

BUSINESS JUDGMENT RULES AND IMPOSITION OF STATE LOSSES ON STATE-OWNED ENTERPRISES WHICH LOSSES DUE TO OWNERSHIP OF AN ASSET SOURCED FROM ACCUMULATION OF PENSION CONTRIBUTIONS

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Abstract

This article aims to examine and analyze the limitations of implementations of Business Judgment Rule and the imposition of state financial losses on State-Owned Enterprise due to losses in asset which is financed by accumulated pension contributions. The problem is focused on the application of the Business Judgment Rule for accumulated pension contributions losses due to ownership of the JMP stand/kiosk in Surabaya and the imposition of state financial losses on that losses. This research is doctrinal legal research which uses interpretive methods to analyze cases of Director's decision at BUMN X, the results of which are then developed into descriptive analysis. Based on the theory of Business Judgment Rules, State Finances, and State Losses, it is concluded that the loss in Accumulated Pension Contributions from the ownership of the JMP stand/kiosk is not a state loss and BUMN X Directors cannot be blamed for this loss. This research suggests the Director to do the cut loss immediately by selling the 18 stands/kiosks and continuing to encourage the Minister of Finance to issue implementing regulations of Undang-Undang Nomor 4 Tahun 2004 tentang Pengembangan dan Penguatan Sektor Keuangan as a basis for the cut loss.

Keywords: Accumulated Pension Contributions; State Financial; State Losses

INTRODUCTION

The loss of State-Owned Enterprises (hereinafter referred to as SOEs) should not automatically become state losses as the management of BUMN business is carried out based on the business paradigm (Business Judgment Rule) and not the government paradigm (Government Judgment Rule). The ownership of the stand/kiosk at JMP initially came from the direct participation of BUMN X by using Pension Contribution Accumulation (AIP) funds in one of the property companies called PT LCN worth Rp75,000,000,000.00 (seventy billion rupiah) in 1993. Direct participation in PT LCN using AIP funds is carried out based on the approval of the Minister of Finance. Considered too long to produce, on October 18, 1993, based on the decision of the Steering Team appointed by the Ministry of Finance, SOE X was advised to withdraw shares to accelerate the return of AIP placement in PT LCN through cash returns and handover of stands/kiosks. In 2022, all cash refunds were completed and BUMN X began looking for buyers for the stands/kiosks. The Minister of Finance at that time hoped that the Board of Directors of BUMN X would resell the stand/kiosk to other parties at a price at least the same as the acquisition price in 1995, which was Rp29,681,573,600.00 (twenty-nine billion six hundred eighty-one million five hundred seventy-three thousand six hundred rupiah). The Secretary General of the Ministry of Finance at that time stated in a meeting with BUMN X on December 22, 1997 that "the implementation of exit / release of existing participation is carried out by seeking the return of the nominal value of investment / initial participation and minimizing the possibility of losses".

The Board of Directors of BUMN X has tried to find buyers both through auctions and cooperation to find investors but the stand/stall was not successfully sold because there was no interest. BUMN X then rented the stand/kiosk. Rental income from 1995 to 2017 obtained by BUMN X amounted to Rp12,400,975,388.00. The JMP stand/kiosk has been owned by BUMN X for 26 (twenty-six) years and only generates debt for building service charge payments and without any return to AIP. In the financial report, BUMN X admitted that until December 2022, AIP's obligations/debts for service charges and electricity stands/kiosks reached IDR 78,808,353,010.00 and fines for late payment of service charges amounted to IDR 14,249,645,804.00. Meanwhile, AIP's debt for the Extension of Shared Land Rights and the Extension of Title Certificates for Flats units amounted to Rp27,594,863,465.00. So that as of December 31, 2022, AIP's total debt to third parties recognized by BUMN X is IDR 120,652,862,279.00.

RESEARCH METHOD

This research is doctrinal legal research which uses interpretive methods to analyze cases of Director's decision at BUMN X, the results of which are then developed into descriptive analysis. Based on the theory of Business Judgment Rules, State Finances, and State Losses. The author uses secondary data sourced from library materials in the form of books, theses, journals, papers, scientific writings related to this research problem as well as applicable legislation and supported by primary data in the form of interviews. The analysis is carried out qualitatively, which uses the characteristics contained in the theory of Business Judgment Rules and State Finance to guide the discovery of research problems, hypotheses, concepts, methodology, and find data analysis tools.

Secondary data in this research is based into 2 (two) sources. Primary Sources contain Law Number 31 of 1999 Eradicating Corruption Crimes; Law Number 17 of 2003 concerning State Finance; Law Number 19 of 2003 concerning State-Owned Enterprises; Law Number 1 of 2004 concerning State Treasury; Law Number 40 of 2007 concerning Limited Liability Companies; Minister of Finance Regulation Number 52/PMK.02/2021 concerning Management of Accumulated Pension Contributions for Civil Servants, State Officials, Soldiers of the Indonesian National Army, and Members of the National Police of the Republic of Indonesia; Constitutional Court Decision Number 62/PUU-XI/2013. Secondary data is supported by directly from Field Research. Data collection was carried out directly, both through interviews with informants and supported by official documents available on BUMN X. The interview consists of several open questions which are then developed during the interview.

The selected sources for the interview are the parties responsible for carrying out the asset management process at BUMN X and based on their job description follow up on the Board of Directors' decisions. Meanwhile, the official documents used are documents issued by companies or other agencies which are deemed capable of providing a picture of decision-making activities, risk analysis that may occur.

RESULTS AND DISCUSSION

BUMN X's efforts to avoid AIP losses

In 2016 and 2017, the Board of Directors of BUMN X issued a Board of Directors Regulation on asset disposal which essentially stipulates, among others, the disposal of assets carried out entirely in one package and disposal carried out through an auction / ownership restructuring mechanism (sale

and purchase). The Board of Directors of BUMN X also made a Board of Directors Decision on the establishment of an Investment Property Asset Release Committee in the form of a Stand/Kiosk at JMP Derived from the Pension Contribution Akumulasi Fund followed by the appointment of KJPP to assess the fair market value of the JMP stand/kiosk. On November 7, 2017, the Board of Directors of BUMN X appointed KJPP to assess the fair market price and asset price as of October 19, 2017. On December 4, 2017, the Board of Directors of BUMN X wrote to the Financial Supervision and Development Agency of the Directorate of Supervision of Financial Services and Manufacturing Business Entities (hereinafter referred to as BPKP) which basically requested assistance and review of the completion of direct participation of AIP Civil Servant funds. In BPKP's opinion, it does not provide a new solution for SOE X where BPKP still recommends the implementation of asset disposal in accordance with applicable regulations. In other words, it must be done with the approval of the Ministry of Finance where the assets of the JMP stand/kiosk that have been reversed are sought to be resold at least at a price worth at the time received in 1995 which is worth Rp29,681,573,600.00 (twenty-nine billion six hundred eighty-one million five hundred seventy-three thousand six hundred rupiah).

