



LEGAL POLICY ON ALLOCATING RESOURCES FOR PERTALITE SUBSIDIES: KALDOR-HICKS EFFICIENCY ANALYSIS

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ABSTRACT

This study aims to analyze the legal and political efficiency of the 2024 Peralite subsidy policy from a legal and economic perspective based on the Kaldor Hicks efficiency principle. The results show that the Peralite subsidy policy has not fully achieved economic and legal efficiency, as reflected in the negative net social benefits ranging from IDR 8–18 trillion per year. This condition indicates that the resulting social benefits have not exceeded the social costs borne by the state and society. The observed inefficiency is mainly caused by inaccuracies in targeting subsidy recipients, limited data integration between institutions, and a suboptimal legal framework governing the protection and management of digital data in the subsidy distribution system. From a normative perspective, the Peralite subsidy policy also requires further strengthening to be more aligned with the principles of efficient and fair economic resource management as mandated by Article 33 of the 1945 Constitution of the Republic of Indonesia.

A. INTRODUCTION

The Peralite fuel oil subsidy policy represents one of the largest forms of fiscal intervention within Indonesia's national economic system. This intervention is implemented to maintain energy price stability and the

purchasing power of the people, particularly those belonging to the middle- and lower-income groups. Based on data from the 2024 State Budget, the government allocated a total energy subsidy of IDR 92.98 trillion, with IDR 56.1 trillion of that amount designated as compensation for the Special Assignment Fuel Type (JBKP) Pertalite, which is used by more than 157 million motor vehicles across Indonesia.¹

When legal institutions are a system of legal norms to achieve a goal or activity that is considered important by society, a legal order/guideline for behavior in life to create security and order in society, and to protect various interests of society and create order in society, then law and legal institutions are a relationship that cannot be separated.² One of these priorities was to enact laws that would repeal or amend several existing regulations simultaneously.³ Constitutionally, the fuel subsidy policy has a firm foundation in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which states that the earth, water, and the natural resources contained therein shall be controlled by the state and utilized for the greatest prosperity of the people. This formulation affirms the dual function of the state as both regulator and executor of its socio-economic responsibilities toward its citizens. From the perspective of public law, the state's control over natural resources is not merely a matter of ownership but a constitutional mandate to regulate, manage, and distribute their benefits fairly and proportionally.⁴ Therefore, energy subsidies, including Pertalite, are not merely fiscal or economic policies but constitutional instruments aimed at realizing social justice as mandated in the Preamble and the body of the 1945 Constitution.

Indonesia, with its cultural diversity, abundant natural resources, and position as one of the world's largest archipelagic nations, has the potential to become a superpower.⁵ In Legal policy is a policy of the state through authorized bodies to establish the desired regulations, which are expected to be used to express what is desired,⁶ Although the energy subsidy policy has a strong legal foundation, its implementation particularly regarding Pertalite, still faces several empirical problems. Various studies and reports from international institutions indicate that fuel subsidies in Indonesia are often

1 Kementerian Keuangan Republik Indonesia., *APBN KiTa Desember 2024: Subsidi dan Kompensasi untuk Stabilisasi Harga, Menjaga Daya Beli, dan Mendukung UMKM*, (Jakarta: Kemenkeu, 2024): 11.

2 Andri Winjaya laksana, et.al., *Lembaga dan Pranata Hukum*, (Medan: Tahta Media Group, 2024): page.2

3 Widayati, Winanto, Andri Winjaya Laksana, Moh. Nurul Huda, Nur Fareha., "The Challenges of Using the Omnibus Law Method in Indonesia's Legal System", *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 8, Issue. 2 (2025): 459-477

4 Jimly Asshiddiqie., *Konstitusi Ekonomi Indonesia: Analisis Pasal 33 UUD 1945*, (Jakarta: Rajawali Pers, 2012): 87.

5 Budi Pramono, (etc)., "The State Defense Legal Politics: National Protection Based on Pancasila Justice", *Jurnal Hukum Unissula* 41, No. 2 (2025): 514-527

6 Uyan Wiryadi, Edy Dwi Martono., "Politik Hukum Dalam Pembentukan Peraturan Perundang-Undangan Nasional", *Jurnal Krisna Law* 6, No. 1 (Februari-Mei 2024): 1-10

mistargeted.⁷ Higher-income groups tend to receive a larger portion of the total fuel subsidies, while lower-income households receive much less. This condition reflects the regressive nature of the subsidy policy, in which the upper-income population enjoys greater benefits than the vulnerable groups.⁸ Such inefficiency not only reduces the effectiveness of welfare distribution but also places a significant burden on state finances. Subsidies that are intended as instruments of redistribution have, instead, become fiscal burdens that weaken the government's capacity to finance productive sectors such as education, health, and public infrastructure.⁹

