

Directors' Liability of PT Pertamina Patra Niaga for Uncompensated Financial Burdens Arising from Government-Mandated Assignments in the Supply and Distribution of Petroleum Fuels

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Keyword:	Abstract
Directors' Liability; State-Owned Enterprises; Government Assignment; Public Service Obligation; Pertamina; under-recovery; fiduciary duty; business judgment rule.	This research examines the liability of the Board of Directors of State-Owned Enterprises for financial burdens arising from Government assignments in the supply and distribution of fuel oil that are not fully compensated by the Government. This research aims to analyse the extent to which such financial burdens may affect the accountability of the Board of Directors in managing the company. This research employs a normative-empirical legal method with a juridical-analytical approach. The normative approach was conducted through the examination of laws and regulations, legal documents, and relevant legal doctrines, while the empirical approach is carried out through document analysis and interviews with relevant stakeholders. The results of this study show that losses or under-recovery arising from Government assignments cannot automatically be attributed to the personal liability of the Board of Directors. Directors' liability may arise only if fault or negligence in corporate management is proven. Therefore, the liability of the Board of Directors must be assessed based on the source of risk and the quality of management, rather than merely on the existence of corporate losses.

INTRODUCTION

Fuel Oil (BBM) is an important strategic commodity in the national economic structure because its existence is inherent in almost all social and economic activities of the community. Therefore, the management and distribution of fuel requires the presence of the state to ensure the sustainability of supply, affordability of prices, and equitable access throughout Indonesia (De Pee et al., 2021; Pambudi & Pramujo, 2025).

Presidential Regulation Number 191 of 2014 is the legal basis for the government in assigning PT Pertamina (Persero) ("Pertamina") c.q. PT Pertamina Patra Niaga ("PPN") in providing and distributing certain fuels, namely Certain Types of Fuels ("JBT") in the form of Diesel Oil and Kerosene, and Special Assignment Fuel Types ("JBKP") in the form of Peralite. The assignment of PSO is a manifestation of public service responsibilities that are a manifestation of the function of SOEs, but in practice the assignment has a financial impact on VAT because the Basic Price Formula ("FHD") used as the basis for calculating subsidies and compensation has not fully described the amount of costs incurred by VAT (Purwantini et al., 2026). This will be a burden on the corporation in the form of losses or under recovery which will have an impact on the

company's financial sustainability and has the potential to become a legal risk if it is associated with the limitation of the liability of the Board of Directors (Hay et al., 2025). This needs to be examined in the context of the implementation of the fiduciary duty of the Board of Directors, as stipulated in articles 92 and 97 of the PT Law.

The constitutional basis for the presence of the state is stated in Article 33 of the 1945 Constitution of the Republic of Indonesia, which emphasizes that the branches of production that are important for the state and that control the lives of the people are controlled by the state and used for the greatest prosperity of the people (Sutedi, 2014). Referring to the Decision of the Constitutional Court of the Republic of Indonesia in case No. 001-021-022/PUU-I/2003, the phrase "controlled by the state" in the doctrine of constitutional law is not interpreted narrowly as formal ownership, but includes the authority of the state to make policies (*beleid*), make arrangements (*regelendaad*), manage (*bestuursdaad*), manage (*beheersdaad*), and supervise (*toezichthoudensdaad*) of strategic resources.

The constitutional mandate is further elaborated in Law Number 22 of 2001 concerning Oil and Gas as amended through Law Number 11 of 2020 concerning Job Creation and reaffirmed its enforceability through Law Number 6 of 2023. This regulation affirms the Government's obligation to ensure the availability and smooth distribution of domestic fuel and provides a legal basis for the Government to assign certain business entities to meet national fuel needs (Azheri & Anggunsuri, 2020).

Law Number 16 of 2025 concerning the Fourth Amendment to Law Number 19 of 2003 concerning State-Owned Enterprises ("BUMN Law") gives the Government the authority to provide special assignments to SOEs in the context of carrying out public benefit functions. Within the institutional framework, the implementation of the Public Service Obligations ("PSO") assignment is given by PT Pertamina (Persero) ("Pertamina") as a State-Owned Enterprise ("SOE") engaged in the energy sector which is then carried out by PT Pertamina Patra Niaga ("PPN") as a Subsidiary of Pertamina which is a Commercial & Trading Sub Holding. Thus, Pertamina not only functions as a business entity, but also as a public policy instrument in the energy sector (Fikriya, 2020).

