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Criminal Law Policy in an Efforts to Combat The Criminal Acts of Subsidized Fuel Misuse in The New KUHP

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Abstract. *This study aims to analyze criminal law policy in combating the misuse of subsidized fuel (BBM) based on the prevailing positive law, particularly Law Number 22 of 2001 on Oil and Gas, and to examine it within the framework of the National Criminal Code (Law Number 1 of 2023) as part of national criminal law reform. The study employs a normative juridical approach with doctrinal analysis supported by a multidisciplinary perspective. The findings reveal that the prevailing positive law bases its regulation on Articles 53, 54, and 55 of Law Number 22 of 2001 as lex specialis, complemented by fraud provisions in the old Criminal Code as lex generalis. However, its effectiveness remains hampered by implementation gaps, weak coordination among law enforcement agencies, inconsistent norm enforcement, and criminogenic factors such as price disparities and inadequate distribution oversight. Within the framework of the National Criminal Code, countermeasures against subsidized fuel misuse are pursued through complementary constructions of fraud, embezzlement, and deceptive conduct offenses alongside existing sectoral regulations. The expansion of corporate criminal liability under Articles 45–50, a varied and proportional sentencing system, and the ultimum remedy principle reflects a more humane policy orientation toward restorative justice. Its effectiveness while demanding synergy among legal substance, institutional capacity, and legal culture, integrated with a comprehensive and sustainable non-penal approach.*

Keywords: *Criminal Law Policy; New Criminal Code; Subsidized Fuel; Substantive Justice.*

1. Introduction

Indonesia, as a state based on the rule of law and a welfare state, has a constitutional obligation to manage natural resources and strategic sectors of production to maximize the prosperity of the people. This principle not only reflects the country's economic orientation but also affirms the state's active role as a public trustee in ensuring the fulfillment of the community's basic needs. State control over strategic sectors is thus positioned as a fundamental instrument for achieving social justice and equitable distribution of prosperity. These values of trust and justice align with the universal teachings affirmed in the Qur'an, particularly Surah An-Nisa', verse 58:

may Allah bless him and give him peace and blessings God willing, God willing, تَحْكُمُوا بِالْعَدْلِ .God willing, God willing, God willing

Inna Allāha ya'murukum an tu'addū al-amānāti ilā Ahlihā, wa idzā ḥakamtum bayna an-nāsi an taḥkumū bil-'adli.

It means:

Indeed, Allah commands that every mandate be delivered to the party entitled to receive it, and requires that every legal decision between humans be made based on the principle of justice.

QS. An-Nisā' verse 58 emphasizes the obligation to fulfill mandates to those who have the right and the obligation to enforce the law fairly in social and state life.[1]

One strategic sector that directly impacts the lives of the wider community is the energy sector. Energy, particularly fuel oil, plays a central role in supporting economic activity, social mobility, and the sustainability of national development. Therefore, energy availability and affordability cannot be entirely left to market mechanisms but require state intervention through public policies oriented toward the public interest. In public economic law doctrine, the energy sector is often classified as part of public utilities, closely related to the livelihoods of the masses.[2]

Within Indonesia's constitutional framework, the concept of the public interest places the state as both the manager and guarantor of public access to strategic resources. This concept demands a balance between economic efficiency and social protection, so that state policy is measured not only by financial gain but also by its ability to ensure distributive justice. Therefore, every state policy in the energy sector must be designed with sustainability, equity, and protection for vulnerable groups in mind.[3]

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[1]Ministry of Religion of the Republic of Indonesia. (2019). The Qur'an and its translation. Jakarta: Lajnah Pentashihan Mushaf Al-Qur'an, QS. An-Nisā' [4]: 58.
[2]Asshiddiqie, J. (2010). Economic constitution. Jakarta: Kompas Media Nusantara, pp. 143–148.
[3]Soponyono, E. (2021). Welfare state and criminal law policy in the economic sector. Journal of Indonesian Legal Development, 3(1), 30–38.

As a concrete manifestation of this responsibility, the Indonesian government has implemented an energy subsidy policy, particularly fuel subsidies. This subsidy policy is intended to maintain public purchasing power, reduce social disparities, and ensure the sustainability of economic activities for low-income communities. However, on the other hand, this subsidy policy also opens up room for abuse if not accompanied by adequate oversight and legal instruments.

Subsidized fuel is a state policy instrument aimed at maintaining national economic stability and ensuring energy access for low-income communities. Fuel subsidies are not only economic in nature, but also encompass social and distributive justice dimensions, reflecting the state's responsibility to ensure public welfare, as mandated by the constitution. Therefore, the management and distribution of subsidized fuel require accountable, transparent governance that prioritizes the interests of the wider community.

