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The Criminal Liability in the Context of Fertilizer Trade in Indonesia

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Abstract: Indonesia is an agricultural country and its agricultural sector which important in meeting food needs. On its journey, the agricultural sector in Indonesia is developing to improve the quality and production of food needs. Then, the fertilizer process has an important role in increasing the production of agricultural products, and the government needs to implement policies to subsidize the price of fertilizers for fertilizer distributors and arrange the regulations underlying the policy. If the fertilizer trade for fertilizer distributors is based on more than clear regulations, how can Indonesia's agricultural journey run. Thus, this study aims to attempt to describe the criminal liability of fertilizer trade based on court decisions at the first level up to the cassation level (namely, Decision Number. 137/pid.sus/2020/PN.Btg, Court of Appeal (Number. 487/Pid.Sus/2020/PT SMG and Cassation Decision Number. 78/Pid.Sus/2022). This study is normative research with a case approach, requiring secondary data in legal documents and references relevant to the subject matter. Data were collected by identification and inventory and then analyzed using the basic principles of criminal law. The novelty is fulfilling criminal liability is not enough regarding the psychological aspects (adult, healthy mind). However, it must also fulfill the normative measure of the act. The results showed that the defendant in the first instance and appellate level decisions were able to take liability but was not sentenced because the element of the action in the prosecutor's charge, which stated "conducting trading business activities without having a license in the field of trade granted by the Ministry" was not fulfilled/proven, because the defendant had a trading business license (SIUP) issued by the Integrated Investment and Licensing Agency Number: 519/054/2014 dated June 04, 2014, under the name of the Agricultural Facilities and Organic Fertilizer Shop "Tani Jaya." The cassation verdict of the defendant can be held responsible and sentenced to punishment because measures from the psychological aspect are fulfilled. The measurements are from the normative aspect demanded by the public prosecutor, especially the elements that are also fulfilled. It can be concluded that based on the court's decision to measure the perpetrator's liability for a criminal offense, two measures must be met in imposing punishment.

Keywords : Business Activities; Crime; Indonesia fertilizer; Trade.

INTRODUCTION

One of the commodities regulated by the rule of law is the fertilizer trade, as fertilizers are related to agricultural issues. Although Indonesia is no longer an agrarian

country, the agricultural sector is still an orientation in policy.^{1,2} The Ministry of Agriculture's Strategic Plan 2020-2024 states that agriculture is important as a food provider and realizes food security.³ Therefore, a subsidized fertilizer policy for farmers encourages government policy to realize it.

Furthermore, this subsidized fertilizer trade must follow the rules set by the government Law Number 6 of 2023 concerning the stipulation of government regulations in lieu of Law Number 2 of 2022 concerning job creation into the law.⁴ In addition, the Ministry of Trade Regulation Number 4 of 2023 also stipulates the Procurement and Distribution of Subsidized Fertilizers for the Agricultural Sector. This law regulates trade administration but also formulates actions that can be subject to punishment.⁵

One of the trade actions that can be punished is stipulated in Law No.7/2014 on Trade, which has been amended by Law No. 11/2020 on Job Creation. However, to determine whether an act can be punished, the conditions for criminalization must be met. First, the requirements for the imposition of punishment are internal requirements from within the perpetrator measured from the psychological aspect, which is an element of individual responsibility. Second, the external requirements are seen from the outside of the individual, namely the actions of the perpetrator, which are measured by normative measures, whether the action is against the law or not.⁶ As stated by Eddy O.S. Hiariej, individuals are punished because they fulfil the ability to be responsible psychologically and because their actions are against the law normatively.⁷ Thus, this study will attempt to discuss the criminal liability of fertilizer traders based on court decisions from the first to the cassation level.

Moreover, Permendag RI Number 15/MDag/Per/4/2013 on the Procurement and Distribution of Subsidized Fertilizers for the Agricultural Sector generally regulates the procurement and distribution of fertilizers. Some reasons cause the misuse of subsidized fertilizers to become more prevalent. Actors who actively misuse subsidized fertilizers are internal factors of the perpetrators themselves. Lack of legal awareness that leads to

¹ Amiruddin Ketaren and Rakhmadsyah Putra Rangkuty, "Kajian Pembangunan Ketahanan Pangan Keluarga Petani," *Jurnal Ilmu Sosial Dan Ilmu Politik Malikussaleh (JSPM)* 2, no. 2 (2021): 218, <https://doi.org/10.29103/jspm.v2i2.5646>.

