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Causative-Based Integral Policy As A Response To Criminogenic Factors In The Distribution Of Subsidized Fuel

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ABSTRACT
This study examines how non-adaptive oil and gas regulations function as criminogenic factors in the distribution of subsidized fuel and formulates an integral policy recommendation to address the misuse of subsidized fuel. This research uses a normative juridical approach with doctrinal legal research. Legal materials were collected through library research and analyzed qualitatively within a normative framework. The findings show that the misuse of subsidized fuel is not solely caused by individual wrongdoing, but is also triggered by the mismatch between regulation, socio-economic conditions, and public access to energy. This disharmony creates criminogenic conditions that encourage various forms of distributional deviation. Effective countermeasures require a combination of penal, non-penal, and social policy approaches.
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INTRODUCTION

The distribution of subsidized fuel is a vital instrument to ensure the fulfillment of basic needs, especially for people living in rural areas and underdeveloped, frontier, and outermost regions. In many areas, communities face access constraints because no fuel station is available within a reachable radius, causing travel and transaction costs to exceed the value of the subsidy itself. A study on the availability of subsidized fuel for fishers shows that distribution barriers can affect the certainty of access for user groups that depend on subsidized fuel (Prianto, 2021). This condition encourages the emergence of retail fuel sales as an adaptive strategy used by communities to meet their daily energy needs.

Although this practice is legally classified as a violation, it reflects a social response to the absence of an adequate formal distribution mechanism. This phenomenon can be read through the crime proofing of legislation approach, namely when regulatory design creates opportunities for crime because it is not aligned with the conditions of implementation (Morgan & Clarke, 2006). According to Agnew (1992), socio-economic pressure can encourage deviant behavior when basic needs cannot be met through legal means. In the energy sector, unequal access also increases the burden on low-income groups (Pachauri et al., 2021), while Khoiriah (2024) shows that retail fuel sales at the village level often arise from practical community needs that are not fully served by formal channels.

Indonesia's legal framework has provided a relatively comprehensive normative basis for energy governance. Article 33 paragraph (3) of the 1945 Constitution affirms the role of the state in controlling and managing natural resources for the greatest prosperity of the people, while Constitutional Court Decision Number 36/PUU-X/2012 interprets state control over energy as a constitutional obligation to ensure the greatest public welfare in oil and gas governance (Nizammudin, 2016). At the statutory level, Law Number 22 of 2001 concerning Oil and Gas, along with its implementing regulations, regulates upstream and downstream oil and gas governance. However, the implementation of energy policy often does not fully correspond to the principle of equal access.

Indonesia's energy sector still faces regulatory, environmental, and infrastructural obstacles (Dutu, 2016), while energy subsidy reform requires a balance between efficiency and equity (Gobel et al., 2024).

Although this normative framework appears complete, distribution practices on the ground show a significant regulatory gap. The state prohibits the retail sale of subsidized fuel without a license, but it has not always provided adequate distribution infrastructure in areas far from official fuel stations. As a result, small community actors become vulnerable to criminal prosecution, not because they seek large profits, but because they are forced to provide fuel for local community needs. In rural or remote areas, people often buy or sell retail fuel because of terrain, travel distance, and the limited number of fuel stations, even though such conduct normatively violates licensing provisions (Ijaya et al., 2023). This situation reflects the characteristics of the law and order mode, namely a phase in which law demands compliance without improving the social conditions that generate violations (Nonet & Selznick, 2001). This framework is consistent with the Milan Plan of Action, which warns that unresponsive development can become a criminogenic factor (United Nations, 1985), and with the Havana Declaration, which emphasizes the relationship between poverty, limited access to basic services, and informality (United Nations, 1990).

Academic studies on energy distribution in Indonesia have mostly discussed regulation, supervision, and unequal access, but have not specifically linked these issues to the criminalization of small community actors in the context of retail sales of subsidized fuel. Kyle (2018) shows that public support for fuel subsidy reform in Indonesia is related to local governance and the risk of corruption in distribution. In more specific Indonesian studies, Putra et al. (2021) position Article 55 of the Oil and Gas Law as a special provision on the misuse of transportation and/or trading of subsidized fuel, while Prakasa et al. (2024) discuss law enforcement against perpetrators of subsidized fuel transportation misuse. However, these studies have not placed retail fuel sales as an adaptive response to structural pressure and non-adaptive regulatory design. Previous research has also not linked this phenomenon to Hoefnagels' theory of criminal policy (1973), Agnew's concept of strain (1992), or criminogenic analysis in international documents such as Milan and Havana. Therefore, this study offers novelty through an analysis that brings together socio-economic pressure, legal gaps, and the need for policy reconstruction through an integrative causative-based approach. This approach emphasizes that the solution is not sufficient if it only punishes small community actors, but must also reform the energy distribution system and provide more inclusive legal access.