However, in practice, the fuel subsidy policy often faces serious problems in the form of increasing criminal acts of misuse of subsidized fuel. This phenomenon not only reflects deviations in the implementation of public policy, but also raises fundamental questions regarding the effectiveness of criminal law policies in overseeing the management of the country's strategic sector. Various forms of misuse, such as hoarding, diversion of distribution, and misappropriation of subsidized fuel, directly cause state financial losses and have a systemic impact on disrupting energy distribution to communities that are normatively entitled to receive it. These practices are essentially forms of action that harm the rights of the wider community and create damage in the energy distribution system, which is fundamentally contrary to the principles of justice and the prohibition of causing social damage as emphasized in the universal moral teachings of the Qur'an, particularly QS. Al-A'rāf verse 85.[4]

God willing وَلَا تَبْخَسُوا النَّاسَ أَشْيَاءَهُمْ وَلَا تُفْسِدُوا فِي

Wa lā tabkhasū an-nāsa asy-yā'ahum wa lā tufs idū fī al-arḍi ba'da iṣlāḥihā.

It means:

And do not reduce or harm human rights, and do not do things that cause damage on earth after the creation of order and improvement.

Furthermore, the misuse of subsidized fuel demonstrates the tension between economic interests and the demands of law enforcement. From a criminal policy perspective, crimes in the energy sector can be classified as a form of economic crime characterized by complex characteristics, involving multiple actors, and connected to a long and structured distribution chain. Therefore, its prevention

[4]Ministry of Religion of the Republic of Indonesia. (2019). The Qur'an and its translation. Jakarta: Lajnah Pentashihan Mushaf Al-Qur'an, QS. Al-A'rāf [7]: 85.

cannot rely solely on a repressive approach, but must be formulated through a comprehensive, rational criminal law policy oriented towards protecting the public interest. This approach aligns with normative values that emphasize the prohibition of acquiring or controlling property illegally and the obligation to maintain social order to prevent collective loss and damage to community and state life, as affirmed in the universal moral teachings of the Qur'an through Surah Al-Baqarah verse 188.[5]

God bless you

Wa lā ta'kulū amwālakum bainakum bil-bāṭil.

It means:

And do not control each other's property in ways that are illegal and contrary to the principles of justice.

Normatively, regulations regarding criminal acts of misuse of subsidized fuel have so far relied on the provisions of Law Number 22 of 2001 concerning Oil and Gas and its implementing regulations. These regulations reflect a sectoral penal policy, placing regulations on energy crimes outside the Criminal Code (KUHP). While this regulatory model provides specificity (lex specialis), it also has the potential to create legal disharmony, inconsistent sentencing, and fragmentation of the national criminal law system.[6]

In Barda Nawawi Arief's view, fragmented criminal law policies risk weakening the effectiveness of law enforcement because they are not integrated into a coherent penal system. Eko Soponyono echoed this sentiment, emphasizing that criminal law reform should not only be normative but also reflect the need to protect the interests of the state and society in the context of modern crime.[7]Thus, tackling criminal acts of misuse of subsidized fuel is not sufficient by relying solely on a sectoral approach, but requires a systemic criminal law policy framework.

With the enactment of the National Criminal Code through Law No. 1 of 2023, a paradigm shift in national criminal law has occurred, emphasizing codification, modernization, and strengthening substantive justice values, including a restorative justice approach. The National Criminal Code is positioned as a ius constituendum (legal source) expected to respond to the dynamics of

[5]Ministry of Religious Affairs of the Republic of Indonesia. (2019). The Qur'an and its translation. Jakarta: Lajnah Pentashihan Mushaf Al-Qur'an, QS. Al-Baqarah [2]: 188.
[6]Arief, BN (2016). Criminal law policy: Developments in the drafting of the National Criminal Code. Jakarta: Kencana, p. 45.
[7]Soponyono, E. (2020). Criminal law policy in combating economic crimes. IUS QUIA IUSTUM Law Journal, 27(2), p. 210.

contemporary crime, including crimes in the energy and natural resources sector, which have a broad impact on the public interest.[8]

In this context, it is crucial to critically examine how the criminal law policy in the National Criminal Code accommodates efforts to address the criminal act of subsidized fuel misuse. This study is relevant not only to assess the consistency of criminal law policies but also to ensure that criminal law reforms truly function as a means of protecting state interests, social justice, and public welfare. Therefore, this research aims to comprehensively and systematically examine the current criminal law policies and the policies formulated in the National Criminal Code.

