

An Islamic Criminal Law Perspective on the Misuse of Subsidised Fuel: Case Study of Decision No. 116/PID.B/LH/PN PSB

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Abstract

This study examines the legal considerations used by the Panel of Judges in imposing criminal sanctions on the defendant in Decision No. 116/Pid.B/LH/2023/PN Psb regarding the criminal act of misuse of government-subsidized fuel trading. Although Article 55 of Law Number 22 of 2001 on Oil and Gas stipulates a maximum penalty of six years in prison and a fine of up to Rp60,000,000,000.00, the defendant was only sentenced to six months in prison and fined Rp50,000,000.00. This study aims to analyze the judge's rationale for imposing the sanction and to examine the verdict from the perspective of Islamic criminal law. This research employs a qualitative approach using a case study method. Primary data was obtained through direct interviews with judges at the West Pasaman District Court, while secondary data was collected from books, journals, legislation, and Islamic legal sources such as the Qur'an and Hadith. The findings indicate that the judge's considerations in sentencing were based on the elements of the criminal act under Article 55 of Law No. 22 of 2001 jo. Article 55, paragraph (1) of the Criminal Code, available evidence, and aggravating and mitigating factors. Additionally, the judge considered consistency with previous decisions that have permanent legal force to prevent sentencing disparities in similar cases. From the perspective of Islamic criminal law, the defendant's actions fall under jarimah ta'zir as they constitute an unlawful act that does not fall within hudud or qisas. While the act could be linked to the concept of al-baghyu (rebellion), the absence of violence or weapon use classifies the punishment under ta'zir, allowing the judge discretion in determining the appropriate sanction.

Keywords: Judge's considerations, misuse of subsidised fuel, criminal sanctions, Islamic criminal law, jarimah ta'zir, al-baghyu.

1. INTRODUCTION

Indonesia is a country that has very large natural resources, one of the natural income of the Indonesian state that has brought rapid development for the welfare of the Indonesian people is Oil and Gas which provide assistance and are very beneficial to the community and large revenues for the country (Hasanah & Dahlan, 2022). Oil and Gas is one of the natural resources controlled by the state, which has an important role in the national economy so that its protection and processing need to be carried out as optimally as possible. In an effort to create Oil and Gas business activities to realize increased prosperity and welfare for the people (Simamora, 2000).

The Government of Indonesia regulates everything related to Fuel Oil and Natural Gas in article 55 of Law Number 22 of 2001 concerning Oil and Gas, the act of transportation, distribution, storage, hoarding and sale of Fuel Oil (BBM) (Pasal 55 Undang-Undang Nomor 22 Tahun 2001 Tentang Minyak Dan Gas Bumi., 2001). Based on the provisions of article 23 of Law No. 22 of 2001 concerning Oil and Gas, it is explained that, downstream business activities as referred to in article 5 number 2,

namely processing, transportation, storage, and trading business activities can be carried out by business entities after obtaining a business license from the government. New business entities can carry out their activities after obtaining a business license from the government, and the business licenses required for petroleum business activities and/or oil and gas business activities, namely, processing business licenses, transportation business licenses, storage business licenses, and commercial business licenses.

Every business entity is required to have a business license to carry out commercial business activities. Therefore, if there are business entities or individuals who carry out commercial business activities, both Fuel Oil and Natural Gas, without a permit that can cause losses to others, they must be punished (BERSUBSIDI & TAJUDDIN, n.d.). The high public demand in using fuel oil has an impact on decreasing the number of natural resources, causing a shortage of fuel oil. Fuel scarcity is a problem for people who use transportation continuously without thinking about and considering the use of petroleum in Indonesia (Rifqi & Rizanizarli, 2022).

As a result of the uncontrolled use of fuel, the government issued Law Number 22 of 2001 concerning Oil and Gas which regulates how the state efforts to increase the prosperity and welfare of the community through oil and gas business activities, so that oil and gas business activities have fixed rules that apply with the existence of the Law (Salsabila & Nursiti, 2021). In positive criminal law, the abuse of fuel oil transportation and trading is regulated in Article 55 of Law Number 22 of 2001 concerning Oil and Gas, regarding legal sanctions for anyone involved in the abuse of fuel oil (BBM) subsidised by the government.

