



## Reconstruction of criminal offenses and sanctions for the misuse of subsidized fuel in Indonesia: A justice-based approach

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### Abstract

This study examines the regulation of criminal offenses and sanctions for the misuse of subsidized fuel in Indonesia within the framework of a justice-based approach. Fuel subsidies, originally intended to protect low-income groups, have proven to be highly regressive, disproportionately benefiting wealthier households while straining public finances and slowing the transition to renewable energy. Moreover, persistent misuse through illegal resale, diversion for industrial use, and smuggling continues despite the severe sanctions prescribed under Law No. 22 of 2001 on Oil and Gas, which includes imprisonment of up to six years and fines of up to sixty billion rupiah. Using a doctrinal legal research method, this study analyzes statutory provisions, constitutional principles, judicial decisions, and scholarly opinions. The primary legal materials include the 1945 Constitution (Articles 33 and 24C), Law No. 22 of 2001 on Oil and Gas, the Job Creation Law (Law No. 11 of 2020, GR No. 6/2023), Presidential Regulation No. 104 of 2007, Minister of Energy and Mineral Resources Regulation No. 26 of 2009, Constitutional Court Decision No. 002/PUU-I/2003, and Kupang District Court Decision No. 123/Pid.Sus-LH/2022/PN Kpg. The findings reveal that loopholes in regulation, weak supervision, and fragile legal culture contribute to recurring violations, undermining distributive justice and constitutional supremacy. The reclassification of licensing violations as administrative rather than criminal under the Job Creation Law further reduces deterrence. Accordingly, this study argues for the reconstruction of criminal provisions and sanctions to strengthen legal certainty, close systemic loopholes, and ensure that subsidy policies align with the justice-oriented mandate of Article 33 of the 1945 Constitution. Such reconstruction is essential not only to deter misuse but also to guarantee that fuel subsidies achieve their intended purpose of promoting prosperity, fairness, and sustainable energy governance.

**Keywords:** Subsidized, fuel, criminal, offenses, sanctions

### Introduction

Fossil fuel subsidies represent government support for the consumption and production of energy derived from fossil resources. Globally, such subsidies were estimated at approximately USD 1.5 trillion in 2022 under a narrow definition, and nearly USD 7 trillion. These subsidies may take the form of reduced taxes on consumption for instance, lower sales taxes on household natural gas, incentives for production such as tax benefits for oil exploration, or the failure to account for negative externalities (Hannah Ritchie, 2025) <sup>[18]</sup>.

Oil and natural gas are among Indonesia's most strategic non-renewable natural resources, controlled by the state under the constitutional mandate of Article 33 of the 1945 Constitution (UUD 1945). As vital commodities, they not only determine the livelihood of many people but also play a decisive role in sustaining the national economy. Consequently, the governance of oil and gas resources must be directed toward achieving the greatest possible prosperity and welfare of the people. The constitutional framework places a clear obligation on the state to manage these resources for the public good, rather than allowing them to be driven solely by market mechanisms (Junaidi Elvis *et al*, 2023) <sup>[19]</sup>.

The philosophical foundation of oil and gas law in Indonesia lies in Article 33 of the UUD 1945, which explicitly mandates that "branches of production that are important to

the state and that affect the livelihood of many people shall be controlled by the state," and that "land, water, and the natural resources contained therein shall be controlled by the state and utilized to the greatest extent possible for the prosperity of the people" (Art. 33(2) -(3) UUD 1945). The 2001 amendment to the Constitution further clarified this principle by introducing the doctrine of "efficiency with justice" (Art. 33(4)), affirming that the national economy should be organized based on democratic principles, fair competition, and the active role of the state in ensuring social welfare (The 1945 Constitution of the Republic of Indonesia).

Despite this constitutional mandate, the political orientation of Indonesian energy law has often shifted towards liberalization, privatization, and globalization. Scholars such as Kwik Kian Gie have argued that the amendment to Article 33 opened space for market liberalism in natural resource management, undermining the collective obligation of the state to guarantee affordable access to fuel for its citizens (Kwik Kian, 2008) <sup>[15]</sup>. In practice, this has forced citizens especially those most in need to bear high energy costs, while the government has gradually withdrawn from its constitutional duty to provide subsidies through mechanisms of collective burden-sharing. This change in orientation has raised concerns that nationalism and patriotism in economic management are being eroded by the

dominance of market forces (Christopher Hoy *et al*, 2023)<sup>[16]</sup>.