Based on the overall description, this research was compiled with the title "Criminal Law Policy in Efforts to Overcome Criminal Acts of Abuse of Subsidized Fuel in the National Criminal Code".

2. Research Methods

This research falls into the category of normative legal research, namely research that focuses on the study of applicable positive legal norms. Normative legal research positions law as a rule or norm that guides behavior, so the objects of study are statutory regulations, legal principles, and legal doctrine.

This research is descriptive-analytical in nature. It is descriptive because it attempts to describe in detail the legal regulations related to criminal law policies in addressing the crime of subsidized fuel misuse. Meanwhile, it is analytical because it goes beyond simply explaining the norms, but continues with a critical analysis of the substance of these regulations to gain a comprehensive understanding of the rationale, objectives, and implications of their provisions in the National Criminal Code.[9]

3. Results and Discussion

3.1. Criminal Law Policy in Addressing Criminal Acts of Misuse of Subsidized Fuel in Current Positive Law, Especially Based on the Oil and Gas Law.

The criminal law policy for addressing the misuse of subsidized fuel under Indonesian positive law is essentially a manifestation of criminal policy formulated comprehensively, systematically, and oriented toward protecting the public interest. Within this framework, criminal law is positioned not only as a repressive instrument to punish perpetrators, but also as a preventive and

[8]Ashworth, A. (2019). Principles of criminal law. Oxford: Oxford University Press, p. 67.
[9]Soekanto, S. (2014). Introduction to legal research. Jakarta, Indonesia: UI Press.

corrective tool that functions to maintain a balanced energy distribution, prevent state losses, and ensure the realization of social justice in society.[10]

Theoretically, criminal law policy is an integral part of social policy, which aims to achieve public welfare through rational and just crime control. Therefore, combating the misuse of subsidized fuel must be understood as a multidimensional effort that focuses not only on law enforcement but also encompasses economic, social, and institutional dimensions.[11]

In Indonesia's positive legal system, regulations regarding the misuse of subsidized fuel are specifically regulated in Law Number 22 of 2001 concerning Oil and Natural Gas as a lex specialis which provides a normative basis for the structured and sustainable management of national energy resources.[12]

The law affirms that oil and natural gas are strategic natural resources under state control and must be utilized to the maximum extent possible for the prosperity of the people. This principle reflects the constitutional orientation that serves as the philosophical foundation for formulating criminal law policies regarding any irregularities in the distribution of subsidized fuel.[13]

In terms of penalties, Article 55 of the Oil and Gas Law explicitly stipulates that anyone who misuses the transportation and/or trade of subsidized fuel is subject to criminal sanctions in the form of imprisonment and significant fines. This provision demonstrates a criminalization policy aimed at providing a deterrent effect and maintaining the integrity of the national energy distribution system.[14]

The explanation of this norm broadens the scope of misuse to include various modes of operation, such as adulteration, illegal distribution, and sale to unauthorized parties. This indicates that lawmakers have anticipated the complexity of crimes in the energy sector with a comprehensive and adaptive approach.[15]

Furthermore, Articles 53 and 54 of the Oil and Gas Law also regulate unlicensed business activities and fuel counterfeiting, both of which are closely linked to the misuse of subsidized fuel. These provisions emphasize that criminal law serves as a control instrument for the entire oil and gas business chain.[16]

From a general criminal law perspective, the misuse of subsidized fuel cannot be viewed solely as an administrative or sectoral violation, but can also be classified

[10]Soponyono, E. (2025). Criminal law policy. Khaira Ummah Journal, p. 212.
[11]Siregar, AH, et al. (2025). Multidisciplinary perspective. Khaira Ummah Journal, p. 56.
[12]Law Number 22 of 2001 concerning Oil and Natural Gas.
[13]Ibid., Article 4.
[14]Ibid., Article 55.
[15]Ibid., Explanation of Article 55.
[16]Ibid., Articles 53–54.

as a crime with a dimension of fraudulent conduct within the national criminal law framework. Therefore, such acts are relevant to be analyzed based on the provisions of the Criminal Code, particularly in Chapter XXVII concerning the crime of fraud, as stipulated in Article 492, which regulates fraud.

This provision essentially emphasizes the element of deception, a series of lies, abuse of circumstances, or the use of false identities with the aim of persuading others to hand over goods, incur debt, or write off receivables. In the context of the misuse of subsidized fuel, this normative construction can be reflected in practices such as distribution manipulation, disguising one's status as a recipient of subsidies, and fabricating transactions that result in losses for the state and society.