² Dewi Nurul Musjtari, "Dampak Liberalisasi Perdagangan Dalam WTO Agreement Terhadap Ketahanan Pangan Indonesia," *Kanun - Jurnal Ilmu Hukum* 16, no. 2 (2014): 221–46.

³ Keputusan Menteri Pertanian No. 484/KPTS/RC.20/M/8/2021 tentang Perubahan Kedua Atas Keputusan No. 259/KPTS/RC.020/M/05/2020 tentang Rencana Strategis Kementerian Pertanian Tahun 2020–2024, "https://Rb.Pertanian.Go.Id/Upload/File/RENSTRA%20KEMENTAN%202020-2024%20REVISI%20%20(26%20Agt%202021).Pdf," Indonesia, n.d. akses 8 Mei 2024.

⁴ Siti Hamidah, Eka Yulyana, and Evi Priyanti, "Distribusi Pupuk Bersubsidi Di Kabupaten Karawang," *Jurnal Ilmiah Wahana Pendidikan* 8, no. July (2022): 156–66, <https://doi.org/https://doi.org/10.5281/zenodo.6791738>.

⁵ Yahya Faisal, "SUBSIDIZED FERTILIZER RETAILERS' COMPLIANCE WITH GOVERNMENT PRICING FROM TAS'IR AL-JABARI'S PERSPECTIVE (Research Study in Mutiara District, Pidie Regency)," *Al-Iqtishadiyah: Jurnal Hukum Ekonomi Syariah* 4, no. 1 (2023): 14–34.

⁶ Kuswardani & Gilang Kartiko, "Asas Kesalahan Dalam Hukum Pidana Pilar Perlindungan Hak Asasi Manusia", *Prosiding Seminar Nasional Online & Call For Paper. Universitas Surya Kencana* (UNSUR PRESS, n.d.).

⁷ Eddy O.S. Hiariej, *Prinsip-Prinsip Hukum Pidana* (Yogyakarta: Cahaya Atma Pustaka, 2016).

significant price disparities and deviant actions is the source of these internal factors, so they are encouraged to commit irregularities in the form of illegally misusing subsidized fertilizers using specific modes. Based on the source of Permentan Number 59/PERMENTAN/SR.310/12/2016 regarding the Amendment to the Regulation of the Minister of Agriculture Number 60/PERMENTAN/SR.310/12/2015.⁸ Supervision of trade activities, especially those carried out by the Minister himself or with representatives of the organizers or related regional agencies, following their authority, districts or cities supervise the provisions of this Ministerial Regulation. The integrated monitoring team for subsidized fertilizers that the Ministry can form to carry out its duties can be formed by the Ministry and brought in by the Director General of Consumer Protection and Trade Administration.⁹

The supervision of trade activities is specifically carried out by the Minister himself or jointly with representatives of the organizers or related regional agencies, following their authority districts or cities conduct supervision of the provisions of this Ministerial Regulation. The Integrated Monitoring Team for Subsidized Fertilizers that the Ministry can form to carry out its duties can be formed by the Ministry and brought in by the Director General of Consumer Protection and Trade Administration.¹⁰ Although the studies differ in the regulations used as a reference and some other detailed aspects, they are similar in their focus on the problem of subsidized fertilizer misuse and the government's supervision efforts to overcome this problem.

METHOD

This study was normative research with a case approach (court decisions). The secondary data were legal documents (laws and court decisions), literature, and journals relevant to the issues discussed. Data collection is carried out by identification and inventory and continues with the categorization of data that can answer the problem formulation. The results of data categorization analyzed and described using the principles of criminal law.¹¹

DISCUSSION

The Concept of Fertilizer Trading Business Activities as a Criminal Offense Category

The role of trade is very important for developing this country, especially in the economic field, to open up opportunities for generations of citizens to develop.¹² Economic development records a phenomenon increasingly developing to make new views and take

⁸ Danu Bagus Pratama, "Pendistribusian Pupuk Bersubsidi Yang Berimplikasi Tindak Pidana Ekonomi," *Jurnal Rechtsens* 9, no. 2 (2020): 197–214, <https://doi.org/https://doi.org/10.36835/rechtsens.v9i2.794>.

