

# Law Enforcement Against Perpetrators of Unlicensed Diluted Gasoline Sellers in Jayapura City

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## ABSTRACT

This research aims to find out the law enforcement of Encen Gasoline business actors in Jayapura City based on Law No. 22 of 2001 on Oil and Gas, where there are still many uncertain actors who are not authorized in giving prices at will to consumers in Jayapura City. This study uses a normative juridical approach that is sourced from the legislation with a descriptive-analytical analysis used to solve legal problems in this scientific work. The results of the study showed that: (1) Enceran Gasoline Sellers who are not licensed continue to increase in Jayapura City, (2) Enceran Gasoline Prices in Jayapura City are uncertain based on sales time. (3) Law enforcement against Enceran gasoline sellers is still very weak. With regard to the above conclusions, the author gives advice that every unjoined gasoline entrepreneur needs to be done by law enforcement.

**Keywords:** Law Enforcement; Retail Gasoline Vendor.

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## I. INTRODUCTION

Indonesia is a country that has abundant natural wealth consisting of coal, oil, and natural gas hereinafter referred to as Oil and Gas, silver, gold, and copper which are spread throughout the country and are prioritized for the welfare of the Indonesian people. This priority has been clearly stated in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, hereinafter referred to as the 1945 Constitution of the Republic of Indonesia, which reads "Earth and water and the natural resources contained therein shall be controlled by the state and used for the greatest benefit of all." the prosperity of the people." Oil and gas are one of the largest natural resources in Indonesia and a significant contributor to state revenue. Data released by the Ministry of Energy and Mineral Resources shows the oil and gas sector contributed to foreign exchange reaching IDR 81.90 trillion as of September 2021 (Pribadi, 2021). Oil and gas is a vital commodity in economic growth and affects the survival of the wider community. It is said to be a vital commodity because it involves the needs of the wider community, in fact, oil and gas are the result of natural wealth that is needed to drive the wheels of the economy and as renewable energy and runs out quickly (Yin, 2021). One of the renewable energy that plays a very important role in society is fuel oil (BBM) which has an important role in carrying out services to the community, more specifically, gasoline. Gasoline is motor vehicle fuel, which is a mixture of light hydrocarbon distillates made from a mixture of petroleum, and gasoline, including basic needs for the people of Indonesia (Wiratmaja, 2010).

The government, in this case, the President and the House of Representatives, hereinafter referred to as the DPR, realizes protection so that every Indonesian people get the same rights to fuel oil, the Government has formulated Law Number 22 of 2001 concerning Oil and Natural Gas and its amendments which are regulated in the Cluster Oil and Gas in Law Number 11 of 2020 concerning Job Creation. The Oil and Gas Law stipulates that every activity engaged in Oil and Gas must be carried out by first obtaining a business license from the Central Government including Upstream (Exploration and Exploitation) and Downstream (Processing; Transportation; Storage; and Commerce) business activities. Business licensing in upstream and downstream business activities is aimed at increasing government supervision in the management and distribution of BBM to the community in a clear and definite manner and is aimed at minimizing the occurrence of fuel abuse (Suyanto, 2019).

The high public demand for fuel in the industrial and transportation sectors has resulted in a shortage of fuel in Indonesia. Based on data released by the Ministry of Finance, since the easing of the Policy on the Implementation of Restrictions on Community Activities (PPKM), the use of BBM in Indonesia has increased, the data can be seen in the following diagram:

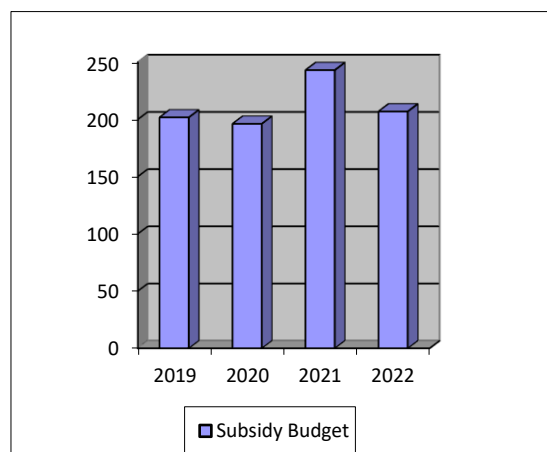


Fig. 1. Realization of the Subsidy Budget (2019-2022). Source: Ministry of Finance.

