

# Juridical Analysis of Criminal Liability Against Perpetrators of Misuse of Subsidized Diesel Fuel Sales to Realize Legal Certainty Hukum (Research Study at Polresta Barelang Batam)

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## ABSTRACT

Oil and gas are natural resources controlled by the state and have an important role in the national economy so that its management needs to be done as optimally as possible. Frequent misuse of subsidized fuel oil and gas can cause a variety of problems. Batam City is an industrial area where there are many companies that do their activities by needing diesel fuel. The regulation of oil and gas mining is regulated by Law No. 22 of 2001 concerning the use and criminal sanctions for perpetrators of the misuse of subsidized soldar fuel. Legal consideration of criminal cases of misuse of transportation and /or commercial diesel fuel subsidies still has many shortcomings even though the deficiency does not make the ruling null and void but the ruling does not reflect the application of the law that is fair to the accused / convicted. Obstacles in law enforcement abuse of fuel oil and gas Spreading distribution agencies in various corners of the area far from supervision, the increase of the channeling agency every know that is not accompanied by the addition of supervisory officers, Pertamina (Persero) which can only crack down on the channeling agency.

**Keyword :** Criminal Acts, Abusers, Oil and Gas

## Introduction

The development of today's era is very dependent on how to manage energy that is efficient and environmentally friendly. Various experiments to create environmentally friendly types of energy are carried out in various countries. This is done to reduce the use of non-renewable energy, one of which is fossil fuels. The transfer of fossil fuels as an energy source has been widely carried out in developed countries by creating energy sources that are more environmentally friendly and renewable such as Bio Diesel fuel derived from plants.

Fuel oil is needed by the community to improve performance in running a business and also fuel oil to move people's mobility in doing work. Therefore, fuel oil is an important sector for the needs of the community so that it is subsidized by the government so that the community can be assisted in carrying out their activities. Fuel oil can be regarded as an important commodity in people's needs whose price can affect the Indonesian economy. When the price of fuel oil rises, it can affect other prices. Not only that. The price of min fuel can also affect the budget deficit. Normally the price of fuel oil depends on a fair and fair business competition mechanism. However, the effect of the price of fuel oil greatly affects the economic sector in Indonesia, the reform, although the price of fuel oil is determined based on fair and reasonable business competition, it does not reduce the government's responsibility to certain groups of people. The form of government responsibility in certain community groups is to provide fuel oil

subsidies where the price of fuel oil is lower and can be utilized by certain communities. One of these subsidies is the subsidy for diesel fuel (BBM Solar).

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When the price of fuel oil rises, it can affect other prices. Not only that. The price of min fuel can also affect the budget deficit. Normally the price of fuel oil depends on a fair and fair business competition mechanism. However, the effect of the price of fuel oil greatly affects the economic sector in Indonesia, therefore, although the price of fuel oil is determined based on fair and reasonable business competition, it does not reduce the government's responsibility to certain groups of people. The form of government responsibility in certain community groups is to provide fuel oil subsidies where the price of fuel oil is lower and can be utilized by certain communities. One of these subsidies is the subsidy for diesel fuel (BBM Solar).

Oil and gas are natural resources that are controlled by the state and have an important role in the national economy so that their management needs to be carried out as optimally as possible. In an effort to create oil and gas business activities in order to realize an increase in the prosperity and welfare of the people, Law Number 22 Year 2001 concerning Oil and Gas has been stipulated. The law provides a legal basis for the renewal and restructuring of oil and gas business activities.

Solar fuel is very much needed in the industrial sector where companies use diesel fuel to run their production. Of course, the price of diesel fuel for companies is different from the price of diesel fuel which has been subsidized to certain people. The difference is that diesel fuel for industrial companies is higher than the subsidized price for diesel fuel for certain people. It is undeniable that there are still many obstacles in the distribution of fuel subsidies provided by the government. The distribution of subsidies from the government is often misused by irresponsible parties, by using the subsidy distribution system which in the process has shortcomings so that it is utilized by violating the existing law. The difference between the selling price for the industrial sector and the selling price for certain communities is exploited by irresponsible people by purchasing diesel fuel from gas stations and then accommodated and resold to industrial companies in need.

Misuse of subsidized fuel oil and gas that often occurs can cause various problems, firstly in the context of distributing fuel oil and natural gas from distributors to bases it will be disrupted because each appointed base entrepreneur will try to get more oil and gas quota than the base. which is usually so that there are bases that do not cheat the quota will be reduced because it is possible that there is a game between the base entrepreneur and the distributor. Second, with the increasing number of perpetrators of mixing fuel oil and natural gas, it will certainly provide great benefits for the perpetrators and losses for the community, it is feared that there will be another explosion of gas cylinders in the community because the gas filling process is not in accordance with the rules. Third, with the mixing of fuel oil and natural gas will create a scarcity of LPG gas, especially the 3 Kg size because the 3 Kg cylinders are often used for mixing because they are still subsidized by the government. The four actions of the perpetrators who carried out the mixing of fuel oil and natural gas will harm the state, this is because the large subsidies issued by the state for the community are only enjoyed by rogue base entrepreneurs. To meet the high demand quota from the public due to the scarcity of fuel oil and natural gas LPG 3 Kg, the government must increase the burden of state expenditure.

BPH Migas is an agency established based on Article 8 paragraph (4) and Article 46 of Law Number 22 of 2001 concerning Oil and Gas. BPH Migas is regulated in Government Regulation Number 67 of 2002 in conjunction with Presidential Decree Number 86 of 2002 concerning the Establishment of a Regulatory Agency for the Supply and Distribution of BBM and business activities of transporting natural gas through pipelines. BPH Migas is authorized as a regulatory agency that regulates and supervises downstream oil and gas activities (processing, transportation, storage and trade).

