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The Law Enforcement of Removal Content's Gas Canister Criminal Based on Decision Number: 322/Pid.Sus/2020/PN.Mlg

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ABSTRACT

The fulfillment of LPG needs for household needs is by selling LPG at an appropriate price set by the government. Unfortunately, many businesses try to make a profit by transmitting the contents of subsidized LPG to non-subsidized LPG which is then sold to consumers at non-subsidized prices. The objective of this research is to understand and analyze the legal liability and law enforcement of Criminal Removal Content's Gas Canister based on Decision Number 322/Pid.Sus/2020/PN.Mlg. This research is included in normative legal research. The results indicated that Iwan Agus Susanto and Hendik Dwi Susanto can be held criminally liable because they have fulfilled all the elements of criminal liability. Law enforcement of the perpetrators of criminal gas canister removal committed by defendants Iwan Agus Susanto and Hendik Dwi Susanto in the existence of facts, such as the statements of witnesses and the existence of evidence confiscated with the confession of the defendants, then law enforcement concluded that the actions committed by Iwan Agus Susanto and Hendik Dwi Susanto were proven to have violated Article 53 letter d of Law of the Republic of Indonesia No. 22/2001 concerning Oil and Gas jo Article 55 Paragraphs (1) to 1 Criminal Code.

Keywords: Criminal Acts, Law Enforcement, The Removal Content of Gas Canister

INTRODUCTION

Unlimited human needs are always limited by the availability of resources to fulfill their needs. The limited fulfillment of these needs results in opportunity costs for humans in determining their resource allocation choices. One of the limitations of humans in this modern era is fuel, especially fuel oil which is a non-renewable resource. This problem is encountered by almost all countries in the world, including Indonesia. If examined further, the problem comes from the increasing global oil prices. One of the ways that the Indonesian government has done is to limit the level of Indonesia's dependence on oil-producing countries such as Arabia.¹

This became the background for the establishment of the kerosene to gas conversion policy. This policy program is a program to transfer subsidies and the use of kerosene to 3kg of gas canisters through the distribution 3kg of gas canister packages along with contents, stoves, regulators and hoses free of charge to communities that have predetermined criteria. This conversion program is implemented by involving several institutions, such as (1) the Ministry of Cooperatives and SMEs as an institution that procures stoves and accessories and distributes them to the community; and (2) the second party is PT Pertamina which is assigned to provide gas canisters and its content. In practical terms, PT Pertamina became the coordinator in the process of converting kerosene to 3kg of gas canisters.²

In Article 1 point 1 of Presidential Regulation No. 104/2007 on the supply, distribution and pricing of 3kg of gas canisters. LPG or commonly known as liquefied petroleum gas is a hydrocarbon gas that is liquefied under pressure to facilitate storage, transportation and handling which basically consists of Propane (C3), Butane (C4) or a mixture of both (Mix LPG). In addition, LPG means gas liquefied at a certain pressure obtained from fractionated petroleum. LPG is an option to replace kerosene. One of the objectives of the government program on the conversion of kerosene to canister gas in 2007 is to provide a fuel that is practical, clean, efficient, and the production cost of LPG is cheaper than kerosene. LPG is produced to supply the fuel gas needs of households, but then becomes the fulfillment of other needs such as industrial and transportation needs. In general, the use of LPG as an energy source is used to fulfill the needs of heat, lighting and power sources.³

¹ Rahmatullah, Inanna, and Mustari, *Konsep Dasar Ekonomi Pendekatan Nilai-Nilai Eco-Culture* (Makassar: CV. Nur Lina, 2018).

² Kementerian Energi dan Sumber Daya Mineral, *Peraturan Menteri Energi Dan Sumber Daya Mineral Tentang Pengoperasian Jaringan Distribusi Gas Bumi Untuk Rumah Tangga Yang Dibangun Oleh Pemerintah* (Jakarta, 2015), [https://peraturan.bpk.go.id/Home/Download/135118/Permen ESDM Nomor 20 Tahun 2015.pdf](https://peraturan.bpk.go.id/Home/Download/135118/Permen%20ESDM%20Nomor%2020%20Tahun%202015.pdf).

