



## **Applicability of Article 53 of Law No. 22 of 2001 in Supporting the Effectiveness of the Law Against the Hoarding of Subsidized Fuel**

*Roziyah Siti Fatima Yusuf*

*Faculty Of Law, Universitas Negeri Gorontalo, Indonesia. E-mail: [roziyah.yusuf24@gmail.com](mailto:roziyah.yusuf24@gmail.com)*

**Abstract:** This study aims to analyze the applicability of Article 53 Law No. 22 of 2001 in Supporting the Effectiveness of the Law Against the Hoarding of Subsidized Fuel (from now on referred to as BBM) in the Resort Police Region of Gorontalo City and the factors that influence this. This type of empirical or field research uses a case approach and a statutory approach. The results of this study indicate the expected effectiveness of the law because, in terms of implementing the article, it is still challenging to implement and also because the lack of tightness in the distribution of subsidized fuel from Pertamina makes hoarding easier. What influences the effectiveness of this law are factors such as the community, law enforcement, and sanctions, which still need to be stronger..

**Kata Kunci:** *BBM; Hoarding; Pertamina.*

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## 1. Introduction

Crime in human life is a social phenomenon that will continue to be faced by everyone, be it society or the state. The facts show that crime can be prevented and reduced, but it is challenging to eliminate it. A person's most extraordinary ability can also have adverse effects, including crimes committed that will become more complex.<sup>1</sup>

Following the goals of the Republic of Indonesia means that there is protection for the community and that people's rights are guaranteed in every aspect of their lives. This is, of course, in line with the rule of law concept initiated by F.J. Stahl, one of which is "providing recognition and protection of human rights. In fact, in the reality of people's lives, it is inversely proportional to the goals of the Indonesian state. Various kinds of legal problems have occurred. The pattern of human behavior is increasingly deviating from the norms that grow in society."<sup>2</sup>

One of the crimes rife in the community is the hoarding of fuel oil (in the future referred to as BBM) carried out by irresponsible persons, which befalls people who need fuel. Oil and gas (in the future referred to as MIGAS) are natural resources controlled by the state that have a vital role in supplying industrial fuel and fulfilling essential needs; therefore, their management must be as efficient as possible so that they can be used for the more excellent progress and welfare of the people.

In Indonesia, the definition of petroleum is regulated in Law Number 22 of 2001 concerning Oil and Natural Gas. Article 1 point (1) defines that "petroleum is the result of a natural process in the form of hydrocarbons that, under conditions of atmospheric pressure and temperature, are in the form of a liquid or solid phase, including asphalt, mineral wax or ozokerite, and bitumen obtained from the mining process, but not including coal or other solid hydrocarbon deposits obtained from activities that are not related to oil and gas business activities."<sup>3</sup>

Oil and natural gas are the country's natural resources and are essential to the national economy. Therefore, its management must be as efficient as possible. In the government's efforts to establish oil and natural gas companies to guarantee the prosperity and welfare of the people, the government has enacted Oil and Gas Law

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<sup>1</sup> Bambang Waluyo, *Pidana Dan Pemidanaan* (Jakarta: Sinar Grafika, 2008) Hal 30.

<sup>2</sup> Jufryanto Puluhulawa Moh. Rusdiyanto U. Puluhulawa and Moh. Fahrurrozie Hidayatullah Nur Musa, "Kebijakan Kriminal Dalam Penanggulangan Tindak Pidana Penganiayaan Menggunakan Panah Wayer Oleh Anak Di Kota Gorontalo," *Jurnal Yuridis* Vol. 6, no. 2 (2019): 93 – 117.

<sup>3</sup> Pasal 1 Undang-Undang No. 22 Tahun 2001.