The conflict between constitutional principles and liberal economic practice became most visible in the judicial review of Law No. 22 of 2001 on Oil and Gas (Undang-Undang Migas). Article 28(2) of this law delegated fuel price determination to market mechanisms, directly contradicting Article 33 of the UUD 1945. In Decision No. 002/PUU-I/2003, the Constitutional Court (Mahkamah Konstitusi) annulled this provision, declaring it unconstitutional. However, the Government continued to raise fuel prices by referring to the annulled article, disregarding the binding force of the Constitutional Court's decision. This act amounted to a serious violation of Article 24C (1) of the UUD 1945, which grants the Constitutional Court exclusive authority to review laws against the Constitution. The government's persistence in applying a repealed norm illustrates the subordination of law to political power, undermining the supremacy of the Constitution (Matthew B. Lawrence, 2022)<sup>[17]</sup>.

In response, constitutional scholars such as Subianto Tjakrawerdaja have emphasized that oil and gas management under Article 33 should embody seven key constitutional characteristics: (i) the economy must pursue collective prosperity; (ii) people must participate in ownership, production, and benefits; (iii) market mechanisms must operate within the principle of "efficiency with justice"; (iv) the state must actively plan and intervene in the economy; (v) state-owned enterprises (BUMN) must control strategic branches of production; (vi) cooperatives must function as the backbone of the people's economy alongside BUMN and the private sector; and (vii) the national economy must reflect an equal partnership among these three pillars (Zulkarnain *et al*, 2018)<sup>[12]</sup>. These elements underscore that the management of oil and gas cannot be reduced to mere market liberalism but must be framed within the values of social justice, solidarity, and constitutional supremacy.

Thus, the development of oil and gas law in Indonesia is shaped by the tension between *ius constitutum* (the law currently in force) and *ius constituendum* (the law aspired to). The challenge lies in reconciling the liberal economic tendencies reflected in statutory law with the justice-oriented mandate of Article 33 of the UUD 1945. Any regulatory framework for oil and gas must therefore ensure consistency between political law (*politik hukum*) as determined by the Constitution and the objectives of prosperity and welfare for all citizens. Failure to do so not only undermines constitutional supremacy but also risks alienating the legal system from the very people it is meant to serve.

### History of Petroleum Management and Business Activities in Indonesia

In 1596, the Dutch first arrived in Indonesia under the leadership of Cornelis de Houtman. Their arrival was motivated by an interest in the natural wealth of the archipelago, particularly spices. Before the Dutch, the Portuguese and the British had already discovered and exploited the natural wealth of the archipelago. As a result, in 1602 the Vereenigde Oost Indische Compagnie (VOC)

was established. Dutch exploration in the archipelago then expanded beyond Java to other regions, including the island of Sumatra (Franky, 2023).

As Dutch exploration expanded to Sumatra, petroleum deposits began to be detected through studies conducted by the colonial administration, especially in Aceh. These studies were triggered by findings of flammable substances on the sea surface in the Malay Archipelago, including in Sumatra. At that time, however, the substance was not yet called "petroleum." The term only emerged and became popular two centuries later, when petroleum was recognized as an important raw commodity and source of energy (Tedy Harnawan, 1930).

By 1860, tin had become the leading mining commodity for the Dutch in the archipelago, alongside petroleum and other minerals. The first person to exploit petroleum in the archipelago was Jan Reerink, who conducted drilling in Cirebon in 1871. Reerink used drilling techniques modeled on those in Pennsylvania, operated with oxen. However, this effort lasted only five years because the drilling site was too small to be commercially viable.