³ Wawan Ardi Subakdo and Yuwono Ario Nugroho, "In-Bound Dan Out-Bound Logistic Pada Distribusi LPG 3 Kg Di Indonesia," in *Seminar Nasional Sains Dan Teknologi* (Jakarta: Fakultas Teknik Universitas Muhammadiyah Jakarta, 2016), 1–10.

The fulfillment of LPG needs for household needs is by selling LPG at an appropriate price set by the government. Unfortunately, many businesses try to make a profit by transmitting the contents of subsidized LPG to non-subsidized LPG which is then sold to consumers at non-subsidized prices. This action is included as a criminal act that has violated the provisions of Article 53 letter d of Law No. 22/2001 concerning Oil and Gas, which contains “Commerce as referred to in Article 23 without a Commerce Business License shall be punished with imprisonment for a maximum of 3 (three) years and a maximum fine of IDR 30,000,000,000 (thirty billion rupiah).” On the other hand, it also stated in Article 55 of Law No. 22/2001 concerning Oil and Gas, which contains “Any person who abuses the transportation and/or trading of fuel oil subsidized by the government will be punished with imprisonment for a maximum of 6 (six) years and a maximum fine of IDR 60,000,000,000 (sixty billion rupiah).”⁴

The example of the case that the researchers examined was the criminal act of conducting oil and gas trading without a commercial business license together which occurred in Batu city which was decided by the Malang District Court with Decision Number 322/Pid.Sus/2020/PN. Mlg. The chronology began when the witness Samsul Hadi, S.H and the witness Rohmad Subekti, S.H received information from the public that the first defendant named Iwan Agus Susanto bin Kastari Teguh Santosa and the second defendant named Hendrik Dwi Susanto bin Suparman often filled 5.5 kg and 12 kg of gas canisters using 3 kg of gas canisters which are subsidized LPG. Based on this information, the witnesses Samsul Hadi and Rohmad Subekti conducted an investigation and managed to arrest the defendants who were removing the contents of 3 kg of gas canisters into 12 kg of gas canisters. Then the witnesses Samsul Hadi and Rohmad Subekti also conducted a search and managed to find evidence in the form of 1 set of hanging scales, 2 sets of iron pipes 2 cm long, 2 gas stoves, 1 blue plastic barrel, 2 boilers, 3 pans, 3 meters of slap rope, 1 used crackle seal, 15 full canisters of 12 kg gas canisters, 20 vacant canisters of 12 kg gas canisters, 15 full canisters of 5.5 kg gas canisters and 3 kg of vacant gas canisters around 40 canisters, all of which the defendants admitted to own.

The defendants did not have a business entity that obtained a commercial business license so they could not fill 5.5 kg and 12 kg of gas canisters at the LPG bulk filling and transportation station (SPPBE) so the defendants filled 5.5 kg and 12 kg of gas canisters by means of the defendants buying 3 kg of subsidized gas canisters, after obtaining 3 kg of gas canisters the defendants moved the 3 kg of gas canisters manually, namely first the defendants boiled water in a pot or boiler using a gas stove, after the water boiled, 3 kg of subsidized gas canisters were put into the hot water so that the gas in the canisters would quickly escape when moved, then 3 kg of subsidized gas canisters were stuck in non-subsidized gas canisters filled with

⁴ Pemerintah Pusat, *Undang-Undang Republik Indonesia Nomor 22 Tahun 2001 Tentang Minyak Dan Gas Bumi* (Jakarta, 2001).

5.5 kg and 12 kg using a metal pipe with a 2 cm long bat in the middle, with the position of the 3 kg subsidized gas canister on top of the 5.5 kg and 12 kg non-subsidized gas canisters, which took approximately 4 minutes, after the defendants estimated that the gas canisters had entered the 5.5 kg and 12 kg of gas canisters, then the defendants weighed them using a manual hanging scale that had been prepared, then the 5.5 kg and 12 kg non-subsidized gas canisters were sealed with the used seals from the 3 kg of gas canisters, then the gas canisters that had been modified were sold by retailing them to grocery stores.