No. 22 of 2001, which regulates matters relating to the management and distribution procedures. Oil and gas in the punishments given to criminals.<sup>4</sup>

Mineral resources are one of the natural resources owned by the Indonesian nation, and if managed properly, they will contribute to the country's economic development. In this case, the government, as the authority over these resources based on the 1945 Constitution, must be able to optimize revenues from exploiting these resources so that maximum benefits can be created for the prosperity of the people.<sup>5</sup>

Considering that fuel is one of the basic needs of today's modern society, fuel subsidies from the government amount to almost 50% (fifty percent) of the price reduction from the selling price of essential fuel. You can compare diesel fuel; for example, the subsidized price is IDR 5,500.00, while the non-subsidized price is IDR 10,200.00. Likewise, for the premium price. However, unfortunately, the government's good intentions do not necessarily positively impact the community. The achievement of targets intended explicitly for the economically vulnerable community becomes widely utilized for the upper-class economic community. This is easy to understand because all people who can be seen ownership of vehicles with this type of car can also use subsidized fuel freely. As a result, a large budget amount (tens of trillions of rupiah) is disbursed by the government to cover half of the fuel price from the base price; it can be said only to benefit the middle class and above.

This is because the need for fuel for the middle class and above with ownership of four-wheeled vehicles (cars) requires more fuel than the lower-class people, who incidentally only use two-wheeled vehicles (motorcycles), and so on. In addition to the problems above, in the process of distributing subsidized fuel in the field, it turns out that there are many other problems. Among them is the use of subsidized fuel by a handful of people to gain profits by carrying out the practice of stockpiling to be sold at a value relatively below industry prices with the target of industrial sales or business partners.

The consequences of this phenomenon often impact the scarcity of subsidized fuel in society. Hoarding subsidized fuel to be sold at industrial prices is a crime that harms the country's economy and deprives the poor recipients of subsidies for human rights.

In the valid *Ius Constitutum* Article 33, paragraph (2) of the 1945 Constitution of the Republic of Indonesia reads, "Production branches that are important for the state and

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<sup>4</sup> Reyhard Jonathan Ilely et.al, "Teknik Dan Taktik Penimbunan Bahan Bakar Minyak (Studi Kasus Pada Direktorat Krimsus Polda Maluku)," *Jurnal Ilmu Hukum* Vol 1, no. 7 (2021) Hal 698.

<sup>5</sup> Radityo Amaradipta Prasodjo, "Efektivitas SKK MIGAS Dalam Mewujudkan Kemakmuran Rakyat Berdasarkan Pasal 33 UUD 1945," *Jurnal Inovasi Penelitian* Vol 3, no. 6 (2022) Hal 6587.

which affect the livelihood of the public are controlled by the state," and paragraph (3) states, "Earth and water and the natural wealth contained therein are controlled by the state and used for the greatest prosperity of the people."<sup>6</sup> One of them is understanding the people's interests by making changes in all aspects of national and state life based on Pancasila and the 1945 Constitution. *Petroleum* is a non-renewable strategic natural resource controlled by the state to benefit society. Crude oil plays an essential role in driving industrial infrastructure, running the wheels of the economy, meeting people's needs, and creating foreign exchange for the country. Therefore, the fuel must be adequately regulated to be used as much as possible for the prosperity and welfare of the people.

The state ordered PT. Pertamina (Persero) is a state-owned enterprise (BUMN) responsible for managing and distributing fuel such as premium, Pertamina, diesel, aviation fuel, and kerosene. Fuel Filling Stations for the Public (SPBU) can meet the community's fuel needs.

In order to accommodate the people's needs for fuel, the government has adopted a policy of providing subsidies to low-income people or groups of poor people. Fuel subsidies are allocated only to low-income groups and industries that need them, not to elite groups of people.