⁹ Muhamad Abas Embang Herlambang, Deny Guntara, "Optimalisasi Pengawasan Pengadaan Dan Penyaluran Pupuk Bersubsidi Dihubungkan Dengan Peraturan Menteri Nomor 4 Tahun 2023," *Jurnal Binamulia Hukum* 12, no. 1 (2023): 47–56, <https://doi.org/DOI: 10.37893/jbh.v12i1.328>.

¹⁰ Sigit Setiawan Ragimun, Makmun, "Strategi Penyaluran Pupuk Bersubsidi Di Indonesia," *Jurnal Ilmiah M-Progress* 10, no. 1 (2020): 69–89, <https://doi.org/10.35968/m-pu.v10i1.369>.

¹¹ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana Prenada Media Group, 2010).

¹² Serlika Aprita Serlika Aprita, "Peranan Peer to Peer Lending Dalam Menyalurkan Pendanaan Pada Usaha Kecil Dan Menengah," *Jurnal Hukum Samudra Keadilan* 16, no. 1 (2021): 37–61, <https://doi.org/10.33059/jhsk.v16i1.3407>.

space in the world economic market. Nowadays, all aspects of life are developing rapidly with the influence of technology, which the public loves, making accessing all information at home and abroad easier. That way, trade continues to develop in the current global era; trade can be done offline and online through technology.¹³

However, trade can lead to other crimes, and corruption is the most closely related crime.¹⁴ The United Nations Convention Against Corruption (UNCAC) declares the obligation of states to consider in their legislative policies to criminalize intentional acts related to trade, including bribery, illicit enrichment of public officials, and laundering of proceeds of crime.¹⁵ Indonesia has ratified UNCAC through Law Number 7 of 2006 on the United Nations Convention Against Corruption Ratification, 2003.¹⁶ The Convention mentions crimes related to corruption. The international community's attention to the problem of trade implications shows that the state is obliged to take appropriate steps in managing trade so as not to cause unwanted criminal acts.

Fertilizer is an important commodity for the agricultural sector. According to existing state policies, it is classified into subsidized and non-subsidized fertilizers. Therefore, fertilizer trading has different consequences between subsidized and non-subsidized fertilizers.¹⁷ It is because the laws governing the trade of subsidized fertilizers are detailed that the act of trading can be disastrous, as it turns into a criminal offence. Government policy, namely Presidential Regulation Number 77 of 2005, affirms that subsidized fertilizers are goods under supervision, meaning that these fertilizers in the procurement and distribution by traders must have permission from the authorities.

There are two teachings against the law, namely against the law in criminal law, namely formal legal malpractice and against material law.^{18,19} Formally against the law is an act that fulfils the formulation of the law - the law while against the law materially is an act contrary to the values that live in society.²⁰ Other terms similar in meaning to those used

¹³ Intan Wulan Dari Bancin and Nurul Jannah, "Analisis Minat Nasabah Pada Penggunaan Aplikasi BSI Mobile Dalam Pembayaran E-Commerce: Studi Kasus Pada Mahasiswa Uinsu," *Jurnal Ilmu Komputer, Ekonomi Dan Manajemen (Jikem)* 2, no. 2 (2022): 1487–99.

¹⁴ S K Imansyah and A D Sumaryanto, "Trading in Influence as a Crime in Indonesia Criminal Law System: A Juridical Study," *Yuris (Journal of Court and ...* 1, no. 2 (2022), <https://journal.jfpublisher.com/index.php/jcj/article/view/107%0Ahttps://journal.jfpublisher.com/index.php/jcj/article/download/107/109>.

¹⁵ United Nation, "United Nations Convention Against Corruption (UNCAC)", dalam https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf, akses 11 Mei 2024

¹⁶ Radita Ajie, "Kriminalisasi Perbuatan Pengayaan Diri Pejabat Publik Secara Tidak Wajar (Illicit Enrichment) Dalam Konvensi PBB Anti Korupsi 2003 (UNCAC) Dan Implementasinya Di Indonesia," *Jurnal Legislasi Indonesia* 12, no. 3 (2018): 1–23.