Urged by various parties to immediately complete BUMN X's obligations for ownership of JMP stands/kiosks using AIP funds, in 2020 BUMN X made a business scheme for selling JMP stands/kiosks to its subsidiaries, namely in this article called PT BUMN X Properti. The value of JMP's assets was first reviewed by KJPP on July 30, 2020. The plan was submitted by the Board of Directors of BUMN X to the Board of Commissioners of BUMN X on October 16, 2020 and November 17. The plan was then approved by the Board of Commissioners of BUMN X on January 12, 2021. Upon this approval, in 2021, the Board of Directors of BUMN X again proposed to the Ministry of Finance the option of completing the JMO stand/kiosk through a sale to PT BUMN X Property, a subsidiary of BUMN X engaged in property. The option is based on considerations to release the service charge payment obligation and the extension of HGB and UN to AIP at a later date. The plan proposed by the Board of Directors of BUMN X at that time was for BUMN X to sell 18 units of stands/kiosks in JMP covering an area of 7,085 m² to PT BUMN X PROPERTI for IDR 48,093,000,000 in accordance with the market price assessed by KJPP on July 14, 2020, but considering that BUMN X has arrears/liabilities totaling IDR 47,129,556,630 to the JMP management, BUMN X will only receive in cash the difference between the market price and the total arrears/liabilities mulied, which is IDR 963,443,370 (IDR 48,093,000,000 - IDR 47,129,556,630). Furthermore, BUMN X with PT BUMN X PROPERTI will make a deed of sale and purchase of JMP stands/kiosks, so that the rights and obligations attached to the ownership of JMP stands/kiosks including liabilities/arrears of Rp47,129,556,630 switch from BUMN X to PT BUMN X PROPERTI.

Regarding the BUMN X letter, the Ministry of Finance dated June 22, 2021 regarding Follow-up on the Completion of Direct Participation Investment in the AIP Program PT BUMN X (Persero) conveyed that the settlement of direct participation investment should be carried out through corporate mechanisms and carried out credibly, professionally, clean from corruption, and there is no conflict of interest, while still applying the principle of prudence and guided by applicable laws and regulations. The Ministry of Finance's response above does not provide an answer for BUMN X to the investment settlement mechanism for JMP stand/kiosk ownership. The answer from the Ministry of Finance indicates that the settlement mechanism is handed over to the Board of Directors of BUMN X for decision, as long as it is carried out with due regard to good corporate governance.

Application of Business Judgment Rule Against AIP Losses on JMP Stand/Kiosk Ownership

a. Pension Contribution Accumulation Arrangement (AIP)

Minister of Finance Regulation Number 52/PMK.02/2021 concerning Management of Accumulated Pension Contributions of Civil Servants, State Officials, Indonesian National Army Soldiers, and Members of the National Police of the Republic of Indonesia (PMK 52 of 2021) does not directly provide the definition of Accumulated Pension Contributions (AIP). Therefore, to know the meaning of AIP, it is necessary to understand the meaning of the words "accumulation" and "Pension Contributions. The definition of "accumulation" based on the Big Dictionary Indonesian is the collection, hoarding, or gathering. Meanwhile, what is meant by Pension Contributions in Article 1 number 1 PMK 52 of 2021 is monthly contributions collected from every Civil Servant, State Official, Indonesian National Army Soldier, and Member of the National Police of the Republic of Indonesia as referred to in Presidential Decree Number 56 of 1974 concerning the Distribution, Use, Method of Deduction, Deposit, and Amount of Dues Collected from Civil Servants, State Officials, and Pension Recipients as amended by Presidential Decree Number 8 of 1977 concerning Amendments and Supplements to Presidential Decree Number 56 of 1974 concerning the Distribution, Use, Method of Deduction, Deposit, and Amount of Contributions Collected from Civil Servants, State Officials, and Pension Recipients. Presidential Decree 56 of 1974 as amended by Presidential Decree Number 8 of 1977 states in Article

1 that contributions collected from civil servants and state officials are to finance businesses in the welfare sector, including 43/4% (four three quarters) for pension fund contributions, 2% (two percent) for health care contributions, and 31/4% (three quarter percent) for old age savings and housing contributions.

So based on the two understandings above, the definition of Accumulated Pension Contributions is the collection of monthly contributions to the pension fund of Civil Servants, State Officials, Soldiers of the Indonesian National Army, and Members of the National Police of the Republic of Indonesia which is intended to finance welfare businesses, namely pensions. Regulation of the Director General of Budget Number PER-02 / AG / 2022 concerning Monitoring and Evaluation of the Management of Accumulated Pension Contributions, called the definition of the Accumulation of Pension Contributions in Appendix CHAPTER II letter A, is a collection of funds that are accumulated pension contributions of Civil Servants, State Officials, Soldiers of the National Army of the Republic of Indonesia, and Members of the National Police of the Republic of Indonesia and the results of their development.

The scope of PMK 52 of 2021 is wider than the scope of the Regulation of the Director General of Budget Number PER-02 / AG / 2022, where the AIP in the Regulation of the Director General of Budget Number PER-02 / AG / 2022 is a collection of pension contributions and the results of their development, while in PMK 52 of 2021 Article 2 it is stated that AIP is not only sourced from pension contributions and the results of the development of pension contributions, but also from income other than pension contributions and their development which includes fees for the distribution of Pension Expenditure Funds, and rental income for pension plan assets.

