

The Enforcement of Emergency Law Number 7 of 1955 Concerning Investigation, Prosecution, and Justice of Economic Crime, in Supporting the Governance Policy of Subsidized Fertilizer

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Abstract

Since globalization, law, especially in the realm of criminal law, has undergone many changes, and many developments have even evolved into new forms. The development of crime has implications for the rapid evolution of rules regarding criminal acts. Indonesia is familiar with arrangements regarding economic crimes since the existence of Emergency Law Number 7 of 1955 concerning the investigation, prosecution, and justice of economic crime. This law is the forerunner to the rules of economic criminal law in Indonesia which is an adaptation of *Wei op de Economische Delichten* 1950 from the Dutch, but has been adapted to the conditions in Indonesia. Economic Crimes are criminal acts or crimes or offenses in the economic field that can harm the state. Indonesia is known as an agrarian country where most of the population depends on the agricultural sector, which is why subsidized fertilizer management is an important matter for attention because the availability of fertilizer is one of the determinants of the sustainability of food production in Indonesia. Subsidized fertilizer from the government has the aim of helping farmers to obtain fertilizer at low prices, the distribution of subsidized fertilizer is monitored by the government so that it is right on target for recipients. However, in reality, there have been irregularities in the management of subsidized fertilizers, one of which was in a case that was decided based on Criminal Decision Number 87/Pid.B/2014/PN.Kds. Emergency Law No. 7 of 1955 is a law that has specificity because it regulates criminal acts in the economic sphere that are not regulated in the Criminal Code (KUHP). This research is to show how the enforcement of Emergency Law Number 7 of 1955 which is in line with the subsidized fertilizer management policy encouraged the progress of the Indonesian economy.

Keywords: Economic Crime; Subsidized Fertilizer Management; Emergency Law No. 7 of 1955.

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Introduction

Economic crimes are criminal acts or crimes or offenses in the economic field that can harm the state. Economic crime is different from economic criminality. Economic crime and economic criminality are distinguished from the consequences. Economic crime is an economic crime that can result in state losses, meanwhile economic criminality is a conventional economic crime that results in individual losses (Ramdania, 2021).

Indonesia is familiar with arrangements regarding economic crimes since the existence of Emergency Law Number 7 of 1955 concerning the investigation, prosecution, and justice of economic crime. Emergency Law Number 7 of 1955 is an adaptation of *Wei op de Economische Delichten* 1950 from the Dutch, and is a rule that has a special nature,

because it is a statutory regulation that is outside the Criminal Code (*KUHP* in Indonesia) and has specific characteristics that deviate from general criminal provisions.

Indonesia is an agricultural country where most of the population depends on the agricultural sector for their livelihood. Because it depends on the agricultural sector, one of the things that supports the success of agriculture is fertilizer. This has led to the availability of fertilizer at the right price is one of the determinants of the sustainability of food production in Indonesia. The government is aware of this condition, and that's why since the New Order era until now, the government has provided subsidized fertilizers to support farmers in Indonesia. The provision of subsidized fertilizer from the government has the aim that farmers can obtain fertilizer at low prices, and the distribution of subsidized fertilizer is monitored from procurement to distribution by the government so that it is right on target. The government also applies the Highest Retail Price (HET) as a reference for fertilizer prices that have been set (Noor and Suradi, 2016). Even though the government has provided subsidized fertilizers and regulated the management of subsidized fertilizers, in society there are still deviations from the management of subsidized fertilizers, one of which is in a case that has been decided based on Criminal Decision Number 87/Pid.B/2014/PN. Kds. Emergency Law Number 7 of 1955 is a law that has specificity because it regulates crimes in the economic sphere that are not regulated in the Criminal Code (*KUHP*). This Emergency Law is the forerunner of the economic criminal law rules, which are still valid today because the government has never revoked them. Even though there are currently new regulations regarding economic crimes, Emergency Law Number 7 of 1955 is still used as a legal basis in deciding cases of economic crimes.

Materials and Methods

According to Morris L. Cohen in Peter Mahmud Marzuki, Legal research is the process of finding the law that governs activities in human society, it involves locating both the rules which are enforced by the states and commentaries which explain or analyze these rules (Marzuki, 2006). Through research, we can find the rules imposed by the state and analyze those rules. This writing is a normative legal research that will examine literature or secondary data to analyze the enforcement of Emergency Law Number 7 of 1955 concerning the investigation, prosecution, and justice of economic crime, in supporting subsidized fertilizer governance, which is embodied in Court Criminal Decision Number 87/Pid.B/2014/PN.Kds.

