

DEBATE ON INDONESIAN ONE-PRICE OIL FUEL POLICY: AN ENERGY JUSTICE ANALYSIS*

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This article will discuss the One-Price Oil Fuel Policy implemented by the Government of Indonesia from 2017 to 2021. This policy ensures the distribution, availability, and affordability of fuel oil prices for people in remote and disadvantaged areas. Energy justice is the goal to be achieved in implementing the policy. Therefore, this study will analyse the laws and policies governing the One Price Oil Fuel Policy from an energy justice perspective. Furthermore, this study is expected to provide a preliminary understanding of affirmative energy policies implemented in Global South countries such as Indonesia.

Introduction

Oil fuel prices significantly impact the Indonesian economy (Goh et al. 2020). Although one of the countries producing crude oil, Indonesia also highly depends on fuel oil imports. Another problem faced is Indonesia's geographical condition, which consists of a cluster of islands, so the distribution and supply mechanism is different from one region to another.

Indonesia's geographical conditions – as an archipelago comprising a cluster of islands–, complicate the fuel supply chain mechanism (Rahman 2014). Furthermore, as an archipelagic country, more than 60% of Indonesia's territory is covered by the sea as a link between islands. Therefore, the downstream oil and gas sector's management faces both challenges and potential for development. This potential includes extensive distribution channels that will trigger and spur an integrated distribution system and a very large population while making Indonesia a domestic market for many national business entities, especially in the fuel trade (BPH Migas 2014).

Furthermore, some areas are categorized as geographically remote and economically lagging due to these conditions. Therefore, since 2016 the Government of Indonesia has created a program called "One Price Oil Fuel Policy." This policy aims to equalize the price of fuel oil commodities throughout Indonesia regardless of location and distribution factors. Realizing energy justice is to be achieved by adopting the national program.

Until 2022, the Indonesian government program is still being implemented even though fuel subsidies are increasingly burdening Indonesia's state budget (Ichsan et al. 2022). These issues will be discussed with all controversies and debates about the policy from the aspect of energy justice. After the introduction section, this article will discuss the concept of fuel oil as a public good from the perspective of Indonesian law. Then this article will explain the development of the One Price Oil Fuel Policy, which was

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initiated in 2016. The next discussion is the policy analysis from the energy justice aspect. Finally, in the end, the author will present a conclusion regarding this article.

1. Oil fuel as public good: Indonesian law perspective

The Indonesian Constitution³ (henceforth: Constitution) adopts the concept of 'controlled by the state' for all commodities derived from mining activities and used for public purposes in general. Fuel oil is one of the results of mining activities, and the process of its processing also includes commodities controlled by the state. One form of control is determining the Government's selling price, which Pertamina then implements as a state-owned enterprise that sells fuel oil to the public. Furthermore, at the legislative level, there exists Law Number 22 of 2001 concerning Oil and Gas (Oil and Gas Law) as a legal instrument that regulates fuel oil as a commodity controlled by the state, but which can also be traded by private companies with permission from the Government. The Oil and Gas Law is considered too liberal and, therefore, one of the laws submitted for judicial review to the Indonesian Constitutional Court (CC).

In addition to the Constitution, the notion of state control over public commodities such as fuel oil is also contained in several CC Rulings. Some CC decisions that became jurisprudence are CC Decision Number 001-021-022/PUU-I/2003,⁴ CC Decision Number 002/PUU-I/2003,⁵ CC Decision Number 3/PUU-VIII/2010,⁶ and CC Decision Number 36/PUU-X/2012.⁷ The four CC Decisions essentially gave the Government of Indonesia a mandate to carry out natural resource management by establishing policies and regulating and supervising commodities related to the public interest. Guarantees from the Government in the operation and management of natural resources are absolute and must follow the law's purpose (Titahelu 1993). Therefore, the legal objectives of managing natural resources that the Government must achieve are the prosperity and well-being of the people.

³ The Indonesian Constitution was adopted in 1945, right after the declaration of independence from the Dutch colonial empire. Furthermore, in 1998, the Reformation Movement made a successful demand for constitutional amendment and during 1999-2002, the 1945 Constitution was amended by the People's Consultative Assembly of the Republic of Indonesia. See Wijaya P.M.F.K. (2016). *The Role of the Constitutional Court in Securing Constitutional Government in Indonesia*, PhD Thesis at The University of Queensland, T.C Beirne School of Law, 2016.