¹⁷ D Abdi, I., Fadillah, S., & Mamang, "ASPEK HUKUM TINDAK PIDANA PENYIMPANAN/ BARANG KEBUTUHAN POKOK DAN BARANG PENTING (Studi Kasus Di Jakarta)," *Jurnal Hukum Jurisdictione* 1, no. 2 (2019): 1–11.

¹⁸ Muhammad Yusuf Ibrahim, "Pemberian Pupuk Bersubsidi Ditinjau Dari Undang-Undang Nomor 19 Tahun 2013 Tentang Perlindungan Dan Pemberdayaan Petani," *Fenomena* 19, no. 2 (2021): 125, <https://doi.org/10.36841/fenomena.v19i2.1464>.

¹⁹ Richard Tulus, Eko Soponyono, and Laila Mulasari, "Rekonstruksi Kebijakan Hukum Pidana Dalam Upaya Penanggulangan Tindak Pidana Ekonomi (Studi Kasus Terhadap Tindak Pidana Penimbunan Pangan)," *Diponegoro Law Journal* 5, no. 2 (2016): 1–18, <https://ejournal3.undip.ac.id/index.php/dlr/article/view/10753>.

²⁰ Eddy O.S. Hiarriej, 2016, *Op. Cit.*, halaman 225.

against the law by criminal law experts are generally given terms without authority, without permission, and / or without rights.²¹

Fertilizer trading, which is a criminal offence in Law No. 7/2014 on Trade, which underwent several changes with Law (Law) No. 6 of 2023 on the Stipulation of Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation into Law, does not provide a specific concept or definition. The Job Creation Law regulates permits that every business actor in conducting Trade must have a business license from the government. The business actor is subject to administrative sanctions if they do not have a business license. This provision is formulated in Article 24, Paragraph 8 concerning Trade, Legal Metrology, Halal Product Guarantee, and Conformity Assessment Standardization. The Closing Provision of Article 184 paragraph (2) of the Job Creation Law states that "implementing regulations from regulations that the Job Creation Law has amended are still in effect as long as they do not conflict with the law". On the other hand, the perpetrators will also be subject to criminal sanctions following applicable provisions.

Fertilizers based on government policy can be divided into two, namely subsidized fertilizers and non-subsidized fertilizers. The trade of fertilizer that constitutes a criminal offence is the trade of subsidized fertilizer, which is not under applicable regulations. It is because of subsidized fertilizers, according to Presidential Regulation of the Republic of Indonesia Number 15 of 2011 concerning Amendments to Presidential Regulation Number 77 of 2005 concerning the Determination of Subsidized Fertilizers as Goods Under Supervision. Therefore, distributors or retailers must have a business identification number called *Nomor Induk Berusaha* (NIB) as proof of permission to have the authority to sell subsidized fertilizers.

Cassation Decision No78/Pid.Sus/2022 also does not provide the concept of fertilizer trading. The cassation decision states that Defendant was sentenced because it was proven legally and convincingly to trade (subsidized fertilizer) without a trade business license.

Perpetrators Liability of Trade Offenses in First Instance to Cassation Decisions

One measure of criminal liability is not only the psychological aspects of the individual but also the normative aspects of the individual's action.²² In this case, the judge must assess the elements of the formulation of the article that form the basis of the prosecutor's indictment in deciding a case, which is proven by the public prosecutor in the trial process, so that the elements are fulfilled.²³

The public prosecutor's indictment in the judge's decision was based on the rule of law Article 106 of Law Number 7 of 2014 on Trade, which in 2022 was amended by the Job

²¹ Andi Hamzah, *Hukum Pidana Indonesia* (Jakarta: Sinar Grafika, 2017).

²² Sugiono Sugiono and Siti Faridatul Gufroniah, "Pendistribusian Pupuk Bersubsidi Dengan Acuan Rencana Definitif Kebutuhan Kelompok (RDKK) Perspektif Etika Bisnis," *Al-Kharaj: Jurnal Ekonomi, Keuangan & Bisnis Syariah* 5, no. 1 (2022): 371–85, <https://doi.org/10.47467/alkharaj.v5i1.1465>.