Article 55 of Law Number 22 of 2001 states that:

"Every person who abuses the transportation and/or trading of government-subsidized fuel oil shall be sentenced to a maximum penalty of 6 (six) years and a maximum fine of Rp. 60,000,000,000.00 (sixty billion rupiah)."

The subsidy in question in this case is that the government sells oil to the general public at a price below world oil. The government's purpose in providing fuel subsidies is to help underprivileged citizens. However, in practice, it is often abused by irresponsible individuals who only want to enjoy profits. So that the distribution does not go well, while the community's need for Fuel Oil is increasing with the increase in the number of vehicles every year. In order to help the community's needs for Fuel Oil, the government has made a policy by providing Fuel Oil subsidies for the community.

Illegal subsidized fuel trading is an activity carried out without a permit or employment contract which is a criminal act that violates the provisions of the Law, so that the act in Islamic criminal law is referred to as *jarimah al-baghyu* (rebellion), which is a person who opposes the ruler and abuses state assets. The rebels do not want to obey the lawful laws and do not want to fulfill their obligations as citizens. As affirmed in the 1945 Constitution that the earth, water, air and everything they contain belong to the state and must be used for the prosperity and welfare of the people and not for monopolies.

Allah SWT strictly forbids doing acts that can harm the rights of others, because everyone has the same rights and Allah also strictly forbids those who in their daily lives like to live destructively. Islamic law views the management of oil and gas as public ownership. In terms of public ownership, it is basically the common property of all citizens, it's just that in its management it is the state that controls it, where the state

has the right to give it to some people according to its policies. State-managed ownership is also basically public property, but its management rights are the authority and responsibility of the government. However, the scope of public ownership can be controlled by the government, because it is the right of all the people in a country, whose management authority is in the hands of the government. As based on the following hadith of the Prophet PBUH:

الْمُسْلِمُونَ شُرَكَاءُ فِي ثَلَاثٍ فِي الْكَلَاءِ وَالْمَاءِ وَالنَّارِ

"Muslims are united on three things: water, pasture and fire"

(HR Abu Daud and Ahmad).

In the Hadith above, in addition to mentioning water, grasslands, the Prophet PBUH also mentioned "fire" which means energy such as: electricity, fuel, gas, coal and so on. Thus, the various resources mentioned in the hadith above are included in the category of public ownership (Rahmawati, 2014). Public ownership is a permission from ash-shari' to the community to jointly use an object. If analogous to the development of technology today, then the general ownership of property is devoted to the public use, the use of all Muslims (Murtiyani et al., n.d.).

Regarding the punishment for the perpetrators of illegal fuel trade abuse, it is not explicitly mentioned in the Qur'an or Hadith, but the act of taking natural resources to fulfill their own interests is still not allowed. Although the Qur'an and hadith do not include punishment for the misuse of illegal fuel trading, there are still sanctions for the perpetrators of these activities because these acts violate the law and go against the interests and rights of the general community. Therefore, the act is subject to ta'zir sanctions where the judge or ruler has the authority to impose what punishment is appropriate for the perpetrator based on his actions (Murtiyani et al., n.d.).

From the description above, it can be seen that sanctions for perpetrators of the abuse of subsidized fuel oil trade in Islamic criminal law are included in the punishment of jarimah ta'zir in the form of imprisonment or fines by considering the crime or the consequences caused, the determination of the level of sanctions is a right for leaders who have authority and the right to determine the type and amount of punishment based on the acts committed by looking at the public interest for the sake of certainty and legal justice. Therefore, the punishment corresponding to the criminal act was returned to the Indonesian government with the enactment of Law Number 22 of 2001 concerning Oil and Gas as part of the violation of ta'zir for having collected a large amount of subsidized fuel oil for the purpose of reselling it at a high price for its own profit. With the enactment of the ta'zir penalty, it is hoped that it can realize the purpose of the ta'zir punishment itself.