Based on the previous case, subsidy abuse has been a crime in society since the fuel issue and the price disparity between subsidized and non-subsidized goods has always been the main cause. Therefore, a review of the price disparity policy is needed because the misuse of subsidies will only represent a waste of the state budget. Another impact is the loss to the community itself both from the aspect of technical safety of LPG work and from the aspect of loss of LPG quantity.

Based on the previous background, the researcher is interested in conducting research related to law enforcement against the criminal act of removing the contents of gas canister. The objective of this research is to understand and analyze the legal liability and law enforcement of Criminal Removal Content's Gas Canister based on Decision Number 322/Pid.Sus/2020/PN.Mlg.

RESEARCH METHODOLOGY

This research uses normative legal research methods, which is a research method that refers to legal norms to understand the application of legal norms to the facts presented, which in this case is to change the situation and offer potential solutions to solve any concrete societal problems.⁵ This research uses two approaches, i.e. case approach and statutory approach. The case approach is used by practitioners in conducting research by identifying court decisions that have qualified jurisprudence to be used in concrete cases.⁶ Meanwhile, the statutory approach is conducted by examining all laws and regulations that are related to the legal issue being faced.⁷

The data collection technique used in this research is literature study. The process of analyzing legal materials used by researchers in this research uses a normative-qualitative method. Legal materials that have been classified from primary legal materials and secondary legal materials are then analyzed by describing the contents in the form of rational interpretation and argumentation to maintain the picture that has been obtained. Furthermore, researchers also use the deductive analysis method, which is by analyzing legal materials based on legal materials that are common and then concluding certain conclusions.

⁵ Amir Alam & Ilyas, *Kriminologi: Suatu Pengantar* (Jakarta: Kencana, 2018).

⁶ Johnny Efendi, Jonaedi & Ibrahim, *Metode Penelitian Hukum Normatif Dan Empiris*, 1st ed. (Depok: Prenada Media Group, 2016).

⁷ Peter Mahmud Marzuki, *Penelitian Hukum*, Cet 13. (Jakarta: Kencana, 2017).

RESULT AND DISCUSSION

The Legal Liability against The Criminal of Removal Content's Gas Canister

The provisions regarding misuse of transportation and commerce are explicitly regulated in Article 55 of Law No. 22/2001 on Oil and Gas, which states that any person who misuses the transportation and/or commerce of fuel, both petroleum, gas fuel and processed products subsidized by the government, without a transportation permit and/or commerce permit from the competent authority can be punished in accordance with applicable regulations.⁸

Based on the explanation of Article 55 of Law No. 22/2001 on Oil and Gas, misappropriation means activities aimed at obtaining individual or business entity profits in a way that is detrimental to the interests of the public and the state, such as the criminal act of removing gas canisters; deviation of fuel allocation; transportation and sale of fuel; transportation and sale of fuel abroad. The main criminal provisions that regulate misuse and/or commerce are also known as additional punishment in the form of revocation of rights or confiscation of goods used to obtain profits from the criminal act. The crime of commerce against perpetrators who violate the applicable provisions of the business of commerce, the elements are regulated in Article 53 letter d of Law No. 22/2001 concerning Oil and Gas which contains such following below:

1. Everyone;
2. Committing any commerces; and
3. No commercial license.
4. Those who do, order to do or participate in the commission of a crime.

The acts committed in this article are the selling, purchasing, exporting and importing of fuel. There is no business of commerce. Commercial activities in the field of fuel oil distribution do not necessarily become a form of criminal offense as long as these activities are licensed by the competent authority. The commerce referred to in this case is the work of buying goods from one place or at one time and selling them at another place or further time with the intention of making a profit. People continue to rely on fossil fuels, forcing the government to continuously subsidize certain types of fuel oil. The use of subsidized fuel oil has actually been severely restricted to certain groups. The government has determined who can receive subsidized fuel oil, but the high demand for subsidized fuel oil has led certain individuals to hoard subsidized fuel oil to gain more profit.