In 1883, a Dutch entrepreneur named A. J. Zijliker began to seriously pursue petroleum in the archipelago after obtaining a permit from the Dutch East Indies government. He conducted studies and research for petroleum drilling. However, the results were not yet optimal due to unexplored and underdeveloped land conditions. Despite this, Zijliker's continuous efforts spurred the development of upstream and downstream oil industry activities, including petroleum production, refining, and marketing. This period was marked by the establishment of the Royal Dutch Company, founded by the Dutch East Indies government and led by J. A. de Gelder (WANG Zuoqian *et al*, 2022).

By the 1870s, Shell and Koninklijke merged to form Royal Dutch Shell, which went on to dominate oil exploitation in the archipelago. After joining the Shell Group, operations were divided into the Bataafsche Petroleum Maatschappij (BPM) and Anglo-Saxon Petroleum Company. Later, in 1912, American oil companies began entering Indonesia. To avoid competition, the Dutch government established a joint venture with the Americans, called Nederlandsch Indisch Aardolie Maatschappij (NAM), which operated in Jambi, Banyu, and Sumatra.

In 1942, the Netherlands faced Japanese attacks as part of World War II. The war not only devastated millions of people worldwide but also disrupted the petroleum industry in the archipelago. During the Japanese occupation of 1942–1945, Dutch assets including petroleum and natural gas holdings were taken over. Japan discovered one of the largest oil reserves in Southeast Asia and carried out petroleum and gas drilling, but not on the same scale as the Dutch, largely due to the brevity of their occupation.

After Indonesia declared independence in 1945, following Japan's surrender to the Allies, a power vacuum emerged. Plantations, factories, and oil fields were then taken over as assets belonging to the people. From 1946 onwards, oil resources in South Sumatra were formally in Indonesian hands, although in practice, much of the control fell into the hands of various groups who directly managed the sites and distribution chains.

#### a. Definition of Petroleum

In Indonesian law, the definition of petroleum is contained in Article 1 paragraph (1) on Oil and Natural Gas, Law No.

22 of 2001 which provides: "Petroleum is a natural process product in the form of hydrocarbons which, under atmospheric pressure and temperature, exist in liquid or solid phases, including asphalt, mineral wax, and bitumen obtained from mining operations, but excluding coal or other solid hydrocarbon deposits not related to oil and gas activities." A similar definition is also found in Article 1 point 1 of the Minister of Energy and Mineral Resources Regulation on the Priority Use of Petroleum for Domestic Needs of No. 42 of 2018.

Meanwhile, according to Article 1 paragraph (2) of Law No. 22 of 2001, natural gas is: "A natural process product in the form of hydrocarbons which, under atmospheric pressure and temperature, exists in a gaseous phase obtained from oil and gas mining activities." This definition is further reaffirmed in Government Regulation concerning the amount and use of fees from business entities providing and distributing fuel oil and transporting natural gas through pipelines.

From the various definitions above, it is clear that oil and natural gas are strategic natural resources fully controlled by the state. This is consistent with Article 33 paragraphs (2) and (3) of the 1945 Constitution of the Republic of Indonesia, which emphasize that branches of production important to the state and affecting the lives of many people are controlled by the state, including land, water, and the natural resources contained therein. Thus, the management of oil and gas resources is not only an energy issue but also concerns industrial input, national energy security, and an important source of state revenue. Therefore, the management of petroleum must be carried out optimally so that it can provide the greatest possible benefits for the prosperity of the people.

Fuel oil is fuel derived from and/or processed from petroleum. Petroleum is one of the vital sectors both for the economy and for human life. Since its first exploitation in Indonesia in 1883, petroleum has become a vital sector for meeting the nation's energy needs. Petroleum plays an important role, especially in fulfilling the energy resource requirements of the Indonesian people and state. Given the high public demand for fuel oil and the high cost of processing raw materials into usable fuel oil, the government seeks to ease the burden on society by subsidizing the purchase of fuel oil (Mutiar, 2023).

### Problem Statements

Despite Indonesia's long history of energy subsidy reforms, the current subsidy scheme remains highly regressive, disproportionately benefiting wealthier households while straining public finances. Subsidies for electricity, fuel, and LPG continue to undermine distributive justice, even though the government introduced reform milestones in 2005 and 2014 by adopting automatic fuel price adjustment mechanisms and expanding social assistance to protect vulnerable groups (Ahya Ihsan *et al*, 2024)<sup>[9]</sup>.