The government's intention to collect pension contributions for Civil Servants, State Officials, Indonesian National Army Soldiers, and Members of the National Police of the Republic of Indonesia is none other than to maintain the continuity of the pension program and collect the necessary sources of funds to maintain and increase pension benefits and national development based on their own abilities. The pension system will be considered good if the following criteria have been met, namely providing adequacy, affordable financing for the country and individuals in it (affordability), sustainable programs in providing needed benefits (sustainability), and resilient and flexible in the face of shock or unexpected events (robustness) (Sariningsih Budi Utami, 2022). The concept of levying funds from workers' wages as pension contributions has actually been regulated for a long time based on Article 1601s of the second part of the Civil Code, which basically reads that employers are prohibited from using workers' wages or income either in whole or in part to buy goods for their needs in certain places or and certain people, except to include workers in a fund, provided that the funds meet the conditions stipulated in the law. The levy of pension contributions was first regulated in the *Arbeidersfondsen Ordonnantie* (Staatsblad of 1926 No. 377). The provision allows the establishment of a joint fund between the employer and the employee, but is considered inadequate as a legal basis for the operation of the pension plan. Then the government issued Law Number 11 of 1956 concerning Pension Spending. Law Number 11 of 1956 marked the beginning of the imposition of civil servant pensions by the State, namely on the State Budget, as well as pension contributions have been borne by the State since the enactment of Government Regulation Number 29 of 1954 (State Gazette of 1954 Number 77) concerning Coverage of Transitional Tax and Wage Tax for Civil Servants (Explanation of Article 2 of Law Number 11 of 1969).

The imposition of pensions on the State Budget was actually carried out because the government argued that in practice it was not possible to provide provisions for proper old age for civil servants and their families who were left with the system of funds referred to in the *Arbeidersfondsen Ordonnantie* (Staatsblad of 1926 No. 377) and the Law of the Netherlands of 28 December 1934 (Ind. Staatsblad 1934 No. 748) due to funds This is simply not enough to guarantee a decent life for retirees.

On 20 to 29 November 1950, at the second Conference of Participating Ministers of the Union of Indonesia – Netherlands in Gravenhage, the Indonesian government stated that it intended to abolish pension funds for civil servants and that it was an internal Indonesian matter. At the conference, several decisions and agreements were made regarding pension funds and pensions of widows and orphans, all of which are regulated by law. Law 11 of 1956 became the forerunner of the establishment of AIP and at the same time became an answer to efforts to maintain the continuity of old age income enjoyed when employees retired. Its implementation is carried out in a program, namely a pension program that seeks pension benefits for its participants through a funding system. The pension plan funding system allows the accumulation of funds needed to maintain the continuity of income of program participants in old age. According to PMK 52 of 2021, AIP can only be used for certain things as follows:

- a. payment of pension benefits;
- b. Early Year Pension Benefits Bailout Payment;
- c. Bailout payment of pension benefit allocation shortfall;
- d. Payment of Operating Costs;

- e. Development in investment instruments;
- f. fulfillment of tax obligations;
- g. refund of the cash value of Pension Contributions;

In addition to these seven uses, specifically for Indonesian National Army Parajurites, Members of the National Police of the Republic of Indonesia, and Civil Servants within the Ministry of Defense and the National Police of the Republic of Indonesia can be used for Down Payment Loans for Home Ownership Loans (PUM KPR).

Article 15 PMK 52 of 2021 states that the form of AIP consists of two, namely assets in the form of investment and assets in the form of non-investment. AIP in the form of assets in the form of investments is placed in the type of:

- a. Government Securities;
- b. deposits at Government Banks;
- c. shares listed on the Stock Exchange, with criteria:
 - 1) has positive fundamentals;
 - 2) Positive business prospects of issuers; and
 - 3) market capitalization value of at least IDR 5,000,000,000,000.00 (five trillion rupiah);
- d. The lowest bonds have an A- rating or equivalent from a securities rating company that has obtained permission from a supervisory agency in the field of capital markets;
- e. foreign-denominated bonds issued by State-Owned Enterprises and bearing the same rating as the State Credit Risk Rating of the Republic of Indonesia issued by internationally recognized rating agencies;
- f. tribes issued by State-Owned Enterprises and at the lowest have an A- rating or equivalent from securities rating companies that have obtained permission from supervisory agencies in the field of capital markets;
- g. medium term notes issued by State-Owned Enterprises and having the lowest rating of A- or equivalent from securities rating companies that have obtained permission from supervisory agencies in the field of capital markets;
- h. Mutual funds in the form of:
 - 1) Money Market Funds, Fixed Income Funds, Blended Funds, and Equity Funds;
 - 2) Protected funds, underwritten funds, and index funds;
 - 3) Mutual funds in the form of limited participation collective investment contracts; and
 - 4) mutual funds whose shares or participation units are traded on the Stock Exchange,

The placement of assets in the form of investment in the form of direct participation as the object of this research (JMP stand/kiosk) can only be done with the following conditions: (pasal 19 ayat 2):

- 1) Placed in business entities that are not engaged in the banking business; and
- 2) Placed in a business entity that does not have the potential to cause a conflict of interest in conducting the same work in accordance with the provisions of laws and regulations.
- 3) If the placement of assets in the form of investment in the form of direct participation is carried out in collaboration with other business entities, then the business entity must be a BUMN/BUMND, or a subsidiary of BUMN/BUMD.

The placement of assets in the form of investment in the form of direct participation by the management agency has been regulated by the government in detail in PMK Number 52 of 2021. Article 20 letter h states that investment in the form of direct participation for each party must not exceed 5% of the total investment and the total is at most 10% of the total investment. The amount of investment in the form of direct participation will continue to be evaluated at least every two years taking into account the development of AIP in such direct participation (article 24 paragraph 2). Before placing investments in the form of direct participation, the managing body is required to first obtain approval from the Minister of Finance (article 23 paragraph 1). This proves that the Minister of Finance has a hand in the placement of AIP. Similarly, in the event that divestment of the direct placement will be carried out, it must first obtain the approval of the Minister of Finance (pasal 23 ayat 3).

b. AIP Losses Due to JMP Stand/Kiosk Ownership

The ownership of the stand/kiosk in JMP initially came from the direct participation of BUMN X on March 17, 1993 in PT LCN worth Rp75,000,000,000.00 (seventy billion rupiah) for 25,000 (twenty-five thousand) shares. Direct participation in PT LCN is carried out using AIP funds and has received approval from the Minister of Finance. The Ministry of Finance at that time considered that direct participation in PT Lamicitra took too long to produce, so on October 18, 1993, based on the decision of the Steering Team appointed by the Ministry of Finance, BUMN X was advised to withdraw its share

participation to accelerate the return of AIP placement in PT LCN through cash returns and handover of stands/kiosks.