To take action against the perpetrators of mixing and hoarding subsidized oil and gas fuels who have disturbed the public and harmed state finances, they may be subject to sanctions of up to 4 (four) years in prison as referred to in Law Number 22 of 2001 concerning oil and natural gas, Article 53 Letter c which containing the storage, hoarding of subsidized fuel oil without a permit, is punishable by a maximum imprisonment of 3 (three) years and a fine of 30 (thirty) billion and Article 55 which contains abuse of the transportation and sale of subsidized fuel is punishable by a maximum imprisonment of 6 years. . Presidential Regulation Number 15 of 2012 and Article 7 Number 2 "Business Entities and/or the public are prohibited from stockpiling and/or storing and using certain types of fuel oil that are contrary to the provisions of laws and regulations" and Article 7 Number 3 "Business Entities and/or the

public violating the provisions as referred to in paragraph (1) and paragraph (2) shall be subject to sanctions in accordance with the provisions of the legislation.

Since the enactment of Law Number 22 of 2001 concerning Petroleum, it has been emphasized that oil and natural gas as natural resources contained within the Indonesian mining jurisdiction are national assets controlled by the state. The control by the state is held by the government as the holder of the mining authority. As strategic natural resources, oil and gas are national assets that play an important role as sources of financing, energy sources and fuel sources for the country's economic development.

Batam City is an industrial area where there are many companies that carry out their activities by requiring Solar fuel. These companies are also tempted by lower prices than the retail price for selling prices to industrial companies, so they accept offers from other parties when the price offered is lower than the usual market price. On average, companies do not check the completeness of permits for those who sell diesel fuel to companies.

According to Deputy Minister of Energy and Mineral Resources Susilo Siswoutomo, the subsidized diesel fuel is heavily smuggled and misused. One of them goes to the industrial sector, because industry is prohibited from using subsidized fuel. This happens because of the very striking price difference where the price of subsidized diesel fuel is at most Rp. 7,000 per liter, because the current economic price of diesel is Rp. 12,500 per liter, but it is sold for only Rp. 5,500 per liter. The price comparison was in 2014 but will be different in 2021 now.

The price difference in 2014 was taken because, in writing this thesis, we used cases where there was a violation of the commercial misuse of diesel fuel in which the diesel fuel sold was subsidized diesel fuel to industrial companies. Considering based on the quote above that the difference in the selling price of subsidized diesel fuel with diesel fuel for industry is very much different so that industrial companies accept price offers from those who sell diesel fuel because the price offered is below the price of diesel fuel for industry.

Law Number 22 of 2001 concerning Oil and Gas has regulated Downstream Business Activities which include :

- a. Processing;
- b. Transportation;
- c. Storage;
- d. Commerce.

The case that has convicted the defendant has violated Article 55 of Law Number 22 of 2001 concerning Oil and Gas:

"Everyone who misuses the Transportation and/or Trading of Oil Fuel 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)."

This incident occurred in Batam City in 2014 where Gundong Purba has been charged with violating Article 55 of Law Number 22 of 2001 concerning Oil and Gas. Gundong Purba is the director of PT. Arta Uli Jaya Abadi whose all activities are the work process of PT Arta Uli Abadi both in processing, storing, distributing and trading of diesel fuel. Gundong Purba is the administrator as director of PT Arta Uli Abadi. The work process of PT Arta Uli Abadi is an integral part of the personal management.

In accordance with this case, I would like to know the extent of responsibility for criminal acts that are violated in Article 55 of Law Number 22 of 2001 concerning Oil and Gas by management and or corporations in terms of criminal acts. The defendant is an administrator of PT Arta Uli Abadi and is sentenced to 10 months in prison and a fine of Rp. 10,000,000,- (ten million rupiah) provided that if the fine is not paid by the defendant, it will be replaced with 4 (four) months in prison.

Punishing someone who can be held accountable and carried out is a retaliation for payment for what has been done or paying for losses arising from the actions committed (Romli Atmasasmita, 1989). Changes in the form of compensation with a sum of money to compensation by imposing penalties, historically a re the beginning of "liability" or liability. A criminal act by a corporation is a crime for which a corporation can be held criminally responsible in accordance with the laws governing corporations. The case is different for criminal acts committed by a person or management of the corporation.

Criminal liability can be asked for criminal acts against legal subjects if there is an error in the legal subject. Managers and companies (corporations) are legal subjects that are different from others. It is neces sary to study the extent of the responsibility of the management, namely the director of the corporation (Gundong Purba) with the responsibility of the corporation (PT Arta Uli Abadi) in cases of abuse of transportation and/or trade of subsidized fuel oil by the government.

## Problem

1. What are the legal arrangements for perpetrators of abuse of the sale of subsidized diesel fuel?
2. What is the criminal liability for the misuse of the sale of subsidized diesel fuel?
3. What are the inhibiting factors/obstacles as well as solutions to criminal law enforcement against perpetrators of abusing the sale of subsidized diesel fuel to achieve legal certainty (research study at the Barelang Batam Police Station)?

## Literature Review

The term justice (iustitia) comes from the word "fair" which means: impartial, impartial, siding with the right, proper, not arbitrary. From several definitions it can be understood that the notion of justice is all things that are related to attitudes and actions in human relations, justice contains a demand that people treat each other according to their rights and obligations, the treatment is not indiscriminate or favoritism but, everyone is treated equally according to their rights and obligations. Justice in the view of several figures, namely:

Justice is described fundamentally by Aristotle in Book 5 of the Nicomachean Ethics. To find out about justice and injustice, three main things must be discussed, namely (1) what actions are related to the term, (2) what justice means, and (3) between the two extreme points whether justice lies. To clearly know what justice and

injustice are, it takes clear knowledge of one side to clearly determine the other side. If one side is ambiguous, then the other side is also ambiguous. In general, it is said that an unfair person is a person who does not obey the law (unlawful, lawless) and an unfair person (unfair), then a just person is a person who is law-abiding and fair.