To measure the extent to which the Peralite subsidy policy can be considered efficient, this study employs the Kaldor-Hicks Efficiency approach, a welfare economics criterion developed by Nicholas Kaldor and John Hicks in 1939.¹⁰ This theory explains that a public policy is considered efficient if the parties who benefit can, in theory, compensate those who are disadvantaged, thereby creating an increase in total social welfare even though inequality may still exist.¹¹ Thus, efficiency is not measured solely by distributive justice but by the balance between total social benefits and total social costs generated by the policy.¹² This approach is particularly relevant within the framework of public law in Indonesia because it integrates fiscal efficiency and accountability of the state budget as the rational foundation of economic law policymaking.¹³

In the context of public law, the application of the Kaldor-Hicks Efficiency theory is closely related to the principles of efficiency and proportionality in the management of state finances.¹⁴ According to Richard A. Posner, efficiency in public law can be understood as a condition in which legal and fiscal resources are utilized to produce maximum social benefits at the lowest possible cost without neglecting the principle of substantive justice.¹⁵ Therefore, a policy can be classified as legally efficient if the resulting net social benefits exceed the fiscal and administrative burdens incurred by the state. Within Indonesia's constitutional framework, this principle aligns with Article 23 paragraph (1) and Article 33 of the 1945 Constitution, which mandate that all state finances must be managed

7 N. Sa'diyah, A. Suryahadi, dan A. A. Yusuf., *Energy Subsidy Targeting and Distributional Effects in Indonesia*, (Jakarta: SMERU Policy Brief SMERU Research Institute, 2025): 4.

8 F. J. Arze del Granado, D. Coady, dan R. Gillingham., "The Unequal Benefits of Fuel Subsidies: A Review of Evidence for Developing Countries", *World Development* 40, No. 11 (2012): 2234–2248

9 R. Pradipto dan G. A. Sahadewo., *Evaluasi Efisiensi Subsidi Energi di Indonesia*, Universitas (Yogyakarta: Gadjah Mada Press, 2022): 31

10 Nicholas Kaldor., "Welfare Propositions of Economics and Interpersonal Comparisons of Utility", *The Economic Journal* 49, No. 195 (1939): 549–552

11 J. R. Hicks., "The Foundations of Welfare Economics", *The Economic Journal* 49, No. 196 (1939): 696–712.

12 E. J. Mishan dan E. Quah., *Cost-Benefit Analysis*, 5th ed, (London: Routledge, 2007):13

13 R. A. Posner., *Economic Analysis of Law*, 9th ed., (New York: Wolters Kluwer, 2014): 15

14 R. A. Musgrave dan P. B. Musgrave., *Public Finance in Theory and Practice*, (New York: McGraw-Hill, 1989): 62

15 R. A. Posner., *Economic Analysis of Law*, 9th ed, (New York: Wolters Kluwer, 2014): 17

transparently and responsibly for the greatest prosperity of the people. Consequently, the failure of subsidy policies to balance fiscal efficiency and social justice can be considered a form of government failure in fulfilling the constitutional obligation to manage public resources effectively.¹⁶

Various international studies emphasize that the reform of energy subsidies is a crucial step toward improving fiscal efficiency and achieving equitable welfare. Del Granado, Coady, and Gillingham argue that fuel subsidies in developing countries are generally unequal and even worsen economic disparities between social groups.¹⁷ Meanwhile, Rentschler and Bazilian found that the success of subsidy reform depends largely on a country's ability to integrate beneficiary data and strengthen social compensation mechanisms.¹⁸ The International Monetary Fund (IMF, 2019) also stresses the importance of applying welfare-based criteria, such as the Kaldor-Hicks Efficiency, to ensure that public subsidies generate net social benefits rather than long-term fiscal burdens.¹⁹ In comparison, countries such as India, Malaysia, and Iran have implemented similar reforms with varying results. India, through the PAHAL (Direct Benefit Transfer) program, channels LPG subsidies directly into the beneficiaries' bank accounts using the national digital identity (Aadhaar) system, resulting in savings of around 30% of its annual subsidy budget.²⁰ Malaysia has implemented the MySejahtera and MyKad integration systems to restrict fuel subsidy recipients to lower-income groups.²¹ Conversely, Iran adopted a more radical reform by converting energy subsidies into universal cash transfers, saving up to USD 60 billion per year but causing high inflation due to weak fiscal countermeasures.²²