Incomplete fuel subsidy reforms continue to impose heavy fiscal costs, especially during periods of high global commodity prices. In 2022, fuel and electricity subsidies rose sharply to 2.8% of GDP from 1.7% in 2021, nearly reversing the progress made after the 2014 reforms, which had reduced subsidies to 1.1% of GDP by 2015. This resurgence in subsidy spending has strained Indonesia's fiscal space, limiting resources for vital investments in health, social protection, and infrastructure, which already

lag behind other middle-income economies (Ahya Ihsan *et al*, 2024)<sup>[9]</sup>.

The misuse of subsidized fuel in Indonesia, while already classified as a criminal offense under Law No. 22 of 2001 on Oil and Gas as amended by the Job Creation Law (GR No. 6/2023), continues to occur despite the threat of severe sanctions of up to six years' imprisonment and fines of sixty billion rupiah. This persistence reflects not only weaknesses in statutory regulations but also the broader complexities of law enforcement in Indonesia. According to Soerjono Soekanto's framework, the effectiveness of law is influenced by five interrelated factors: the law itself, law enforcement, facilities and infrastructure, community behavior, and legal culture (Derita Prapti, 2020),

Non-compliance in the distribution of subsidized fuel is largely driven by entrenched social practices and economic pressures that perpetuate misuse. Moreover, the foundation of legal culture the societal values that shape attitudes toward the law remains fragile, as many perceive the misuse of subsidies not as a serious offense but rather as an acceptable or even unavoidable means of economic survival (Reza Oktiananta *et al*, 2023)<sup>[6]</sup>.

Fuel subsidies in Indonesia, while originally designed to protect the poor, have disproportionately benefited the wealthiest segments of society. Dartanto (2013)<sup>[7]</sup> found that the richest 30% of the population captured more than 72% of total fuel subsidies, consuming on average 63.8% of the subsidy between 1998 and 2013 (Dartanto, 2013)<sup>[7]</sup>. This inequitable distribution highlights a structural flaw in subsidy policy, where resources intended for vulnerable groups are diverted to wealthier households. Moreover, while the elimination of fuel subsidies may temporarily increase poverty levels, Dartanto argues that reallocating subsidy expenditures to productive state spending could ultimately reduce poverty and enhance social welfare. This paradox underscores a fundamental policy problem: the current fuel subsidy scheme not only fails to achieve its distributive justice objectives but also risks entrenching inequality and misallocation of public resources.

At the same time, Indonesia's reliance on fossil fuel subsidies has generated broader distortions that extend beyond distributional inequity. Subsidies place a heavy strain on public finances, delay the transition to renewable energy, and are vulnerable to abuse through illegal trading and diversion. Despite the existence of strict criminal sanctions under Law No. 22 of 2001 on Oil and Gas, as amended by the Job Creation Law, such violations persist, revealing weaknesses in both the legal framework and enforcement mechanisms. This condition calls for a critical reconsideration: how should criminal offenses and sanctions for subsidized fuel misuse be reconstructed within a justice-based approach that not only ensures subsidies reach their intended purpose but also aligns with constitutional principles of prosperity, fairness, and sustainable energy governance? (Dartanto, 2013)<sup>[7]</sup>.

### Research Methodology

This study employs a doctrinal legal research approach, focusing on the examination of legal norms as reflected in statutory regulations, constitutional mandates, judicial decisions, and academic interpretations concerning the misuse of subsidized fuel in Indonesia. The primary legal materials utilized in this research include: The 1945 Constitution, particularly Articles 33 and 24C(1); Law No.

22 of 2001 on Oil and Gas; Law No. 11 of 2020 on Job Creation along with Government Regulation No. 6 of 2023; Presidential Regulation No. 104 of 2007 on LPG supply and distribution; Minister of Energy and Mineral Resources Regulation No. 26 of 2009 on LPG distribution arrangements; Constitutional Court Decision No. 002/PUU-I/2003 regarding fuel price determination; and Kupang District Court Decision No. 123/Pid.Sus-LH/2022/PN Kpg concerning the misuse of subsidized kerosene and diesel. As well as Secondary and tertiary Legal Materials: Legal dictionaries, encyclopedias, and reference sources clarifying key concepts.