Normative legal certainty is when a regulation is made and promulgated with certainty because it regulates clearly and logically. It is clear in the sense that it does not cause doubt (multi-interpretation) and is logical. It is clear in the sense that it becomes a norm system with other norms so that it does not clash or cause norm conflicts. Legal certainty refers to the application of a clear, permanent, consistent and consequent law whose implementation cannot be influenced by subjective circumstances. Certainty and justice are not just moral demands, but factually characterize the law. A law that is uncertain and does not want to be fair is not just a bad law (Christine, 2009).

Legal certainty must also be accompanied by criminal liability. There are two terms that refer to responsibility in the legal dictionary, namely liability and responsibility. Liability is a broad legal term that refers to almost any character of risk or responsibility, which is certain, which depends on or which may include all the actual and potential characteristics of rights and obligations such as losses, threats, crimes, costs or conditions that create the duty to carry out the law. -law. Responsibility means things that can be accounted for by an obligation, and includes decisions, skills, abilities and skills that also include the obligation to be responsible for the laws that are implemented (Hasan Alwi, 2006).

In this study, researchers used a grand theory taken from the theory of Jeremy Bentham. According to Bentham, it is a form of reaction to the conception of natural law in the eighteenth and nineteenth centuries. Bentham criticized the conception of natural law, because he considered that the laws of nature were neither vague nor fixed. Bentham explores the periodical movement from the abstract, idealistic, and a priori to the concrete, materialist, and fundamental. According to Bentham, the purpose of law is to provide the greatest benefit and happiness to as many citizens as possible. So, the concept puts benefit as the main goal of law. The measure is the greatest happiness for as many people as possible. Assessment of good or bad, fair or not this law is very dependent on whether the law is able to give happiness to humans or not. Benefit is defined the same as happiness.

As a middle theory, the legal system theory from Lawrence M. Friedmen is used that the effectiveness and success of law enforcement depends on three elements of the legal system, namely the legal structure (structure of the law), legal substance (substance of the law) and legal culture (legal culture). The legal structure concerns law enforcement officers, legal substance includes statutory instruments and legal culture is a living law adopted in a society. The structure of the legal system consists of the following elements: the number and size of courts, their jurisdiction including the types of cases they are authorized to hear, and the procedure for appeals from court to court. Structure also means how the legislature is organized, what the president can and cannot do, what procedures the police follow and so on. So the structure (legal structure) which consists of existing legal institutions, is intended to carry out the existing legal instruments.

As an applied theory, the author uses the Integrative Legal Theory from Talcott Parsons which states that in order for the legal system to carry out its integrative function effectively, there are four (4) problems that must be resolved first, namely: legitimacy, which will be the basis for the observance of the rules. ; interpretation, which will involve the issue of determining the rights and obligations of the subject through the process of determining certain rules; sanctions, which confirms what sanctions will arise if there is compliance and what sanctions will arise if there is a binding to the rules, and at the same time confirms who will apply the sanctions; jurisdiction, which establishes the lines of authority that have the power to enforce legal norms. Seen from Parsons' perspective, it seems that the effectiveness of the integrative function of the legal system in Indonesia is still facing problems in terms of legitimacy, interpretation, sanctions, and jurisdictional aspects.

## Research methods

This study uses a normative juridical approach (legal research) to obtain secondary data through a literature review of the legislation and legal books and an empirical approach (sociological juridical) to obtain primary data through field research in the form of direct interviews. with respondents. Given this research focuses on primary data and secondary data. Primary data sourced from interviews at the Bareleng Batam Police Station. Secondary data collection is carried out through library research by reviewing books, journals, research results, conventions and laws and regulations as well as through internet media regarding matters related to research problems. The analysis was carried out using the Descriptive Analysis method because the problem being investigated was to describe/describe the state of the subject/object of research, namely analyzing the problem- solving procedures studied by means of obtained and literature studies to be analyzed and interpreted by giving conclusions.

## Results and Discussion

The term petroleum comes from the English translation, namely crude oil, while the term natural gas comes from the English translation, namely natural gas ([Http://Id.Wikipedia.Org/Wiki/Minyak\\_Bumi](http://id.wikipedia.org/wiki/Minyak_Bumi)). The definition of petroleum is found in Article letter (i) of The Petroleum Tax Code, 1997, Indian. Article 3 letter (i) in the Indonesian translation reads as follows:

“Petroleum means crude oil that exists in the form of natural conditions, such as all types of hydrocarbons, bitumen, both in solid and liquid form, obtained by condensation (condensation) or extracted, including by distillation (distillation/filter) or condensation (condensation) when associated with very heavy hydrocarbons which are listed as a mixture, but do not include natural gas” (Salim, 2005)

A more complete definition of petroleum is also regulated in Article 1 paragraph (1) of Law Number 22 of 2001 concerning Oil and Gas. Basically the formation of fuel oil comes from the processing of petroleum. Petroleum based on Law No. 22 of 2001 concerning Oil and Gas is

“The products of natural processes are in the form of hydrocarbons under atmospheric pressure and temperature in the form of liquid or solid phases, including asphalt, mineral wax, and bitumen obtained from mining, but excluding coal or other solid hydrocarbon deposits obtained from activities that are not relating to Oil and Gas business activities”

The term crime comes from a term known in Dutch criminal law, namely strafbaar feit. Although this term is found in the Dutch WvS, as well as the Dutch East Indies WvS (KUHP), but there is no official explanation of what is meant by strafbaar feit. Therefore, jurists try to give the meaning and content of the term. And unfortunately until now there has been no uniformity of opinion (Adami Chazawi, 2005).

According to Sabar Simbolon, there are several conditions to determine the act as a crime, these conditions are as follows:

1. There must be human action;
2. Human actions are against the law.
3. The act is prohibited by law and is punishable by a criminal offense.
4. The act is carried out by a person who can be accounted for
5. The act must be accountable to the maker.