⁴ Judicial Review on Law Number 20 Year 2002 on Electricity, this judicial review submitted by Non-Governmental Organisation Coalition, The Labour Union of the State Electricity Company, and The Union of Former Labour of the State Electricity Company. The Constitutional Court in the decision declared the annulment of The Law.

⁵ Judicial Review on Law Number 22 Year 2001 on Oil and Gas, this judicial review submitted by Non-Governmental Organisation Coalition and involved dozens of lawyer. The Constitutional Court not fully granted all of the claims.

⁶ Judicial Review on Law Number 27 Year 2007 on Coastal Management, this judicial review submitted by Non-Governmental Organisation Coalition and dozens of Indonesian citizens who aggrieved by adoption of the Law.

⁷ Judicial Review on Law Number 22 Year 2001 on Oil and Gas, this judicial review submitted by Indonesian Moslem Organisations and Non-Governmental Organisation Coalition. The Constitutional Court dissolved 'The BP Migas' (the institution who responsible to managed Indonesian oil and gas upstream sector on behalf of The Indonesian State).

The fuel oil industry is a very strategic business activity, the regulation and supervision of which by the Government is important because fuel oil as non-renewable fossil energy is very necessary for meeting national energy needs as a consequence of rapidly increasing national economic growth; on the other hand, the amount of crude oil produced by Indonesia every year is shrinking and is now unable to meet all national energy needs for fossil energy (Dartanto 2013). Therefore, the Government of Indonesia realizes the importance of private involvement domestically and abroad in managing Indonesia's natural resources. Especially for fuel oil, in the process of selling to the public, certain permits are needed in all their activities.⁸ The influx of foreign investors certainly also needs attention from the Indonesian Government so that investors who participate in the Indonesian fuel oil market are not only profit-oriented but must also positively impact the welfare of the Indonesian people.

2. The development of the One Price Oil Fuel Policy

The Indonesian Constitution also mandates the guarantee of the availability and distribution of oil fuel as part of equitable energy. The meaning of fairness from the perspective of the Indonesian Government is 'fair in terms of price, availability, and distribution' (MEMR 2019). An official press release from the Indonesian Ministry of Energy and Mineral Resources stated that the One Price Oil Fuel Policy is the Government's effort to make fuel oil available and accessible to the public (MEMR 2019). In addition, this program is expected to significantly impact the access of people outside Java Island⁹ to the availability and price of fuel oil. In addition, this program can also provide a multiplier effect, especially to economic growth in remote and underdeveloped areas. This program started in 2017, and until 2020, 253 distributors have been built (BPH Migas 2021). Therefore, the availability of fuel and reasonable prices can stimulate economic growth. On the other hand, if fuel is unavailable and the price is not reasonable, it will hinder economic growth, especially in the regions (Suryadi 2019).

Table 1 shows that 58.91% of sub-districts in Indonesia do not have fuel oil distribution facilities or gas stations. This amount is very large and is considered not to meet the principle of equitable energy in terms of availability, distribution, and price. The data above also shows that fuel oil distribution in Indonesia has not been evenly distributed. This figure needs to be discussed further because it is not an indicator of successful performance in fuel oil distribution. However, this condition factually causes an injustice effect on the economic development of regions in Indonesia that are geographically far from the capital. The most significant problem caused by the uneven distribution is a disparity in fuel oil prices (Nur et al. 2020).

⁸ Article 23 of the Oil and Gas Law stipulated that the oil and gas downstream sector consist of processing, transportation, storage, and commerce activities. All of these activities required a permit from the Indonesian Government.

⁹ According to the Indonesian Statistic Agency (BPS), more than 50% of economic activities in Indonesia are centralised in Jawa Island. See https://www.bps.go.id/website/materi_ind/materiBrsInd-20220509115801.pdf.