The urgency of this research is increasingly evident because the criminalization of retail fuel sellers continues to occur, while the root problem lies in weak energy access that should be guaranteed by the state under the constitutional mandate. Recent law enforcement data show that the misuse of subsidized fuel continues to be processed by authorities, including cases of misuse of transportation and trading of subsidized fuel discussed in the studies of Abadi & Madjid (2025), Refdiantoni et al. (2025), and Sihaloho et al. (2025). Without reform, this condition may widen the rural-urban economic gap and weaken the livelihood capacity of small communities. This study therefore aims to examine non-adaptive oil and gas regulation as a criminogenic factor in the distribution of subsidized fuel and to formulate an integral policy recommendation for addressing the misuse of subsidized fuel.

RESEARCH METHODS

Research uses a normative juridical approach with doctrinal legal research. This approach places law as written norms formed and enforced by the state, so the analysis focuses on the internal logic of statutory regulations and the principles that govern them. Doctrinal research views law as law in books. Therefore, the entire research construction is directed at understanding, interpreting, and testing the consistency among norms within the oil and gas legal system, especially regarding criminal provisions in the distribution and trading of subsidized fuel.

The main data sources in this study consist of primary legal materials, including the Oil and Gas Law, implementing regulations, and official documents such as statutory explanations and legislative records. This study also uses secondary legal materials in the form of criminal law books, scientific journals, and academic analyses on energy policy and criminological theory. Tertiary legal materials such as legal dictionaries and encyclopedias are used to strengthen conceptual interpretation.

Legal materials were collected through library research by tracing relevant literature, documents, and regulations. The analysis was conducted qualitatively within a normative framework, by interpreting legal norms through grammatical, systematic, and teleological interpretation to understand the purpose of the regulation. The analysis was then linked to criminal policy theory, strain theory, and international documents such as the Milan Plan of Action and the Havana Declaration to assess the extent to which oil and gas regulation creates criminogenic potential.

Through this approach, the study seeks to reveal the internal coherence of norms, identify problems of interpretation, and evaluate whether positive law is consistent with the principles of justice, certainty, and utility in the context of subsidized fuel distribution. The doctrinal approach was chosen so that the analysis of regulation could be conducted in a deep and systematic manner before being linked to the social phenomena that arise in practice.

RESULTS AND DISCUSSION

1. Non-Adaptive Oil and Gas Regulation as a Criminogenic Factor in the Distribution of Subsidized Fuel

Non-adaptive oil and gas regulation can only be fully understood by first examining how positive law regulates fuel distribution and trading. The normative framework built by lawmakers is intended to maintain order in energy supply, protect state interests, and close spaces for distribution manipulation. This purpose is reflected in the licensing design for downstream oil and gas activities, which places processing, transportation, storage, and trading within a business license system (Putra et al., 2021). Therefore, before discussing how this regulation may become a criminogenic factor in practice, it is important to trace the basic norms that regulate subsidized fuel trading and how these provisions are interpreted in the social context of society. At this point, rules designed to maintain distribution order may conflict with the lived reality of citizens who depend on daily energy access, especially when subsidy reform has not fully addressed the aspect of access justice (Gobel et al., 2024).