Usman Simanjuntak argued that criminal acts can be distinguished on certain grounds, namely:

1. According to the Criminal Code system, a distinction is made between crimes (misdrijven) contained in book II and violations (overtredingen) contained in book III.
2. According to the method of formulating it, it is distinguished between formal crimes (formeel delicten) and material crimes (materieel delicten).

3. Based on the form of the error, it is distinguished between intentional crime (*doleus delicten*) and unintentional crime (*culpose delicten*).

The sanctions referred to in this case are criminal sanctions. Sanctions are defined as punishments. Punishment, namely torture imposed on people or legal subjects who violate the law or the decision handed down by the judge. The punishment referred to in this case is the punishment regulated in Law No. 22 of 2001 concerning Oil and Gas. Sudarto said that punishment is suffering that is intentionally imposed on people who carry out actions that meet certain conditions.

Law Number 22 of 2001 concerning Oil and Gas is known for the types of criminal acts that will be imposed on perpetrators who commit crimes in the field of Oil and Gas. The forms of criminal acts regulated in Law 22 of 2001 are:

1. Processing without a processing business license
2. Transportation without a transportation business license
3. Storage without a storage business license
4. Trading without a commercial business license

That national development must be directed to the realization of people's welfare by carrying out reforms in all fields of national and state life based on Pancasila and the 1945 Constitution. That oil and gas are non-renewable strategic natural resources controlled by the state and are vital commodities that control livelihood of many people and has an important role in the national economy so that its management must be able to maximally provide prosperity and welfare of the people. That solar and natural gas business activities have an important role in providing real added value to increasing and sustainable national economic growth.

The problem of law enforcement according to Soerjono Soekanto conceptually, namely the essence and meaning of law enforcement lies in the activity of harmonizing the relationship of values that are described in solid rules and attitudes of action as a series of final stage value elaborations to create, maintain and maintain peaceful social life (Soerjono Soekanto, 1983). Mardjono Reksodipoetro has divided this system into three stages, namely:

1. The stage before the court trial or the pre-adjudication stage,
2. Court trial stage or adjudication stage
3. The stage after the trial or the pre-adjudication stage (post-adjudication). (Mulyadi, 2008)

In facing global needs and challenges in the future, Oil and Gas business activities are required to be better able to support the sustainability of national development in order to increase the prosperity and welfare of the people.

Based on the above matters, it is necessary to draw up a Law on Oil and Gas to provide a legal basis for steps to reform and restructure Oil and Gas business activities so that the sale of subsidized fuel oil can be protected from any form of criminal act.

Whereas Law Number 44 Prp. 1960 concerning Oil and Gas Mining and Law Number 15 of 1962 concerning Stipulation of Government Regulation in Lieu of Law Number 2 of 1962 concerning the Obligation to Fulfill Domestic Oil Needs, and Law Number 8 of 1971 concerning Oil and Gas Mining Companies The state is no longer in accordance with the development of the oil and gas mining business.

That while still taking into account national and international developments, it is necessary to amend the laws and regulations that can create independent, reliable, transparent, competitive, efficient, and environmentally friendly oil and gas mining business activities, as well as encourage the development of national potential and roles.

Law enforcement efforts have been carried out by the officers who are authorized to do so. As in various regions, "naughty" industrial actors have been arrested who abuse subsidized fuel oil. It has been stated in the articles in Law No. 22 of 2001 concerning criminal penalties and criminal sanctions for perpetrators of abuse of subsidized fuel oil.

The regulation of oil and gas mining is regulated in a written law made by the competent government and set forth in the Legislative Regulations. The regulations regarding oil and gas are as follows:

1. The 1945 Constitution of the Republic of Indonesia. Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia states that:  
"All excavated materials contained within the mining jurisdiction of Indonesia are natural deposits as a gift from God Almighty, are the national wealth of the Indonesian nation and are therefore controlled and used by the State for the greatest prosperity of the people."  
These provisions give the state the right to control all of Indonesia's natural resources and give the state an obligation to use them for the greatest prosperity of the people (Azhar, 2003).
2. Law Number 22 of 2001 concerning Oil and Gas. In consideration said that:  
"National development must be directed to the realization of people's welfare in all fields, one of which is the result of oil and gas mining which is used for the welfare of the people."

The philosophical foundations stipulated by Law No. 22 of 2001 concerning Oil and Gas, namely:

1. The implementation and control of Oil and Gas as natural resources and development resources that are strategic and vital.
2. Support and develop national capacity to be more competitive.
3. Increasing state income and contributing as much as possible to the national economy, developing and strengthening Indonesian industry and trade. Creating jobs, improving the environment, increasing people's welfare and prosperity.

Presidential Regulation Number 15 of 2012 and in Article 7 Number 2 "Business entities and/or the public are prohibited from stockpiling and/or storing and using certain types of fuel oil that are contrary to the provisions of laws and regulations" and Article 7 Number 3 "Business Entities and/or the public violating the provisions as referred to in paragraph (1) and paragraph (2) shall be subject to sanctions in accordance with the provisions of the legislation.

The provisions contained in Law Number 22 of 2011 concerning Oil and Gas are further elaborated in other laws, Government Regulations, Presidential Regulations and Ministerial Regulations, including:

1. Law Number 44 of 1960 concerning Oil and Gas Mining.
2. Law Number 15 of 1962 concerning Stipulation of Government Regulation in Lieu of Law Number 2 of 1962 concerning Obligations of Oil Companies to Meet Domestic Needs.
3. Law Number 8 of 1971 concerning Pertamina in conjunction with Law Number 10 of 1974 concerning Amendments to Law Number 8 of 1971 concerning Pertamina.
4. Government Regulation Number 41 of 1982 concerning Obligations and Procedures for Depositing Government Revenue from Pertamina's Own Operating Results and Production Sharing Contracts.
5. Government Regulation Number 42 of 2002 concerning Implementing Body for Upstream Oil and Gas Business Activities.
6. Presidential Decree Number 42 of 1989 concerning Cooperation between Pertamina and Oil and Gas Refining and Management Business Entities.
7. Presidential Decree Number 169 of 2000 concerning the Principles of Pertamina's Organization.
8. Regulation of the Minister of Energy and Mineral Resources number 18 of 2013 concerning Retail Sales Prices and the Use of Certain Types of Fuel Oil.