The frequent abuse of subsidized fuel oil trades makes the police have to act to eradicate and overcome the abuse of subsidized fuel oil trading. The police as the party responsible for public safety are expected to be able to overcome and enforce the law against the abuse of subsidized fuel oil trade in Indonesia, especially in West Pasaman Regency. Although the law has prohibited and threatened with severe punishment, namely with a maximum penalty of 6 (six) years and a maximum fine of Rp60,000,000,000.00 (sixty billion rupiah) against perpetrators of the crime of commercial abuse of subsidized bio diesel fuel (BBM), the fact is that in the jurisdiction of the West Pasaman District Court it still occurs to this day. In fact, in the field there are still many traders who sell oil at high prices, of course these traders do not have a business license for the sale of Fuel Oil (BBM).

As the times develop, the mode of perpetrators to commit the crime of misuse of the fuel trade continues to develop. The initial mode was that the perpetrator bought oil using a minibus containing 12 (twelve) jerry cans, after arriving at the petrol station the perpetrator filled 100 (one hundred) liters, then the perpetrator exited the petrol station, then he entered again to fill up with 145 (one hundred and forty-five) liters. The perpetrators resold the oil to truck drivers and other diesel cars at high prices.

The criminal act of misuse of subsidized fuel oil trading in this study was handled directly by members of the West Sumatra Regional Police because they received reports from the public that there were alleged criminal activities of misuse of the transportation and trading of subsidized bio diesel fuel at the petrol station in Ranah Batahan District, West Pasaman Regency.

In this case, the public prosecutor stated that the defendant, named Zulhendri, had been proven to have legally committed criminal activities of abusing the government-subsidised fuel oil trade. The public prosecutor charged the defendant with imprisonment for 1 (one) year and 6 (six) months and a fine of Rp50,000,000.00 (fifty million rupiah). Based on the public prosecutor's demands, the author argues that in his demands, the public prosecutor has not reflected justice for the perpetrators, which is not the maximum of the prosecutor's demands.

Regarding the West Pasaman District Court Decision No. 116/Pid.B/LH/2023/PN Psb, the defendant named Zulhendri has been legally and convincingly proven guilty of misusing the government-subsidized bio diesel fuel trade. For the defendant's actions, the judge sentenced the defendant to 6 (six) months in prison, and a fine of Rp50,000,000.00 (fifty million rupiah). The basis for the judge's consideration in imposing a prison sentence is relatively low from the prosecutor's demands against the perpetrators of the crime of abusing subsidized fuel oil trade based on juridical considerations, namely criminal charges from the public prosecutor, the violated articles, evidence, witness statements, defendants' statements and based on incriminating matters and mitigating matters for consideration. In this case, the public prosecutor should give the maximum charge and the judge should also impose a prison sentence on the perpetrator higher than the verdict given. To create a deterrent effect and awareness for the community to prevent the occurrence of illegal fuel trade abuse. The judge's decision in imposing the sentence is also not following the rules in Islamic criminal law, because the judge should consider justice in his decision.

2. RESEARCH METHOD

Methodology is a study used in studying the rules of a method. So what is meant by research method is the science that studies how research methods and tools are used in research. The type of research used is field research with a qualitative approach that aims to find out the phenomena that occur using a descriptive approach. And data collection through observation, documentation, and interviews with the West Pasaman District Court Judge on the case of the misuse of the government-subsidized fuel oil trade, which is the primary data source. Meanwhile, the author's secondary data is obtained from books, laws and regulations, and data analysis in the form of data reduction and data presentation. The purpose of the formulation of this research is First, to find out how the judge's analysis in imposing sanctions on perpetrators of the crime of abuse of the government-subsidized fuel oil trade. Second, to find out what is the view of Islamic criminal law on the criminal act of misusing the government-subsidized fuel oil trade.