Hoarding subsidized fuel oil means actions committed by certain parties to collect subsidized fuel in large quantities and then resell it with the aim of obtaining multiple profits. Fuel hoarders are not only those who hoard illegally and do not

⁸ Ibnu Sina Chandranegara, "Desain Konstitusional Hukum Migas Untuk Sebesar-Besarnya Kemakmuran Rakyat," *Jurnal Konstitusi* 14, no. 1 (2017): 45–80, <https://media.neliti.com/media/publications/115007-ID-desain-konstitusional-hukum-migas-untuk.pdf>.

have permits but there are also fuel agents who abuse subsidized fuel oil storage permits. The usual mode used by subsidized fuel oil hoarders is to buy subsidized fuel oil at public filling stations (SPBU) in a mobile manner so as not to be suspected. In Article 55 of Law No. 22/2001 concerning Oil and Gas, which states that any person who misuses fuel subsidized by the government, will be punished with imprisonment for a maximum of 6 (six) years and a maximum fine of IDR 60,000,000,000 (sixty billion rupiah).

The punishable act in this article is any person or business entity that misuses the transportation and/or trading of fuel oil subsidized by the government and without a business license to carry out the transportation of fuel oil so as to cause harm to others.⁹ In this provision, the misuse refers to the activities of fuel oil mixing, deviating from the allocation of fuel oil, transporting and selling fuel oil abroad. In this case, the meaning of benefiting oneself, harming others is included in the criminal offense regulated in the Criminal Code (KUHP) Article 378 concerning fraudulent acts. The article 378 of the Criminal Code which contains, "any person who, with intent to unlawfully benefit himself or another, by assuming a false name or false dignity, deceit or a series of falsehoods, induces another person to deliver any property to him, or to incur a debt or to cancel a debt, shall, being guilty of fraud, be punished by a maximum imprisonment of four years."

A criminal act regulated in Article 1 paragraph (1) of the Criminal Code known as the Principle of Legality, which determines that no act can be punished without the strength of criminal rules in existing legislation in order that a person can only be punished if the act has been formulated in advance as a criminal act. The defendants Iwan Agus Susanto bin Kastari Teguh Santosa and Hendik Dwi Susanto bin Suparman have committed the crime of removing the contents of LPG canisters, the defendants transferred subsidized LPG gas from 3 kg canisters to 5.5 kg and 12 kg non-subsidized gas canisters without the permission of the authorized official.

The Law Enforcement of Removal Content's Gas Canister Criminal Based on Decision Number: 322/Pid.Sus/2020/PN.Mlg

Law enforcement as a process is essentially the application of discretion concerning decisions that are not strictly regulated by legal rules but have elements of personal judgment. Wayne laFavre states that basically discretion is between law and morals. Based on this case, it can be stated that interference with law enforcement may occur if there is a disharmony between the triad of values, rules and patterns of behavior. The disturbance occurs when there is a mismatch between the paired values incarnated in the conflicting rules and undirected patterns of behavior that disturb the peace of life.

⁹ Putu Ari Mulyani, I Wayan Sudirman, and Ni Nyoman Yuliarmi, "Kajian Terhadap Faktor-Faktor Yang Mempengaruhi Subsidi Bahan Bakar Minyak (BBM) Indonesia," *Jurnal Ekonomi Kuantitatif Terapan* 8, no. 1 (2015): 1–8.

Therefore, law enforcement is not merely the implementation that must be in accordance with Indonesian legislation, but rather its tendency. Law enforcement as the implementation of judges' decisions. If these rather narrow opinions have weaknesses, it will disturb the peace in the association of life. These factors have a neutral meaning so that the positive or negative impact lies in the content of these factors. These factors include the following:

1. The legal factor itself, which in this research will be limited to the law.
2. Law enforcement factors such as parties who form and apply the law.
3. Facility factors or facilities that support law enforcement.
4. Community factors such as the environment where the law applies or is applied.
5. Cultural factors, such as the results of work, copyright and race based on human nature in the association of life.

The five factors are interrelated because they are the essence of law enforcement and are also the benchmarks of the effectiveness of law enforcement. Business entities and distributors that do not have a license will be subject to sanctions as stipulated in Law No. 22/2001 on oil and gas in Article 53 and Article 55.

On Monday, April 13, 2020 at approximately 6:00 p.m. or at least at some other time in April 2020 at Flamboyan St, Tambuh RT. 02 RW. 06 Songgokerto, Batu or at least at a place which is still included in the jurisdiction of the District Court of Malang, those who commit, those who order to commit and those who participate in the trading of oil and gas without a trading business license the act is committed.