Results and Discussion

A. Economic Crimes

Het retch hink anter de feiten aan, is a classic Netherlands adage, when translated literally into English means that the science of law is always left behind with the events to be regulated. It has become common knowledge that the times and globalization that have entered the country have implications for various aspects of life, including law. The influence of globalization on the Indonesian national legal order is enormous (Sulistyan, 2019). Grotius in his opinion said that where there is society, there is law. Globalization has made society aim to be a global society. This globalization has also had an impact on the law.

Since globalization, law, especially in the realm of criminal law, has undergone many changes, and many developments have even evolved into new forms. Not without reason, this is because many new crimes have emerged such as the emergence of new types of narcotics, violations of intellectual property rights or IPR, cybercrimes, as well as crimes in the field of corporations, business competition, and the economy. The development of crime is what ultimately has implications for the rapid evolution of rules regarding criminal acts.

Criminal law (*Wetboek van Straftrecht / WvS*) is the origin of the Criminal Code (*KUHP*) for indigenous people in the Dutch colonial era. The formation of the *WvS* was accompanied by the thoughts of Dutch scholars who predicted that criminal crimes would experience faster development than the law. Therefore, there is a principle, *Lex Specialist derogate Lex Generale* (Special laws override general laws, if special laws do not regulate, the provisions originating from the general law are enforced). This principle is legitimized in article 103 of the Criminal Code, therefore if there is a criminal crime that is not regulated in the Criminal Code, it will be regulated by rules outside the Criminal Code which are commonly called Special Criminal Law.

Economic Crime is regulated in the Special Criminal Law. In this year, the concept of Economic crimes in Indonesian law has changed and developed its meaning from time to time. At the beginning of its appearance, economic crimes were legitimized in Emergency Law Number 7 of 1955 concerning the investigation, prosecution, and justice of economic crime. The term economic crime is interpreted as a violation that has prominent characteristics in violations in the field of community development, whether in modern society or a society that is heading towards modernization. These economic crimes have a negative impact on the economic activity to the detriment of the people involved and that can be detrimental to the state in some cases on a large scale (Fadri, 2010).

Etymologically, this economic crime is a form of extraordinary crime or a criminal act that stands alone under Emergency Law Number 7 of 1955. Then developed marked by the enactment of Law Number 1 of 1961 concerning the stipulation of all emergency laws to become laws, Economic Crime's Law also experienced development with the existence of new economic actions such as stock exchanges, foreign investment, crowdfunding, and other economic activities.

B. Management of Subsidized Fertilizer by the Government

One of the government's efforts to support increased production of agricultural products in Indonesia is to provide fertilizer subsidies to farmers. To be on target, subsidized fertilizers must have good governance. Regulations for the management of subsidized fertilizers are regulated in the Decree of the Minister of Industry and Trade No.70/MPP/Kep/2/2003 concerning Procurement and Distribution of Subsidized Fertilizers for the Agricultural Sector. In Article 1 of the regulation, it is explained that Subsidized fertilizers are fertilizers whose procurement and distribution receive subsidies from the Government for the needs of farmers which are carried out based on Government programs. The types of subsidized fertilizers are specified in Article 3, namely organic fertilizers (urea, superphos, ZA, NPK) (Muhardini, 2021). Subsidized fertilizer is a product of PT. Pupuk Indonesia (Persero) has a composition of urea, nitrogen, phosphate, and potassium (NPK).

In the allocation of subsidized fertilizers, Article 3 of the Minister of Agriculture Number 10 of 2022 states that there are several criteria for the distributing of subsidized fertilizers to farmers, namely for farmers who have a land area of no more than 2 (two) hectares per planting season and are members of a Farmer Group registered in SIMLUHTAN with sub-sector businesses, such as food crops (consisting of rice, corn, and soybeans); horticulture (which consists of chilies, shallots, and garlic); and plantations (which consist of smallholder sugarcane, cocoa, and coffee). Article 4 explain that the determination of the allocation of subsidized fertilizer consists of the allocation of subsidized fertilizer at the central, provincial, and district/city levels. It is further explained in Article 5 that the determination of the allocation of subsidized fertilizer at the central level is carried out after the definitive budget ceiling for fertilizer subsidies is determined based on Farmer Land Spatial data by taking into account the standard area of protected paddy fields and the