Based on the description above, criminal acts are the main basis in imposing criminal penalties on people who have committed criminal acts on the basis of someone's responsibility for the actions he has committed, but before that regarding the prohibition and threat of an act, namely regarding the criminal act itself, namely based on the principle of legality (principle of legality). of legality), the principle that determines that there is no prohibited act and is threatened with a criminal if it is not determined in advance in the law.

The criminal acts regulated in the criminal provisions are regulated in Law Number 22 of 2001 concerning Oil and Gas, Article 51 to Article 58. The contents of the description of the articles mentioned above are addressed to everyone. The word "everyone" is an individual person who can act and do everything that is the subject of the law. Basically, legal subjects are not only imposed on a person, but legal entities are also referred to as legal subjects. The legal entity in question is like a human being, namely as a legal subject, has rights and obligations, and can also carry out legal relationships, such as legal relationships between legal entities and people (humans) or legal relationships between legal entities that one legal entity to another. Therefore, legal entities can enter into agreements, such as sale and purchase agreements, exchange agreements, lease agreements, leasing agreements, and all kinds of actions in the field of property (Nyulistiowati Suryanti, 2015).

In case No. 789/Pid. B/ 2014/ PN. BTM, all witnesses admit to working for PT. Arthauli Jaya Abadi and being paid a salary by the company means that all the witnesses who work have nothing to do personally with the defendant Gundong Purba. The facts of the trial are evident that all activities on behalf of the company mean that the company is a legal subject who is being held criminally responsible regardless of the company law. 40 of 2007 concerning Limited Liability Companies Article 92 paragraph (1), the board of directors has the duty to represent the company, namely:

1. Regulate and carry out the company's business activities.
2. Manage the company's assets.
3. Representing the company inside or outside the court

This means that the perpetrator of a crime should be a business entity regardless of all actions being represented by the board of directors. The evidence has also attached the deed of establishment of the company PT. Arthauli Jaya Abadi which in his considerations did not consider who was the manager of the company. Basically, if it is shown

and proven correctly that the management of the company there are several directors, then these directors must be responsible for all actions that occur under the name of PT. Arthauli Jaya Abadi.

The personal responsibility of the directors in a civil manner does not rule out the possibility of their actions being criminally processed, this is in accordance with Article 155 based on Law no. 40 of 2007 concerning Limited Liability Companies which reads: "The provisions regarding the responsibility of the board of directors and or the board of commissioners for their mistakes and negligence as regulated in this law do not reduce the provisions stipulated in the law on criminal law".

The provisions of this article in corporate responsibility do not eliminate or reduce criminal legal liability for errors and omissions committed by the board of directors or the board of commissioners if the mistakes and omissions carried out contain elements of criminal offenses. Because a criminal act is not only against the law in the criminal book, but in certain circumstances it can be against the law in the sense of civil law.

In Law No. 22 of 2001 concerning Oil and Gas, it is explained that business licenses are only granted to business entities by the government. The business entity in question is a company in the form of a legal entity that runs a type of business that is permanent, continuous and established in accordance with applicable laws and regulations and works and is domiciled within the territory of the Unitary State of the Republic of Indonesia. However, this law does not regulate criminal acts if the company commits an unlawful act.

If proven legally and convincingly all the actions that occurred in the Batam District Court Decision No. 789/Pid. B/ 2014/ PN. BTM on behalf of the company PT. Arthauli Jaya Abadi, the criminal element of each person cannot be fulfilled because the company is not everyone but a legal subject that is run by a person or group of people.

Criminal liability for abuse of transportation and/or trading of subsidized diesel fuel in the Batam District Court decision no. 789/Pid. B/ 2014/ PN. BTM cannot be sued to PT. Arthauli Jaya Abadi with the indictment of Article 55 of Law Number 22 of 2001 concerning Oil and Gas that does not meet the elements of a criminal act of "everyone" which is not directed to a legal entity.

Criminal liability cannot be charged to Gundong Purba under Article 55 of Law No. 22 of 2001 concerning Oil and Gas because of the legal fact that all legal actions are carried out on behalf of PT. Arthauli Jaya Abadi as a legal entity not as a "person/everyone". This has been proven legally and convincingly from various witness

statements that have been presented by the public prosecutor.

Based on the description above, it refers to the provisions of Article 1 paragraph (1) of the Criminal Code which reads: "An act cannot be punished, except based on the strength of the provisions of the existing criminal legislation." 789/Pid. B/ 2014/ PN. BTM cannot be held criminally liable to PT. Arthauli Jaya Abadi because the law that has been violated does not exist and so is the legal fact that is proven in that the party that has committed the legal act is the legal entity PT. Arthauli Jaya Abadi is not personally from Gundong Purba.

Based on the results of research conducted by the author, it can be seen that there are factors that cause abuse of transportation and/or trade of subsidized diesel fuel in the Bareleng Batam Police Legal Area. The author in this case will divide the factors causing the crime into two types, namely internal and external factors:

1. Internal factors are factors that come from within the individual, the factors that cause the occurrence of crimes of misuse of fuel oil and natural gas in the Bareleng Batam Police Legal Area, namely:

- a. Individual Factor

Based on the author's interview with Remon lumbangaol (30 years old) a police officer of crime of misuse of subsidized diesel fuel in the Bareleng Batam Police Legal Area are individuals and as part of a creature. Based on the results of research on various cases or perpetrators, according to him, the cause of deviant behavior is because the perpetrator is unable to adapt to the will of the community and the perpetrator is considered to be carrying out an activity that is looked down upon in society.