Normatively, SOEs are established to support the implementation of production branches that are important to the state and that control the livelihood of the people, as well as contribute to the national economy and state revenue. This goal is the implementation of the constitutional mandate of Article 33 of the 1945 Constitution. Therefore, SOEs can be interpreted as having a dual orientation. On the one hand, it operates as a business entity that is obliged to maintain business sustainability, efficiency, and management professionalism, but on the other hand, it functions as an instrument of the state in implementing economic policies and public services, including through the PSO assignment mechanism. This character puts the Persero SOE in a position as a quasi-public entity.

One of the conceptual reinforcements in the SOE Law is in Article 4B which emphasizes that if there are advantages or losses that occur to SOEs, then it is an advantage or loss of SOEs as a legal entity (Anggriani et al., 2023; Swardhana & Monteiro, 2023). This provision emphasizes the separation between the state's financial

responsibility as shareholders and SOEs as corporate entities (Backer, 2020; Milhaupt & Pargendler, 2017; Waluyo et al., 2025). The implication is that any financial impact that occurs as a result of business activities, including those resulting from the implementation of PSO, is legally recorded as a profit or loss of SOEs, and is not considered a direct state gain or loss. Thus, the management and accountability of financial risks is within the scope of corporate governance. When associated with the PT Law, especially Article 92 and Article 97, the management of the company that results in losses to SOEs is part of the management responsibility of the Board of Directors as long as there is an element of error or negligence committed by the board of directors. The separation of assets affirmed in Article 4B of the SOE Law does not eliminate the principle of accountability of the Board of Directors in the corporate law regime. On the contrary, the separation makes it clear that the Board of Directors is responsible for SOEs as legal entities, not for the state directly. In the context of the implementation of PSO, this has the normative implication that if there is a loss or under-recovery experienced by SOEs, then the loss is still qualified as a loss of the company. The responsibility of the Board of Directors in the company's legal regime cannot be separated from two interrelated doctrinal foundations, namely fiduciary duty and business judgment rule. These two concepts form a normative framework that determines the standard of conduct of the Board of Directors, the limits of management authority, and the measure of legal responsibility for managerial actions carried out in carrying out the company's business management. Doctrinally, the fiduciary duty of the Board of Directors includes at least two main dimensions, namely the duty of care, namely the obligation to act with a reasonable standard of care as a professional manager in a comparable situation and the duty of loyalty, namely the obligation to put the interests of the company first and avoid conflicts of interest that may interfere with the objectivity of decision-making.

The assignment of PSO to Pertamina is also emphasized through Presidential Regulation Number 191 of 2014 concerning the Supply, Distribution, and Retail Selling Price of Fuel as last amended by Presidential Regulation Number 117 of 2021. This regulation distinguishes fuel as a Specific Type of Fuel ("JBT") that receives subsidies from the Government and a Special Assignment Fuel Type ("JBKP") which is distributed to the public through an assignment mechanism with price control. Pertamina is explicitly appointed as a business entity that carries out the assignment of providing and distributing JBT and JBKP fuel throughout Indonesia, including commercially disadvantaged areas.

Referring to the 2021-2024 (Audited) and 2025 (Unaudited) VAT Audited Financial Statements, the cumulative losses on the assignment of the supply and distribution of JBT Solar fuel reached US\$2.70 billion, equivalent to IDR 41.52 trillion caused by the Basic Price Formula ("FHD") which is the basis for calculation that has not been able to cover all fuel procurement and distribution costs that have been incurred by VAT. In addition to JBT Solar, the cumulative loss for JBT Kerosene also reached US\$58.03 million, equivalent to Rp923.30 billion. Meanwhile, for JBKP Peralite, it still suffered losses in 2022 but with the Decree of the Minister of Energy and Mineral Resources Number 255.K/MG.01/MEM. M/2022 regarding the JBKP Base Price Formula, then in 2023 and

2024, the profitability performance of JBKP Pertalite fuel produced a positive contribution, but nevertheless in the 2025 VAT Financial Statements (Unaudited) the achievement of JBKP Pertalite fuel performance suffered a loss of US\$1.54 million, equivalent to Rp25.40 billion

The difference in costs that are not recovered through the subsidy and compensation mechanisms is ultimately charged to the corporation. Consequently, losses that arise legally have the potential to be qualified as the responsibility of the Board of Directors based on Article 97 number 3 of the PT Law, which requires the Board of Directors to carry out management in good faith and full of responsibility.