People generally obtain subsidized fuel through gas stations and APMS (oil and diesel distribution agents). In these two places, people receive fuel subsidies for the community, not commercial companies. As well as in the Circular Letter of the Directorate General of Oil and Gas (BP Migas) Number 1394/16/2013 and the Regulation of the Minister and Mineral Resources (ESDM) Number 1 of 2013, which prohibit government vehicles, BUMD, and BUMN, from using subsidized fuel, this has quite an impact on the widespread abuse of subsidized fuel. Many official vehicle voters who should buy non-subsidized fuel instead buy retail premium for Rp. Eight thousand per liter instead of buying Pertamina at a gas station for Rp. 10,950 per liter. This causes retail fuel to sell well in the community and can trigger retail fuel traders to survive and make this their primary source of income rather than working elsewhere.<sup>7</sup>

The author sees the direction of Lawrence Meir Friedman's view that a structural system determines whether the law can be adequately implemented. No matter how well the legal products have been prepared, if law enforcement officials cannot maximize their performance in carrying out their duties, justice will become a mere dream. In other words, the law will not run smoothly if no law enforcement officers

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<sup>6</sup> Article 33 of the 1945 Constitution of the Republic of Indonesia.

<sup>7</sup> M Muhadi and D Karya, "Penegakan Hukum Terhadap Penyalahgunaan BBM Bersubsidi Di Kalimantan Timur," *Journal de Facto* Vol 6, no. 1 (2019), Hal 2.

are credible, competent, and independent. Therefore, one of the successes of law enforcement comes from the personalities of law enforcers.<sup>8</sup>

In the Province of Gorontalo itself, especially in the case study area of Gorontalo City, as it is within the scope of the research, the researchers themselves have previously conducted interviews and also observed data on the number of cases of subsidized fuel stockpiling, while the data obtained:

Tabel 1. 1 Data on *BBM* Crime Cases that Occurred in the City of Gorontalo

No.	Year	Case
1.	2018	1
2.	2019	4
3.	2020	0
4.	2021	0
5.	2022	0
	Total	5

Source : *Gorontalo City Police* <sup>9</sup>

So from the data above, of course, there are still gaps in this case; it can be seen that even though there are regulations in force, they have yet to be able to suppress cases of hoarding in Gorontalo City. In Article 191 of 2014, paragraph (2) states that business entities or the public are prohibited from hoarding or storing and using certain types of fuel that are contrary to the provisions of the laws and regulations concerning retail fuel oil, and paragraph (3) states that business entities or communities that violate the provisions referred to in paragraph (1) and paragraph (2) are subject to sanctions following the provisions of the legislation concerning Oil and Gas No. 22 of 2001.<sup>10</sup>

- a. The crimes related to the misuse of fuel are regulated in Article 53 of Law Number 22 of 2001 concerning Oil and Gas, which reads as follows:
- b. Everyone who does:
- c. As referred to in Article 23, the manager without a processing business license shall be subject to imprisonment for a maximum of 5 (five) years and a maximum fine of Rp. 50,000,000,000.00 (fifty billion rupiahs).

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<sup>8</sup> Fence M. Wantu and Apripari, "Musyawarah Lingkungan Hidup Sebagai Strategi Penyelesaian Kerusakan Lingkungan Di Desa Tupa," *DAS SEIN: Jurnal Pengabdian Hukum & Humaniora* 3, no. 1 (2023) Hal 35.

<sup>9</sup> Source : Gorontalo City Police

<sup>10</sup> Article 18 Regulation of the President of the Republic of Indonesia No. 191 of 2014.

- d. Transportation, as referred to in Article 23 without a transportation business permit, shall be subject to imprisonment for 4 (four) years and a maximum fine of Rp. 40,000,000,000.00 (forty billion rupiah).
- e. Storage, as referred to in Article 23, without a storage business permit, shall be imprisoned for 3 (three) years and a maximum fine of Rp. 30,000,000,000.00 (thirty billion rupiahs).
- f. Trading, as referred to in Article 23, without a trading business license shall be subject to imprisonment for 3 (three) years and a maximum fine of Rp. 30,000,000,000.00 (thirty billion rupiah).<sup>11</sup>

Based on an analysis of various laws related to existing data, the authors assess the need for research from a criminal perspective on the effectiveness of applicable laws, conduct research, and write it in journal form with the title "U No. 22 Year 2001 in Supporting Legal Effectiveness Against Subsidized Fuel Hoarding."