3. RESULT AND DISCUSSION

The Judge's Consideration in Imposing Criminal Sanctions on Decision No. 116/Pid.B/LH/2023/PN Psb for Perpetrators of the Crime of Abuse of Government-Subsidized Fuel Oil Trading

1. Criminal Case Process for Perpetrators of Subsidized Fuel Misuse

To answer the problems in chapter I, the author will analyze the data on the decision No. 116/Pid.B/LH/2023/PN Psb in the West Pasaman District Court regarding the Crime of Abuse of Subsidized Fuel Oil Trading.

Before the case is transferred to the West Pasaman District Court, the Public Prosecutor must know the seat of the case that has been examined by the investigator. The case of the crime of abuse of fuel oil subsidized by the government based on case No. 116/Pid.B/LH/2023/PN/Psb is as follows:

Zulhendri is called Zul, born in Kampung Baru on August 15, 1975, age 47 years, male gender, Indonesian nationality, residence in Jorong Kampung Baru Kenagariaan Batahan Kec.

Starting on Wednesday, May 3, 2023 at around 14.00 WIB, the defendant departed from his home to the Jorong Kampung Baru petrol station using a green Isuzu Panther brand minibus with police number BK 1101 VL which contained 12 (twelve) jerry cans, after arriving at the Jorong Kampung Baru petrol station, the defendant filled 100 (one hundred) liters of bio diesel oil, Then the defendant came out of the petrol station and then entered again to fill up with 145 (one hundred and forty-five) liters, when filling up with bio diesel type oil which was the second time a member of the West Sumatra Police came who secured the defendant.

Initially, members of the West Sumatra Police received information from the surrounding community that there were alleged criminal activities of abusing the transportation and trading of subsidized bio diesel fuel oil carried out by the defendant Zulhendri. It turns out that so far the biodiesel fuel oil purchased by the defendant Zulhendri at the Jorong Kampung Baru petrol station, West Pasaman Regency, has been resold by the defendant at a stall owned by his parents who sell retail oil to truck drivers and other diesel cars at a price of Rp8,000.00/liter (eight thousand rupiah per liter), which the defendant previously bought at the petrol station at a price of Rp7,300.00/liter (seven thousand rupiah per liter) with the normal price at petrol stations which is Rp6,800/liter (six thousand eight hundred rupiah per liter), with which the defendant gets a profit of Rp700.00/liter (seven hundred rupiah per liter), the defendant Zulhendri has been doing his act for approximately 5 (five) months ago with the excuse of providing for his children and wife because during covid the defendant's egg business was not running, The defendant Zulhendri filled bio diesel fuel repeatedly using the barcode belonging to another truck driver and his barcode.

In the trial, the public prosecutor proved his charges by presenting two witnesses, namely Rahmat Hidayat and Ridho Al Amin Akbar. Rahmat Hidayat gave his statement that it was true that the witness had been examined at the investigation level and the witness confirmed that the BAP had been made and signed, the witness also did not recognize the defendant, the incident of the defendant's arrest on Wednesday, May 3, 2023 took place at petrol station 13.263.508 Jalan Lintas Medan Jorong Kampung Baru Kenagarian Batahan Ranah Bantahan District, West Pasaman Regency The witness arrested the defendant along with other witnesses from the West Pasaman Police, the defendant was caught carrying subsidized diesel fuel and the witness checked the type of fuel carried by the defendant and it was known that the type of subsidized diesel this could be known by the naked eye, the filling was carried out with a different barcode system which was initially filled at 14.00 WIB and the second filling was carried out at

17.00 WIB, According to the defendant's confession, the bio diesel fuel will be resold at his mother's stall that sells retail oil, the defendant was arrested based on reports from the public that there were people who filled diesel fuel using jerry cans brought in a green Panther brand minibus car. Ridho Al Munir Akbar also stated that it was true that the witness had been examined at the investigation level and the witness confirmed the BAP that had been made and signed, the witness also did not recognize the defendant, the team that secured the defendant amounted to 6 people and when the defendant was secured there was no attempt to escape, the witness checked the type of fuel carried by the defendant and it was known that the type of subsidized bio diesel this can be known by means of eye gauze, the filling was carried out using a different barcode, the defendant sold bio diesel fuel at a price of Rp8,000.00 (eight thousand rupiah per liter), Initially, members of the West Sumatra Police received information from the public in the field that there were alleged criminal activities of misuse of the transportation and trading of bio diesel fuel subsidized by the government at the Jalan Lintas Medan Jorong petrol station, Kampung Baru, West Pasaman Regency, The defendant has filled bio diesel fuel into the jerry cans that he brought and will be resold at his parents' stalls that sell retail oil.