Thus, the application of Article 492 of the Criminal Code in the case of misuse of subsidized fuel demonstrates that general criminal law remains relevant as a lex generalis that can complement specific provisions in sectoral legislation. This also emphasizes that the law enforcement approach to economic crimes is not partial but must be carried out in an integrated manner, utilizing all available legal instruments to achieve optimal crime prevention effectiveness.[17]

These provisions contain elements of deception, a series of lies, and abuse of trust to gain unlawful gain. In the practice of misusing subsidized fuel, these elements are often reflected in distribution manipulation and illegal transactions that harm the state and the public.[18]

From a penal policy perspective, law enforcement against the misuse of subsidized fuel is aimed not only at creating a deterrent effect but also at strengthening the authority and credibility of the law within the community. This approach emphasizes the firm, consistent, and proportional application of criminal sanctions against perpetrators, thereby preventing the recurrence of similar acts and simultaneously conveying a normative message that any violation of the national energy distribution system will be seriously addressed.

Furthermore, within the framework of an effectiveness-oriented criminal law policy, such firm action must be accompanied by legal certainty and uniformity in law enforcement practices, to prevent disparities in sentencing that could potentially undermine the preventive function of criminal law itself. Therefore, penal policy in this context serves not only as a repressive tool but also as an instrument for fostering legal compliance and systematically controlling public behavior.

In line with this, Prasetyo emphasized that harmonization of criminal law is a crucial factor in ensuring that law enforcement runs effectively and without

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[17]Criminal Code. (2023). Law Number 1 of 2023 concerning the Criminal Code, p. 99.
[18]Ibid

overlap, so that every penal policy implemented can provide an optimal impact in tackling crime, including in cases of misuse of subsidized fuel.[19]

However, the effectiveness of criminal law policy cannot rely solely on a penal approach. Non-penal approaches are also needed, including strengthening oversight systems, transparency of subsidy policies, and increasing public legal literacy to create a sustainable prevention system.[20]

From the perspective of classical criminal law doctrine, Simons asserts that an act can only be punished if it meets the essential elements, namely its unlawful nature (wederrechtelijkheid), its fault (schuld), and the threat of a predetermined penalty in statutory regulations. These three elements are the main foundation in determining whether or not an act can be held criminally accountable within a legal framework based on the principle of legality.

When linked to the practice of misusing subsidized fuel, the act substantively fulfills all of the aforementioned elements. The unlawful element is reflected in the deviation from the provisions for the distribution and use of subsidized fuel regulated by the state. The element of wrongdoing is evident in the perpetrator's intent, or at least negligence, to exploit loopholes in the distribution system to obtain illegitimate profits. Meanwhile, the element of criminal penalties has been clearly defined in both sectoral legislation and general criminal law.

Thus, based on this doctrinal construction, the misuse of subsidized fuel can be viewed not only as an administrative violation but also as a criminal offense worthy of criminal sanctions. This approach also emphasizes that law enforcement against crimes in the energy sector must be based on basic criminal law principles that guarantee legal certainty, justice, and benefit in a balanced manner.[21]

This view is reinforced by Eddy OS Hiariej who stated that modern economic crimes must be understood as violations of the broad public interest, thus requiring firm, systematic handling that is oriented towards protecting society.[22]

Meanwhile, Eko Soponyono stated that the success of criminal law policy is largely determined by the synergy between legal substance, law enforcement structures, and the legal culture of society. These three aspects must operate harmoniously to achieve effective law enforcement.[23]

In recent academic developments, as reflected in various publications in the Khaira Ummah Journal in 2025, the misuse of subsidized fuel is no longer viewed

[19]Prasetyo, T. (2025). Harmonization of criminal law. Khaira Ummah Journal, p. 302.
[20]Soponyono, E. (2025). p. 212.
[21]Simons. (1937). Leerboek van het Nederlandsche Strafrecht. Haarlem: Tjeenk Willink, p. 72.
[22]Hiariej, EOS (2016). Principles of criminal law. Yogyakarta: Cahaya Atma Pustaka, p. 89.
[23]Soponyono, E. (2025). p. 212.

solely as a legal issue, but rather as a complex phenomenon with structural and cultural dimensions. This phenomenon demands a multidisciplinary approach that integrates legal, economic, and sociological perspectives, so that the resulting analysis can reach the root of the problem more comprehensively.

From a legal perspective, the focus is directed at the effectiveness of norms and law enforcement; from an economic perspective, attention is paid to price distortions, subsidy mechanisms, and profit incentives that encourage deviations; while from a sociological perspective, community behavior patterns, levels of legal awareness, and social factors influencing abuse are examined. Thus, this multidisciplinary approach allows for the formulation of more holistic policies that are responsive to the dynamics of crime in the energy sector.