Cash returns were made by PT LCN in stages in 1994, 1995, and 1997 with a total of Rp26,138,426,400.00 (twenty-six billion one hundred thirty-eight million four hundred twenty-six four hundred rupiah). Meanwhile, the return in the form of handover of stand/kiosk assets was carried out in 1995, namely 8 (eight) stands/kiosks covering an area of 7,333.6 m² at a price of Rp29,681,573,600.00 (twenty-nine billion six hundred eighty-one million five hundred seventy-three thousand six hundred rupiah). After making cash refunds and returns in the form of stands/kiosks, on August 8, 1997, BUMN X and PT LCN agreed to return the remaining capital deposit of Rp22,000,000,000.00 (twenty-two billion rupiah) through a Deed of Agreement before Zacharias Omawele, SH Notary in Jakarta with a return schedule in 4 (four) payments.

On December 23, 1997, all stands/kiosks were completed by BUMN X into 18 (eighteen) certificates of ownership rights over flats. The Minister of Finance at that time hoped that the Board of Directors of BUMN X would resell the stand/kiosk to other parties at a price at least the same as the acquisition price in 1995, which was Rp29,681,573,600.00 (twenty-nine billion six hundred eighty-one million five hundred seventy-three thousand six hundred rupiah). In the course of its management, after being handed over to BUMN X, the rental income from 1995 to 2017 obtained by BUMN X was Rp12,400,975,388.00. The obligations that must be completed by SOE X consist of service charge obligations and renewal fees for the Right to Shared Tanak along with the extension of the Certificate of Ownership of Non-Residential Flats. The service charge burden has become the burden of BUMN X since the stand/kiosk has been empty and has no tenants, namely since 2004. Service charge bills have been submitted by PT LCN to BUMN X from 2004 to 2022 every year. In the financial report, BUMN X admitted that until December 2022, AIP's obligations/debts for service charges and electricity at JMP stands/kiosks reached IDR 78,808,353,010.00 and fines for late payment of service charges amounted to IDR 14,249,645,804.00. Meanwhile, AIP's debt for the Extension of Shared Land Rights and the Extension of Title Certificates for Flats units amounted to Rp27,594,863,465.00. So that as of December 31, 2022, AIP's total debt to third parties recognized by SOE X is IDR 120,652,862,279.00.

So that when compared between the amount of BUMN X's participation in JMP's stand/kiosk assets with the amount of regain after BUMN X divested, BUMN X only received PT LCN's cash return plus the remaining capital deposit and JMP stand/kiosk rental income, which was Rp26,138,426,400.00 plus the remaining capital deposit of Rp22,000,000,000.00 and rental income of Rp12,400,975,388.00 which is Rp60,539,401,788.00. This amount is still burdened with the obligation to pay service charges, late service charge penalties, Extension of Shared Land Rights and Extension of Ownership Certificates for Flats, which is a total of Rp120,652,862,279.00. When compared between the acquisition of BUMN X during the ownership of JMP stands/kiosks with the obligations that must be borne by AIP, there is already a shortfall in the amount of AIP amounting to Rp60,113,460,491.00. The lack of AIP can be considered as a loss for the state, where the funds should be used by the government as intended for AIP for the management of the Civil Servant Pension Program or should be stored and developed for the preparation of a fully funded Civil Servant Pension Program.

c. BUMN X's Efforts to Avoid AIP Losses

In 2016 and 2017, the Board of Directors of BUMN X issued a Board of Directors Regulation on asset disposal which essentially stipulates, among others, the disposal of assets carried out entirely in one package and disposal carried out through an auction / ownership restructuring mechanism (sale and purchase). The Board of Directors of BUMN X also made a Board of Directors Decision on the establishment of an Investment Property Asset Release Committee in the form of a Stand/Kiosk at JMP Derived from the Pension Contribution Akumulasi Fund followed by the appointment of KJPP to assess the fair market value of the JMP stand/kiosk. On November 7, 2017, the Board of Directors of BUMN X appointed KJPP to assess the fair market price and asset price as of October 19, 2017. On December 4, 2017, the Board of Directors of BUMN X wrote to the Financial Supervision and Development Agency of the Directorate of Supervision of Financial Services and Manufacturing Business Entities (hereinafter referred to as BPKP) which basically requested assistance and review of the completion of direct participation of AIP Civil Servant funds.

BPKP's opinion above does not provide a new solution for SOE X where BPKP still recommends the implementation of asset disposal in accordance with applicable regulations. In other words, it must be done with the approval of the Ministry of Finance where the assets of the JMP stand/kiosk that have been reversed are sought to be resold at least at a price worth at the time of receipt in 1995 which is Rp29,681,573,600.00 (twenty-nine billion six hundred eighty-one million five hundred seventy-three thousand six hundred rupiah). BUMN X has tried to find buyers through auctions but until 2020 there was no interest in the JMP stand/kiosk.

Urged by PT LCN to immediately settle BUMN X's obligations for the ownership of JMP stands/kiosks using AIP funds, in 2020 BUMN X made a business scheme for selling JMP stands/kiosks to its subsidiary, PT BUMN X Properti. The value of JMP's assets was first reviewed by KJPP Karmanto and Rekan. In 2021, the Board of Directors of BUMN X again proposed to the Ministry of Finance the option of completing the JMO stand/kiosk through a sale to PT BUMN X Property (hereinafter referred to as PT BUMN X PROPERTI), a subsidiary of BUMN X engaged in property. The option is based on considerations to release the service charge payment obligation and the extension of HGB and UN to AIP at a later date. BUMN X sold 18 units of stands/kiosks in JMP covering an area of 7,085 m² to PT BUMN X PROPERTI for IDR 48,093,000,000 according to the market price assessed by KJPP Karmanto and partners on July 14, 2020, but considering that BUMN X has arrears/liabilities totaling IDR 47,129,556,630 to the JMP management, SOE X will only receive in cash the difference between the market price and the total arrears / liabilities mulied, which is IDR 963,443,370 (IDR 48,093,000,000 - IDR 47,129,556.630).

Furthermore, BUMN X with PT BUMN X PROPERTI will make a deed of sale and purchase of JMP stands/kiosks, so that the rights and obligations attached to the ownership of JMP stands/kiosks including liabilities/arrears of Rp47,129,556,630 switch from BUMN X to PT BUMN X PROPERTI. To the BUMN X plan, the Ministry of Finance gave an answer which basically stated that the completion of the AIP program's direct participation investment should be carried out with good corporate governance by considering urgency, time, potential, and carried out without the influence of other parties. In addition, the settlement of direct participation investment is carried out through corporate mechanisms and carried out credibly, professionally, clean from corruption, and there is no conflict of interest, while still applying the principle of prudence and guided by applicable laws and regulations. The Ministry of Finance's response above does not provide an answer for BUMN X to the investment settlement mechanism for JMP stand/kiosk ownership. The answer from the Ministry of Finance indicates that the settlement mechanism is left to the Board of Directors of BUMN X for decision, as long as it is carried out with due regard to good corporate governance.