²³ Valeriana Darwis and NFN Supriyati, "Subsidi Pupuk: Kebijakan, Pelaksanaan, Dan Optimalisasi Pemanfaatannya," *Analisis Kebijakan Pertanian* 11, no. 1 (2016): 45, <https://doi.org/10.21082/akp.v11n1.2013.45-60>.

Creation Law.²⁴ The changes in substance were further expanded except for those business actors who run businesses with low and medium risk, so Article 106 in job creation law consists of three (3) paragraphs, of which the second and third paragraphs are exceptions. Article 106, paragraph (1) is in the Job Creation Law. In although of this, it should be noted that the judge's decisions occurred in 2020.²⁵

Based on the decision of the first level judge, namely Decision Number 137/Pid.Sus/2020/PN Btg and the appeal decision of the Central Java High Court Number 487/Pid.Sus/2020/PT SMG, based on the indictment of the Public Prosecutor. The indictment has an important role for the judge in deciding the case. Therefore, in making an indictment, the public prosecutor will endeavour to make an indictment not only in the form of a single indictment but will generally make an alternative or subsidized one.²⁶ The two decisions (first level & appeal) were based on the second alternative indictment of the Public Prosecutor, with the legal basis being Article 106 of the Trade Law.²⁷ The substance of the article is as follows:

"Businesses that conduct Trade business activities without licenses in the field of Trade granted by the Ministry, as referred to in Article 24 paragraph (1), shall be punished with imprisonment for a maximum of 4 (four) years or a maximum fine of Rp10,000,000,000.00 (ten billion rupiah)"

The substance of the article has two elements that the public prosecutor must prove, and the judge assesses and weighs the evidence of the public prosecutor to determine whether it is proven or not.²⁸ The elements are (1) business actors and (2) conducting trade business activities without a license in the field of trade granted by the Ministry. Based on the judge's consideration, the second element of the public prosecutor's charges was not proven. The reason is that (1) the defendant in running his business has a trade business license called *Surat Ijin Usaha Perdagangan* (SIUP) issued by the Integrated Investment and Licensing Agency Number: 519/054/2014 dated June 04, 2014, under the name "Toko Sarana Pertanian dan Pupuk Organik Tani Jaya; (2) the defendant's SIUP in running his business has never been revoked by the official authorized to issue SIUP.²⁹ Therefore, based on Article 191 paragraph (1) of the Criminal Procedure Code, the defendant was acquitted

²⁴ Kuku Widiatmoko, "PENGGELEDAHAN DAN PENYITAAN TERHADAP BARANG BUKTI TINDAK PIDANA DI BIDANG PANGAN," *Lex Crimen* 10, no. 4 (2021): 43–53.

²⁵ Andhiya Moza Faris and Dian Rachmat Gumelar, "Right To Be Forgotten as an Effort to Suppress Recidivism Rate of Theft Crime" 10, no. May (2024): 358–72.

²⁶ I Made Arjaya Dan I Nengah Laba I Putu Bagus Eko Hadhi Santosa, "Aspek Hukum Tuntutan Jaksa Penuntut Umum Tentang Tindak Pidana Pemasaran Dan Pengancaman," *Jurnal Analogi Hukum* 1, no. 1 (2019): 88–92.

²⁷ Yuan Lievia Wijaya and Syaifuddin Zuhdi, "Animals as Criminal Evidence in the Perspective of Criminal Procedure Law," *Justisi* 10, no. 2 (2024): 315–27, <https://doi.org/10.33506/js.v10i2.2912>.

²⁸ Benhur Raubert Putirulan, Kristi Warista Simanjuntak, and Paul Przemysław, "Settlement of the Malamo Community Customary Land Dispute in Sorong Regency: A Review of Legal and Social Aspects" 2, no. 2 (2024): 96–110.

²⁹ Mahkamah Agung RI, Putusan No. 137/Pid.Sus/2020/PN Btg & Pengadilan Tinggi Jawa Tengah No 487/Pid.Sus/2020/PT SMG, dalam <https://putusan3.mahkamahagung.go.id/direktori/putusan/zaeb646bf7fa89d08bc4313630303434.html> akses 15 Maret 2024.