In line with this, Siregar et al. emphasized that integrating various disciplines in analyzing criminal law policy is key to increasing the effectiveness of crime prevention, as it connects normative aspects with empirical realities on the ground. Therefore, addressing the misuse of subsidized fuel requires a strategy that is not only based on law but also takes into account economic and social dimensions in a balanced manner.[24]

These studies also confirm that a significant implementation gap remains between formally formulated legal norms and the reality of law enforcement on the ground. This situation reflects the suboptimal transformation of normative rules into consistent, measurable, and equitable practices. This gap is not only caused by weak coordination among law enforcement officials but also by limited resources, inconsistencies in regulatory interpretation, and external factors such as social, economic, and political pressures that influence the law enforcement process.

Furthermore, this phenomenon demonstrates that the effectiveness of criminal law policy in Indonesia still faces complex structural and cultural challenges. In this context, law cannot simply be understood as a set of norms; it must be viewed as a system that demands synchronization between legal substance, institutional structure, and societal legal culture. Therefore, policy reformulation efforts are needed that are oriented not only toward regulatory reform but also toward strengthening the capacity of law enforcement institutions and continuously increasing public legal awareness, so that the gap between das sollen and das sein can be minimized.[25]

Furthermore, various criminogenic factors contribute significantly to the misuse of subsidized fuel, such as the stark price disparity between subsidized and non-subsidized fuel, weak oversight systems in the distribution chain, and the opportunity to gain relatively large economic profits. These conditions create

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[24]Siregar, AH, et al. (2025). p. 56.
[25]Rahman, F. (2025). Khaira Ummah Journal, p. 89.

strong incentives for perpetrators to commit repeated irregularities, whether through hoarding, diverting distribution, or misusing the subsidized fuel itself.

Furthermore, the situation is exacerbated by regulatory gaps and suboptimal control mechanisms that should be able to detect and prevent potential irregularities early on. In practice, oversight is not effectively integrated, both across institutions and within the distribution system itself, opening up space for manipulation and illegal practices that are difficult to detect. Thus, favorable economic factors, combined with weak structural oversight, create a systemic and recurring pattern of crime, requiring a more comprehensive and sustainable approach.[26]

Furthermore, this approach implies that every policy adopted by authorities must consider the greater good while minimizing potential harm that could harm the wider community. In this context, the law is not merely understood textually, but also contextually, taking into account social dynamics and the real needs of the community. Therefore, the use of legal instruments, including criminal law, must be directed toward preventive and educational goals, and must not conflict with the principles of justice and the public interest.

Furthermore, the concept of "Al-Syayyyah" (the principle of "the principle of justice") also legitimizes the authorities to adopt policies that are adaptive and responsive to changing times, as long as they remain within the framework of sharia values. Thus, the implementation of legal policies oriented toward the welfare of the people serves not only as a means of law enforcement but also as an instrument for maintaining social order, justice, and the sustainable well-being of the community.[27]

Thus, criminal law policies to address the misuse of subsidized fuel must be formulated comprehensively, integratively, and oriented toward substantive justice. Effective implementation requires synergy between law enforcement officials, policymakers, and the public as part of a comprehensive and sustainable national legal system.[28]

3.2. Criminal Law Policy in Addressing Criminal Acts of Abuse of Subsidized Fuel in the National Criminal Code.

Criminal law policy to address the misuse of subsidized fuel within the framework of the National Criminal Code is essentially an integral part of national legal policy aimed at protecting the public interest and ensuring the fair and sustainable distribution of energy resources. Reforms through Law Number 1 of 2023 concerning the Criminal Code not only reflect normative updates but also

[26]Nugroho, A. (2025). Supervision of fuel distribution. Journal of Law, p. 134.
[27]Al-Mawardi. (2006). Al-Ahkam al-Sulthaniyyah. Beirut: Dar al-Kutub al-Ilmiyyah, p. 15.
[28]Wahyuningsih, SE (2018). Restorative justice in criminal law, p. 145.

affirm a more adaptive criminal policy direction to the dynamics of modern economic crime.[29]

From a theoretical perspective, the criminal law policy in the National Criminal Code must be understood as part of a social policy aimed at creating public welfare through rational and proportional crime control. Therefore, addressing the misuse of subsidized fuel cannot be positioned solely as a legal issue, but rather as a structural problem requiring comprehensive policy intervention.[30]

The National Criminal Code continues to uphold the principle of legality as a fundamental principle, as reflected in Article 1, which states that no act may be subject to criminal sanctions without the provision of pre-existing legislation, and prohibits the use of analogy in determining criminal acts. This provision reflects the application of the principle of nullum delictum nulla poena sine lege, which ultimately guarantees legal certainty and protects human rights.[31]

In the context of the misuse of subsidized fuel, the National Criminal Code does not explicitly formulate a specific offense that directly regulates such acts. However, the absence of such specific provisions does not necessarily reduce the scope of criminal law in prosecuting such acts, considering that the general offense construction in the Criminal Code can still be used to qualify various forms of deviation that occur. In this case, the provisions of Law Number 22 of 2001 concerning Oil and Natural Gas continue to act as lex specialis that provide a sectoral basis, while the National Criminal Code functions as lex generalis that complements and strengthens the criminal law enforcement framework.