The first defendant named Iwan Agus Susanto Bin Kastari Teguh Santosa and the second defendant named Hendik Dwi Susanto Bin Suparman committed the crime of transferring the contents of LPG canister. The incident began when Iwan Agus Susanto and Hendik Dwi Susanto on an unknown date because they forgot, in early March 2020 at around 16.00 p.m. met at the Karangploso rest area, Malang. Then they discussed a business plan to convert subsidized LPG canister of 3 kg to non-subsidized gas canister of 5.5 kg and 12 kg. After that, the first defendant and Hendik Dwi Susanto agreed and pooled their capital with a total of IDR 11,000,000 (eleven million rupiah) with the profit system to be shared equally between the three people. Then, the first defendant and Hendik Dwi Susanto Bin Suparman purchased subsidized 3 kg LPG gas canister from Bambang and Malik from Dau and Kepuh, Malang. The defendants did not have a business entity that obtained a commercial business license so they could not fill 5.5 kg and 12 kg of gas canisters at the LPG bulk filling and transportation station (SPPBE) so the defendants filled 5.5 kg and 12 kg of gas canisters by means of the defendants buying 3 kg of subsidized gas canisters, after obtaining 3 kg of gas canisters the defendants moved the 3 kg of gas canisters manually, these are first the defendants boiled water in a pot or boiler

using a gas stove, after the water boiled, 3 kg of subsidized gas canisters were put into the hot water so that the gas in the canisters would quickly escape when moved, then 3 kg of subsidized gas canisters were stuck in non-subsidized gas canisters filled with 5.5 kg and 12 kg using a metal pipe with a 2 cm long bat in the middle, with the position of the 3 kg subsidized gas canister on top of the 5.5 kg and 12 kg non-subsidized gas canisters, which took approximately 4 minutes, after the defendants estimated that the gas canisters had entered the 5.5 kg and 12 kg of gas canisters, then the defendants weighed them using a manual hanging scale that had been prepared, then the 5.5 kg and 12 kg non-subsidized gas canisters were sealed with the used seals from the 3 kg of gas canisters, then the gas canisters that had been modified were sold by retailing them to grocery stores. The first defendant and Hendik Dwi Susanto stated that for every 3 kg subsidized LPG gas canister transferred to 5.5 kg and 12 kg non-subsidized LPG gas canisters, they received a profit of IDR 10,000 (ten thousand rupiah) for the 5.5 kg/tube and IDR 36,000 (thirty-six thousand rupiah) for the 12 kg non-subsidized gas canister. Then, the first defendant and Hendik Dwi Susanto Bin Suparman on Monday, April 13, 2020 at approximately 6:00 p.m at Flamboyan St, Tambuh RT. 02 RW 06 Songgokerto, Batu while transferring 3 kg subsidized LPG gas canisters to 5.5 kg and 12 kg non-subsidized LPG gas canisters. Because they did not have a permit from the competent authority, the first defendant and Hendik Dwi Susanto were arrested from March 10, 2020 to April 13, 2020 at the Batu Police Station along with evidence of LPG gas canisters. The earnings from the defendant's actions were used to pay for their daily living expenses.

While the discussion on Article 53 letter d of Law No. 22/2001 concerning Oil and Gas as amended by Law No. 11/2020 concerning Job Creation Jo. Article 55 Paragraph (1) to 1 of the Criminal Code which contains such following below:

1. Everyone;
2. Committing any commerces; and
3. No commercial license.
4. Those who do, order to do or participate in the commission of a crime.

Based on these legal facts when connected with the elements of Article 53 letter d of Law No. 22/2001 concerning Oil and Gas Jo. Article 55 Paragraph (1) to 1 of the Criminal Code as referred to in the Subsidiary Indictment of the Public Prosecutor, the Panel of Judges states that these facts have fulfilled all the elements of the indictment. Therefore, the defendants must be punished in accordance with their actions. In order to impose a sentence on the defendants, it is required to first consider the aggravating and mitigating circumstances. Here these are several aggravating circumstances that aggravate the defendants, such as (1) the defendant's action caused harm the state; and (2) their action caused self-harm and others. Meanwhile, the mitigating circumstances that mitigate the defendants, such

as (1) the defendants were honest and polite during the trial, (2) they regretted their actions, and (3) they had never been convicted.