(vrijpraak) because the defendant's actions, especially the second element of Article 106 of the Trade Law, were not proven.³⁰³¹ Likewise, for the appeal decision, namely Decision No. 487/Pid.Sus/2020/PT SMG that the High Court of Semarang corroborated the decision of the Batang District Court Number 137/Pid.Sus/2020/PN Btg dated November 5, 2020, which was appealed.

However, in the Supreme Court cassation decision No. 78 K / Pid.Sus / 2022, the decision stated that it differed from the first-level court and the appeal decisions. The Supreme Court overturned the decision of the Court of Appeal No. 487/Pid.Sus/2020/PT. SMG, dated December 17, 2020, upheld the Batang District Court Decision No.137/Pid.Sus/2020/PN Btg. The Supreme Court held that the first and second elements of Article 106 of the Trade Law were proven legally and convincingly. It is based on the testimony of the witness who had purchased fertilizer at the Defendant's shop, which said that at the shop, Defendant sold two kinds of fertilizer, namely non-subsidized fertilizer and subsidized fertilizer. According to the law, the requirement to sell subsidized fertilizer is to have a permit as a complete fertilizer shop, *Kios Pupuk Lengkap* (KPL), and the Defendant did not have a permit for that.³²³³

From the psychological aspect, criminal liability measures the ability to be responsible for the Defendant. First, the Defendant's age (more than 49 years) indicates adulthood; second, in front of the trial, there is evidence that the Defendant is physically and mentally healthy³⁴ or, in other words, according to the author, healthy and sane in mind, so that the Defendant is capable of being criminally responsible.

CONCLUSION

To summarize, government policy in the agricultural sector implicitly categorizes fertilizers into two categories, namely subsidized and non-subsidized fertilizers. Trading subsidized fertilizers by business actors, individuals or legal entities can be criminal if it does not follow applicable legal provisions. It is shown in Supreme Court Decision No 78 K/Pid.Sus/2022, business actors who trade subsidized fertilizers must have a Kios Pupuk Lengkap (KPL) permit. There are differences in decisions regarding the criminal liability of business actors in the external aspects (actions) of the perpetrators, even though the legal basis used to decide is the same, namely Article 106 of the Trade Law as amended by Article 106 paragraph (1) of the Job Creation Law The District Court Decision and the Central Java

³⁰ Mahkamah Agung RI, "Kitab Undang-Undang Hukum Acara Pidana (KUHP)", dalam https://jdih.mahkamahagung.go.id/storage/uploads/produk_hukum/file/KUHAP.pdf, akses 10 Mei 2024

³¹ Nur Prasetya Ningsih, "Criminological Analysis of Child Victims of Exploitation as Drug Couriers in Sorong City" 2, no. 2 (2024): 133–49.

³² E. Bachrie, M. Safitri, and A. Salsabila, "Implementasi Penerapan Sanksi Pidana Terhadap Pelaku Tindak Memproduksi Pupuk Kompos Merk Aneka Mitra Sejahtera(AMS) Yang Tidak Terdaftar (Studi Putusan Nomor: 64/Pid.Sus/2021/PN Gns)," *Jurnal Kewarganegaraan* 6, no. 2 (2022): 4375–86.

³³ Mawrni Fatma Muhammad Adystia Sunggara, Yang Meliana, Wahab Aznul Hidayat, Sokhib Nain, "Dinamika Hukum Dan Korupsi Politik (Dampak Dan Tantangan Penegakan Hukum Di Indonesia)," *Unizar Law Review* 7, no. 1 (2024), <https://doi.org/http://dx.doi.org/10.36679/ulr.v7i1.64>.

³⁴ Mahkamah Agung RI, Putusan Pengadilan Negeri Batang No.137/Pid.Sus/2020/PN Btg., halaman 37.

High Court Decision in Semarang stated that the second element (conducting trade business activities does not have a license in the field of trade granted by the Ministry) of the article was not proven, so the defendant was not sentenced. However, in the Cassation Decision, the elements of the article were all fulfilled and proven, so the verdict imposed was a cumulative punishment, namely imprisonment and a fine.

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