With no answer to the proposed sale of stands/kiosks to PT BUMN X PROPERTI by the Ministry of Finance, the Board of Directors of BUMN X discouraged the intention to carry out this mechanism.

Application of Business Judgment Rule Against AIP Losses on JMP Stand/Kiosk Ownership

Regulations related to the Business Judgment Rule in Indonesia are contained in the PT Law, where the Board of Directors can take refuge in the Business Judgment Rule and cannot be prosecuted for its policies and decisions if the policies and decisions are carried out in good faith, carried out with proper purpose, carried out with due care and carried out in a reasonable belief manner (Sirait, 2019). Article 97 paragraph (5) of the 2007 PT Law in full is: Members of the Board of Directors cannot be held responsible for losses as referred to in paragraph (3) if they can prove:

- 1) Such losses are not due to his fault or negligence;
- 2) Have managed in good faith and prudence for the benefit and in accordance with the aims and objectives of the Company;
- 3) Do not have a conflict of interest either directly or indirectly for management actions that result in losses; and
- 4) Have taken measures to prevent such losses arising or continuing.

Referring to the criteria for losses that cannot be charged to members of the board of directors as stipulated in the PT Law above, the case of AIP losses on JMP stall/stand ownership can be explained one by one as follows:

- 1) losses occur through no fault and negligence of the Board of Directors

A person is said to be negligent when he acts indifferently or does not care about what is his duty. Negligence is considered to have occurred in the event that someone does not pay attention to the interests of others as is common in the social system of life in society (Adami, 2007). In criminal law, Fitri Wahyuni mentioned in her book entitled Basics of Criminal Law in Indonesia explained that negligence is one form of error that arises because the perpetrator does not meet the standards of behavior determined by law, and the negligence occurs due to the person's own behavior. For example, the case of health services, for example due to lack of knowledge, lack of experience and or lack of caution by doctors (Wahyuni, 2017).

Based on the doctrine of D. Schaffmeister, N. Keijzer, and E. PH. Sutorius there is a scheme of negligence or culpa, namely (Widjaja, 2003):

- a. Culpa lata conscious (alpa) or conscious. That is, conscious negligence, that is, a person is aware of the risk, but hopes that bad consequences will not occur. Examples: reckless (roekeloos), negligent (onachtzaam), or indifferent.

- b. Unconscious (negligent) culpa lata. That is, unconscious negligence, that is, one should be aware of the risks, but this is not the case. Example: lack of thinking (onnadentkend) or carelessness (onoplettend).

In conclusion, negligence, negligence, or culpa is a form of error in criminal law as a result of the actions of a person who is not careful. While legal consequences may be imposed on a person who commits negligence if his negligence causes economic loss, or results in injury or death of another person, or the damages involve only a trivial matter, there is no legal consequence for a person who commits negligence. Legal actions that can be carried out against the maker of negligence are in the form of administrative, civil and even criminal legal actions.

When viewed from the history of direct placement carried out by BUMN X from PT LCN, the direct placement plan has been carried out with the principle of prudence where there has been a study that considers the potential location and business prospects of JMP. The study dated December 24, 1992 has considered the potential location, namely the potential of the city of Surabaya in the development of the national economy, the facilities available in the city of Surabaya to support the industrial and trade sectors. In addition, it also considers the company's prospects, namely related to the condition of leasing shops in North Surabaya.

- 2) Have managed in good faith and prudence for the benefit and in accordance with the aims and objectives of the Company.

Good faith referred to in the management of the company can be interpreted as a sense of responsibility in carrying out duties for the interests and business of the company (Widjaja, 2003). The manifestation of good faith by the Board of Directors in running the company may include (Harahap, 2021):

- a. Must be trusted;
- b. Must carry out management for reasonable purposes (duty to act for a proper purpose);
- c. Compulsory compliance with the rules of law (statutory duty);
- d. Must be loyal to the company (loyalty duty); dan
- e. Must avoid conflicts of interest (avoid conflict of interest)

Gunawan Widjaja said that the standards of good faith of the company's Board of Directors are as follows: (Harahap, 2021):

- a. The Board of Directors may not carry out activities at the expense of the company if it does not provide at all or provides very little benefit to the company compared to the personal benefits obtained by the directors concerned. The exception is if it is carried out at the expense of the position representation fee of the member of the Board of Directors concerned based on the resolution of the GMS.
- b. The Board of Directors must not be a competitor for the company he leads, for example taking business opportunities that should be channeled to and by the company he leads, but the business opportunities are channeled to other companies in which there is a personal interest of the directors.
- c. The Board of Directors must refuse to make decisions regarding something that it knows or should know may result in the company violating applicable laws and regulations so that the company is threatened with sanctions by the competent authority, for example revoking its business license or being sued by other parties.
- d. The Board of Directors makes an effort or action that needs to be taken to prevent the company's losses.
- e. The Board of Directors made efforts to increase the company's profits.

Referring to the criteria of good faith stated by Gunawan Widjaja and compared to the efforts and policies of the Board of Directors of BUMN X in direct placement and divestment in PT LCN, the Board of Directors of BUMN X should be considered to have carried out their duties in good faith and prudently which was done based on studies, had calculated the benefits that would be obtained by the company, not done to benefit the Board of Directors, and carried out in accordance with statutory provisions. The proof is that all policies and decisions taken have never been carried out alone by the Board of Directors of BUMN X but are carried out by asking for the views of third parties such as the Steering Team, KJPP, and BPKP.

- 3) Do not have a conflict of interest either directly or indirectly for management actions that result in losses

Based on the Regulation of the Minister of SOEs Number PER-2 / MBU / 03/2023 concerning Guidelines for Governance and Significant Corporate Activities of State-Owned Enterprises, conflict of interest is the difference between the economic interests of SOEs and the personal economic interests of members of the Board of Directors, members of the Board of Commissioners / Supervisory Board or

shareholders that can harm the SOE. In Article 3 of the regulation of the Minister of SOEs, it is stated that SOEs are required to apply the principles of Good Corporate Governance, one of which is independence, which *is* a situation where the company is managed professionally without conflict of interest and influence / pressure from any party that is not in accordance with the provisions of laws and regulations and sound corporate principles. The prohibition on conflict of interest directed at the Board of Directors is that it is not allowed for the Board of Directors to use SOEs for personal, family, and/or other parties that can harm or reduce the profits of SOEs either directly or indirectly from SOE activities other than legitimate income. The implementation of direct placement of AIP funds is not carried out alone by the Board of Directors of SOE X but has gone through the study and approval of the Ministry of Finance, as well as the decision making to divest and release JMP stands/kiosks is also carried out in accordance with the advice and approval of the Steering Team, so that the losses incurred can be said not to be caused by the efforts of the Directors of BUMN X to obtain personal benefits.