## **2. Methods**

The research method used in this paper is empirical research, or field research, using a case approach and laws with observation, interview, and documentation techniques to obtain clarity from something discussed.

## **3. Analysis and Discussion**

### **Applicability of Article 53 of Law No. 22 of 2001 in Supporting Legal Effectiveness Against Subsidized Fuel Hoarding Actors**

The author assesses that in Gorontalo Province, subsidized fuel hoarding must lead to a lack of regulation for filling fuel at gas stations. As stated in Chapter II, which regulates several articles that have explained that subsidized fuel cannot be traded for personal gain, this is what will become an introductory study of the effectiveness of the law governing the distribution of subsidized fuel in the City of Gorontalo. The author gives the hypothesis that if we want to stop the crime of hoarding subsidized fuel, then what must be strengthened is the pattern of distribution arrangements through gas stations in Gorontalo. Quo, the author hopes that there will be no fuel hoarding in the future because gas stations operate following applicable legal norms. Specifically explained by Pertamina, "We remind you that there will be criminal sanctions for the misuse of subsidized fuel as stated in Law Number 22 of 2001 concerning Oil and Gas, with a maximum imprisonment of six (six) years and a maximum fine of Rp. 60 billion." Pertamina itself also imposes strict sanctions on

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<sup>11</sup> Law No. 22 of 2001.

channeling institutions that are proven to have sold subsidized fuel not on target, namely in the form of a suspension of stopping the distribution of subsidized fuel for 30 days until the termination of business relations.”<sup>12</sup>

On September 3, 2022, the President of the Republic of Indonesia announced and formalized the increase in the price of pertalite and diesel fuel.<sup>13</sup> This causes long lines at gas stations. This incident provided an opportunity for the public to sell retail fuel, which was sold using glass bottles and plastic bottles, which in this case made it easier for the community because they did not need to queue, even though the price sold was higher than the price at gas stations. On the other hand, income from retail fuel sales generates a significant quantity of profit and high demand from consumers.<sup>14</sup>

Even though the fuel distributed to the broader community must meet the elements or specifications set, it must also have a business license. The distribution of fuel is regulated in Article 9 paragraph (1) of Law Number 22 of 2001 concerning Oil and Gas, which explains that upstream business activities consisting of exploitation and exploration and downstream business activities consisting of transportation, storage, and trading are carried out by state-owned enterprises (BUMN), regional-owned enterprises (BUMD), cooperatives, and private enterprises (BUS). PT Pertamina is a body appointed by the state specifically to manage and distribute BBM, as in this case, there is a third party as a partner in the oil sector to distribute BBM, namely Oil Fuel Filling Stations (SPBU). SPBU is a place for distributing fuel for the smooth mobility of everyday life, especially in transportation. In the sale of fuel, as stated in Article 2 of Government Regulation Number 30 of 2009 concerning Amendments to Government Regulation Number 36 of 2004 concerning Downstream Oil and Gas Business Activities, it is explained that only those in the form of legal entities can carry out fuel business activities, not individuals. However, Article 23 of Law Number 22 of 2001 concerning Oil and Gas explains that trading activities can be carried out after obtaining a trading business permit. However, Article 23 of Law Number 22 of 2001 concerning Oil and Gas explains that trading activities can be carried out after obtaining a business license. One regulated commercial business license is the oil and fuel business license. You may be imprisoned for three years and a maximum fine of IDR 30,000,000.00 if you do not have a business license. One of the most critical

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<sup>12</sup> Pertamina Tindak Tegas Penyelewengan Penjualan BBM Bersubsidi <https://pertaminapatraniaga.com/berita/pertamina-tindak-tegas-penyelewengan-penjualan-bbm-bersubsidi/> diakses tanggal 28 May 2023