determination of *LP2B* and/or absorption of subsidized fertilizer in the previous year. Article 7 explains that the allocation of subsidized fertilizers at the provincial level is carried out after the allocation of subsidized fertilizers at the central level is determined and taken based on Farmer Land Spatial data (using land area data in *SIMLUHTAN*) taking into account the standard area of protected paddy fields and the Determination of *LP2B* in districts/cities within the province. absorption of subsidized fertilizer in the previous year, and/or details of provincial subsidized fertilizer allocation. The allocation of subsidized fertilizers at the provincial level is further broken down by district/city, type, quantity, and monthly distribution determined by the governor's decree (explained in Article 8). Article 9 states that the allocation of subsidized fertilizers at the district/city level is carried out after the allocation of subsidized fertilizers at the provincial level is determined based on Spatial Data of Farmers' Land, proposals for fertilizer allocation from sub-districts through electronic definitive plans for group needs (*e-RDKK*), and district subsidized fertilizer allocations / city determined by the governor's decision. The details of the allocation of subsidized fertilizers at the district/city level are based on the sub-district, type of subsidized fertilizer, quantity, prospective farmers, and prospective locations as well as the monthly distribution determined by a regent/mayor decision as explained in Article 10.

In 2023, the Government through Decree of the Minister of Agriculture Number 734 of 2022 stipulates subsidized fertilizer HET with a value of IDR 2,250 per kg for urea fertilizer, IDR 2,300 per kg for NPK fertilizer, and IDR 3,300 per kg for NPK fertilizer with cocoa special formula (BUMN, 2023). In Ministerial Regulation Number 10 of 2023, for 2023 only 9 (nine) commodities will receive fertilizer subsidies, namely rice, corn, chilies, soybeans, garlic, shallots, coffee, cocoa, and sugarcane.

In the Decree of the Director General of Agricultural Infrastructure and Facilities Number 45.11/KPTS/RC.210/B/11/2022 concerning Technical Guidelines for the Management of Subsidized Fertilizers for the 2023 Fiscal Year, the mechanism for distributing subsidized fertilizer is stated in a closed manner in accordance with Regulation of the Minister of Trade Number 04 of 2023 regarding Procurement and Distribution of Subsidized Fertilizers for the Agricultural Sector, through producers (Line I and Line II) to distributors (distributors in Line III), then distributors distribute them to Retailers (distributors in Line IV) up to Farmer Groups/farmers. Then, to redeem the subsidized fertilizer, farmers must have a farmer's card that is integrated into the Definitive Plan for Farmer Group Needs (*e-RDKK*). This card is made by the ministries involved, namely the Coordinating Ministry for the Economy, Trade, State-owned enterprises, Agriculture, Governors, and Regents/Mayors, but if someone in their area has not received a farmer card, they can make a redemption using their identification (Resident Identity Card).

If the technical guidelines for the management of subsidized fertilizers are implemented properly, and the relevant institutions that have the authority to carry out supervision carry out their authority properly, then the management, namely the procurement and distribution of subsidized fertilizers, will be right on target, which will ultimately drive the progress of the Indonesian economy.

C. The Enforcement of Emergency Law Number 7 of 1955 in Court Criminal Decision Number 87/Pid.B/2014/PN.Kds

Even though the government has provided subsidized fertilizers and regulated the management of subsidized fertilizers, there are still deviations in the management of subsidized fertilizers in society. Irregularities in the management of subsidized fertilizers, if they are not legally processed and continue to occur, will be very detrimental to the Indonesian economy.

This writing will analyze one of the economic crime cases that began with the actions of a person who committed an economic crime by selling goods under supervision. Goods under control are defined as all goods in any form, whether originating from imports or originating from domestic production, which are with or based on a Government Regulation, designated as goods under Government control.

This case is about the trading of subsidized urea fertilizer which is included in the category of goods under supervision, by a person who didn't have the permit and authority to distribute subsidized urea fertilizer, either as a producer, distributor or retailer. Procurement and distribution of subsidized fertilizers for the agricultural sector is regulated in the Regulation of the Minister of Trade of the Republic of Indonesia Number 15/M-DAG/PER/4/2013. Article 21 stipulates that distributors and retailers are prohibited from trading subsidized fertilizer outside their designation, while Article 30 paragraph (2) stipulates that distributors and retailers who trade subsidized fertilizer outside their designation are subject to sanctions in accordance with statutory provisions. The Regulation of the Minister of Trade does not regulate criminal sanctions, so convict violators must be based on statutory regulations which contain criminal sanctions.

In this case, the offender charged by the Public Prosecutor with a single charge of committing a crime as stipulated in Article 6 paragraph (1) letter b Jo Article 1 Sub 3e of the Indonesian Emergency Law No. 7 of 1955 Jo Article 4 paragraph (1) letter a Jo Article 8 paragraph (1) Government Regulations In lieu of Law Number 8 of 1962 concerning Trade in Goods under Supervision Jo Article 2 paragraph (2) Presidential Decree No. 15 of 2011 concerning changes to Presidential Decree No. 77 of 2005 concerning Stipulation of Subsidized Fertilizers as Goods under Control Jo Article 30 paragraph (3) Jo Article 21 paragraph (2) Regulation of the Minister of Trade of the Republic of Indonesia No. 15/M-DAG/PER/4/2013 concerning Procurement and Distribution of Subsidized Fertilizers for the Agricultural Sector.