Furthermore, this approach reflects the normative flexibility within the national criminal law system, where various forms of economic crimes, including the misuse of subsidized fuel, can be analyzed and qualified through criminal constructions such as fraud, embezzlement, and cheating. Thus, criminal law is not trapped in narrow formalism but is able to adapt to the increasingly complex and dynamic development of criminal modus operandi.

From a criminal law policy perspective, the use of these general criminal provisions demonstrates that criminal law functions as an instrument to protect the economic interests of the state and society from harmful, manipulative practices. This aligns with Eddy OS Hiariej's view that criminal law plays a strategic role in protecting legal interests (rechtsbelangen), particularly in the context of economic crimes that have a broad impact on social stability and public welfare.[32]

[29]Law Number 1 of 2023 concerning the Criminal Code.
[30]Soponyono, E. (2025). Criminal law policy. Khaira Ummah Journal, p. 212.
[31]Law Number 1 of 2023 concerning the Criminal Code, Articles 1–2.
[32]Ibid

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Thus, qualifying the misuse of subsidized fuel as a crime against property not only strengthens the basis for law enforcement, but also reflects an integrative approach between general criminal law and special criminal law in order to realize the effectiveness of crime prevention in the energy sector as a whole.

From a criminalization policy perspective, classifying subsidized fuel misuse as a general offense demonstrates that lawmakers are adopting a more flexible, less rigid-formalistic approach. This approach emphasizes the essence of the act, namely its unlawful nature and the resulting harm to both state finances and the broader public interest. Therefore, the classification of a crime depends not solely on the offense's nomenclature but rather on the substance of the deviant behavior.

Furthermore, this approach reflects a criminal law policy orientation based on the concrete protection of legal interests (rechtsbelangen), taking into account the socio-economic impact of an act. In this context, the misuse of subsidized fuel is viewed as a form of economic crime with systemic implications, thus placing it within the general offense category, providing law enforcement officials with broader interpretative space to adapt the legal framework to evolving modus operandi.

In line with this, Prasetyo emphasized that harmonization of criminal law requires synchronization between general and specific legal norms, so that criminalization policies do not become trapped in a rigid approach, but are able to adapt to the dynamics of modern crime without ignoring the principle of legal certainty.[33]Thus, placing the misuse of subsidized fuel within the general crime framework is a reflection of a criminal law policy that is progressive, adaptive, and oriented towards the effectiveness of crime prevention as a whole.

In this context, the elements of deception, abuse of trust, and distribution manipulation are essential elements that form the construction of the crime of fraud and simultaneously serve as a meeting point between the practice of misusing subsidized fuel and the criminal law norms in the Criminal Code. These three elements not only reflect manipulative actions but also demonstrate a systematic effort by the perpetrators to circumvent the state-regulated distribution mechanism in order to obtain unlawful profits.

Furthermore, in practice, the modus operandi for misuse of subsidized fuel often involves complex schemes, such as the use of unauthorized identities or documents, diverting distribution to unauthorized parties, and even fabricating transactions to appear legitimate. These patterns substantially fulfill the characteristics of fraud, as they involve a series of acts deliberately designed to

[33]Prasetyo, T. (2025). Harmonization of criminal law. Khaira Ummah Journal, p. 302.

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mislead other parties, including the state and the public, the beneficiaries of the subsidy.

Thus, the relevance of criminal law in addressing distribution-based crimes becomes increasingly apparent, as the norms in the Criminal Code not only regulate conventional acts, but are also able to accommodate the development of modern economic crimes that are covert and organized. This is in line with the view of Eddy OS Hiariej who emphasized that the crime of fraud must be understood substantively as an act containing elements of manipulation and abuse of trust that cause harm, so that it can be applied adaptively to various forms of contemporary crime.[34]

Furthermore, the National Criminal Code expands the scope of criminal liability by explicitly recognizing corporations as subjects of criminal law, as regulated in Law Number 1 of 2023 concerning the Criminal Code, specifically Articles 45 to 50. This regulation marks an important shift in the national criminal law system, from being oriented towards individual liability to recognizing collective entities as perpetrators of criminal acts.