The provisions in the Oil and Gas Law were actually established to maintain order in energy distribution and prevent speculative practices that harm the state, as reflected in Article 53 letter d, which states:

> *"Any person who conducts: ... d. Trading as referred to in Article 23 without a Trading Business License shall be punished with imprisonment for a maximum of 3 (three) years and a maximum fine of Rp30,000,000,000.00 (thirty billion rupiah)."*

Article 53 letter d provides that any person who conducts trading or buying and selling activities without a Trading Business License may be punished with imprisonment of up to three years and a fine of up to thirty billion rupiah. This norm confirms that fuel trade cannot be carried out freely because fuel is a strategic commodity under state authority. The provisions of the Oil and Gas Law have been understood as licensing-based criminal provisions in downstream activities (Putra et al., 2021), while Pertamini business actors remain connected to licensing obligations in trading activities (Pradana et al., 2021). A business license also functions as a limiting mechanism so that supply and prices are not fully influenced by informal markets. Even so, retail fuel sales continue to occur due to legal factors, law enforcement facilities, community factors, and cultural factors (Ijaya et al., 2023).

In addition to Article 53 letter d, a prohibition is also contained in Article 55, which states:

> *"Any person who misuses the Transportation and/or Trading of Fuel subsidized by the Government shall be punished with imprisonment for a maximum of 6 (six) years and a maximum fine of Rp60,000,000,000.00 (sixty billion rupiah)."*

Article 55 of the Oil and Gas Law is further clarified in its statutory explanation as follows:

> *"In this provision, what is meant by misuse is an activity intended to obtain individual or business entity profit in a manner that harms the interests of the wider community and the state, including, among others, fuel adulteration, deviation of fuel allocation, and transportation and sale of fuel abroad."*

Article 55 goes further. Any person who misuses the transportation or trading of subsidized fuel may be punished with imprisonment of up to six years and a fine of up to sixty billion rupiah. The explanation of the article clarifies that misuse refers to acts carried out to obtain profit in a way that harms public and state interests. The elements of Article 55 may be read through the act of misusing the transportation and/or trading of subsidized fuel carried out without a license or contrary to regulation (Abadi & Madjid, 2025). The transportation of fuel without a license is also treated as a threat to the stability of national energy distribution (Putri et al., 2025). Examples include fuel adulteration, deviation of allocation, and sale abroad. From this explanation, it can be seen that the lawmakers intended to target large-scale manipulative practices that potentially damage the national distribution system.

However, this norm has broader implications. Literally, small traders who sell subsidized fuel at retail without a license may also be categorized as actors conducting trade without a license or as perpetrators of distribution misuse, even though the motive and scale of their actions are far from the criminal intention referred to in the statutory explanation. Retail fuel sales in villages may continue because public access to fuel stations is limited (Khoiriah, 2024), and retail fuel is often considered practical by consumers even though it is normatively problematic (Ijaya et al., 2023). This is where the gap between legal language and social reality becomes apparent. The state restricts fuel trading through strict norms, but does not adequately provide distribution access that fits the needs of people living in areas without fuel stations or in economically vulnerable conditions. Unequal energy access is closely related to the burden borne by vulnerable groups, which strengthens this reading (Pachauri et al., 2021).

Non-adaptive oil and gas regulation is a concrete example of an issue that has long been discussed in international forums. At the Seventh United Nations Congress on crime prevention in the context of development in Milan in 1985, the Milan Plan of Action emphasized that development can become a criminogenic factor when it is not aligned with community needs, ignores welfare, and separates moral values from public policy foundations (United Nations, 1985). Regulations may also create unintended criminal consequences when they open opportunities for illegal trade, fraud, or market abuse (Morgan & Clarke, 2006). Development that focuses only on economic targets and administrative structures without considering the people affected by it creates an empty space that may be filled by deviant behavior. When energy regulation prohibits the retail sale of subsidized fuel without being balanced by equal access and realistic distribution mechanisms, that policy becomes part of non-adaptive development as warned in the Milan document.

This context is clearly visible in the distribution of subsidized fuel in Indonesia. Oil and gas regulation that concentrates distribution through formal fuel stations is built on an administrative control logic, but it often ignores the social reality of people living far from fuel stations or under economic pressure. The prohibition of retail sales of subsidized fuel appears ideal in regulatory design, but it fails to read mobility needs, service distance, and the limited income of communities. When law does not provide reachable legal channels, people are pushed toward informal means that are later classified as legal violations. Problems of distribution certainty and availability of subsidized fuel can arise among particular user groups (Prianto, 2021), while diesel subsidy access among small fishers also faces practical policy obstacles (Wulandari et al., 2023). In this framework, Zafirovski's (2011) idea of development without moral and welfare dimensions as a driver of structural criminality becomes relevant.