- b. Psychological Factor

Psychological factors are used by criminology in explaining the causes or sources of crime based on personality problems and psychological pressures that can encourage someone to do evil. According to Bintoro (25 years old), a member of the Batam Bareleng Police Police explained (Bintoro, 2021) Psychological factors have an important role for someone to commit a crime, these factors arise because of an impulse or pressure that can come from the problem of needs faced, One of the forms of efforts to fulfill these needs is to commit a crime and the low level of education results in a shallow way of thinking, meaning that someone with low education tends to commit a crime compared to an educated person. The crime arises because of curiosity and trial and error as well as demands for needs or life problems experienced so that it can continue and become a habit that is done repeatedly.

2. External Factors

External factors are factors that are rooted in the environment outside of humans (external), especially things that have a relationship with the emergence of crime, the influence of these factors is what determines a person to lead to crime, the cause of the misuse of fuel oil and gas. the earth in the Bareleng Batam Police Legal Area.

Based on the author's interview with Remon lumbangaol (30 years) a police officer of the Batam Bareleng Police Station (Remon lumbangaol, 2021), stated that the factors causing the crime of abuse of fuel oil and natural gas in the Legal Area of the Bareleng Batam Police were the main factors were economic factors because if studied/ Fundamentally, this factor has a major influence on the emergence of various types of criminal acts, for reasons of economic need are often used by perpetrators as the main reason. Then Bintoro (25 years), a member of the Batam Bareleng Police Police added that the unemployment rate was still high, and economic difficulties made the perpetrators or individuals seek double profits by hoarding for personal gain and the absence of sanctions or reprimands, thus making the perpetrators or people are free to do it.

Based on the description above, in the case of misuse of fuel oil and natural gas in the Bareleng Batam Police Legal Area, it is caused by two factors, namely internal and external factors. Internal factors include individual factors and psychological factors. While external factors include economic factors.

The world of the oil business, which looks orderly from the outside, turns out to have a lot of problems inside, from distribution, smuggling to the mixing of fuel oil and natural gas. In this lucrative business, many people are playing, and it is even suspected that it involves the authorities who have a strong influence in it.

The number of criminal acts of misuse of subsidized diesel fuel (BBM) has increased from year to year, but the settlement is considered less than optimal. This is because it is influenced by various factors so that efforts to overcome it are very difficult to do. In carrying out the task of overcoming the criminal act of misuse of subsidized Solar Oil (BBM).

For this reason, firm efforts by law enforcement officers, in this case the police, are needed, especially in the jurisdiction of the Bareleng Batam Police. Many people feel aggrieved by the actions of the perpetrators of abusing subsidized diesel fuel. However, in taking action against the perpetrators, many obstacles were found, resulting in a lack of deterrent effect on the abusers of fuel oil and natural gas.

The obstacles experienced in preventing and supervising the misuse of fuel oil and natural gas are as follows:

1. Factors of Law Enforcement Officials That Support Illegal Actions.

Law enforcement officers are the parties that form and apply the law. Sociologically, every law enforcement has a position (status) and a role (role). The problem that arises from law enforcement is the application of the role of law enforcement. Obstacles that need to be overcome include:

- a. Limited ability to put oneself in the role of the other party with whom he or she interacts;
- b. Relatively low level of aspiration;
- c. So limited enthusiasm for thinking about the future that it is very difficult to make a projection;
- d. The absence of the ability to delay the satisfaction of a certain need, especially material needs;
- e. A lack of innovative power is what conservatism mates.

2. Factors of People Who Want to Get Big Profits By Taking Illegal Actions.

The heterogeneous Batam community, which tends to have a high lifestyle, makes some people want to get huge profits in an instant and violate the law, even where the law applies and applies within that environment. Public opinion about the law also influences law enforcement with legal compliance. One of the public's opinions is regarding the meaning of law which is considered synonymous with officers. This opinion causes the community to obey the law if there are officers (Soerjono Soekanto, 2015).

So it can be concluded that the obstacles in criminal law enforcement in cases of misuse of subsidized diesel fuel by perpetrators in the city of Batam in this study were very much influenced by various factors, namely the legal factor itself, such as the lack of detailed regulations governing the criminal act of misuse of fuel. burning oil and gas carried out by the perpetrators contained in Law No. 22 of 2001 concerning Oil and Gas, law enforcement factors where the law enforcement process will run properly when law enforcement officers carry out their duties in accordance with their respective codes of ethics, and legal culture factor where in dealing with criminal acts of abuse of fuel oil and natural gas committed by the perpetrators, law enforcement officers must have a strong mentality so that in processing cases of misuse of fuel oil and natural gas, especially in Batam, law enforcement officers can carry out their own policies and procedures. process of law enforcement without sorting out who the perpetrators are behind the series of abuses of fuel oil and natural gas.

The rise of criminal acts of misuse and scarcity of fuel, as a result of soaring oil prices on the world market. For most people, fuel is a basic need, both for household and business needs (diesel, gasoline, kerosene). so that the

scarcity of fuel will hinder people's efforts to meet their primary needs. In this case, it is the middle and lower economic class people who feel the most impact.

The government is currently waging a war against the misuse of subsidized diesel fuel. This is because in the midst of concerns about the scarcity of fuel, there are still people who have the heart to fish in the murky water, by taking advantage of the situation and conditions plus the realization of the government increasing fuel prices due to high world oil prices. The misuse of BBM is one of the criminal acts in which there is a threat to the perpetrators. The problem of misuse of subsidized diesel fuel is currently a sharp spotlight in the community, especially the people in Batam City. To overcome these problems, it is necessary to take firm action from law enforcement officers, especially the Bareleng Police in dealing with criminal acts of misuse or misappropriation of Subsidized Diesel Fuel (BBM).