The diagram above describes the increase in the use of BBM in Indonesia after the PPKM policy was relaxed. It is known that the easing of the PPKM has been carried out since the end of 2021. So that the increase in fuel use will occur in 2021 and continue in 2022. The increasing use of fuel is still experiencing classic problems that have not been resolved properly. These problems include the unequal fuel price gap throughout the country. Even though the Government has issued a One Price Fuel Policy so that people in the outermost areas of the island of Java feel and enjoy the one price fuel price in all corners of the country as evidence of the realization of social justice for all Indonesian people (Dewata & Hariyati, 2022).

The increasing demand for fuel in the community will lead to the emergence of new, very complex problems. In reality, many people find fraud in the fuel trade in the form of reselling fuel without a permit from the government (Masuara, 2020), especially in Jayapura City which is the capital city of Papua Province. The existence of legal rules regarding Oil and Gas does not mean that people obey these rules, this is in line with what was stated by Prof. Satjipto Rahardjo which in essence states that the rules do not guarantee that people obey the law, but it is the law-abiding culture that will make people obey the law (Rahardjo, 2007). The problem regarding the sale of fuel without a permit in Jayapura City is a concrete example of the community's non-compliance with regulations regarding Oil and Gas. Many people continue to sell fuel, such as selling retail gasoline illegally in Jayapura City.

The retail gasoline sales process is carried out by putting fuel into a one-liter bottle which is then sold to buyers, where previously the fuel was purchased from "General Fuel Filling Stations (SPBU)". In fact, if it refers to Article 23 A of the Oil and Gas Cluster, it is explained that everyone who carries out Downstream Business Activities without a permit will be subject to Administrative Witness in the form of "cessation of business and/or activities, fines, and/or coercion from the Central Government" plus criminal sanctions for any people who abuse the government-subsidized fuel commerce. Referring to the above rules, the practice of selling retail gasoline without a permit has violated the law. If you look at the reality, there are still many people who still maintain the practice of selling retail gasoline.

In the research that the author conducted, in Jayapura City, it is very easy to find retail gasoline sales practices spread across various districts, even in urban Jayapura. Based on the author's search in Jayapura City, there are very many retail gasoline traders scattered along the road by setting up mini kiosks which are often known as "depots". The argument for retailers to keep trading because they are able to help people increase their economy/income without having to waste excess energy, plus fuel is needed by all people to drive cars, motorbikes or other modes of transportation. This situation implies that the law on Oil and Gas is unable to control the actions of the public in retail sales without a permit (Tambunan, 2021).

The phenomenon of retail gasoline sales practice is very interesting to discuss, considering that the government has instructed commercial business entities to have a license. However, the reality in the field is very different, from the many retail gasoline traders who do not have a sales permit from the government at all. Especially in the city of Jayapura based on the author's observations in the field, there are 24 (twenty-four) kiosks, consisting of 4 (four) districts, namely Abepura District as many as 8 (eight) Kiosks, Heram District as many as 4 (four) Kiosks, South Jayapura District as many as 5 (five) kiosks, North Jayapura District as many as 7 (seven). In each of the retail gasoline kiosks, the price of fuel is uncertain. As a result, many people complain about the high price of gasoline up to 5 times the usual price which causes unrest in the community.

Several previous studies discussing the same thing have been carried out by Nur Afifah Maudara and Abdur Rahman Adi Saputera in a study entitled "Analysis of the Effectiveness of Law No. 22 of 2001 on the practice of selling retail gasoline to the people of East Gorontalo City" from the results of their research The practice of retail gasoline sales by The community in East Gorontalo City has not been effective which is influenced by Law No. 22 of 2001 as a legal instrument that has not been able to reach the community,

law enforcement officers do not carry out their duties and public awareness of business licenses in East Gorontalo City is low (Masuara, 2020).