The assignment of PSO BBM JBT and JBKP to Pertamina c.q. VAT cannot be understood solely as an energy policy issue, but as a matter of harmonization of norms between the SOE Law and the PT Law. It is necessary to reconstruct a regulatory framework that is able to balance the orientation of public services with the principle of protecting the interests of the company. This arrangement is important to ensure legal certainty, fairness in risk allocation, and proportionate protection for the Board of Directors in carrying out the state's mandate. Therefore, this research has theoretical and practical urgency as a conceptual foundation for SOEs in carrying out state assignments proportionately and fairly.

Although numerous studies have examined SOEs and government assignments, limited attention has been given to the specific issue of directors' liability for uncompensated financial burdens arising from PSO assignments. Previous research has largely focused on either public service obligations or corporate governance separately, without systematically analyzing the intersection between the two regimes. Ansari's doctoral dissertation (2021) examined the regulation of Public Service Obligations in SOEs but did not specifically address directors' liability for financial losses. Siregar (2018) discussed government assignments from the perspective of public service obligations but focused more on the normative framework rather than on the legal consequences for directors. Sinaga (2024) analyzed tax disputes in government assignments but did not address the broader issue of directors' accountability. This gap underscores the need for research that specifically examines the legal accountability of SOE directors for financial burdens arising from government-mandated assignments and the appropriate regulatory framework to ensure legal certainty and protection for directors.

Based on the background as has been conveyed, the legal issues that will be studied in this paper are formulated as follows: How is the accountability arrangement of the Board of Directors from the perspective of the PT Law and the SOE Law on the cost of implementing Public Service Obligation (PSO) which is not fully borne by the Government? What is the implementation model and regulatory recommendations in the Law to ensure legal protection and certainty of the accountability of the Board of Directors to be in line with the principles of fiduciary duty and business judgment rule?

This research aims to analyze the extent to which financial burdens from government assignments may affect the accountability of the Board of Directors in managing the company, examine the normative relationship between the SOE Law and

the PT Law regarding directors' liability for government assignments, and formulate regulatory recommendations to ensure legal protection and certainty for SOE directors aligned with the principles of fiduciary duty and business judgment rule. Theoretically, this research contributes to the development of corporate law and public administration theory by examining the intersection between public service obligations and corporate governance in the context of SOEs. Practically, the findings are expected to provide strategic recommendations for policymakers, particularly in harmonizing regulations governing SOE assignments and directors' liability, as well as offering operational guidance for SOE directors in managing risks associated with government assignments while ensuring compliance with fiduciary duties.

METHOD

According to Soekanto, research methods were scientific activities that use certain methods, systematics, and thinking, by analyzing and studying in depth legal facts, in order to find solutions to problems that arise in related legal phenomena.

The research methods applied are as follows:

Types and Properties of Research

This research is a normative-empirical legal research with a juridical-analytical nature. Normative legal research is used to examine legal norms, legal principles, legal doctrines, and laws and regulations that apply in the positive legal system of Indonesia. In this study, a normative approach is directed to analyze the regulation regarding SOEs that receive assignments from the Government, especially in the supply and distribution of fuel oil as part of efforts to ensure the sustainability of national energy supply.

The normative approach is used to examine the relationship between the provisions in the PT Law, the SOE Law, and regulations in the oil and gas sector that regulate government assignments, subsidies, compensation, and the responsibilities of implementing business entities. Peter Mahmud Marzuki emphasized that legal research aims to find legal rules, legal principles, and legal doctrines to answer the legal issues faced. Therefore, this study not only reads laws and regulations textually, but also interprets the relationship between norms in order to assess the accountability of the Board of Directors of SOEs in the implementation of Government assignments. In addition to the normative approach, this study also uses an empirical approach to understand the implementation of these legal norms in practice.

The nature of this research is juridical-analytical, because the research not only describes the applicable legal provisions, but also analyzes the conformity between legal norms and their implementation. The analysis is used to assess whether the applicable regulations have provided legal certainty and adequate protection for the Board of Directors of SOEs in carrying out the Government's assignments, especially if financial burdens arise that are not fully compensated by the state.

Data

This study uses secondary data obtained from interviews with respondents and analysis of legal sources.

Primary Legal Material

Primary legal materials are sources of law that have binding power and are the main basis for normative law research including laws, government regulations, presidential regulations, ministerial regulations, ministerial decrees, regulations and decrees of regulatory bodies.

The interview was conducted with related functions at PT Pertamina (Persero), the Board of Directors of PT Pertamina Patra Niaga who handles assignments related to the supply and distribution of JBT & JBKP fuel. In addition, interviews will also be conducted with respondents from relevant Ministries/Institutions, namely the Ministry of Finance, Ministry of Energy and Mineral Resources, BPH Migas and the Financial Audit Agency (BPK).