From the witnesses disclosed above, they have given testimony or information related to the case and disclosed the information in front of the West Pasaman District Court in accordance with what they know, and the defendant confirmed all the testimony given by the witness.

1. Consideration of the Judge of the West Pasaman District Court in imposing sanctions on Case No. 116/Pid.B/LH/2023/PN Psb

In the trial process, the judge is an official who performs the duties of judicial power to examine, adjudicate and decide and resolve criminal or civil justice cases of the first degree. In making a decision, the judge must consider many things because the decision can cause debate, especially if there is one party who feels that the decision made is unfair. The basis of the Judge's consideration in imposing a verdict can be seen from juridical considerations, namely the criminal indictment from the public prosecutor, the article violated, the evidence, witness statements, the defendant's testimony and based on incriminating matters and mitigating matters for consideration.

In the trial, the public prosecutor submitted evidence in the form of 1 (one) unit of green Isuzu Panther minibus No. Pol BK 1101 VL along with the ignition key, 1 (one) green Isuzu Panther minibus registration number No. Pol BK 1101 VL an H. Syahrul Sitorus, 12 (twelve) jerry cans with a capacity of 33 liters and 331,610 (three hundred and thirty-one point six hundred and ten) liters of bio diesel fuel oil.

From the statements of witnesses that correspond to each other, the defendant's statements, letters and are linked to the evidence submitted at the trial, legal facts were obtained that it is true that the defendant was arrested on Wednesday, May 3, 2023 at approximately 18.00 WIB at the Jalan Lintas Medan Jorong petrol station, Kampung Baru, West Pasaman Regency, the arrest of the defendant began from information submitted by the surrounding community that there were activities of alleged criminal acts of abuse transportation or trading of fuel oil subsidized by the government in the form of bio diesel fuel. Members of the West Sumatra Police also saw the Defendant driving 1 (one) unit of a green Isuzu Panther brand minibus with police number BK 1101 VL which contained jerry cans in it, based on the minutes of volume measurement from the Trade and Small and Medium Business Cooperatives Office of West Pasaman Regency and Test Report Number 019/LAB-AD/V/2023 from PT. Pertamina Patra

Niaga, then it has been found that the evidence in this case in the form of 331,610 (three hundred and thirty-one point six hundred and ten) liters is true to be bio diesel fuel oil in accordance with the testing standards of the Decree from the Director General of Oil and Gas, the defendant's purpose is to fill bio diesel fuel into jerry cans to be resold at the defendant's stall at retail with a profit of Rp700, 00 (seven hundred rupiah) per liter, the defendant has been doing this act for approximately 5 (five) months and does not have a permit.

Based on the above legal facts, the Panel of Judges will consider whether the defendant can be declared proven to have committed a criminal act as charged by the public prosecutor, with a single indictment of article 55 of Law Number 22 of 2001 concerning Oil and Gas which is amended in article 40 number 9 of Law Number 6 of 2003 concerning the Stipulation of Government Regulation in Lieu of Law of the Republic of Indonesia Number 2 of 2022 concerning Job Creation Becomes a Law with the elements of every person and Abuse transportation and/or trading of subsidized Fuel Oil, Fuel Gas, and/or Liquefied Petroleum Gas and/or its supply and distribution is assigned by the government.

After paying attention to the element of misusing transportation and/or commerce as a material act that precedes the object rather than the act, based on the examination of the evidence of the letter in the form of the Volume Measurement Results Event from the Trade and Small and Medium Business Cooperative Office of West Pasaman Regency, and evidence in the form of Test Report letters from PT. Pertamina has therefore found legal facts that the evidence in this case is indeed bio diesel fuel oil subsidized by the government in accordance with the Decree testing standards from the Director General of Oil and Gas and after careful research, it turns out that the defendant does not have a business entity holding a general oil and gas trading business license, so the panel of judges is of the view that the defendant has committed abuse in the subsidized diesel fuel business.