### **Regulation of Criminal Offenses and Sanctions for the Misuse of Subsidized Fuel in Indonesia**

The concept of criminal act in Indonesian law derives from the Dutch term *strafbaar feit*, which broadly refers to human conduct prohibited by law and threatened with punishment. Although the Indonesian Penal Code (KUHP) does not provide an authentic definition, scholars such as E. Utrecht, Vos, Pompe, and Van Hattum have described it as an unlawful act for which the perpetrator may be held criminally responsible. Within the Indonesian legal system, several conditions must be met for an act to be classified as a criminal offense, including that it is a human act, unlawful, prohibited by statute, punishable, and attributable to the offender (Adami Chazawi, 2008)<sup>[3]</sup>.

In the context of the oil and gas sector, Law No. 22 of 2001 on Oil and Gas originally criminalized a range of licensing violations, such as processing, transporting, storing, and trading oil and gas without the appropriate permits (art. 53). Sanctions were severe, ranging from three to five years' imprisonment and fines of up to Rp 50,000,000,000. These provisions reflected the legislature's intention to protect state resources and ensure that vital energy commodities were managed under strict government oversight, in line with Article 33 of the 1945 Constitution, which mandates that natural resources be controlled by the state for the prosperity of the people.

However, following the enactment of the Job Creation Law (Law No. 11 of 2020, further regulated by GR No. 6 of 2023), significant changes were introduced. Article 23 of Law No. 22/2001 was amended, and a new Article 23A was inserted, reclassifying many licensing violations as administrative offenses rather than criminal ones. As a result, activities such as unlicensed processing, transportation, storage, and trading of oil and gas are now subject primarily to administrative sanctions (e.g., suspension of business, fines, or government enforcement), unless they result in harm to health, safety, or the environment. Only in such cases do criminal sanctions apply, carrying a maximum penalty of five years' imprisonment or fines up to Rp 50,000,000,000.

The misuse of subsidized fuel is classified as a criminal offense under Law No. 22 of 2001 on Oil and Natural Gas, Articles 53–58, which prescribe penalties of up to six years' imprisonment and fines reaching Rp 60 billion, along with additional sanctions such as the revocation of rights or confiscation of assets used in or derived from criminal activity. However, in practice, this law has proven ineffective in curbing violations. Weaknesses and loopholes within the legislation, particularly provisions concerning the maximum amount of subsidized fuel that may be sold freely, allow offenders to exploit the system. These gaps

enable individuals and groups to purchase large volumes of subsidized fuel for resale at substantial profits, supply it illegally to industries, or even smuggle it outside the designated area (Kuswardani, 2023)<sup>[2]</sup>.

For example, in 2022 two criminal cases involving the misuse of subsidized kerosene and diesel were recorded in Kupang, demonstrating how subsidies intended for public welfare are frequently diverted and misappropriated. Such practices not only cause significant financial losses to the state but also undermine the distributive justice objectives of the subsidy policy. As highlighted in academic studies (e.g., Rini Anggriani & Adi Hermansyah, 2018) and supported by judicial decisions<sup>[1]</sup> these recurring violations reveal systemic enforcement challenges.

This condition underscores the urgent need for a justice-based reconstruction of criminal provisions and sanctions. Strengthening the legal framework is essential not only to close loopholes and ensure effective deterrence but also to realign enforcement with the constitutional mandate of Article 33 of the 1945 Constitution, which requires natural resources, including subsidized fuel, to be managed for the greatest prosperity of the people.