Secondary Legal Materials

Secondary legal materials are materials that provide explanations of primary legal materials and help with analysis. Secondary legal materials that can be used include Pertamina's internal study documents, for example, the Company's Financial Statements, RJPP, RKAP, sales and profitability performance reports for JBT Diesel Oil & Kerosene fuel products, and Peralite JBKP.

Data Collection Methods/Techniques

The data collection technique in this study was carried out through literature studies and interviews with stakeholders who have roles, authorities, responsibilities, and are directly related to the implementation of PSO assignments in the provision and distribution of fuel.

The interview data is then used to enrich the analysis of the legal materials that have been obtained through literature studies. Information from the source is not treated as the sole basis for conclusions, but is analyzed together with laws and regulations, legal doctrines, financial statements, policy documents, as well as audit documents or other relevant institutional documents.

Data Analysis

Data analysis is carried out qualitatively with the following approaches:

1. Conceptual Approach

The conceptual approach is used to examine the key concepts that form the theoretical basis of the research, especially the concept of Public Service Obligation (PSO), fiduciary duty, business judgment rule, and the construction of SOEs as quasi-public entities.

2. Statuary Approach

The legislative approach is carried out by systematically examining all regulations relevant to the object of research, including the 1945 Constitution (especially Article 33), Law No. 16 of 2025 concerning SOEs, Law No. 40 of 2007 concerning Limited Liability Companies, and implementing regulations related to the assignment of PSOs (Permadi, 2023).

3. Case-Based Approach

The case approach is used by analyzing court decisions and Constitutional Court decisions that are relevant to the concept of separated state assets, the legal position of SOEs, the accountability of SOEs Directors and the application of business judgment rules.

4. Imperative Approach

The imperative approach is used in the formulation of recommendations and the construction of norm harmonization models. The imperative approach is directed to answer the question of how (das sollen) legal norms should be regulated to be in harmony with the principles of fiduciary duty and the constitutional mandate of the state. This approach is relevant in drafting recommendations for law reform or harmonization of regulations between the SOE Law and the Limited Liability Company Law.

5. Conclusion

Conclusions are drawn deductively, namely from general legal premises to specific conclusions. The conclusion will include how the legal arrangements related to the accountability of the Board of Directors of PT Pertamina (Persero) in accordance with the PT Law on the cost of implementing PSO) fuel and recommendations for regulations in the Law to ensure legal protection and certainty of the accountability of the Board of Directors of SOEs for the implementation of Government assignments to be in line with the principles of fiduciary duty and business judgment rules within the framework of the SOE Law and the PT Law.

Discussion of the Arrangement of the Accountability of the Board of Directors of PT Pertamina Patra Niaga for the cost of implementing PSO Fuel that is not fully borne by the Government

RESULT AND DISCUSSION

Legal Basis for Assignment and Construction of Financing by the State

The government's assignment to State-Owned Enterprises or SOE subsidiaries to carry out public benefit functions has a firm legal basis in the BUMM legal regime, especially Article 87C of Law Number 16 of 2025 concerning the Fourth Amendment to Law Number 19 of 2003 concerning SOEs emphasizes that the Government can provide special assignments to SOEs or SOE subsidiaries while still paying attention to the objectives of SOEs and considering the capabilities of business entities that are assigned. The same norm also states that if the special assignment requires funding and/or is not financially feasible, then the Government provides funding. However, SOEs in the form of Persero are still legal entities of limited liability companies that must be managed professionally. Article 11 of the SOE Law emphasizes that all provisions and principles applicable to limited liability companies apply to Persero. Thus, the role of SOEs needs to be understood in layers. First, SOEs are an extension of the state to carry out the constitutional mandate of Article 33 of the 1945 Constitution. Second, SOEs function as development agents that play a role in encouraging the national economy, providing strategic goods and services, and becoming pioneers in sectors that have not been optimally run by the private sector. Third, especially for SOEs in the form of Persero, the management of the company must still be carried out professionally based on the legal

principles of limited liability companies and Good Corporate Governance. According to respondents from the Directorate General of Oil and Gas of the Ministry of Energy and Mineral Resources, SOEs play a leading sector that drives the community's economy. The presence of SOEs in ensuring the availability of fuel will have various positive impacts on the future, such as economic transactions, growth of business activities, job creation, development of micro, small, and medium enterprises, and the presence of various social benefits through the implementation of corporate social responsibility. This is in line with the idea that SOEs are quasi-public entities, namely private legal entities that remain subject to corporate principles, but at the same time carry out certain public mandates because of their relationship with state policies.