This perspective becomes stronger when linked to the discussion at the Eighth United Nations Congress in Havana in 1990. The Congress emphasized that poverty, social inequality, and the non-fulfillment of basic needs are significant criminogenic factors in the development of urban crime and informality (United Nations, 1990). This reading is consistent with strain analysis because strain emerges when people do not have legal means to achieve their basic needs, so socio-economic pressure may produce legal violations (Agnew, 1992). In the energy field, fuel subsidy reform is related to economic, social, and environmental impacts, so policy change cannot be separated from distributional aspects (Toha & Soetjipto, 2025). Public policy that is insensitive to the socio-economic conditions of society may generate structural pressure that gives rise to violations, not because of malicious intent, but because the state fails to provide basic needs and proper access.

The relationship between the Havana perspective and the distribution of subsidized fuel is clear. People living under economic pressure and far from formal distribution networks depend on small traders as an alternative means of meeting energy needs. These retail traders become intermediaries between community energy needs and the absence of formal services in certain areas. In the Havana framework, this practice is not merely an administrative violation, but a social phenomenon born from poverty, limited social welfare, and unequal energy development. This view is consistent with Sovacool's (2014) research, which shows that the energy research agenda must read the relationship between energy systems, society, and their social impacts. The unreadiness of oil and gas regulation to accommodate these social conditions strengthens structural pressure that encourages criminogenic conditions caused by non-adaptive policy design, as explained in the crime proofing of legislation approach (Morgan & Clarke, 2006).

When criminological theory is combined with Zafirovski's insight and current scientific analysis, it appears that oil and gas regulation may become a criminogenic factor through several pathways. Regulation creates distance between the basic needs of society and the legal mechanisms to fulfill them, a situation consistent with strain theory (Agnew, 1992). Regulation also strengthens inequality and the failure to fulfill welfare as highlighted in Havana (United Nations, 1990). In addition, it forms legal norms that are not supported by social norms, so acts considered socially reasonable are transformed into acts labeled as criminal. In the Indonesian context, this pattern appears in the studies of Khoiriah (2024), Ijaya et al. (2023), and Prianto (2021), which show that fuel distribution or sales practices at the lower level cannot be read solely as individual violations. The criminality that emerges is more accurately understood as the result of interaction among policy structures, social needs, and economic conditions that are not accommodated by the state.

From this analysis, it is apparent that criminality in subsidized fuel distribution is not a matter of individual morality, but the result of structural tension among state policy, unequal development, and the socio-economic conditions of society. The root of the problem lies in the design of regulation and development policy itself. Improvement can only be achieved through energy policy that is responsive, adaptive to social context, and aligned with international ideas on just development. From this point, the analysis can move toward how the state should redesign subsidy distribution so that it no longer becomes a source of criminality.

2. From Criminalization to Energy Justice: An Integral Policy Analysis for Addressing the Misuse of Subsidized Fuel Based on a Causative Approach

An integral policy that combines penal and non-penal approaches becomes increasingly important when the deviation in subsidized fuel distribution is seen not only as a legal violation, but also as a symptom of a long-standing structural imbalance in energy access. The penal approach remains necessary to provide legal certainty and deterrent effect for actors who intentionally engage in illegal trading or exploit regulatory loopholes for personal gain. The investigation of subsidized fuel misuse requires proof through witness testimony, expert testimony, suspect statements, and physical evidence (Refdiantoni et al., 2025), while law enforcement against the misuse of subsidized fuel transportation remains an important element of the penal response (Prakasa et al., 2024). However, the effectiveness of the penal approach depends heavily on the state's ability to correct the social and economic factors that drive these violations. In the framework of criminal policy theory, Hoefnagels (1973) emphasizes that criminal policy includes all rational efforts, whether through law enforcement, measures outside criminal law, or social policy that improves social conditions. This direction of thought shows that crime prevention cannot be handed over entirely to criminal law because criminal law can only work effectively when the surrounding social environment supports law-abiding behavior.

