

Corporate Criminal Responsibility for the Crime of Mixing LPG in the Perspective of Consumer Protection and Law Enforcement

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Abstract. This study aims to find out how the criminal responsibility of agents of mixed 3-kilogram LPG gas is in the perspective of consumer protection and to find out what aspects encourage the misuse of LPG gas by mixing mode. The research method used is normative juridical and by using a statutory approach. The results of the study show that agents can be held accountable for their mistakes, namely misusing LPG cylinders and their contents where this is detrimental to society as consumers as stipulated in Law Number 22 of 2001 concerning Oil and Gas in conjunction with Article 55 of the Criminal Code through vicarious liability. The aspect that encourages the misuse of 3-kilogram LPG gas is due to social inequality, especially in the economic sector, which is then exacerbated by the condition of the subsidy policy that is not on target as a factor in the occurrence of crime. Based on this, it shows that the low quality of law enforcement is passive and the lack of supervision of the distribution of subsidized LPG gas, therefore it is important to change the subsidy system and increase supervision of the distribution of subsidized LPG gas through evaluating the distribution of subsidized LPG gas to the community so that it is right on target and prevents any victims of LPG gas abuse.

1. Introduction

The selling price of LPG gas has been set by the government, which cannot exceed the Highest Retail Price (HET) of IDR 16,500. However, in practice in the field, there are many LPG selling agents who commit fraud in order to get multiple profits. Unfair competition carried out by Agent level actors to play games on the selling price of LPG gas and even the volume of LPG gas. The fraud was committed by transferring a 3-kilogram gas cylinder to a 12-kilogram gas cylinder. By injecting it using a thick round iron pipe that has been modified, in addition to that by pitting the heads of the two gas cylinders and facing them together and placing them and then cooling them, the 3 kilogram gas uses ice cubes with the aim that the gas will evaporate and the existing gas at 3 kg it switches to a 12 kg gas cylinder, as well as a scale to weigh the results of the concoction. Usually, the contents of the gas that are mixed are reduced by 0.5 kilograms per tube. So after being aspirated the contents of the 12 kilogram gas cylinder are not full 12 kilograms.[1]

The discussion related to dispensing LPG is not a new topic, previous research related to the misuse of LPG, among others:

1. Irfansyah Munthe, in a 2019 review journal entitled juridical analysis of counterfeiting of fuel oil and natural gas (case study of Medan district court decision No. 922/Pid.B/L.h/2018/MDN);
2. Marlina Siregar, in her 2020 thesis entitled the role of the police in handling the crime of mixing LPG gas;
3. Dimas Putu Passadena Vialli, Ketut Sudiarmaka, Komang Febrinayanti Dantes, in a 2021 review journal entitled Implementation of Article 23 paragraph (1) of Law Number 22 of 2001 concerning Oil and Natural Gas Regarding Illegal Retail Fuel Sales in Sangsit Village, District Buleleng'
4. Albert Yusuf Dien, Nurlaila Suci Rahayu Rais, Anggi Rechandini, in a 2018 study journal entitled development of an information system for monitoring elpiji gas transactions for PT. Amrin Jami Indonesia Tigaraksa;
5. Siti Firda Nurhaliza, in her 2021 thesis scientific work entitled Legal protection for consumers for the sale of mixed gas produced by PT. Cahaya Maung Banten is connected with Law Number 8 of 1999 Juncto Law Number 22 of 2001 concerning Oil and Gas.

The first study discusses the disparity factor (difference in price range) of government-subsidized LPG compared to non-subsidized LPG which results in the emergence of vulnerability to counterfeiting practices. The second study discusses the role of the police in handling criminal acts of mixing LPG (Liquified Petroleum Gas) located at the investigation and investigation stage. The third study discusses the implementation of Article 23 Paragraph (1) of Law Number 22 of 2001 concerning Oil and Gas Related to Illegal Retail Fuel Sales in Sangsit Village, Buleleng Regency, which did not run optimally because almost all retail fuel sellers in Sangsit Village did not have permits. business. The fourth study discusses the location of bases that are far apart causing difficulties in terms of control and evaluation of transactions. The fifth study discusses the implementation of gas distribution in Karang Timur Village, Karang Tengah District, the Defense and Security Complex, in this case it is not in accordance with the distribution. While the research conducted by the author is to find out how the criminal liability system is for agents who commit fraudulent acts in the perspective of consumer protection and what aspects encourage the misuse of LPG gas by mixing or mixing it.