At the operational level, the assignment is further elaborated through Presidential Regulation Number 191 of 2014 concerning the Supply, Distribution, and Retail Selling Price of Fuel Oil, as amended several times, most recently by Presidential Regulation Number 69 of 2021.

Referring to the Decree of the Minister of Energy and Mineral Resources Number 439.K/MG.01/MEM. M/2023 concerning the Basic Price Formula for Certain Types of Fuel Oil, the last adjusted Basic Price Formula for JBT Diesel and Kerosene fuel was adjusted on December 8, 2023, namely for Diesel Oil 100% of the Market Index Price of Diesel Oil plus IDR 868/Liter, and for Kerosene 102.49% of the Market Index Price of Kerosene plus IDR 263/Liter which includes acquisition costs, distribution costs, storage costs, and margins. Meanwhile, the Decree of the Minister of Energy and Mineral Resources Number 255.K/MG.01/MEM. M/2022 concerning the Basic Price Formula for JBKP Peralite Fuel, which is 100% of the RON 90 Gasoline Market Index Price plus IDR 1,200.00 per liter, which includes acquisition costs, distribution costs, storage costs, and margins.

From the perspective of the BPH Migas Committee, the policy design for the assignment of JBT and JBKP fuel has in principle considered the balance between the goals of public services and the business sustainability of the implementing business entity, but of course this balance must be adjusted according to the needs and development of conditions. BPH Migas has the authority to regulate and supervise the supply and distribution of fuel, while the authority for the fiscal aspect lies with the Ministry of Finance and the corporate governance aspect is with BP SOEs and Danantara. There is no legal instrument that formally integrates the three authorities in a single binding coordination mechanism and is implemented by the Business Entity Implementing the Assignment. From the perspective of the BPH Migas Committee, the financial risks arising in the implementation of public service obligations (PSO) in the supply and distribution of JBT and JBKP fuel are in principle more appropriately seen as a policy consequence (policy-induced risk), while still paying attention to certain limitations as business risks of business entities.

Inconsistency between the Basic Price Formula and the Actual Cost of Assignment Execution

In the JBT fuel subsidy regime, the applicable mechanism includes several interrelated stages, namely the provision of the subsidy budget in the State Budget, the calculation of the amount of subsidies based on the formula and volume of distribution that meet the requirements, the submission of distribution data and documents by the business entity implementing the assignment, and payment after verification in accordance with the provisions. This is reflected in the Minister of Finance Regulation Number 166 of 2023 concerning Procedures for Budget Provision, Calculation, Payment, and Accountability of Subsidized Funds for Certain Types of Fuel Oil and Liquefied Petroleum Gas Cylinders 3 Kilograms, which explicitly regulates the provision of the subsidy fund budget, the calculation of subsidy funds, the payment of subsidy funds, as well as its accountability, accounting, and reporting.

Meanwhile, in the JBKP fuel compensation regime, the process that applies is more layered. Regulation of the Minister of Finance Number 73 of 2025 concerning Procedures for the Provision, Calculation, Payment and Accountability of Compensation Funds for Shortfall in Business Entity Revenue Due to the Policy of Determining Retail Selling Prices of Fuel Oil and Electric Power Tariffs shows that compensation governance includes the allocation of compensation funds, the formula and calculation of compensation funds, budgeting, reviews and payments, corrections of monthly payments, calculation and assertion of management, accountability, accounting and reporting, as well as data, documents, and reporting.

The results of interviews with respondents from the Ministry of Finance confirm two important things. First, subsidies and compensation for fuel distribution by the business entity implementing the assignment are formula-based payments, not full claim-based payments for all actual costs. Second, the payment is subject to the stages of verification, review, and accountability with related agencies, so that only the cost component that is included in the formula structure and meets the administrative and substantive requirements can be paid.

From the literature used in this study, it is recorded that the final formulation for FHD BBM JBT Solar was updated on December 8, 2023, based on the Regulation of the Minister of Energy and Mineral Resources Number 439.K/MG.01/MEM. M/2023 and until now there have been no further changes in the formula. This certainly has juridical and economic implications, as a static formula will collide with the cost of purchasing and distributing the fuel dynamically. When the base price formula does not follow these dynamics, the likelihood of a difference between the actual cost and the value of receipts becomes even greater. According to respondents from BPH Migas, based on the recommendation of BPKP, actually the formula consisting of market index prices plus their constants must be reviewed at least once every 2 years to get closer to the realization figure.