The Public Prosecutor charged the perpetrator with Emergency Law Number 7 of 1955 Article 6 paragraph (1) letter b Jo Article 1 Sub 3e stipulates as follows: in Article 6 paragraph (1) letter b stipulates that "in the event of a crime involving economic crimes included in Article 1 sub 2e and based on sub 3e, it is punishable by a maximum imprisonment of two years and a maximum fine of one hundred thousand rupiahs or with one of these penalties" and in Article 1 Sub 3e it is stipulated that "a violation of a provision in or based on another law unless that law calls that violation an economic crime".

Then in the Government Regulations In lieu of Law Number 8 of 1962 concerning Trade in Goods under Control Article 4 paragraph (1) letter stipulates that "Anyone is prohibited from trading goods under supervision without a permit", and Article 8 paragraph (1) regulates "Violations of the provisions in the Government Regulation Substitute for this Law, as well as the implementing regulations, are economic crimes".

Further Article 2 paragraph (2) Presidential Decree No. 15 of 2011 concerning changes to Presidential Decree No. 77 of 2005 concerning the Stipulation of Subsidized Fertilizers as Goods under Control explains that: "types of subsidized fertilizers as referred to as goods under supervision include Urea Fertilizer, SP36 Fertilizer, ZA Fertilizer, and NPK Fertilizer".

Regulation of the Minister of Trade of the Republic of Indonesia No. 15/M-DAG/PER/4/2013 concerning Procurement and Distribution of Subsidized Fertilizers for the Agricultural Sector. Article 30 paragraph (3) in conjunction with Article 21 paragraph 2 stipulates that "other parties besides Producers, Distributors, and Retailers are prohibited from trading Subsidized Fertilizers, those who trade subsidized fertilizers are subject to sanctions by following the provisions of laws and regulations".

In Criminal Decision No. 87/Pid.B/2014/PN.Kds, the Court stated that the act of trading subsidized fertilizers that fall into the category of "goods under control" without a permit is an economic crime. If one looks closely, Emergency Law Number 7 of 1955 mention that Economic Crimes include acts that violate any provisions in or based on regulations, which initially started with violations violation of regulations regarding controlled goods, price controls, and so on. Based on this, Vervloet and Mohamad Jusuf proposed the notion of an economic violation (crime) as: "...the act of someone who violates government regulations in the economic field..." (Reksodiputro, 1994).

In general, economic crimes are defined as crimes or violations of any rights, obligations, or prohibitions in the economic field that have been regulated in the applicable legal regulations. Based on its understanding, economic crimes are divided into 2, namely; first, economic crimes in a narrow sense are criminal acts in the economic field that are legally regulated in the Republic of Indonesia's Emergency Law Number 7 of 1955. While the second, is the broad definition of economic crimes, namely, crimes with economic motives which are generally committed by people with intellectual abilities and important positions in society, is an example of money laundering crimes. RI Emergency Law Number 7 of 1955 concerning Investigation, Prosecution, and Justice of Economic Crime is the basic law enforcement rule for criminal acts in the economic field. This basic rule still regulates general economic crimes. Along with the development of society, new rules have been formed which later become the legal basis for specific criminal acts in the economic field, both in the form of statutory legal products and regulations under statutes.

The only indictment that was imposed on the perpetrator was: whoever committed an economic crime, namely without a permit trading in goods under supervision in the form of subsidized fertilizer of the Urea type, where other parties other than producers, distributors, and retailers were prohibited from trading subsidized fertilizers. It has been examined in court, and the elements in the indictment have been proven.

The first element, "whosoever" refers to legal subjects, both individuals and legal entities as supporters of rights and obligations who commit and or have committed an act prohibited by positive law. If the legal subject has been legally and convincingly proven to have committed a criminal act, then he can be said to be the perpetrator. In this case, the legal subject suspected of being the perpetrator is an individual or natural person.