Based on the description of the above considerations, for this second element has been legally fulfilled according to the law, and the panel of judges is convinced from valid evidence that the defendant is the person who committed the act, therefore the defendant must be legally and convincingly proven guilty of committing a criminal act with the qualification of "abusing the government-subsidized fuel oil business" as charged in the indictment single Public Prosecutor.

In this case, the public prosecutor charged the defendant with a prison sentence of 1 (one) year and 6 (six) months minus the detention period with an order that the defendant remain in custody and a fine of Rp50,000,000.00 (fifty million rupiah) subsidy for 3 (three) months of confinement.

Based on the above legal considerations, for the sake of upholding justice, the panel of judges is of the opinion that if the sentence is to be decided on the defendant, it must consider previous decisions that have permanent legal force in order to prevent disparities in sentencing for cases that have the same legal problem. In the trial, the panel of judges did not find any things that could eliminate criminal liability, either as a justification/excuse for forgiveness, and the defendant was able to be responsible, so the defendant must be found guilty and sentenced to death. To impose a criminal sentence on the defendant, it is necessary to first consider the aggravating circumstances and mitigate the defendant. The incriminating situation for the defendant is that because the defendant harms the community who need subsidized fuel, the defendant has committed acts of business abuse since the last 5 (five) months and enjoys the results. The thing that relieves the defendant is that the defendant regrets

and admits his mistake, the profits obtained are relatively small and the defendant has never been convicted and is the backbone of the family.

After the judge considered the aggravating circumstances and mitigating circumstances, as well as the evidence and explanations of the witnesses in this case, it was clear that it was related to the crime committed by the defendant by paying attention to Article 55 of Law Number 22 of 2001 concerning Oil and Gas in conjunction with Article 40 Number 9 of Law Number 6 of 2003 concerning Government Regulation in Lieu of Law of the Republic of Indonesia Number 2 of 2022 concerning Job Creation into Law Number 8 of 1981 About the Criminal Procedure Law, as well as other relevant laws and regulations.

The judge stated that the defendant Zulhendri or Zul above had been legally and convincingly proven guilty of committing the crime of "abusing the government-subsidized fuel oil business" as in the single indictment of the public prosecutor, the judge sentenced the defendant therefore to 6 (six) months in prison, and a fine of Rp50,000,000.00 (fifty million rupiah) with the provision that if the fine is not paid, it will be replaced with imprisonment for 1 (one) month by stipulating that the period of arrest and detention that has been served by the defendant is completely reduced from the sentence imposed and orders the defendant to remain in detention. The judge also determined that evidence in the form of 1 (one) unit of green Isuzu Panther minibus No. Pol BK 1101 VL along with the ignition key, 1 (one) piece of green Isuzu Panther minibus vehicle registration No. Pol BK 1101 VL an H. Syahrul Sitorus, 331,610 (three hundred and thirty-one point six hundred and ten) liters is true to be bio diesel fuel oil, 12 (twelve) jerry cans with a capacity of 33 liters.