Profitability, especially JBT and JBKP fuel in the calculation

VAT shows conditions that generally cause under-recovery. The cumulative loss of JBT Solar's fuel assignment products since 2021 has reached US\$ 2.70 billion or equivalent to around IDR 41.52 trillion. Meanwhile, in 2025 based on unaudited data, JBT Solar's fuel distribution performance will still show a loss of US\$450.54 million or equivalent to around IDR 7.42 trillion. Since 2021, the cumulative loss of JBT Kerosene Fuel reached US\$58.03 Million ekv Rp923.30 Billion and for 2025 (Unaudited), the performance achievement of JBT Kerosene Fuel has suffered a loss of US\$17.25 Million ekv Rp284.22 Billion. The profitability performance of Pertalite's JBKP fuel products was able to produce a positive contribution/profit achievement of US\$410.33 million ekv IDR 6.40 trillion from 2022 to 2025 (Unaudited). However, specifically in 2025 (Unaudited), the achievement of Pertalite's JBKP fuel performance suffered a loss of US\$1.54 million, equivalent to Rp25.40 billion.

Differences in Subsidy and Compensation Regimes and Their Implications

The financial pressures arising from assignments must also be read by making a clear distinction between the subsidy regime and the compensation regime. Based on Presidential Regulation Number 191 of 2014 jo. Presidential Regulation Number 69 of 2021, JBT is a subsidized fuel, while JBKP is a fuel that is not subsidized. This distinction is very important, because although both are based on the basic price formula, the fiscal consequences and implications for business entities are different.

The implications of this difference are very real for Pertamina as the business entity implementing the assignment. In the subsidy regime, there is at least a more measurable connection between the volume of subsidies and the budget allocation. However, in the compensation regime, the size of government payments is determined not only by the reality of costs on the ground, but also by the country's fiscal capacity, budgeting cycle, and accompanying administrative stages. Therefore, the financial pressure of business entities tends to appear stronger in the compensation regime.

Implications for Cash Flow, Time Value of Money, and Business Sustainability

The company must prioritize all costs for the smooth assignment process, while payments from the government, including the compensation process, follow the calculation, review, budgeting, and payment settlement process. This situation makes cash flow disrupted, where outflows are continuous but inflows are not always at the same time.

The financial pressure experienced by VAT in the implementation of the assignment of providing and distributing JBT Solar and JBKP Pertalite fuel is a consequence born from a combination of three main factors, namely the normative design of the basic price formula, the difference in the fiscal regime between subsidies and compensation, and the time missynchronization between corporate expenditure and state payments. These three factors work together to form structural pressure on business entities. Therefore, under-recovery in this context cannot be simply positioned as a result of internal inefficiencies or managerial failures alone. In fact, normatively and empirically, this issue

must first be read as the result of the design of the state's price and financing policy in the implementation of the PSO.

Implications of the Financial Impact of the Assignment on Fiduciary Duty and Business Judgment Rule of the Board of Directors

Within the framework of the Limited Liability Company Law, the basic standards of management of the Board of Directors are reflected mainly in Article 92 paragraph (1) and Article 97 of the PT. Article 92 paragraph (1) emphasizes that the Board of Directors carries out the management of the company for the benefit of the company and in accordance with the company's intentions and objectives. Furthermore, Article 97 emphasizes that the Board of Directors is responsible for the management of the company, is obliged to act in good faith and full of responsibility, and can be held personally responsible if proven guilty or negligent in carrying out its duties. Thus, the emphasis of the legal assessment of the Board of Directors does not lie solely on the final result in the form of profit or loss, but on the quality of management carried out by the Board of Directors in facing and managing the risks that arise.

Therefore, the assessment of the fiduciary duty of the Board of Directors in the case of PSO BBM cannot be carried out with an approach that is identical to that of ordinary private companies. He must take into account that the Board of Directors manages risks whose main source does not come entirely from internal business decisions, but from the public policy of the state. However, the character of public policy does not remove the obligation of the Board of Directors to act carefully. Precisely because the financial risk of the assignment can be predicted as a recurring risk and has the potential to increase, the fiduciary duty of the Board of Directors requires measurable measures, including: conducting periodic mapping of the difference between real costs and the basic price formula; Develop mitigation for cash flow pressures; document funding needs and potential under-recovery; convey material exposure to corporate organs and shareholders; and seek to adjust formulas, payment schemes, or funding support to the government through available institutional mechanisms. Thus, the fiduciary obligation of the Board of Directors in the context of PSO BBM is not measured by its success in eliminating all risks, but by the seriousness and prudence of the Board of Directors in managing the risks that have been identified.

