kesehatan*, Rineka Cipta, Jakarta. Sudikno Mertokusumo, 1999, *Mengenai Hukum Suatu Pengantar*, Liberty, Yogyakarta. Suratman, 2012, *Metode Penelitian Hukum*, Alfabeta, Jakarta.

Wahbah Al-Zuhaili, 1997, *al-Fiqh al-Islam wa Adillatuh*, Cet IV, Dar al-Fikr, Bairut. Zainudin Ali, 2014, *Metode Penelitian Hukum*, Sinar Grafika, Jakarta.

Internet:

<https://www.gramedia.com/literasi/surat-niaga/>