Furthermore, Meria Gabriel Wola in a study entitled "Law enforcement against sellers of fuel oil without a permit according to Law No. 22 of 2001 concerning Oil and Gas". The results of his research explain that law enforcement against sellers of fuel oil without a permit is still ineffective in the application of both administrative and criminal sanctions so there is a need for support from the central government and local governments as well as the role of the community to improve the performance of law enforcement officers (Wola, 2019).

This research is different from previous research because this research focuses on the juridical implications of the application of the law, both criminal sanctions and administrative sanctions for retail gasoline traders in Jayapura City. This research will also provide input if it is able to increase public awareness, especially among retail gasoline traders in business licenses. Therefore, the purpose of this study is to determine law enforcement against retail gasoline sellers in Jayapura City.

## II. METHODOLOGY

This study uses a normative juridical research methodology by basing its analysis on the applicable laws and regulations, namely Law Number 22 of 2001 concerning Oil and Gas and Law Number 11 of 2020 concerning Job Creation (Benuf & Azhar, 2020). This study uses secondary legal data in the form of primary legal materials, namely laws and regulations as the main data and research material and uses primary data as supporting data in the study. This study is also equipped with secondary legal materials in the form of legal literature related to law enforcement against unlicensed retail gasoline sellers in the city of Jayapura. The legal data were obtained through a literature study which was then analyzed descriptively analytically -(Sonata 2014) and used by the author to dissect legal issues in this study.

## III. RESULT AND DISCUSSION

### A. *The Nature of Law Enforcement and the Factors that Influence It*

Law enforcement is the process of making efforts to enforce or actually function legal norms in the life of society and the state (Utama, 2019). Law enforcement is the elaboration of legal ideas and ideals into concrete forms. To realize the law as an idea into a concrete form requires a fairly complex organization. These organizations, such as courts, prosecutors, police, and penitentiaries, are classic elements of law enforcement formed by the state (Ariyanti, 2019). Law enforcement cannot only be carried out by an organization or group but requires cooperation from each of these organizations to achieve the legal goal of making the community happy (Bolger, 2019). Furthermore, Soerjono Soekanto also emphasized that law enforcement is an activity to harmonize the relationship of values spread in legal rules/legal norms and public attitudes as a series to maintain peace in society. Law enforcement is an effort to apply positive law to actions that violate material law or formal law. Therefore, as a form of providing justice, it must decide the law in a concrete way with the aim of maintaining and ensuring the observance of the procedural law stipulated in formal law and material law as a legal substance that must be enforced. The essence of law enforcement itself is to realize the principles and values that contain justice and truth (Soekanto, 2004). Law enforcement is not only the duty of law enforcers, whether prosecutors, judges, or other officials who are given special authority, but it is the duty of every community (Lawang, 2015). However, it is the government that must remain responsible and takes control of actions that violate the law. In general, law enforcement can be divided into two, namely; First, law enforcement is viewed from the point of view of the subject. In a broad sense, law enforcement includes all legal subjects scattered in every legal relationship. Everyone who implements positive law or does something or does not do something because the legal norms regulate it then has implemented or enforced the rule of law. Second, law enforcement is viewed from the point of view of its object, namely in terms of the law. In a broad sense, law enforcement includes the values of justice that are contained/included in formal legal rules or material law as well as the values of justice that live in society. Meanwhile, in a narrow sense, law enforcement is an effort by law enforcement officials to ensure and guarantee that a rule of law is still implemented and runs as it should. Furthermore, law enforcement aims to realize the value of justice, the value of certainty, and the value of the benefit to the community (Jayadi, 2015).