Table 1: Oil Fuel Facilities in Indonesia

| Region | Total Regions | Total Districts ¹⁰ | Districts with Oil Fuel Distribution Facilities | | Districts without Oil Fuel Distribution Facilities | |
|--------------|---------------|-------------------------------|---|---------|--|--------|
| | | | | | | |
| Municipality | 95 | 725 | 525 | 72,4% | 200 | 27,6 % |
| Regency | 419 | 6505 | 2401 | 36,9 % | 4104 | 63,1% |
| Total | 514 | 7230 | 2971 | 41,09 % | 4259 | 58,91% |

Source: Center for Energy Studies UGM & BPH Migas (2019)

To implement this policy, the Government of Indonesia established several regulations as the legal basis. In this section, one implementing regulation will be discussed, namely the Regulation of the Minister of Energy and Mineral Resources Number 36 of 2016. This regulation regulates the types of fuel oil that are considered the main commodities under the One Price Oil Fuel Policy. The three key fuel oil types are diesel (gas oil), kerosene oil, and gasoline (minimum RON 88).¹¹ Corporations appointed by the Government still carry out the distribution of fuel oil. Based on this, it can be interpreted that the Government of Indonesia is implementing the four CC Rulings, as mentioned in the previous section. However, it is necessary to criticize this typology of considering certain forms of fuel oil as main commodities under the One Price Oil Fuel Policy. Not all of these types of fuel oil in Java Island are distributed to remote and underdeveloped areas in implementing the policy.

According to a report submitted by Pertamina,¹² implementing policies has various problems. First, significant problems exist regarding licensing at the local level, security, and weather (Pertamina 2021). Licensing is a problem because there is a synchrony between national and local policies, which hampers the One Price Oil Fuel Policy. In addition, security problems also arise in conflict-prone areas such as in Eastern Indonesia. The next problem is related to weather which often interferes with the distribution of fuel oil carried out through ships or aircraft.

The target of the program, namely underdeveloped and remote areas for the distribution and distribution of fuel oil, is very reasonable. However, the area remains an inseparable part of Indonesia's territory. Therefore, it is quite natural for the Government to create a program that guarantees the distribution and availability of fuel in remote and underdeveloped areas. Table 2 provides data on the distribution of fuel oil to remote and underdeveloped areas in Indonesia.

¹⁰ District (Indonesian: Kecamatan) is local government institution under Municipality or Regency.

¹¹ Article 2 Regulation of Minister Energy and Mineral Resources Number 26 Year 2016.

¹² Indonesia State Owned Enterprise on Oil and Gas.

Table 2: Realization of Oil Fuel Distribution to Remote Areas in Indonesia

| Year | Amount of Gas Stations | Average Volume of Oil Fuel Distribution (Monthly)* | Oil Fuel Distribution Volume (Annual)* |
|------|------------------------|--|--|
| 2020 | 243 | 72,5 | 211,294 |
| 2019 | 160 | 98,5 | 189,094 |
| 2018 | 124 | 59,5 | 88,543 |
| 2017 | 54 | 34,3 | 22,267 |

*in kilolitre (KL)

Source: Pertamina (2021)

Based on the data in Table 2, it can be concluded that from year to year, there is an increase in the distribution of fuel oil to underdeveloped and remote areas. This fact has consequences related to policy sustainability commitments and subsidies imposed on the state budget. Therefore, the Indonesian Government needs to think about a long-term strategy to provide subsidies under the One Price Oil Fuel Policy that can grow the economy of underdeveloped and remote areas. In addition, this policy should allow private corporations to compete freely and fairly in selling fuel oil. However, if there is no long-term strategy, remote and underdeveloped areas will continue to require subsidies and special treatment in fuel oil distribution.

3. One Price Oil Fuel Policy: an energy justice analysis

Energy justice is a principle and the main goal to be achieved in implementing the One Price Oil Fuel Policy. The Indonesian Government interprets equitable energy in fuel oil distribution as including three aspects: affordability, availability, and accessibility (Deenderlianto et al., 2020). Energy justice, as intended by the Government of Indonesia in the One Price Oil Fuel Policy, is rooted in the conception of social justice in the ideology adopted by the Indonesian state. Social justice in Indonesia comes from the spirit of help manifested in the economy (Ali 2009). As part of Asian society, the nature of collectivism is strongly carried in the Indonesian Constitution's idea of economy and social welfare. In addition, the principle of social justice is also influenced by welfare state thinking that developed in Europe after the Second World War (Nullmeier & Kauffman 2021).

Perspectives on energy justice are discussed by Jenkins et al. (2016); energy justice consists of three dimensions, namely distribution, recognition, and procedural. The distribution dimension is related to the location of the injustice and the solution to solve the problem. Furthermore, the dimension of recognition is related to the subject experiencing injustice and the mechanisms for identifying it. The last dimension is procedural related to the existence of equitable processes and the analysis of the need for new procedures to create justice (Jenkins et al. 2016).