The crime of misappropriating subsidized diesel fuel (BBM) is generally carried out by the oil mafia, although not all of these illegal activities are carried out by organized networks. Based on various reports obtained at the Bareleng Police, the misuse of subsidized diesel fuel is not only carried out by one group, but several groups. The world of the oil business, which looks orderly from the outside, turns out to have a lot of problems inside, from distribution, smuggling to the mixing of fuel oil and natural gas. In this lucrative business, many people are playing, and it is even suspected that it involves the authorities who have a strong influence in it. For this reason, firm efforts by law enforcement officers, in this case the police, are needed, especially in the jurisdiction of the Bareleng Batam Police. Many people feel aggrieved by the actions of the perpetrators of abusing fuel and natural gas. This is exacerbated by the emergence of scarcity of fuel oil and natural gas, the supplies that Pertamina itself feels are sufficient are not in accordance with reality, people queue up to get fuel and natural gas. Not to mention the price that has soared and is increasingly unaffordable, and this is made worse by the government's realization that the increase in fuel oil and natural gas has increasingly caused concern and anxiety in the community.

The emergence of problems regarding the misuse of fuel and natural gas turns out that there are still parties who carry out illegal activities by abusing the fuel oil. This of course must get special attention from the Government, and law enforcement officers in this case the Police. The police as the executor of the government in enforcing the law certainly need to take firm action against the perpetrators of the abuse of subsidized diesel fuel, the police are asked to act quickly, responsively and appropriately in tackling the perpetrators of the abuse of fuel and natural gas. Of course, this is a tough job for the police, especially investigators, because as is well known the perpetrators of the misuse of fuel and natural gas involve unscrupulous officials from both Pertamina and the security forces.

The conditions that are expected by the perpetrators to be processed are the parties who actually commit the abuse, not the small people who do not know the problem. This often happens that only small people are processed in court, while the big ones are hiding behind the law. This of course causes injustice in society. The process of law enforcement and justice takes a long and long time, but what needs to be remembered is that the application of the law does not look at a person's position and social status so that the law can really be enforced and a sense of justice and legal certainty can be realized.

Countermeasures against criminal acts of misuse of fuel oil (BBM) and natural gas can be carried out by using criminal law policies or by using penal and non-penal measures. Penal efforts or penal law policies are a science that ultimately has a practical goal to enable positive legal regulations to be formulated better and for guidance not only to legislators but also to organizers or implementers of court decisions. In criminal law policies or efforts to penal sanctions are given to fulfill justice and have effectiveness, meaning that by giving sanctions, the perpetrator will feel deterred and will not repeat the act.

## **Conclusions and suggestions Conclusions**

Based on the descriptions that the authors describe in the discussion of this thesis, it can be concluded in accordance with the problems raised as follows:

1. The regulation of oil and gas mining is regulated in a written law made by the competent government and set forth in Legislation and has been contained in the articles in Law No. 22 of 2001 concerning criminal penalties and criminal sanctions for perpetrators of misuse of fuel oil. subsidized solder.
2. Legal considerations in cases of criminal acts of abuse of transportation and/or trading of subsidized diesel fuel still have many shortcomings, although these shortcomings do not make the decision null and void, but the decision does not reflect the application of a fair law against the defendant/convict. The legal considerations that are passed in this case are regarding the elements of each person where the perpetrator who was charged and convicted in the case seemed to act on his own but the legal fact is that the act that occurred on behalf of PT. Arthauli Jaya Abadi. The decision did not consider that the fuel oil sold was

- subsidized fuel but stated that it was legally and convincingly proven to trade subsidized diesel fuel without a permit. So that there is no difference in the provisions of Article 55 with Article 55 letter d in Law Number 22 of 2001 concerning Oil and Gas.
3. Criminal liability for abuse of transportation and/or trade of subsidized diesel fuel cannot be held accountable to the ancient Gundong because the legal facts of the trial of the unlawful act were carried out by the legal entity PT. Arthauli Jaya Abadi apart from being a director is Gundong Purba who acts on behalf of the company both in court and out of court.
  4. Factors causing the misuse of fuel oil and natural gas are divided into two, namely internal factors originating from the individual himself and external factors originating from the external environment of humans, generally influenced by economic and environmental factors. Obstacles in law enforcement on the misuse of fuel oil and natural gas The distribution of distribution institutions in various remote areas that are far from supervision, The increase in distribution institutions every year which is not accompanied by additional supervisory officers, Pertamina (Persero) which can only take action against the channeling institutions. The criminal policy against the crime of misuse of fuel oil and natural gas in the form of penal efforts focuses more on the nature of "repressive" (suppression / eradication / suppression), after the crime or crime has occurred and non -penal efforts are more of a preventive measure for the occurrence of crime, the target The main thing is to deal with the factors conducive to the occurrence of crime. The conducive factors are, among others, centered on problems or social conditions that are directly or indirectly. This effort is used primarily to direct that the objectives of business activities in the oil and gas sector can be carried out as optimally as possible so as to realize general welfare for all Indonesian people.

### Suggestions

The researcher hopes that the panel of judges who examine and decide cases will be more active in examining cases and considering better in order to give a fair decision, there is a change in the law, especially in violation of Law No. 22 of 2001 concerning Oil and Gas, which is a violation of the law. Criminal law still focuses on individual legal subjects but in fact legal entities through individual legal subjects who run the company can also commit criminal acts but in the non-criminal rules these provisions have not been regulated. This development is needed in criminal law.