Based on this, it shows that there were legal events which were certainly not without cause, moreover these events resulted in losses and even fatalities which due to fraudulent actions resulted in explosions from concocted LPG cylinders. Through this research, it is hoped that it can contribute ideas regarding the application of law relating to fraudulent acts through mixing LPG by understanding how the criminal liability system for agents who commit fraudulent acts in the perspective of consumer protection and what aspects encourage the misuse of LPG gas by mixing or clone. In this study using a statutory approach as a reference in determining an act regulated in Law no. 22 of 2001 concerning Oil and Gas as well as legal theory and doctrine as a knife for analysis, so that a suggestion is obtained as an alternative solution to be offered.

2. Method

This paper uses normative legal research methods because the focus of the study departs from norms, regulations, legal theory and therefore has the task of systematizing positive law, using approaches: statutory approaches, conceptual approaches, and analytical approaches. The technique of tracing legal materials uses document study techniques, and research analysis uses qualitative analysis. This research method is descriptive with the type of normative juridical research, using a statutory approach and a conceptual approach.

3. Results and Discussion

1. Criminal Liability of 3 Kilograms of Mixed LPG Gas Agents in the Perspective of Consumer Protection

Indonesia as a rule of law state is clearly stated in the 1945 Constitution (UUD 1945), in Article 1 paragraph (3) which then becomes a logical consequence of a rule of law state being able to realize the supremacy of law as one of the prerequisites for a rule of law state. An important task of a state administration activity that has principles as a rule of law is to determine a policy which is then used as the basis for controlling state activities in achieving its goals. The product of a legal policy has responsibilities that are not limited to legal experts, but also to other state institutions. The Government's policy regarding the policy of converting kerosene to LPG (Liquified Petroleum Gas) is the result of a consideration of saving public budget spending and simultaneously reducing pollution levels. Therefore the policy of converting the use of kerosene to LPG is seen as a logical policy, but in implementing this policy it turns out to be experiencing problems, such as the low quality of passive law enforcement and the lack of oversight of subsidized LPG distribution. Subsidies are an idea or a breakthrough to help poor people so that at least people in this group are helped economically and can live properly.[2]

Consumer rights always go hand in hand with the obligations that must be carried out by business actors. In trading their business, business actors are required to fulfill consumer rights and carry out the obligations as stipulated in Article 7 of Law Number 8 of 1999 concerning Consumer Protection. Business Actors are charged by the consumer protection law to carry out the obligations as stated in Article 7 UUPK. One of the rules governing the provision of protection for consumers is regulated in Article 4 of Law Number 8 of 1999 concerning Consumer Protection which forces business actors to prioritize consumer rights in trading goods and/or services marketed to consumers. In Law Number 8 of 1999 Article 1 paragraph 2 it is stated that a consumer is the end user of an item marketed by a business actor, in trading goods and/or services a business actor sometimes trades goods that are not the same as the goods and/or services previously offered to consumers, this will cause losses so that consumers in this case need protection so that the rights they have are not simply not fulfilled by business actors. Article 4 of Law Number 8 of 1999 burdens business actors with fulfilling consumer rights as follows: in trading goods and/or services, business actors sometimes trade goods that are not the same as the goods and/or services previously offered to consumers, this will cause losses so that consumers, in this case, need protection so that their rights are not simply fulfilled by businesses. Article 4 of Law Number 8 of 1999 burdens business actors with fulfilling consumer rights as follows: in trading goods and/or services, business actors sometimes trade goods that are not the same as the goods and/or services previously offered to consumers, this will cause losses so that consumers, in this case, need protection so that their

rights are not simply fulfilled by businesses. Article 4 of Law Number 8 of 1999 burdens business actors with fulfilling consumer rights as follows:[3]

- a. The right to comfort, security and safety in consuming goods and/or services;
- b. The right to choose goods and/or services and obtain said goods and/or services in accordance with the exchange rate and the conditions and guarantees promised;
- c. The right to correct, clear and honest information regarding the conditions and warranties of goods and/or services;
- d. The right to have their opinions and complaints heard about the goods and/or services used;
- e. The right to obtain advocacy, protection and efforts to resolve consumer protection disputes properly;
- f. The right to receive guidance and consumer education;
- g. The right to be treated or served correctly and honestly and not discriminatory;
- h. The right to receive compensation, compensation and/or reimbursement, if the goods and/or services received are not in accordance with the agreement or not as they should be;
- i. The rights regulated in other statutory provisions.