So law enforcement is essentially a process of realizing ideas that seek to enforce legal norms in real life in society. Thus, conceptually the core of law enforcement lies in activities or efforts to maintain the legal rules that have been regulated in positive law without injuring the values that live in society. If these values or norms are not in harmony, it will create confusing rules and undirected behavior patterns that disturb the peace of society. Creating law enforcement in accordance with values and norms is strongly influenced by law enforcement factors, as stated by Soerjono Soekanto, including:

### 1) *Legal Factor*

In the practice of administering the law, sometimes there is a conflict between justice and legal certainty, on the one hand, if upholding legal certainty but on the other hand, injuring justice. This situation is inseparable from the concept of justice which is still abstract, while legal certainty is a provision that has been formulated normatively in the legislation. However, if there is a policy or action that is not fully regulated in positive law, it can still be accepted as long as the policy does not conflict with the applicable positive law. Therefore, law enforcement does not only regulate law enforcement but also peace maintenance because law enforcement is a process of harmonizing legal rules and behavior patterns aimed at achieving peace.

### 2) *Law Enforcement Factor*

The mentality and personality of law enforcers is an indispensable role in enforcing the law, such as law enforcement officials say if the personality of law enforcement is very good but the rules are not good then the decisions taken will be good too, but if the regulations are good but the quality of law enforcement is lacking well then there will be a complex problem. Therefore, the key to success in enforcing the law is the noble heart of law enforcers.

### 3) *Community Factor*

Basically, law enforcement is part of society that aims to achieve peace. In accordance with legal fiction, people are considered to know about the law, giving an understanding that the community at least still has legal awareness. But the question is, is the level of legal compliance by the community less, moderate or high? If more and more people obey the law and obey the existing rules, the law will function according to its main function.

### 4) *Cultural Factor*

Culture has a very big role in everyday life. Culture functions to regulate so that people can act, act or determine attitudes in dealing with other communities. Culture, of course, has taught obedience to traditional values. So that culture can be said as the main line or the first step of society to find out what actions should be allowed and what actions are prohibited (Soekanto 2004).

Starting from the factors that influence law enforcement above, in fact, the main problem in the law enforcement process is the effectiveness and social impact of legal rules or norms that have been formulated in legislation -(Rahman, 2020). The effectiveness of law enforcement clearly cannot be measured solely based on the regulations contained, but on how far the effectiveness of these rules has been applied by the community with the aim of justice.

## *B. Law Enforcement Against Unlicensed Retail Gasoline Sellers in Jayapura City*

It is known that law enforcement is the embodiment of ideas in a concrete form, namely legal practices that occur in society (Barak & León, 2020). In this regard, the ratification of Law No. 22 of 2001 concerning Oil and Gas (Migas) is a breakthrough to protect and supervise oil and gas production and commerce in Indonesia. The enactment of the Oil and Gas Law is expected to be able to control the management of oil and gas nationally. Oil and gas production is expected to be able to reap profits in an effort to increase state income, create jobs and maintain environmental sustainability (Asnawi, 2016).

However, oil and gas management must be carried out carefully and carefully. Because oil and gas play an important role in the Indonesian economy and as a state asset must be protected and must be avoided from actions that are detrimental to the state. The enactment of the Oil and Gas Law is expected to be able to create oil and gas business activities that are "independent, transparent, competitive, environmentally friendly, and encourage the development of national potential and roles." There are several important principles in the Oil and Gas Law, namely "people's economy, integration, benefits, justice, balance, equity, common prosperity and welfare of the people, security, safety, and legal certainty as well as environmental insight, as stipulated in Article 2 of Law Number 22 2001 concerning Oil and Gas.

The Oil and Gas Law has the principle of transparency as stated in Article 9 paragraph 1 which reads "Upstream and downstream business activities as referred to in Article 5 points 1 and 2 can be carried out by: State-Owned Enterprises, Regional-Owned Enterprises, Cooperatives, Small Businesses, and Private Business Entities". According to Didik Rachbini, the main problem of natural resource management cannot be separated from old concepts, policies, regulations, and operational institutions that do not work effectively, innovatively, creatively, and professionally. In the legal aspect, natural resources are public goods that must be transparent and wide open to the community as economic actors. So that way the community can play an active role in controlling the management of oil and gas. If the management control is under the control of the government and involves the community, the more benefits the community will receive. This is the main principle of people's economy or economic democracy.