In this normative construction, corporations are viewed not only as vehicles for economic activity but also as legal entities with the capacity to commit unlawful acts through policies, decisions, and actions taken by their organs or managers. Therefore, criminal liability is not only imposed on the individual perpetrator, but also on the corporation as the entity that benefits from or exerts control over the occurrence of the crime.

This provision is particularly significant in the context of subsidized fuel misuse, given that on-the-ground practices demonstrate that irregularities in fuel distribution and commerce often involve companies or business entities operating in an organized manner. Therefore, recognizing corporations as subjects of criminal law allows for more effective and comprehensive law enforcement, as it targets not only individual perpetrators at the operational level but also encompasses the corporate structures behind these crimes.

Furthermore, the provisions in Articles 45–50 of the National Criminal Code also provide the basis for imposing specific criminal sanctions on corporations, such as fines in certain categories, as well as the possibility of imposing additional measures aimed at preventing the recurrence of criminal acts. This demonstrates that the criminal law policy in the National Criminal Code has accommodated the development of modern economic crimes that are complex, systemic, and often involve collective actors on a broader scale.[35]

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[34]Hiariej, EOS (2016). p. 89.
[35]Law Number 1 of 2023 concerning the Criminal Code, Articles 45–50.

Thus, imposing criminal liability on corporations is not only intended to provide a deterrent effect, but also to encourage good corporate governance and improve legal compliance in business activities. This aligns with Atmasasmita's view, which asserts that under economic criminal law, corporations must be positioned as legal entities subject to criminal liability for any actions that cause harm to the public and state interests.[36]

Furthermore, this approach opens up space for a more contextual application of justice, particularly through restorative justice mechanisms that emphasize restoring relationships between perpetrators, victims, and the community. In this regard, perpetrators from vulnerable groups who did not play a dominant role in the crime can be considered for more constructive and rehabilitative forms of accountability, rather than simply imprisonment.

In line with this, Wahyuningsih emphasized that restorative justice is a relevant approach in the modern criminal law system, because it is able to accommodate humanitarian values, social justice, and the objectives of punishment which are not only to punish, but also to restore and improve.[37]

Furthermore, the application of the ultimum remedium principle in the National Criminal Code emphasizes that criminal law must be used cautiously and as a last resort. This principle directs that efforts to combat fuel misuse should not rely solely on criminal penalties, but also include administrative and preventive instruments.[38]

From a law enforcement perspective, the effectiveness of criminal law policy in addressing the misuse of subsidized fuel is fundamentally determined by the consistency, integrity, and professionalism of law enforcement officials in implementing norms firmly, proportionally, and non-discriminatory. Inconsistent or selective law enforcement has the potential to create legal uncertainty and weaken the deterrent effect of criminal law itself. Therefore, a strong institutional commitment is needed to ensure that all forms of misuse, whether committed by individuals or corporations, are processed fairly and transparently. In this context, consistent law enforcement functions not only as a repressive tool but also as an instrument for building public trust in the criminal justice system. In line with this, Soponyono emphasized that the effectiveness of criminal law policy is highly dependent on the harmonization of legal substance, law enforcement structure, and community legal culture, so that all three must operate synergistically and sustainably.[39]

[36]Atmasasmita, R. (2020). Economic criminal law, p. 118.
[37]Wahyuningsih, SE (2018). Restorative justice, p. 145.
[38]Prasetyo, T. (2019). The principle of ultimum remedium, p. 302.
[39]Soponyono, E. (2025). p. 212.

Furthermore, from the perspective of classical criminal law doctrine, Simons emphasized that criminal punishment must be based on the fulfillment of the elements of unlawfulness (wederrechtelijkheid), the existence of error (schuld), and the existence of a criminal threat that is clearly formulated in the law. These three elements are the main foundation in determining legal and just criminal responsibility. In the practice of misuse of subsidized fuel, the unlawful element is reflected in the violation of the distribution provisions that have been established by the state, the element of error is apparent from the perpetrator's will or awareness in obtaining illegal profits, while the element of criminal threat has been regulated both in special provisions and in general criminal law. Thus, this doctrinal construction confirms that the misuse of subsidized fuel is not merely an administrative violation, but has met the qualifications as a criminal act that deserves to be subject to strict and proportional criminal sanctions.[40]

Furthermore, Hiariej emphasized that criminal law must be able to address the complexity of modern crime through a rational, proportional approach based on the principle of substantive justice, so that law enforcement is not only oriented towards punishment, but also towards protecting society and preventing future crimes. Therefore, in addressing the practice of misuse of subsidized fuel, criminal law is required to be present firmly but remain fair, by considering the balance between legal certainty, benefit, and justice as the main objectives of criminal law enforcement.[41]