<sup>13</sup> Antrean Mengular Terjadi di SPBU Kota Malang, Konsumsi Pertalite Meningkatkan <https://www.timesindonesia.co.id/read/news/429508/antrean-mengular-terjadi-di-spbu-kotamalang-konsumsi-pertalite-meningkat> diakses pada tanggal 23 Oktober

<sup>14</sup> Zanira Salsabila, Tindak Pidana Melakukan Niaga Bahan Bakar Minyak Tanpa Izin Usaha Niaga (Suatu Penelitian di Wilayah Hukum Pengadilan Negeri Sigli), *Jurnal Ilmiah Mahasiswa Bidang Hukum Pidana*, Vol. 5 No. 2 (2021). h. 366.

indicators in fuel distribution is the equipment used. Based on Article 12 of Law Number 2 of 1981 concerning Legal Metrology, it has been explained that:

"With a government regulation, it is stipulated regarding measuring and weighing instruments and equipment that:

- a) must be calibrated and recalibrated;
- b) Exempt from calibrating or recalibrating, or from both;
- c) The conditions must be met."

Based on the results of observations and research, retail fuel sales in Gorontalo City still need to use the tools that the Legal Metrology Agency has determined. Sales of BBM that do not meet the sales requirements may not be traded, as this is explained in Article 26 of Law Number 2 of 1981 concerning Legal Metrology, which reads:

"It is prohibited to offer to buy, sell, offer to rent, rent, hold inventory for sale, rent, surrender, or trade in any way:

- a. Instruments for measuring, weighing, and equipment marked with null tera;
- b. Instruments for measuring, measuring, weighing, or equipment that is not marked with a valid sharpening mark or is not accompanied by a statement of valid validation, except as stated in Article 12 b;
- c. Measuring instruments, measuring instruments, mats, and equipment with damaged warranty marks

The Downstream Oil and Gas Regulatory Agency (BPH Migas) provides an opportunity to open a business in retail fuel sales. Based on Article 3 of the Downstream Oil and Gas Regulatory Agency Regulation Number 6 of 2015 concerning the distribution of certain types of fuel oil and types of fuel specially assigned to areas where there are no distributors, it is explained that in areas where there are no fuel distributors or are not fuel distributors, sub-distributors are appointed. Sub-Distributors are representatives of several groups of users of certain BBM types and particular assignment BBM types with predetermined standards and quality.<sup>15</sup>

With several parameters for retail fuel sales that have been outlined in the constitution, we can conclude that in Gorontalo City, there are almost no places where subsidized fuel is sold that meet these standards, not to mention the legality issues that must be met, which is a clear red light for selling fuel. What people do illegally is

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<sup>15</sup> Dadan Kurniansyah, H. Lukmanul Hakim, Penerapan Peraturan BPH Migas Nomor 6 Tahun 2015 Terhadap Pelaku Usaha Pertamina/Pom mini Di Kabupaten Karawang Tahun 2018, *Jurnal Politikom Indonesiana*, Vol. 3 No. 2 (2018). h.217



not justified by the law. Likewise, with the rise of unscrupulous business actors selling retail fuel, especially in the Gorontalo City Region, Article 23 of Law Number 22 of 2001 concerning Oil and Gas confirms that fuel sales are carried out by business entities that have legal business licenses from the government. The development and improvement of national development, especially in the business world, requires legality, which is information about documents about companies that are established and legality as owners.<sup>16</sup>

Retail gasoline sellers in Gorontalo City are still mushrooming because no strict sanctions are given to the perpetrators. Ironically, this is done repeatedly to go to the same gas station, and some use jerry cans to increase the gasoline storage capacity. On the other hand, these gasoline sellers are small communities that want to get out of poverty. According to the author, the habits of the people above are due to weak oversight and control from the government.