The consumer's right to obtain information is part of the many consumer rights, as stated in Article 4 of Law Number 8 of 1999 concerning Consumer Protection (UUPK). In addition to Article 4 of the UUPK, besides that there is also Article 7 of the UUPK which emphasizes that business actors also have an obligation. When viewed from the phase of the dispute, this dispute occurs in the pre-transaction and transaction phases.[4] The pre-transaction phase means violations prior to the occurrence of transactions between business actors and consumers. Violations in this phase occur when a business actor injects a 3 kg LPG gas cylinder into a 12 kg LPG gas cylinder, and flushes the valve of the LPG gas cylinder using hot water to make it firm again until the LPG gas process is traded to the public. Violations that occur in the transaction phase are violations that occur when business actors and consumers make purchases. Violations in this phase occur because business actors have sold/traded goods that are not suitable for trading because they are no longer in accordance with the quality and standard of the LPG gas purchased by the consumer, where the contents are no longer in accordance with the label on the LPG gas.[5] Based on the Consumer Protection Act, protection for consumers is as regulated in Article 4 of Law Number 8 of 1999 concerning Consumer Protection. Elpiji gas cylinders that are not perfect or not in accordance with SNI standards are of course very dangerous to safety and cause harm to the community as consumers who use LPG gas cylinders.

If the crime is correlated with the crime of Oil and Gas in accordance with the provisions of Law Number 22 of 2001, namely as formulated in Article 52, Article 53, and Article 55. Article 52 of Law no. 22 of 2001 prohibits exploration and exploitation. Furthermore, Article 53 regulates the prohibition of processing either in the form of storing or distributing/selling

without permission. Furthermore, Article 54 regulates the prohibition against counterfeiting fuel and natural gas. Furthermore, the prohibition of general surveys without rights is regulated in Article 51. The provisions of these articles are emphasized in the Criminal Code which stipulates that violations and or crimes against fuel and natural gas are applied to the provisions as in Law Number 22 of 2001.

As for the criminalization of actions in the form of abuse of Subsidized LPG in Law no. 22 of 2001 concerning Oil and Natural Gas, are as follows: The act of refining carried out by actors by transferring 3 kilograms of LPG gas into 12 kilograms of LPG gas cylinders is an act of management without permission. Then the LPG gas cylinders that have been tampered with are stored and transported for distribution to the public where the LPG gas cylinders use fake seals so that the product appears to be genuine or correct. From the provisions of several articles in Law no. 22 of 2001 mentioned above, is a licensing crime which includes permits for Processing, Transportation, Storage and Trading of BBM in general, and the crime of imitating or falsifying BBM and Natural Gas.

In the elucidation of Article 55 it is stated that: "... what is meant by abuse is an activity that aims to gain personal or business entity benefits in a way that is detrimental to the interests of the community at large and the state, such as among others activities of mixing oil fuel, deviations in the allocation of fuel Oil, transportation and sale of fuel oil abroad. So, for business entities and the public who misuse subsidized 3 kg LPG can be charged with the criminal provisions above if the elements of a crime in the article are fulfilled.

According to Muladi, corporate justification can be accounted for based on the following matters:[6]

- 1) On the basis of an integralistic philosophy, namely everything should be measured on the basis of balance;
- 2) On the basis of kinship;
- 3) To eradicate anomie of success (success without rules);
- 4) For consumer protection; And
- 5) For technological progress.