4) Have taken measures to prevent such losses arising or continuing

Article 97 of Law Number 40 of 2007 concerning Limited Liability Companies states that Members of the Board of Directors cannot be held responsible for the Company's losses, one of which is if they have taken action to prevent the arising or continuation of these losses. The action in question includes the Board of Directors has taken steps to obtain information regarding management actions that may result in losses, among others through the Board of Directors meeting forum. To prevent greater AIP losses, the Board of Directors of BUMN X has made several efforts to find solutions such as asking for BPKP's views, conducting asset appraisals through KJPP, conducting asset auctions, selling to individuals and companies, leasing stands/kiosks, and transferring ownership of stands/kiosks to subsidiaries. However, there has not been an agreement from the Minister of Finance regarding the investment settlement mechanism that is considered the best and does not harm the company. The Board of Directors of SOE X has reported any obstacles and submitted investment settlement proposals to the Minister of Finance as required in Minister of Finance Regulation Number 52/PMK.02/2021.

As with any business that is not always profitable, after all the studies, preparations, and caution carried out, over time, after the JMP stand/kiosk was controlled by BUMN X, the business and urban center in Surabaya moved from North Surabaya so that JMP became empty of visitors. Stalls/stands that have been attempted to be rented or sold are not in demand. So that the loss incurred by AIP in this case is not a form of negligence, because it is not caused by carelessness, carelessness, or not heeding one obligation or one job by the Board of Directors of SOE X. The Board of Directors of BUMN X has fulfilled all the criteria stated in Article 97 paragraph (5) of the 2007 PT Law so that based on the Business Judgment Rule, members of the Board of Directors of BUMN X cannot be held responsible for AIP losses incurred due to ownership of JMP stands/kiosks. In the doctrine of Business Judgment Rule, corporate actions, both private and state-owned companies, should be protected from potential compensation incurred due to business risks if they have been carried out on the basis of good governance. This doctrine principally prevents judicial interference with the actions of directors based on good faith and prudence, in order to achieve lawful corporate objectives. This responsibility must be carried out based on the principle of fiduciary duty and duty to skill and care, while what is meant by the fiduciary duty of a Board of Directors in this case is a legally issued duty (by the operation of law) of a fiduciary relationship between the Board of Directors and the company he leads, so that a director must have care and ability (duty of care and skill), Good faith, loyalty, and honesty towards his company with a high degree (high degree) (Priyono et al., 2022).

In carrying out corporate actions, BUMN directors carry out position orders related to investment and corporate decisions are always faced with a situation of "double-edged knife" on the one hand carrying out duties to run a business and on the other hand must maintain state wealth that is separated in the SOE (Frederik J. Pinakunary, 2022).

The Board of Directors is considered to be truly honest (good faith) in carrying out the company's responsibilities, and has good faith when accompanied by reasonable judgment in accordance with experience and knowledge and the prevalence of business practices (common business practice), even though the consideration is wrong and erroneous (error judgment). If the Board of Directors has done these things, he cannot be held liable for honest mistakes of judgment or not liable for any error judgment.

Imposition of State Loss Sanctions on BUMN X Directors for Losses in Accumulated Pension Contributions Due to JMP Stand/Kiosk Ownership

a. AIP Disadvantages in State Financial Perspective

If you look at the source of AIP, one of them is from the pension contributions of Civil Servants and Regional Officials at the central and regional levels. The contribution is deducted from the basic salary and family allowance, namely as Article 6 paragraph (2) of Government Regulation Number 25 of 1981 which has been amended by Government Regulation Number 20 of 2013, states: The contribution amount as referred to in paragraph (1) is determined as follows: a. 4 3/4% (four three quarters of a percent) for pensions and b. 3 1/4% (three quarters of a percent) for old age savings. The pension contribution of 4 3/4% (four three quarters of a percent) since 1985 based on the letter of the Minister of Finance of the Republic of Indonesia Number dated February 21, 1985 was transferred to PT BUMN X (PESERO) to be managed and developed in the context of establishing a civil servant pension fund as mandated by Law Number 11 of 1969 Article 2, letter a.

Especially for the Old Age Savings Program (ENT) which has been managed by BUMN X since 1961 has been fully funded, in other words, the payment of ENT clim and its development is financed by the ENT fund. As a follow-up to Law Number 11 of 1969 concerning Employee Pension and Employee Widows/Widowers, and Government Regulation Number 25 of 1981 concerning Social Insurance for Civil Servants and Government Regulation Number 26 of 1981 concerning Transfer of Public Employee Savings Fund and Insurance Form to a Company Company (PESERO). BUMN X manages the Pension Contribution Fund to be developed in order to fertilize the Pension Contribution Fund in a fully funded manner. This is regulated in Article 2 letter a of Law Number 11 of 1969, as follows:

"For civil servants/former civil servants or deceased, shall be entitled to receive salaries at the expense of the State Budget, prior to the establishment and operation of a Pension Fund which will be regulated by Government Regulation, fully financed by the State, while expenditures for such financing are charged to the said budget."

The phrase "fully financed by the State" implies that the government is fully responsible for financing the implementation of the Pension Fund to be formed. It is further explained in the phrase "while the expenditures for financing are charged to the budget", implying that the government is also responsible for the expenditures arising from the implementation of the pension plan. The expenditures in question are called Pension Operating Costs (BOP) in the 1987 Letter of the Minister of Finance which states that the government will reimburse BUMN X expenses for the implementation of pension programs. BOP itself is financed by AIP as explained in PMK 21 of 2021. This shows that AIP is a fund collected by BUMN X but is state-owned and not owned by BUMN X. The logic of thinking is that if the fund is the wealth of BUMN X or in this case the wealth of SOEs, then the funds and the results of their development can be used by BUMN X for their company activities or are the full authority of the organs in the BUMN or in other words the Board of Directors of BUMN X as the management of a legal entity that has immunity to make decisions regarding their wealth. H.A.J. Ford Ford mentioned that people who can carry out the Company's activities, as well as representatives of the Company can make decisions within the Company (Ford, 1978). In terms of business processes, each BUMN was established for certain purposes and purposes which are broadly intended to pursue profits. In realizing the aims and objectives of its establishment, BUMN carry out corporate actions, namely producing products or services that will then be sold for profit.