Despite the prohibition of subsidized fuel misuse under Law No. 22 of 2001 on Oil and Gas, as amended by the Job Creation Law (Law No. 11 of 2020), and the imposition of severe criminal sanctions, such offenses remain widespread. A clear example is Case No. 123/Pid.Sus-LH/2022/PN Kpg, involving Romli Mone, who was convicted under Article 55 of Law No. 22 of 2001 in conjunction with Article 55(5)(9) of the Job Creation Law for smuggling 420 liters of subsidized kerosene and 840 liters of subsidized diesel using a motorboat in Kupang Bay. The illicit trade generated substantial profits for the perpetrator, highlighting how subsidized fuel is easily diverted from its intended purpose.

This case illustrates the persistent gap between law and practice: although strict sanctions exist, legal loopholes, weak supervision, and the lure of high profits continue to enable offenders to exploit the subsidy system. The misuse of subsidized fuel not only causes significant state financial losses but also undermines the constitutional mandate of Article 33 of the 1945 Constitution, which requires natural resources to be managed for the greatest prosperity of the people. Therefore, this recurring problem demonstrates the urgent need for a justice-based reconstruction of criminal provisions and sanctions to strengthen deterrence, close regulatory loopholes, and ensure that subsidies fulfill their role in promoting fairness and social welfare rather than being exploited for private gain.

To address rising demand for oil and natural gas, particularly among households and micro-enterprises, the Indonesian government has sought to guarantee a stable domestic fuel supply. One significant measure was the shift from kerosene to liquefied petroleum gas (LPG) in order to ease the fiscal burden of fuel subsidies. This policy was codified in Presidential Regulation No. 104 of 2007 on the supply, distribution, and pricing of 3-kilogram LPG cylinders, and further reinforced by Minister of Energy and Mineral Resources Regulation No. 26 of 2009, which stipulates the specific conditions of subsidized LPG including users, packaging, volume, and pricing. These rules were designed to ensure that subsidies reached low-income households and small businesses.

In practice, however, the system has been prone to misuse and diversion, as subsidized LPG is often resold illegally or

redirected to industrial users for profit. Such abuses mirror the challenges faced in the subsidized fuel oil sector, where legal loopholes and weak enforcement undermine subsidy targeting. This not only creates significant fiscal losses for the state but also contravenes the distributive justice mandate of Article 33 of the 1945 Constitution, which requires natural resources to be managed for the welfare of the people. These conditions highlight the need for a justice-based reconstruction of criminal provisions and sanctions, ensuring that subsidy policies for both fuel oil and LPG achieve their intended social purpose rather than being exploited for private gain (Plante, M, 2014) <sup>[1]</sup>.

### Conclusion

The management of oil and natural gas in Indonesia is rooted in the constitutional mandate of Article 33 of the 1945 Constitution, which requires natural resources to be controlled by the state and utilized for the greatest prosperity of the people. Despite this, the implementation of fuel subsidies has historically produced distortions, both in distribution and in fiscal sustainability. Empirical evidence shows that subsidies have been largely regressive, disproportionately benefiting wealthier groups while imposing significant burdens on state finances and slowing Indonesia's transition toward renewable energy.

The persistence of criminal acts of subsidized fuel misuse, even under Law No. 22 of 2001 on Oil and Gas, which prescribes severe sanctions of up to six years' imprisonment and fines of Rp 60 billion, highlights weaknesses in statutory regulation and enforcement. Loopholes in the law, combined with weak supervision and entrenched social practices, have allowed offenders to profit from illegal resale, industrial diversion, and smuggling of subsidized fuel. Case studies such as Kupang District Court Decision No. 123/Pid.Sus-LH/2022/PN Kpg demonstrate the recurring nature of such violations and their detrimental impact on state finances and distributive justice.

Therefore, this study concludes that the reconstruction of criminal provisions and sanctions for subsidized fuel misuse is urgently required. Such reconstruction must be justice-based, ensuring: Stronger legal certainty by closing loopholes that enable systemic abuse; Balanced sanctions that target not only small-scale offenders but also large-scale networks that profit from subsidy misuse; Integration with distributive justice principles, so that subsidies fulfill their intended purpose of protecting vulnerable groups rather than enriching elites; and Alignment with constitutional values, particularly Article 33(2)– (4) of the 1945 Constitution, emphasizing efficiency with justice, democratic economic organization, and active state intervention.

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