According to the theory of imputation, the relationship between management or employees as physical actors and the corporation is the main thing, in the sense that employees must act within the scope or part of the job for the benefit of the corporation. Thus the corporation is responsible for the intentions and actions of its employees. The use of the principle of vicarious liability is associated with the superior respond theory and alter ego theory. According to respondeat superior theory, corporations can be held accountable according to criminal law, if corporate agents commit crimes within their scope of work and are intended to provide benefits to the corporation. There are 3 elements that must be fulfilled so that a corporation can be held accountable for the actions of its agents, as stated by Sigid Soeseno who quoted Sanford H. Kadish's opinion, namely:[7]

- 1) The corporate agent commits a crime;
- 2) The crime was committed within the scope of his authority; And
- 3) With the aim of corporate profits.

Based on this, the actions of an agent who mixes LPG gas can be held accountable to the agent if the agent enjoys the benefits of this action, but if the agent does not know and does not enjoy the benefits achieved from the act of mixing LPG gas, then the one who can be held criminally responsible is the perpetrator or employee who commits the act of mixing the LPG gas.

2. Aspects That Drive the Misuse of LPG Gas in the Mixing Mode

Indonesia is a state of law. The role of law is vital to regulate the interests of human beings in society. Law is a reflection of a civilization so that law cannot be separated from human life and its needs.[8]

One of the needs of today's society that must be owned and most sought after is LPG (Liquefield natural gas). In this modern era, gas fuel is widely used by the public because it is more efficient, cheap and time-saving compared to other fuels. Because of the great interest of the people who use LPG gas, it makes entrepreneurs become gas agents.[9]

Oil and natural 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 natural gas business activities in order to achieve increased people's prosperity and welfare, Law Number 22 of 2001 concerning Oil and Gas has been stipulated.[10]

According to Abdul Syani, the factors that can lead to criminal acts are generally divided into two factors, namely factors that originate within the individual (internal) and factors that originate outside the individual himself (external). These factors include:[4]

- 1) Internal factors are factors that come from within the individual which include:
 - a. Specific characteristics of individuals such as: emotional power, low mental and anomi.
 - b. General characteristics of individuals such as: age, gender, position in society, education and entertainment.
- 2) External factors are factors that are based on the external environment of the human self (external), especially matters that have a relationship with the emergence of crime. It is the influence of these external factors that determines for a person to lead to other evil deeds:[12]
 - a. Economic factors, influenced by high living needs but low economic conditions.
 - b. Environmental factors, influenced by the environment in which they live.

Based on this, the factors that encourage the misuse of LPG gas include:

Internal factors:

- 1) There are unscrupulous LPG gas bases who violate legal regulations regarding the distribution of subsidized LPG gas;
- 2) There are many illegal subsidized LPG retail outlets;

External factors:

- 1) There is a price disparity;
- 2) Lack of information regarding the supply and distribution of LPG gas;
- 3) Lack of supervision from the Government and Pertamina on the distribution of subsidized LPG gas;
- 4) Passive law enforcement officials, waiting for reports, even though they are not criminal offenses.

The crime of mixing LPG gas is an act that is very detrimental and even causes loss of life and is a criminal act. Crime is an act that is prohibited by law and violation is punishable by sanctions. On the other hand, crime as a psychological problem means human action. Crime is also a complex phenomenon that can be understood from many different angles. That's why in our daily life we can catch various comments about a crime event that are different from one another. The existence of social inequality, especially in the economic sector, which is then exacerbated by the condition of subsidy policies that are not on target, increases the crime of mixing LPG gas which is very detrimental. This shows that the low quality of passive law enforcement and the lack of supervision over the distribution of subsidized LPG gas.

4. Conclusion

Enforcement of the criminal law against the sale of LPG gas as stipulated in Law Number 22 of 2001 concerning Oil and Gas and the application of Law Number 8 of 1999 concerning Consumer Protection against perpetrators of mixing LPG gas does not provide a deterrent effect, meaning that the effectiveness of the law has not materialized. Apart from the legal substance in law enforcement efforts, it is also important to optimize supervision in the distribution of LPG gas through the active role of law enforcement officials together with the public in prevention and mitigation efforts. Based on this, it is important to change the subsidy system and increase supervision of subsidized LPG gas distribution through evaluating the distribution of LPG gas subsidies to the public so that they are right on target and prevent victims of LPG gas misuse.

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