With the consideration of AIP as government-owned finance, AIP can be said to be part of public finance related to state finance. Similarly, the results of the development of pension contributions and other income from pension expenditure funds and pension asset rents, also become part of state finances because it is a development of these pension contributions.

The definition of state finance in Article 1 and the scope of state finance in Article 2 of Law Number 17 of 2003 concerning State Finance when associated with the term "loss" namely "loss, deficiency, or reduction", then state financial losses can be interpreted as loss or reduction of state rights and obligations that can be assessed with money, as well as everything in the form of money and goods that can be made state property in connection with the implementation of rights and liability resulting from unlawful acts. Based on this understanding, the scope of financial losses can be explained in more detail as follows (Makawimbang, 2014):

- a. Loss or diminishment of rights and obligations of the State
 - 1) Loss or diminishment of the state's right to collect or receive taxes;
 - 2) Issuing and circulating money or securities that are unlawful or not in the interest of the state (for the benefit of oneself, others or *corporate*);
 - 3) Making loans not in accordance with the terms and unreasonable amounts (unreasonable loans, loans that are not useful or arising obligations to repay the state that should not exist).

- b. Loss or depletion of state finances from government service activities:
 1. The cost of carrying out general service duties of the central or local government in the form of service activities: health, education, transportation, land administration, licensing, banking services, financial services and insurance that are not in accordance with the provisions;
 2. Paying third-party bills that are unlawful (should not have paid, or paid higher than the amount they should have).
- c. Loss or reduction of state financial receipts and/or expenditures.
 - 1) State/Regional Revenues, Non-Tax State Revenues (PNPB), Levies, and revenues from state/regional businesses are lost/smaller than what should be received from activities sourced from APBN/APBD or BUMN/BUMD funds;
 - 2) State/local financial revenue rights are lost/less than they should be received from state-owned natural resource management agreements (mining, oil, gas, forestry, agriculture, fisheries, water, sand and soil management or other natural resources);
 - 3) Expenditures of the state treasury or regional treasury that should not be spent or expenditures greater than they should (including lower quality of goods and receipts of goods purchased from state money damaged and not useful);
 - 4) The incurring of an obligation to pay the state or region from a procurement transaction does not exist (fictitious), or the payment is greater than it should be (*murk up*).
- d. Loss or reduction of State Assets managed by itself or other parties. reduction or loss of state or regional wealth in the form of assets, money, securities, receivables, goods and other rights that can be assessed in money, which:
 - 1) Self-managed by the central or local government.
 - 2) Managed by BUMN or BUMD or State or Regional Public Service Agency.
 - 3) Managed by other parties based on agreements with the state (central/local government).
- e. Loss or reduction of wealth of others managed by the State.
 - 1) Reduction or loss of wealth of other parties controlled by the government in the context of carrying out government duties and / or public interests.
 - 2) Reduction or loss of wealth of others obtained by using facilities provided by the government.

AIP losses due to JMP stand/kiosk ownership can be determined with certainty and tangible where there has been a reduction in the amount of AIP since divestment in the form of assets in the form of 18 JMP stands/kiosks. Since the divestment mechanism was chosen in the form of JMP stand/kiosk assets, AIP must bear *the service charge* obligation and certificate renewal fee for the stand/kiosk amounting to Rp120,652,862,279.00, while the stand/kiosk itself only generates Rp12,400,975,388.00 from the rental fee. Real losses have occurred by not returning the value of AIP worth the acquisition price, where the stand/kiosk should have been worth Rp29,681,573,600.00 (twenty-nine billion six hundred eighty-one million five hundred seventy-three thousand six hundred rupiah). In fact, it does not produce more than these gains and instead leaves liabilities in a much larger amount. The real loss of AIP is the decrease in the amount of AIP which should be returned to the state by Rp29,681,573,600.00 (the value of the JMP stand/kiosk at the time of acquisition), currently to minus Rp60,113,460,491.00. This value does not include late renewal penalties that have not been billed by PT Pelabuhan Indonesia III (Persero) to BUMN X.

When referring to the elements of state losses according to state administrative law, namely the element of authority and the element of purpose and motivation, the Board of Directors of SOE X in making direct placement and divestment in PT LCN is in accordance with its authority as stipulated in Article 3 PMK 52 of 2021 which states that the management of AIP is carried out by the Management Agency and Government Regulation Number 25 of 1981 concerning jo. Government Regulation 26 of 1981 which regulates authority Management Agency to manage AIP and the appointment of BUMN X as the Management Agency for Civil Servant Pension Programs.

Based on discussions with the three legal systems, it can be stated that it is true that the amount of AIP has been reduced by Rp60,113,460,491.00 due to the ownership of JMP stands/kiosks, but the cause of the loss does not meet the criteria for state losses because it is not caused by an unlawful act or abuse of authority, opportunity or means that exist in a person because of his position or position and this is done in connection with the act enrich oneself or others or a corporation.

Sanctions for State Losses

1) Administrative Sanctions

Muhammad Djafar Said explained that the settlement of state losses can be resolved through two mechanisms, namely the return of state losses through out-of-court mechanisms (administrative) and the return of state losses through court mechanisms (criminal or civil). The return of state losses of

the court mechanism can be carried out simultaneously with the return of state losses administratively with the following legal considerations:

1. The procedure for the return of state losses through judicial mechanisms is different from the return of losses of administrative mechanisms;
2. Return of State losses that by administrative mechanisms do not include sanctions or penalties. The nature of the return is as a substitute for state losses based on the determination of the authorized official or institution.
3. The return of state losses through judicial mechanisms is a sanction or punishment imposed by the court.

If state losses cannot be resolved by claiming compensation, the procedure for settling state losses must be taken through a judicial process either through state administrative, civil, or criminal law (Saidi, 2008).