However, the fact is that many of these retail fuel sellers do not have licenses and do not even know if this permit is needed. They do this business over a long period, namely 2 to 3 years. The increase in fuel prices causes a surge in queues at gas stations. This is an opportunity for retail fuel sellers because it will make it easier for the community. Sure enough, many people feel immensely helped by the presence of these retail fuel sellers because they do not have to wait in long lines at gas stations.

Juridically, retail fuel sales are not justified because there are some concerns. One is a fraud, namely fuel hoarding by business actors, which results in scarcity and resale at high prices. This is not justified because one of the distributions of BBM aims to be able to help develop activities in the broader community. Then there needs to be more public understanding of the regulations set regarding commerce. On the other hand, a lack of public understanding is caused by a lack of outreach, monitoring, and supervision by law enforcement agencies. If the rule of law is to work well, it must be disseminated effectively.

### **3.2 Factors That Become Constraints in the Application of Article 53 of Law No. 22 of 2001**

Based on the research results, the obstacles encountered in implementing Article 53 of Law No. 22 of 2001 are caused by several factors, including:

#### **1. Legal Factor**

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<sup>16</sup> Amin Purnawan, Siti Ummu Adillah. (2020). *Hukum Dagang dan Aspek Legalitas Usaha*. Bogor: LINDAN Bestari. h.5

There is no exceptional minimum sentence. In general, punishment for perpetrators of fuel abuse, in this case, retail petrol sellers, is considered very light, which does not deter convicts. In the absence of an exceptional minimum staff in the provisions of Article 53 of Law No. 22 of 2001, in the sentencing of perpetrators of misuse of fuel, the judge refers to the general minimum staff in the Criminal Code, namely imprisonment for 1 (one) day. This means the judge can impose a minimum sentence of one day and a maximum of six years.

## **2. Law Enforcement Factor**

The Gorontalo City Police managed to control the perpetrators of subsidized fuel hoarding in the Gorontalo City area in 2019. They succeeded in securing 71 gallons, with details of 25 gallons containing premium fuel and 46 empty gallons ready to be used to fill fuel, but so far, there has yet to be a P21 regarding Article 53 of Law 22 of 2001. The Gorontalo City Police collided with an expert examination from SKK MIGAS in south Jakarta. This distance constraint makes it difficult in terms of proof, one of which is the depreciation of confiscated evidence because there is no good place to store evidence that has been confiscated and ends up with an SP3 or Warrant for Termination of Investigation.<sup>17</sup>

## **3.Social Factor's**

In addition, some people who are retail gasoline sellers do not show any attitude of rejection. Road users feel helped by the presence of retail gasoline sellers. This is quite natural, considering that Pertamina, accessed by the community in Gorontalo City, still needs to be fulfilled within the reach capacity that makes it easier for the community. This is an opportunity for unscrupulous retail gasoline sellers to cover up the lack of coverage for fuel distribution.

## **4. Conclusion**

Article 53 Law No. 22 of 2001 in the Gorontalo City Resort Police Area still needs to be more effective in its application, which has made retail fuel sellers mushroom because they still need to care about the standardization given by law. The lack of law enforcement implementation of the law itself creates patterns of behavior for people who ignore standardization and also existing retail procedures. This is what started the hoarding case in Gorontalo because subsidized fuel retailing behavior is still difficult to control by the government, even though the constitution has approved this.

In applying Article 53 of Law No. 22 of 2001, investigators still experience several obstacles during the investigation process. These constraints have caused many cases related to subsidized fuel hoarding to not proceed to the prosecution process. However, this should not be a reason to justify the investigator. Apart from that,

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<sup>17</sup> Interview with Putra Mamonto as BANIT III SATRESKRIM Polresta Gorontalo City on May 30 2023

subsidized fuel stockpiling has its origins in the distribution of subsidies that are not good from Pertamina, so the researchers conclude that, in terms of stopping stockpiling, stricter regulations are needed from Pertamina as the leading distributor of subsidized fuel.

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