Meanwhile, Eko Soponyono emphasized that the success of criminal law policy is not solely determined by the quality of the norms formulated in legislation, but rather depends heavily on the harmonious synergy between the substance of the law, the structure of law enforcement, and the legal culture of society. These three elements must operate in an integrated and mutually reinforcing manner, as weaknesses in any one aspect will directly impact the low effectiveness of law enforcement overall. In this context, criminal law policy regarding the misuse of subsidized fuel requires not only firm norms, but also adequate institutional capacity of the authorities and public legal awareness.[42]

In the development of recent academic studies, as reflected in various publications in the Khaira Ummah Journal in 2025, the misuse of subsidized fuel is understood as a multidimensional phenomenon that cannot be explained in isolation. This phenomenon involves a complex interaction between legal, economic, and social factors, thus requiring an interdisciplinary approach that can reach the root of the problem more comprehensively. This approach allows

[40]Simons. (1937). Leerboek van het Nederlandsche Strafrecht, p. 72.
[41]Ibid
[42]Soponyono, E. (2025). p. 212.

for analysis that focuses not only on normative aspects but also takes into account the empirical realities developing in society.[43]

Furthermore, the research findings in the journal also identified an implementation gap between the norms formulated in the National Criminal Code and law enforcement practices in the field. This gap is reflected in the suboptimal application of legal provisions, inconsistencies in enforcement, and the limited effectiveness of supervision of subsidized fuel distribution. This situation poses a major challenge to realizing effective criminal law policies, as the success of a legal norm is ultimately determined by its implementation in practice. Therefore, ongoing improvements are needed in regulatory, institutional, and community legal culture to optimally achieve the goal of combating crime.[44]

Therefore, the criminal law policy in the National Criminal Code cannot be implemented partially, but must be implemented in an integrated manner with a comprehensive and sustainable non-penal approach. This approach includes strengthening the subsidized fuel distribution monitoring system through administrative and technological mechanisms, restructuring energy subsidy policies to be more targeted, and increasing transparency and accountability in energy sector governance. Furthermore, preventive efforts through public education, increasing public legal awareness, and economic empowerment of vulnerable groups are also integral parts of this crime prevention strategy. Thus, criminal law policy functions not only as an instrument of enforcement but also as part of a broader public policy strategy to maintain social justice and a balanced distribution of state resources.[45]

In line with this framework, it is understandable that the National Criminal Code has essentially provided a relatively adequate normative foundation for addressing various forms of crime, including the misuse of subsidized fuel. However, its effectiveness is not solely determined by the comprehensiveness of the regulated norms, but rather depends heavily on the quality of implementation in the field, the level of integration between sectoral policies, and the consistency and commitment of all elements of the criminal justice system. It is at this point that the synergistic role of law enforcement officials, policymakers, and the public becomes crucial in realizing law enforcement that is not only oriented towards certainty but also capable of delivering substantive justice in real social life.[46]

[43]Siregar, AH, et al. (2025). Khaira Ummah Journal, p. 56.
[44]Rahman, F. (2025). Khaira Ummah Journal, p. 89.
[45]Nugroho, A. (2025). Energy policy. Journal of Law, p. 134.
[46]Wahyuningsih, SE (2018). p. 145.

4. Conclusion

1. Based on the results of research and discussion, the criminal law policy in tackling the crime of misuse of subsidized fuel in Indonesian positive law has a fairly strong normative basis, both through Law Number 22 of 2001 concerning Oil and Natural Gas as lex specialis and provisions in the Criminal Code as lex generalis. This policy is not only oriented towards the repressive aspect of criminalization, but also includes preventive and corrective functions in order to maintain the stability of energy distribution, protect public interests, and prevent state losses. However, the effectiveness of its implementation still faces various obstacles, especially in the form of implementation gaps, weak distribution monitoring systems, and the existence of economic factors that encourage systemic and repeated misuse. 2. From the perspective of the National Criminal Code, criminal law policy demonstrates more progressive and adaptive developments through strengthening the principle of legality, recognizing corporate criminal liability, and implementing a restorative justice approach within the criminal justice system. The National Criminal Code provides greater scope for a flexible and contextual legal approach to addressing economic crimes, including the misuse of subsidized fuel. However, its successful implementation depends heavily on regulatory harmonization, the quality of law enforcement officers, and the synergy between legal substance, institutional structures, and the legal culture of society. Thus, while the National Criminal Code is normatively adequate, empirically it still requires strengthened implementation to optimally realize substantive justice.

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