The second element is the element of "committing economic crimes, namely without permission to trade goods under supervision in the form of subsidized urea fertilizer, where other parties besides producers, distributors, and retailers are prohibited from trading subsidized fertilizers" referring to the actions of the perpetrator, who without permission has traded subsidized fertilizer. Subsidized fertilizers are goods under supervision whose procurement and distribution must comply with regulations set by the government. The purpose of this subsidized fertilizer is to meet the needs of farmer groups and/or farmers in the agricultural sector which include urea, SP-36, ZA, and NPK fertilizers and other types of subsidized fertilizers determined by the minister who carries out government affairs in the agricultural sector. companies that produce urea, SP-36, ZA, and NPK fertilizers in the country; Distributor is a legal business entity appointed by the producer to purchase, store, sell, and market subsidized fertilizer in large batches to be sold to final consumers through their retailers; and Retailers are individuals/business entities appointed by distributors whose main activities are selling directly to final consumers in small batches.

In this case, the perpetrator's husband is a licensed retailer of subsidized fertilizer produced by PT Pupuk Sriwijaya Palembang through distributor CV Fortuna. However, the perpetrator acted individually and without fulfilling legal requirements as a retailer to obtain subsidized fertilizer from other parties which were then resold to other parties, the actions taken by the perpetrator violated the rules regarding Trade in Goods under Control.

Based on this description, the perpetrator is an individual legal subject who has been proven to fulfill the elements of an economic crime of trade in goods under supervision, namely, subsidized fertilizer. In terms of age, when the perpetrator committed the crime she was 39 years old, which is said to be an adult according to the Criminal Code. In addition, she is a healthy person both physically and spiritually, so it can be said that she is legally competent. When committing a crime, she also consciously did so without coercion from others. Based on this situation, she can be said to be a person who is legally competent and has consciously committed a crime of her own free will, so that there are no excuses, justifications, or abolition of prosecution that can be applied to her. Thus the perpetrator can be subject to criminal liability for her actions.

In criminal law, there are known reasons for criminal abolition, according to Moeljanto there are 3 reasons for criminal abolition, namely (Moeljanto, 1993):

- 1) Justification reasons. Reasons that eliminate the unlawful nature of an act, so that what the defendant does then becomes a proper and correct action. Example: forced defense.
- 2) Excuses for forgiveness are reasons that eliminate the guilt of the accused. In this case, the actions committed by the defendant are still unlawful, so they are still criminal acts, but he is not convicted, because there was no mistake. Example: carrying out a position order.
- 3) The reason for eliminating prosecution. This reason is based on the absence of benefits for the community with the implementation of prosecution, then there will be no prosecution, what is being considered here is the public interest. Example: the perpetrator voluntarily discourages committing a crime.

The perpetrator who has traded goods under supervision without a permit according to Emergency Law 7/1955 can be subject to a maximum prison sentence of 6 years and a maximum fine of 500 rupiah. In the Court Decision, the Panel of Judges stated that she was proven legally and convincingly guilty of committing "an economic crime without a permit to trade in goods under supervision in the form of subsidized urea fertilizer" and sentenced her to 5 months imprisonment with 6 months' probation. This decision means that if within 6 (six) months she does not commit another crime which has been decided by a judge's decision, then she does not need to be imprisoned for 5 (five) months. However, if within a period of 6 (six) months after the decision, there is another judge's decision that states he is guilty of committing a criminal act, then she must serve a prison sentence of 5 (five) months plus the new decision.

With the description above, we understand that Emergency Law Number 7 of 1955 has a common thread with other legal regulations governing economic crimes. Emergency Law No. 7 of 1955 is an adaptation of *wet op de Economich Delicten* in the Netherlands, it has been adjusted to the Indonesian conditions, although some sentences are still original as in Article 1 (Ramdania, 2021). In accordance with the Emergency Law, economic crimes contain elements of acts carried out within the framework of economic activities which are normal and legal in nature, these actions violate or harm the interests of the state or society in general, not only individual interests, and these actions also include acts in the business environment that are detrimental to other companies or other individuals (Setiadi and Yulia, 2010). Therefore, Emergency Law No. 7 of 1955 can be called a Law that is suspended animation but there are still cases that are resolved using this Emergency Law, such as one example of the case experienced by the perpetrator in trading subsidized fertilizers.

Conclusion

Law, criminal law, and economic criminal law have undergone many changes and developments. Although the rules regarding economic crimes have undergone developments and changes, Emergency Law No. 7 of 1955 concerning Investigation, Prosecution, and Justice of Economic Crimes, which was the forerunner of the economic criminal law regulations in Indonesia, is still valid today because it was never revoked by the Government. In practice, this Emergency Law is still used as a legal basis for resolving a criminal case. In Criminal Decision No. 87/Pid.B/2014/PN.Kds, enforcement of Emergency Law No. 7 of 1955 in line with the subsidized fertilizer management policy which also supports the progress of the Indonesian economy.

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