This view corresponds to the idea that criminal policy must always be directed at correcting the root causes of crime, not merely its symptoms (Arief, 2010). Many forms of criminality in the energy sector grow from unequal access, long service distances, and the absence of adequate official infrastructure. Communities that do not have alternative legal access tend to seek shortcuts through informal markets, and in such conditions criminal law often handles only the final consequence of a structural problem. Therefore, non-penal interventions such as the construction of new fuel stations or the formation of sub-distributors within a radius of 5-10 kilometers should be viewed as part of crime prevention policy, not merely as physical development projects. This direction is also consistent with the finding that energy subsidy reform must combine efficiency and inclusiveness (Gobel et al., 2024).

The establishment of fuel stations or sub-distributors within a radius of 5-10 kilometers has a strong criminological logic. When distribution distance is too far, structural strain occurs, namely tension between people's need for mobility and their limited access to legal energy. This strain creates space for black markets to grow because informal markets provide quick access, even though they violate the law. In Indonesia, the energy sector still faces infrastructural and regulatory obstacles (Dutu, 2016), while the one-price fuel policy was created to respond to price and access injustice in underdeveloped, frontier, and outermost regions (Thoriq & Rahmatullah, 2019). By increasing legal distribution points, the state removes the structural causes that have triggered deviation. Communities no longer need black markets if access to legal and affordable fuel is available within a reasonable distance.

On the other hand, providing cheap and simple licenses to retail traders is a form of structural intervention that opens space for small community actors to participate in the legal distribution chain.

This policy functions as a mechanism of social and economic integration. In addition to suppressing illegal practices, it expands formal supervision over the flow of subsidized fuel. Situational prevention can work by reducing opportunities for crime through changes in environmental design and supervision mechanisms (Clarke, 1995). In Indonesian practice, the sub-distributor scheme can be read as a legal opportunity for communities to help fulfill fuel distribution needs in a more orderly manner (Khoiriah, 2024). By making small traders a legitimate part of the distribution network through affordable licensing, the state improves the market structure while ensuring that community energy needs remain fulfilled without dependence on illegal networks.

The social justice aspect of this policy must also be considered. Subsidized fuel is intended for economically weak groups, but unequal access causes them to buy fuel at much higher prices in informal markets. This creates a subsidy paradox, where those who should receive assistance actually pay more. Indonesia's energy subsidy policy needs to be directed toward a balance between efficiency and justice so that reform does not harm vulnerable groups (Gobel et al., 2024). Fuel subsidy reform also has social and distributional impacts in economic policy analysis (Toha & Soetjipto, 2025). By expanding legal distribution infrastructure and granting licenses to small traders, the state performs both preventive and corrective functions so that subsidies reach their intended targets.

Such an integral policy, which combines penal, non-penal, and social policy measures, fully aligns with Hoefnagels' principle that crime prevention must be pursued through prevention, repression, and social policy (Hoefnagels, 1973). The penal approach remains necessary to maintain compliance, especially against actors who manipulate the transportation or trading of subsidized fuel for personal profit, as seen in the studies of Abadi & Madjid (2025), Refdiantoni et al. (2025), and Sihaloho et al. (2025). However, without responsive non-penal and social policies, the structural pressure that creates black markets will not decrease. Therefore, policy integration through the establishment of fuel stations or sub-distributors within a certain radius, simplification of small trading licenses, and strengthening of administrative control must be understood as a unified strategy that targets the root causes of subsidized fuel distribution deviation, not merely as an effort to punish surface-level actors.

Through this approach, the state not only reduces the potential for criminality in fuel distribution, but also ensures that energy as a basic need can be accessed fairly, affordably, and evenly. A responsive integral policy makes the distribution system more inclusive, safeguards the purpose of subsidies, and strengthens the legitimacy of law in the eyes of society. This direction is consistent with more inclusive subsidy reform (Gobel et al., 2024) and the understanding of energy distribution as a social issue, not merely a technical licensing issue.

CONCLUSION

Criminality in the distribution of subsidized fuel is basically not merely an issue of individual violation, but arises from structural tension among non-adaptive oil and gas regulation, unequal energy access, and the socio-economic conditions of society. The legal norms in the Oil and Gas Law are designed to maintain distribution order, but they are not yet fully aligned with the real needs of citizens who live far from fuel stations or depend on informal markets. This situation makes regulation potentially criminogenic because it creates strain and widens the distance between people's basic needs and the legal mechanisms available to fulfill them. In this context, countermeasures against the misuse of subsidized fuel will only be effective if they combine penal, non-penal, and social policy approaches.

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