Business Judgment Rules as the Basis for the Protection of the Board of Directors in the Implementation of Government Assignments

In the system of the PT Law, the substance of the business judgment rule is reflected in Article 97 paragraph (5), which basically provides room for exemption from liability if the Board of Directors can prove that the loss was not caused by its mistake or negligence, the Board of Directors has acted in good faith and prudence for the benefit of the company, the Board of Directors has no conflict of interest, and the Board of Directors has taken action to prevent the occurrence or continuation of losses. The structure of this norm shows that Indonesian company law does not adhere to an approach that considers

every loss of the company as the automatic basis of personal responsibility of the Board of Directors.

In the context of the assignment of the BBM PSO, the business judgment rule becomes very relevant because the financial pressures that arise cannot always be explained as a result of the commercial decisions of the Board of Directors. As previously described, the pressure arises from the interaction between the normative basic price formula, actual cost dynamics, subsidy and compensation mechanisms, and uncertainty of payment time from the government. If these factors are the dominant source of under-recovery, then the losses or financial pressures that arise are basically more appropriately placed as a consequence of the design of public policy than as a direct result of the mismanagement of the Board of Directors.

In this construction, the business judgment rule serves to protect the Board of Directors from being held personally liable just because they are in a position to manage the impact of a state policy that financially pressures the company. However, the protection of the business judgment rule is not immunity. The Board of Directors can only take refuge under this doctrine if they can actually show that their decisions and actions were made based on adequate information, reasonable analysis, good faith, without conflict of interest, and accompanied by concrete steps to prevent greater losses.

In the context of VAT, it means that the Board of Directors must be able to show an adequate paper trail on how assignments are managed, how cost differences are monitored, how funding needs are calculated, how potential risks are conveyed to shareholders or the government, and how mitigation efforts are carried out. If all of that can be proven, then losses arising from the basic price formula that no longer reflect actual costs should not immediately qualify as the fault of the Board of Directors.

The financial pressure that arises in the implementation of the assignment of PSO BBM, JBT, Solar, and JBKP cannot be separated from the state policy structure that makes the basic price, subsidies, and compensation formulas the main instruments of regulation. Therefore, this pressure is basically a manifestation of public policy risk. However, the company's legal regime requires that the Board of Directors continue to manage these risks carefully, loyally, and responsibly. Thus, the accountability of the Board of Directors must be built on a clear distinction between risks born from state policies and risks born from imprudent management.

In this perspective, fiduciary duty should not be understood as a basis for transferring the entire burden of public policy to the Board of Directors, while the business judgment rule should not be understood as a reason to exempt the Board of Directors from the obligation to manage risks carefully. The right position is to place the two in a balance: The Board of Directors remains obliged to manage the impact of the assignment to the highest standard of prudence, but the Board of Directors must also obtain legal protection if the losses incurred are primarily a consequence of the design of public policies that are beyond its managerial control.

Discussion of the implementation model of the regulation in the Law to ensure legal protection and certainty of the accountability of the Board of Directors to be in line with the principles of fiduciary duty and business judgment rule.

Implementation of regulations in the SOE Law and the PT Law

The need for the implementation of regulations in the SOE Law and the PT Law has become increasingly prominent after the amendment of the SOE Law in 2025. SOE Law No. 1 of 2025 and SOE Law No. 16 of 2025 show the direction of legislation that strengthens the state's position in the management and supervision of SOEs, including material changes related to institutions, supervision, and state relations with SOEs. At the same time, the PT Law still places the Board of Directors as an organ that is fully responsible for the management of the company for the benefit of the company.

The implementation of the regulation from the perspective of state control requires an affirmation that the implementation of government assignments by the Persero SOEs is part of the implementation of the state's constitutional mandate, but the financial consequences should not be read separately from the state's responsibility as the assignee. In other words, it is not enough for the state to simply mandate, but it must also bear the normative consequences of that mandate in the form of funding, compensation schemes, or appropriate risk reduction mechanisms. If the state does not do this adequately, there will be a transfer of public policy risks into the corporate body, and at a certain stage it has the potential to shift again to a legal risk for the Board of Directors. This is where the urgency of implementing the regulation from the perspective of the concept of state control lies. The ideal implementation of a regulation is not a regulation that reduces the weight of fiduciary duty, but a regulation that explains how fiduciary duty is applied in the context of Persero carrying out a state mandate (Anggriani et al., 2020; Widiyono, 2018). If fiduciary duty establishes standards of conduct, then the business judgment rule sets a limit so that the Board of Directors is not held personally liable just because a decision or circumstance ends in a loss to the company.