Based on the research conducted by the author with an interview with the Judge of the West Pasaman District Court, Mr. Imam Kharisma Makkawaru, SH., MH that the basis for the judge's consideration in sentencing the defendant for 6 (six) months and a fine of Rp50,000,000.00 (fifty million rupiah) because for the sake of upholding justice, the Panel of Judges is of the opinion that the sentence to be decided on the defendant must consider the previous verdict that has permanent legal force, namely in a similar case that was previously decided at the first level of the West Pasaman District Court with case No. 101/Pid.B/LH/2023/PN Psb on behalf of the convict Anggi Monika on Thursday, April 27 at approximately 15.15 WIB at Jorong Sariak Nagari Koto Baru, Luhak Nan Duo District, West Pasaman Regency which was decided on August 22, 2023, In the verdict that the defendant Anggi Monika had committed the crime of "abusing the subsidized fuel oil trade", In the case of the defendant Anggi, the public prosecutor of the West Pasaman District Prosecutor's Office based on the indictment of Article 55 of Law Number 22 of 2001 concerning Oil and Gas in conjunction with Article 40 number 9 of Law Number 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2002 concerning Job Creation into Law, In the letter of demand dated August 8, 2023, the Public Prosecutor of the West Pasaman District Prosecutor's Office only charged the convict with a prison sentence of 10 (ten) months minus the detention period with an order to remain in custody and a fine of IDR 50,000,000.00 (fifty million rupiah) as this indictment is certainly very different from the charges filed by the Public Prosecutor in the case which is the amount of subsidized bio diesel fuel evidence The government reached as many as 335 (three hundred and thirty-five) liters or greater than that found in this case.

After conducting research, the author found an irregularity in the case of the abuse of subsidized fuel oil trade carried out by the defendant Zulhendri that in the case there was a role of a petrol station member named Andre who had facilitated the defendant

Zulhendri to commit a crime, but after the author read and understood the content of the verdict Number: 116/Pid.B/LH/2023/PN Psb, the author did not find the testimony of Andre's brother even though he had taken part in crime that has been committed by the defendant Zulhendri. In the verdict, the defendant Zulhendri also paid pump wages to petrol station members in the amount of Rp500.00 (five hundred rupiah) per liter. The judge should also have asked for the presence of the petrol stations that had participated in the case and asked for explanations and testimony on the case to members of the petrol stations involved in the case of the misuse of the government-subsidized fuel oil trade.

Based on the verdict that has been determined by the Panel of Judges to the defendant Zulhendri, according to the author, it still does not reflect justice, even though in the previous case the defendant Anggi Monika Hakim sentenced the defendant to imprisonment for 5 (five) months and a fine of Rp50,000,000.00 (fifty million rupiah). The judge should have imposed a higher sanction on the defendant Zulhendri than the verdict given in order to provide a deterrent effect on the perpetrator and provide awareness to the public about the crime so that there would be no more similar cases in the future.

Analysis of Islamic Criminal Law on Decision No. 116/Pid.B/LH/2023/PN Psb

In Indonesia, the management of Oil and Gas is regulated in Law of the Republic of Indonesia Number 22 of 2001 concerning Oil and Gas, and for the transportation of fuel oil without a business license is a crime as mentioned in Article 57 paragraph (2) of Law of the Republic of Indonesia Number 22 of 2001 concerning Oil and Gas. Where the form of threat is regulated in 53 Letter b of Law of the Republic of Indonesia Number 22 of 2001 concerning Oil and Gas, namely transportation as referred to in Article 23 without a transportation business license is punishable by a maximum prison sentence of 4 (four) years and a maximum fine of Rp40,000,000,000 (four billion rupiah).

Islamic law views that the management of oil and gas is included in public ownership. In terms of public ownership, it is basically the common property of all citizens, it's just that the management is controlled by the state.

According to Islamic law, the act of a person who commits the crime of abusing the government-subsidized fuel oil trade is called *jarimah al-baghyu* (rebellion), which is an act that opposes the legitimate government by unlawful means, based on the division of *jarimah* in the *fiqh jinayah* which the author has described in chapter II that the sanctions for the act of *al-baghyu* or rebellion are divided into two, Namely *Jarimah Hudud* and *Jarimah Ta'zir*, this punishment depends on the form of the crime committed. In this case that the author is researching, the author argues that the sanctions imposed in Islamic criminal law against the act of abusing subsidized fuel oil trade are classified as the punishment of *jarimah ta'zir*, where the punishment is returned to the Indonesian government as part of the violation of *ta'zir* for selling subsidized fuel oil with the aim of gaining profit for oneself.