### References

1. Harjono, Teknologi Minyak Bumi, Yogyakarta: Gajah Mada University Press. 2007, hal. 96
2. Adami Chazawi, Pelajaran Hukum Pidana Bagian 1; Stelsel pidana, teori-teori pemidanaan & batas berlakunya
3. hukum pidana, Jakarta : PT. RajaGrafindo, 2010;
4. Ahmad Rifa'i Penemuan Hukum Oleh Hakim Dalam Prespektif Hukum Progresif. Jakarta: Sinar Grafika, 2011; Amir Ilya, Asas-Asas Hukum Pidana Memahami Tindak Pidana Dan Pertanggungjawaban Pidana Sebagai
5. Syarat Pemidanaan, Yogyakarta : Mahakarya Rangkang Offset, 2012; Andi Hamzah, Hukum Acara Pidana Indonesia, Jakarta : Sinar Grafika, 2008; Andi Hamzah, Asas-Asas Hukum Pidana, Jakarta :Rineka Cipta, 2010;
6. Ansari, Faktor-Faktor Pertimbangan Hakim Dalam Menjatuhkan Putusan Pidana Terhadap Pelaku Tindak Pidana Narkotika Di Pengadilan Negeri Yogyakarta, Jurnal Res Judicata (Volume 1, Nomor 1, Juni 2018),hal 9-10
7. Bahder Johan Nasution, Hukum Kesehatan Pertanggungjawaban Dokter, Jakarta : Rineka Cipta, 2005; Bambang Purnomo, Pokok-Pokok Tata Cara Peradilan Indonesia, Jogjakarta : Liberti, 2004;
8. Barda Nawawi Arief, Kebijakan Legislatif dalam Penanggulangan Kejahatan Dengan Pidana Penjara, Yogyakarta : Genta Publishing, 2010;
9. Eddy O.S. Hiarij, Prinsip-Prinsip Hukum Pidana, Yogyakarta : Cahaya Atma Pustaka, 2014;
11. Hanafi Amrani, Reformasi Sistem Pertanggung jawaban Pidana, Jurna Hukum, Volume. 6 no. 11 Tahun 1999; Hari Sasangka dan Lily Rosita, Hukum Pembuktian Dalam Perkara Pidana, Bandung : Mandar Maju, 2003;

12. H. Salim, Hukum pertambangan di Indonesia, Jakarta : PT Raja Grafindo Persada, 2005; [https://id.wikipedia.org/wiki/Harga\\_bahan\\_bakar\\_minyak\\_di\\_Indonesia](https://id.wikipedia.org/wiki/Harga_bahan_bakar_minyak_di_Indonesia)
13. <https://finance.detik.com/energi/d-2707872/banyak-diselundupkan-solar-subsidi-dan-non-subsidi-beda-rp-7000liter>
14. <https://id.wikipedia.org/wiki/Terpidana>
15. <https://kbbi.web.id/salah%20guna.menyalahgunakan>
16. <https://www.prosesindustri.com/2015/02/defenisi-bahan-bakar-diesel-solar.html>  
<http://seputarpengertian.blogspot.com/2014/09/seputar-pengertian-subsidi.html>  
<https://solarelnusa.wordpress.com/2016/01/19/definis-bahan-bakar-solar-diesel>
17. I Made Pasek Diantha, *Metodoogi Penelitian Hukum Normatif*, Jakarta : Prenada Media Group, 2016; Leden Marpaung, *asas-teori-praktik hukum pidana*, Jakarta : Sinar Grafika, 2007;
18. Moeljatno, *Perbuatan Pidana Dan Pertanggungjawaban Pidana*, Jakarta : Bina Aksara, 1983;
19. Muhammad Taufik Makarao, *Hukum Acara Pidana Dalam Teori Dan Praktek*, Jakarta : Ghalia Indonesia, 2004; Mukti Arto, *Praktek Perkara Perdata pada Pengadilan Agama*, Yogyakarta : Pustaka Pelajar, 2004;
20. Munir Fuady, *Teori Hukum Pembuktian (Pidana dan Perdata)*. Bandung : Citra Adtya Bakti., 2000;
21. M. Syamsudin. *Konstruksi Baru Budaya Hukum Hakim Berbasis Hukum Progresif*. Jakarta: Kencana. 2012; Nyulistiowati Suryanti, *Hukum Perusahaan (Modul)*, Bandung : Universitas Padjadjaran, 2015;
22. Peraturan Pemerintah Nomor 36 Tahun 2004 tentang Kegiatan Usaha Hilir dan Gas Bumi;
23. Peraturan Pemerintah Nomor 30 Tahun 2009 tentang Perubahan Atas Peraturan Pemerintah Nomor 36 Tahun 2004 tentang Kegiatan Usaha Hilir Minyak Dan Gas Bumi;
24. Peraturan Presiden Republik Indonesia Nomor 191 Tahun 2014 Tentang Penyediaan, Pendistribusian Dan Harga Jual Eceran Bahan Bakar Minyak;
25. Peraturan Mahkamah Agung RI No. 13 Tahun 2016 tentang Tata Cara Penangan Perkara Tindak Pidana Oleh
26. Koorporasi.
27. Roeslan saleh, *Pikiran-Pikiran Tentang Pertanggungjawaban Pidana*, Jakarta : Ghalia Indonesia, 1982; Romli Atmasasmita, *Asas-Asas Perbandingan Hukum Pidana*, Jakarta : Yayasan LBH, 1989.
28. Sudarto, *Hukum dan Hukum Pidana*, Bandung ; Alumni, 1986; Sugiyono, *Penelitian Kualitatif*, Bandung: Alfabeta, 2012;
29. Undang-Undang Nomor 73 Tahun 1958 Tentang Menyatakan Berlakunya Undang -Undang No. 1 Tahun 1946
30. Republik Indonesia Tentang Peraturan Hukum Pidana Untuk Seluruh Wilayah Republik Indonesia Dan Mengubah Kitab Undang-Undang Hukum Pidana;
31. Undang-Undang No. 8 Tahun 1981 Tentang Hukum Acara Pidana;
32. Undang-Undang Nomor 22 Tahun 2001 Tentang Minyak Dan Gas Bumi Undang-Undang Nomor 4 Tahun 2004 Tentang Kekuasaan Kehakiman;
33. Wirjono Prodjodikoro, *Asas-Asas Hukum Pidana Indonesia*, Bandung : PT Eresco, 1986;
34. Yahya Harahap, *Pembahasan Permasalahan dan Penerapan KUHAP: Pemeriksaan Sidang Pengadilan, Banding, Kasasi, dan Peninjauan Kembali*. Jakarta: Sinar Grafika, 2010;