This issue has been regulated in Article 53 letter d of Law No. 22/2001 in conjunction with Article 55 Paragraph (1) to 1 of the Criminal Code and Law No. 8/1981 on Criminal Procedure and other relevant laws and regulations. There are three basic elements in the purpose of law enforcement according to Gustav Radbruch, including legal certainty, justice, and expediency. These three elements must be implemented in a balanced manner in order to achieve the objectives of law enforcement. However, the problem that occurs is that there is often a clash between legal certainty and justice, or legal certainty and its benefits. An example is a judge who wants a fair decision based on his perception for a criminal defendant, but his decision actually causes harm to the community or if the community is satisfied with the judge's decision, but justice for certain people has to be sacrificed. Based on this case, Gustav stated that the law must use the principle of priority, such as the priority of justice, expediency, and certainty.

When there is a violation of rights committed by someone, the consequence is that the person will be sanctioned based on a fair decision from the court. This sanction aims to provide peace in the community that was disturbed by the defendant's actions. In the verdict with case number 322/Pid.Sus/2020/PN.Mlg, the Panel of Judges has sentenced the first defendant named Iwan Agus Susanto bin Kastari Teguh Santosa and the second defendant named Hendik Dwi Susanto bin Suparman to imprisonment for 1 (one) year and 6 (six) months using alternative charges from the public prosecutor based on Article 53 letter d of Law No. 22/2001 jo Article 55 Paragraph (1) of the Indonesian Penal Code, which carries a maximum sentence of 3 years imprisonment, and ordered the defendants to pay a fine of IDR 5,000,000 (five million rupiah), provided that if the fine is not paid, it will be replaced by 6 (six) months imprisonment.

CONCLUSION

Iwan Agus Susanto bin Kastari Teguh Santosa and Hendik Dwi Susanto bin Suparman can be subject to criminal liability because Iwan Agus Susanto and Hendik Dwi Susanto have fulfilled all the elements of criminal liability as described such as (1) Iwan Agus Susanto bin Kastari Teguh Santosa and Hendik Dwi Susanto bin Suparman have committed an unlawful act because they have removed subsidized LPG gas from 3 kg canisters to 5.5 kg and 12 kg non-subsidized gas canisters without the permission of the authorized official. The intent and purpose of the defendant in removing the contents of 3 kg subsidized LPG gas canisters to 5.5 kg and 12 kg non-subsidized gas canisters in the incident was to obtain monetary gain; (2) Iwan Agus Susanto bin Kastari Teguh Santosa and Hendik Dwi Susanto bin Suparman are considered capable of being responsible for the acts they have committed because they are not suffering from mental illness or disease. Therefore,

they should be subject to criminal liability as stipulated in Article 53 letter d of Law No. 22/2001 on Oil and Gas; (3) The actions of the defendants Iwan Agus Susanto bin Kastari Teguh Santosa and Hendik Dwi Susanto bin Suparman are a form of intentional misconduct as a specific intent because their actions to remove the contents of LPG gas canisters using 1 set of hanging scales, 2 sets of iron pipes with a length of 2 cm, 2 gas stoves, 1 blue plastic barrel, 2 boilers, 3 pans and 3 meters of slap rope. Therefore, they had a form of guilt with deliberate intent as a certain known and intended consequence of their actions; and (4) There is no excuse for the acts committed by the defendants Iwan Agus Susanto bin Kastari Teguh Santosa and Hendik Dwi Susanto bin Suparman because when they committed the criminal acts they were not in a state of necessity or as a forced defense that exceeded the limit.

Law enforcement of the perpetrators of criminal gas canister removal committed by defendants Iwan Agus Susanto and Hendik Dwi Susanto in the existence of facts, such as the statements of witnesses and the existence of evidence confiscated with the confession of the defendants, then law enforcement concluded that the actions committed by Iwan Agus Susanto and Hendik Dwi Susanto were proven to have violated Article 53 letter d of Law of the Republic of Indonesia No. 22/2001 concerning Oil and Gas jo Article 55 Paragraphs (1) to 1 Criminal Code.

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