According to the author, upstream and downstream businesses as enshrined in the Oil and Gas Law contain the spirit of reducing the occurrence of monopolistic practices that have often occurred in Indonesia, including the monopoly practice of Pertamina. The author views the need for a number of priorities and

conveniences, especially in terms of cooperation in the oil and gas distribution and marketing sector, which is not only limited to Pertalite BBM. The principle of the people's economy must still be accommodated in every article and content of the Oil and Gas Law which provides opportunities for small traders to be involved in the fuel distribution sector to the community. It is necessary for the government, in this case, Pertamina, to collaborate with small traders to be involved in distributing fuel to the community with easy licensing.

However, if you look at the reality that is happening, it seems very difficult to involve small communities to be actively involved in the distribution of oil and gas. This is certainly inseparable from the practice of Corruption, Collusion and Nepotism (KKN) which is increasingly taking root in the organs of the Indonesian Oil and Gas industry (Ma'arif, 2013), This situation makes people not try to get involved in the oil and gas trade, so many people are directly involved in buying oil and gas (BBM) at gas stations and then selling it on the street to the public, especially in Jayapura City. Such an act of course cannot be justified because if it applies Article 1 number 20 Oil and Gas Clusters, Law Number 11 of 2020 concerning Job Creation reads: "Business Permit is a permit granted to a Business Entity to carry out Processing, Transportation, Storage, and/or Commerce with the aim of obtaining profit and/or profit". This means that in carrying out any commercial business, you must first obtain a permit.

It should be remembered that to set up a business, including small oil and gas traders, must obtain a business license as a form of legality and provide legal certainty for entrepreneurs, and these activities are protected by the government (Sorongan, 2018). Business licensing is legality granted by the state to business actors to start and run and/or their activities. Applications for business licenses can be made at the Investment Service and One Stop Integrated Service (DPMPSTP) which functions to carry out government affairs in the investment sector, as stipulated in Article 1 number (5) Government Regulation Number 6 of 2021 concerning the Implementation of Business Licensing in the Regions. As a unit that begins with the stages of licensing applications to completion of permits.

As mentioned above, business licensing is a requirement that must be owned by every business actor if they want to be involved in the downstream sector of oil and gas commerce. Business licensing is a form of business entity legality, as it is known that business legality is broadly divided into 2 (two) types, namely institutional legality and operational legality (Hartono, 2009). Business licensing is included in the type of operational legality. Therefore, any act of setting up retail fuel kiosks scattered along the road outside the gas station is a crime if you do not have a business license. prohibited by the Oil and Gas Law. If referring to the Oil and Gas Cluster in the Job Creation Law, anyone who does not have a business license is subject to administrative sanctions in the form of termination of business and/or activities, fines, and or coercion. In addition to administrative sanctions, it also regulates criminal sanctions which in essence explains that if the act of carrying out Downstream Business Activities without a Business License results in victims/damage to health, safety and/or the environment, the perpetrator is sentenced to a maximum imprisonment of 5 (five) years or a maximum fine of 5 years. high Rp. 50,000,000,000.00 (Fifty billion rupiah).