2) Criminal Sanctions

In the event that state losses occur due to criminal elements, especially corruption, criminal settlement becomes one of the premium remedium, although in principle criminal law is the ultimum remidium (Constitutional Court of the Republic of Indonesia, n.d.). In principle, what has become the right of the state must be given to the state. In the rights of the state there are rights of citizens who are obligations of the state. Therefore, there is a principle of giving to the people something that is the right of the people. By enforcing corruption cases can create justice, fair essentially means putting something in its place and giving to anyone what is rightfully (Ravena & SH, 2017). According to Fleming, as quoted by Purwaning, M. Yanuar stated that the prosecution of corruption cases was carried out with the perspective of settling state losses through asset returns. Return of assets is considered to help fight corruption oriented to profit, greed, and organized (Ravena & SH, 2017).

In the event of corruption, the instrument used in settling state losses through the courts to the accused is to impose a sentence to pay substitute money as stipulated in Pasal 18 ayat (1) huruf b UU Eradication of Tipikor. The defendant may be sentenced to an additional crime at most equal to the property obtained from the criminal act of corruption. The crime is imposed in the form of confiscation from the convicted person in the form of confiscation of tangible or intangible movable property or immovable property used for or obtained from the criminal act of corruption, including companies owned by the convicted person where the crime of corruption was committed, as well as from goods that replace these goods. Article 10 of the Criminal Code also provides for the imposition of additional criminal sanctions. The provision recommends "In addition to the main penalties in the form of the death penalty, imprisonment, confinement, and fines, there are also additional penalties consisting of deprivation of certain rights, confiscation of certain goods, and announcement of judges' decisions" (Soesilo, 1995). The deprivation of property of the convicted person obtained from the crime or goods used to commit the crime can be seized for the benefit of the state regulated in also regulated in Article 39 paragraph (1) of the Criminal Code. The provisions in the Criminal Code are in line with the regulation of additional criminal sanctions on corruption as stipulated in Article 18 paragraph (1) letter a of the Law on the Eradication of Tipikor. Goods that can be confiscated are tangible or intangible movable goods or immovable goods used or enjoyed by the accused or convicted of corruption, including businesses or companies owned by the convicted person where the crime of corruption was committed, including goods that replace these goods.

3) Civil Sanctions

In addition to using criminal law instruments, the Law on the Eradication of Corruption does regulate the act of returning state losses using civil law instruments through filing a lawsuit that can be carried out by the Prosecutor or an institution that is aggrieved for the occurrence of state financial losses against the perpetrators or their heirs based on the provisions of the Law on Corruption as follows:

a. Pasal 32 UU:

- 1) In the event that the investigator finds and believes that one or more elements of the criminal act of corruption do not contain sufficient evidence, while there has been a real loss of state finances, the investigator immediately submits the case file resulting from the investigation to the State Attorney for a civil lawsuit or submitted to the aggrieved agency to file a lawsuit.
- 2) Independent decision in the matter of corruption does not eliminate the right to claim losses against the country's finances.

b. Pasal 33

In the event that the suspect dies during the investigation, while there has been a real loss of state finances, the investigator immediately submits the case file resulting from the investigation to the State Attorney or submitted to the aggrieved agency for a civil lawsuit against his heirs.

c. Pasal 34

In the event that the defendant dies during an examination at the court hearing, while there has been a real loss of state finances, the public prosecutor immediately submits a copy of the minutes of the hearing to the State Attorney or is submitted to the aggrieved agency for a civil lawsuit against his heirs.

d. Pasal 38C

If after the court decision has obtained permanent legal force, it is known that there are still property belonging to the convicted person who is suspected or reasonably suspected to also come from a criminal act of corruption that has not been subject to seizure for the state as referred to in Article 38 B paragraph (2), then the state can bring a civil lawsuit against the convicted person and or his heirs.

Imposition of State Loss Sanctions on BUMN X Directors for AIP Losses Due to JMP Stand/Kiosk Ownership

With the fulfillment of all the criteria in Article 97 paragraph (5) of the PT Law, the actions of the Board of Directors of SOE X do not meet the elements of "unlawful" or "negligence" as referred to in Article 2 paragraph 91) of the Law on the Eradication of Corruption and the State Treasury Law. So that administrative sanctions cannot be imposed, namely compensation for AIP losses or cannot be subject to criminal sanctions in the form of substitute money or confiscation of tangible or intangible movable property or immovable property or additional penalties in the form of basic crimes in the form of the death penalty, imprisonment, confinement, and fines, there are also additional penalties consisting of deprivation of certain rights, confiscation of certain goods, and announcement of the judge's ruling. Likewise, civil sanctions cannot be imposed in the form of confiscation of personal property that can be passed on to heirs if there is still wealth that can be seized from them to recover state losses.

In terms of authority to manage AIP, the Board of Directors of SOE X also cannot carry out the entire management itself as the management of state financial wealth separated in SOEs in general. Because AIP is part of state finance, namely state revenue from Civil Servant Pension Program contributions intended for the operational implementation of the Pension Program, the Minister of Finance as the state treasurer has a hand in deciding every policy for the management of AIP. The management of AIP and the decision to directly participate in PT Lamicitra Nusantara and divestment in the form of stand/kiosk assets have also been approved by the Minister of Finance and advice from the Steering Team formed by the Minister of Finance. This is the difference between the wealth of SOEs and state finances in the form of AIP. With this mechanism, the Board of Directors of SOE X does not have the authority to tamper with AIP without the approval of the Minister of Finance, so there is little possibility of a conflict of interest in the Directors of SOE X. So that the condition of lack of nominal AIP due to AIP ownership of Rp60,113,460,491.00 cannot be asked for compensation to the Board of Directors of BUMN X.

CONCLUSION

Based on the description above, it can be concluded that, first, the Board of Directors of SOE X has met all the criteria of the Business Judgment Rule, so that the Directors of BUMN X cannot be held responsible for AIP losses incurred due to the ownership of JMP stands/kiosks. All policies carried out by the Board of Directors are not carried out alone and have received approval from the Ministry of Finance. Second, the Board of Directors of SOE X is allowed to cut losses or sell assets below the acquisition price to provide the possibility of more optimal returns and prevent greater losses. Third, the cause of AIP losses does not meet the criteria for state losses because it meets the criteria of "not due to fault or negligence, adequate analysis has been carried out, and there is no conflict of interest" AIP impairment is not a state loss or other losses in accordance with the provisions of laws and regulations. Fourth, because further provisions regarding cut loss and impairment of assets managed by the manager of the Pension Program related to state finances will be further regulated in the Government Regulation, then while waiting for the issuance of the Government Regulation, SOE X can prepare a cut loss option that will be carried out and start preparing for the sale of its 18 JMP stands/kiosks while providing proposals to the Minister of Finance.

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