Different opinions were expressed by Sovacool and Dworkin (2016), who stated that energy justice could be a conceptual, analytical, and decision-making tool. The definition of energy justice used by the Government of Indonesia is close to the version proposed by Sovacool and Dworkin (2016), especially from the perspective of a

decision-making tool. Energy justice as a decision-making tool must prioritize and promote eight aspects: availability, affordability, due process, good governance, sustainability, intergenerational equity, intragenerational equity, and responsibility.

Based on these eight aspects, energy justice is only partially adopted as a principle in implementing the One Price Oil Fuel Policy. According to the author's opinion, the policy is only drafted for the short term and does not consider sustainability. Furthermore, it can be seen from the fact that only three aspects are used as indicators of equitable energy: affordability, availability, and accessibility. When referring to the thoughts of Sovacool and Dworkin (2016), there is a lack of three important aspects in the Indonesian Government's version of the energy fairness indicator. These shortcomings are the lack of the aspects of sustainability, equity, and responsibility.

Aspects of sustainability can be analyzed through its three fundamental pillars: economic, social, and environmental (Hansmann et al. 2012). One Price Oil Fuel Policy will be sustainable if it provides tangible benefits economically, socially, and environmentally. In the author's opinion, the policy of subsidies provided continuously to fuel oil commodities will not have an economic impact if it is not given to the right beneficiaries. Furthermore, socially this policy must also have an impact on the communities that are targeted by the program. The social impact, for example, is to facilitate the lives of people in remote and disadvantaged areas. Then this policy must also be environmentally safe and not provide new opportunities for environmental pollution.

The equity aspect is an inseparable part of energy justice. Without equity for all parties accessing energy, energy justice will not be created (Jenkins 2018). In the perspective of the One Price Oil Fuel Policy, the form of equity that should exist is mainly regarding access to good quality fuel oil. Determining only certain types of fuel distributed to remote and disadvantaged areas maintains the problem of inequity. The problem is that people in remote and disadvantaged areas do not have the same access to the type of energy as those owned by people in other areas.

The One Price Oil Fuel Policy's next drawback is responsibility. This aspect is strongly related to sustainability, especially in the environmental dimension. Protection of the environment is very important to be carried out in implementing the program and considering the pattern of community energy consumption before and after this policy. The availability of fuel oil and low prices before this policy should not make people wasteful and produce more emissions.

Nonetheless, the One Price Oil Fuel Policy must be recognized as a legal breakthrough and a brilliant policy. The Government of Indonesia took this step to penetrate geographical boundaries and strive to provide access to fuel oil services to communities in remote and underdeveloped areas. Therefore, with all its advantages and disadvantages, this policy is worthy of being continued. However, various improvements both from the aspect of regulation and its implementation need to be adopted. Managing a country with a geographical area consisting of tens of thousands of islands certainly requires a good policy breakthrough and, of course, must be sustainable.

Conclusion

The author's analysis is an integral part of the contribution to academic debates related to energy policy in Indonesia. One Price Oil Fuel Policy as part of a political commitment to realizing energy justice has advantages and disadvantages. This policy's advantage is that it guarantees availability and affordable prices for certain fuel oil commodities. However, this policy has disadvantages in sustainability, equity, and responsibility. Therefore, improvements are needed so this policy can later provide wider and more sustainable benefits for people in remote and disadvantaged areas. Thus, the Government of Indonesia needs to change the One Price Oil Fuel Policy regulation to follow energy justice indicators: affordability, availability, accessibility, sustainability, equity, and responsibility.

For the Global South, especially countries with archipelagic geographical conditions, Indonesia's experience can be valuable. This affirmative policy can be adopted as a model to provide access to energy sources to people in the remote areas. However, on the one hand, this policy can indeed be a breakthrough to increase access to the utilisation of fuel oil. On the other hand, it will increase the use of fossil fuels that contribute to increased carbon dioxide emissions.

This study recommends that future research should be focused on the relationship between the one price oil fuel policy and the climate policy adopted by Indonesia. The dilemma between these two policies is interesting to be analysed either from an economic, social or legal perspective. The study will provide another perspective on affirmative policies, especially in the provision of fossil fuels in the global south.

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