The administrative sanctions or criminal sanctions described above are consequences that must be accepted by business actors if they do not have a business license. However, the reality that is happening in the community is that there are still many retail gasoline sales practices in several districts of Jayapura City that are not in accordance with sales standards, and even gasoline prices are increased many times over certain hours. As can be explained by the author based on research in the field:

TABLE I: DATA ON PETROL KIOSKS IN SEVERAL DISTRICTS IN JAYAPURA CITY 2020-2021

Number	Subdistrik	Capital of Subdistrict	Petrol Kiosks	Gasoline Price Per / Liter by Time		
				09-16 WIT	19-23 WIB	01.00 WIT
1.	Abepura	Kota Baru	8	Rp. 10.000,-	Rp.20.000,-	Rp.50.000,-
2.	Heram	Waena	4	Rp.10.000,-	Rp.20.000,-	Rp.50.000,-
3.	Jayapura Selatan	Entrop	5	Rp.10.000,-	Rp.20.000,-	Rp.50.000,-
4.	Jayapura Utara	Tanjung Ria	7	Rp.10.000,-	Rp.20.000,-	Rp.50.000,-
Number of Retail Gasoline Depots/Kiosks			24			

Note: Data on petrol stalls in several districts in Jayapura City 2020-2021.

Based on the table, it can be seen that the number of diluted gasoline sales in Jayapura City based on field observations there are 24 (twenty-four) kiosks, consisting of 4 (four) districts, namely Abepura District as many as 8 (eight) Kiosks, Heram District as many as 4 (four) Kiosks, South Jayapura District as many as 5 (five) kiosks, North Jayapura District as many as 7 (Seven). Each erratic price of diluted gasoline given by retail gasoline sellers, which of course makes a lot of complaints from the public, is proven to be one of the public complaints that are published in online media regarding the high price of gasoline at certain times in Jaya Pura City (Satu 2019). If you look at the Oil and Gas Cluster Job Creation Act, the practice of selling

retail gasoline can be subject to administrative sanctions as well as criminal sanctions. However, in reality, the sanctions are not carried out optimally by law enforcement officials.

If the Administrative Sanctions and criminal sanctions are not carried out, it will lead to an assumption in the community "that the regulated law has no spurs and has no impact on society". The powerlessness of law enforcement in enforcing criminal sanctions and criminal sanctions is due to the practice of selling retail fuel because it is used as a livelihood for the people along the roads in the district and in the city of Jayapura. In an incident like this, law enforcers, the government and Pertamina parties should call gasoline retailers to sit down together to discuss problems that occur in the community and remind retail gasoline traders not to inflate fuel prices at certain times. Apart from that, the government can help retail gasoline traders to carry out business licensing arrangements and Pertamina is expected to provide opportunities for retail traders to establish cooperation in the commercial sector or distribution of fuel to the public.

However, if gasoline sales that occur in Jayapura City are still soaring, law enforcement can provide administrative sanctions in the form of fines, business closures, warnings and so on. However, if the retail gasoline sales practice increases the price of subsidies from the government, it can be imposed with strict sanctions as regulated in Article 55 Oil and Gas Clusters in the Job Creation Law which reads "Anyone who abuses the Transportation and/or Trading of Oil Fuel, fuel gas, and/or liquefied petroleum gas subsidized by the Government, shall be punished with imprisonment for a maximum of 6 (six) years and a maximum fine of RP 60,000,000,000.00 (sixty billion rupiah)". The application of these criminal sanctions is a step taken by law enforcers to maintain the stability of fuel prices that are evenly distributed throughout the country. In addition, criminal sanctions are expected to be able to provide lessons for retail traders not to repeat actions that inflate the price of fuel at certain times because the state has basically provided convenience and relief in obtaining fuel so it is hoped that there will be no more acts that inflate the price of fuel which have an impact. to the welfare of society.

#### IV. CONCLUSION

Law enforcement is essentially a process of realizing ideas that seek to enforce and actually function legal norms as a guide for actors in the life of society and the state. However, the reality is that law enforcement against the perpetrators of selling unlicensed diluted gasoline in the city of Jayapura is not running effectively so people become victims of these crimes. Therefore, the author hopes that gasoline entrepreneurs in the Jaya Pura city district must carry out business permits in order to realize legal objectives in the oil and gas trade sector in Indonesia. Furthermore, the government should be more concerned with taking action against gasoline entrepreneurs, both administratively and criminally, to protect the public from the practice of unreasonably increasing gasoline prices.

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