Therefore, a sound regulatory implementation model must contain an affirmation that the dominant financial loss or expense derived from government assignments cannot be automatically used as the basis for the personal liability of the Board of Directors. Personal responsibility can only arise if it is proven that the Board of Directors violated the standards of conduct as determined by the Law of PT. This affirmation is not synonymous with granting immunity. The Board of Directors must still prove that they have acted actively and prudently. However, the law needs to shift the starting point of the analysis: not from the fact that the company is making a loss, but from the question of why the loss arises and how the Board of Directors responds to it (Hill, 2020).

Implementation of Regulations in the Perspective of Legal Certainty, Justice and Usefulness

In addition to the perspective of state control and company law, the regulatory implementation model must also be built on the concepts of legal certainty, justice and utility. In this study, legal certainty, justice and usefulness are not enough to be understood as the existence of written rules, but as clarity about who bears what, under what conditions, and based on what extent responsibility can be allocated. From the

perspective of the state of law, the subject of the law must be able to estimate the normative consequences of his actions.

Based on this regulatory model, the authors recommend several directions of regulatory formulation. First, it is necessary to formulate a norm that the government's assignment to the SOE Provider that is legally given and approved by the company's organs is part of the implementation of the company's interests in a special sense. Second, it is necessary to formulate a norm that losses, lack of revenue, or financial burden arising mainly due to government assignments do not become the basis for personal liability of the Board of Directors as long as the Board of Directors can prove the elements of Article 97 paragraph (5) of the Constitution. Third, it is necessary to formulate norms that every government assignment must be accompanied by a clear, measurable, and supervisory financing scheme, compensation, or cost recovery mechanism. Fourth, it is necessary to formulate a norm that the division of responsibility between the state as the assignee, SOEs Holding, and operational entities must be explicitly stated in the assignment documents and corporate decisions. Fifth, for assignments that are financially unprofitable, it is necessary to have periodic evaluations of the adequacy of the basic price formula, the level of margin fairness, and its impact on the financial health of SOEs.

The assignment of the supply and distribution of JBT and JBKP fuel carried out by Pertamina based on Presidential Regulation Number 191 of 2014 concerning the Supply, Distribution, and Retail Selling Price of Fuel needs to be adjusted again by referring to the issuance of Law Number 16 of 2025 concerning SOEs, especially Article 87C paragraphs (1) to (4) which regulate special assignments to SOEs. Changes are needed in Presidential Regulation 191/2014 to provide legal certainty, justice and benefits for SOEs in the implementation of the PSO BBM assignment.

CONCLUSION

In conclusion, financial pressure due to the assignment of the provision and distribution of JBT Solar and JBKP is more appropriately categorized as a public policy risk because it comes from the design of state policy, so that losses or under-recovery do not automatically become the basis for personal liability of the Board of Directors of SOEs, unless there is evidence of errors or negligence in carrying out fiduciary duties, including failures in risk mitigation, cash flow management, financial exposure documentation, or abuse of authority; therefore, the assessment of the responsibility of the Board of Directors must consider the source of risk and the quality of management, not solely the existence of losses. Based on these findings, several recommendations are proposed. For the Government (Ministry of Energy and Mineral Resources, Ministry of Finance, and Ministry of SOEs), it is recommended to revise Presidential Regulation Number 191 of 2014 to align with Law Number 16 of 2025 concerning SOEs, including affirmation of government funding support when assignments are not financially feasible, a firm separation between public policy risks and business risks, and strengthening the principles of the business judgment rule. For BPH Migas, it is recommended to conduct periodic evaluation of the basic price formula at least every two years to ensure it reflects actual cost dynamics and to regulate validated consumer data for JBT and JBKP to prevent

overquota. For the Board of Directors of Pertamina and PPN, it is recommended to maintain comprehensive documentation of risk management efforts, including periodic mapping of cost differences, cash flow mitigation strategies, and material exposure reporting to corporate organs and shareholders. For future researchers, further studies are recommended to examine the comparative implementation of PSO assignments in other sectors and countries, as well as empirical research on the effectiveness of business judgment rule protection for SOE directors in Indonesia..

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