The needs of the community will not be met because monopoly leads to social difficulties, as is the case with the abuse of subsidized fuel trade. Thus, the government must intervene to prevent mistakes made by the community. The government has the authority to decide the penalty, even when faced with this kind of action. Allah SWT says in Q.S Al-Hajj verse 25 which states that:

It's a matter of fact that it's *a'l-da'aa'a'l-'aa'a'i'a'l-'aa'i'aa'*, *'a'l-'*

"Indeed, those who disbelieve and hinder mankind from the path of Allah SWT and the Grand Mosque that We have made for all mankind, both those who live there and in the desert and who intend to commit evil in it, we will certainly feel for him as a painful punishment". (Q.S Al-Hajj/ 22:25).

Based on the above verse, the author argues that there is a connection between the verse and the problem that the author is researching, namely in that verse Allah SWT has given a way for all mankind to go to the Grand Mosque, but it is hindered by disbelievers with the aim of committing crimes, then the person who obstructs it will get punishment from Allah SWT. From the meaning of this paragraph, the author argues that the Government has established petrol stations for the entire community and provides policies in the form of subsidized fuel oil to people who have a low economy, but because of crimes committed by one of the communities so that other communities are prevented from getting facilities that have been provided by the government, one of which is the government's policy in providing subsidized fuel oil to certain people, then the person who commits the crime deserves punishment.

The act of transporting fuel oil without a business license is an act that is prohibited and unlawful in Islam. Because these acts cause harm whose impact can harm the state and others. Therefore, these acts must be eliminated. As stated in the rules of fiqh, namely:

الضَّرَرُ يُزَالُ

"Harm must be eliminated".

The basis of this rule is based on the hadith of the Prophet PBUH:

عَنْ أَبِي سَعِيدٍ سَعْدِ بْنِ مَالِكٍ بْنِ سِنَانٍ الْخُدْرِيِّ رَضِيَ اللَّهُ عَنْهُ أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ: لَا ضَرَرَ وَلَا ضِرَارَ

From Abu Sa'id, Sa'd bin Malik bin Sinan Al-Khudzri radliyallahu 'anhu, the Prophet PBUH said: "There should be no danger and there should be no harm to others." (HR. Malik, Dhuruquthni, al-Baihaqi and Al-Hakim).

The above hadith explains that one should not harm others with any form of evil.

So in this case, based on the Decision of the West Pasaman District Court No. 116/Pid.B/LH/2023/PN Psb on the actions of the defendant Zuhendri who misused the trade of fuel oil without a commercial business license, including the crime of al-baghyu (rebellion), this is because the criminal act committed by this defendant is a form of disobedience to regulations made by the government. The punishment falls into the category of jarimah ta'zir. Because the act committed by the defendant is an unlawful act, the sanctions can be in the form of hudud and ta'zir jarimah, but because the crime committed by Zuhendri was not followed by force or weapons, the punishment is classified as a ta'zir jarimah whose act of misuse of fuel oil without a commercial business license is determined by the judge.

4. CONCLUSION

Based on decision No. 116/Pid.B/LH/2023/PN Psb, the basis for the judge's consideration in imposing sanctions on the defendant is based on the elements of the criminal act contained in article 55 of Law No. 22 of 2001 Jo. Article 55 paragraph (1) of the Criminal Code, the existence of evidence in accordance with the criminal act committed by the defendant. In addition, the Judge also considered the aggravating circumstances and mitigated the defendant, the Panel of Judges also argued that the sentence to be decided on the defendant must consider previous decisions that have permanent legal force in order to prevent differences in sentencing for cases that have

the same legal validity. The view of Islamic Criminal Law in the application of sanctions against decision No. 116/Pid.B/LH/2023/PN Psb against the perpetrators of the criminal act of abusing subsidized fuel oil trades carried out by the defendant Zulhendri without a commercial business license is included in the crime of al-baghyu (rebellion). The punishment falls into the category of jarimah ta'zir, because the act committed by this defendant is an unlawful act, the sanctions of which can be in the form of hudud jarimah and ta'zir jarimah, but because the crime committed by Zulhendri is not followed by force or weapons, the punishment is classified as jarimah ta'zir whose act of misuse of fuel oil trade without a commercial business license is the sanction of punishment determined by the judge or ruler.

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