At the national level, Indonesia has begun to pursue reforms in energy subsidy policy through the utilization of digital systems in its distribution mechanisms, one of which is the implementation of the MyPertamina platform. This initiative is designed to link data on subsidy beneficiaries with population databases and vehicle ownership information through the use of quick response (QR) codes, with the aim of ensuring that

16 J. E. Stiglitz., *People, Power, and Profits: Progressive Capitalism for an Age of Discontent*, (New York: W. W. Norton & Company, 2020): 92

17 F. J. Arze del Granado, D. Coady, dan R. Gillingham., *Op.Cit* : 2234–2248.

18 Rentschler, J., & Bazilian, M., "Reforming Fossil Fuel Subsidies: Drivers, Barriers And The State Of Progress", *Climate Policy* 17, No. 7 (2017): 891–914.

19 D. Coady, I. Parry, N. P. Le, dan B. Shang., *Global Fossil Fuel Subsidies Remain Large: An Update Based on Country-Level Estimates*, (Washington, DC: IMF Working Paper No. 19/89 International Monetary Fund, 2019): 3

20 A. Ghosh., *Direct Benefit Transfers and Welfare Reform in India: Lessons from the PAHAL Programme*, (New Delhi: Oxford University Press, 2020): 51

21 Y. J. Loke dan P. L. Tan, "Public Acceptance and Resistance Towards Fuel Subsidy Rationalization in Malaysia", *Energy Policy* 156 (2021): 112415

22 D. Salehi-Isfahani., *Energy Subsidy Reform in Iran: Lessons and Challenges dalam The Middle East Economies in Times of Transition*, diedit oleh A. Galal dan I. Diwan (Cham: Palgrave Macmillan, 2016): 182–190.

subsidies are more precisely targeted to eligible groups within society.²³ This digitalization policy is consistent with the National Medium-Term Development Plan for 2020–2024, which positions subsidy governance reform as part of a broader agenda to enhance fiscal efficiency, administrative transparency, and social justice.²⁴ From a law and economics perspective, the use of digital technology such as MyPertamina in subsidy distribution reflects the evolution of public administrative law toward a more efficient model of policy management by reducing state transaction costs.²⁵ Nevertheless, the effectiveness of this policy is highly dependent on the readiness of the legal framework, the assurance of personal data protection, and the degree of coordination among the institutions involved. Where these prerequisites are not adequately met, subsidy digitalization may instead give rise to institutional inefficiencies, manifested in increased implementation burdens resulting from bureaucratic fragmentation and weak legal certainty.

Previous studies in Indonesian economic law have similarly emphasized that fuel subsidies derive their legitimacy from Article 33 of the 1945 Constitution and must therefore be evaluated not merely as fiscal policies but as manifestations of the state's redistributive obligation.²⁶ In line with international literature, earlier empirical analyses have demonstrated that generalized fuel price subsidies disproportionately benefit higher-income groups, thereby weakening their social justice rationale and imposing significant burdens on state finances.²⁷ This study also aligns with prior applications of the Kaldor–Hicks efficiency criterion in public policy analysis, which assess efficiency based on whether total social benefits outweigh total social costs rather than on distributional equality alone. Furthermore, comparable research on subsidy reform in developing countries has underscored the growing reliance on digital governance, beneficiary targeting, and institutional integration, as evidenced by reforms in Iran, India and Malaysia.²⁸

This study aims to provide a comprehensive evaluation of the 2024 Peralite subsidy policy using the Kaldor-Hicks Efficiency approach within the framework of economic law. Specifically, this has three objectives, the first is assess the level of fiscal efficiency of the subsidy policy by comparing total social benefits and total social costs; second is identify the factors causing inefficiency, including institutional, administrative, and legal obstacles in the

23 Triwibowo, D., A. Setiawan, dan R. Siregar., *Evaluasi Kebijakan Penyaluran BBM Bersubsidi Melalui Sistem Digitalisasi MyPertamina*, (Jakarta: Universitas Indonesia Press, 2025): page.44

24 Badan Perencanaan Pembangunan Nasional (Bappenas)., *Rencana Pembangunan Jangka Menengah Nasional 2020–2024*, (Jakarta: Kementerian PPN/Bappenas, 2024): 117

25 Bintarto, Bidul, dan Zaid., *Penerapan Economic Analysis of Law dalam Kebijakan MyPertamina*, (Jakarta: Universitas Borobudur Press, 2022): 65

26 Maria Farida Indrati., "Prinsip Negara Kesejahteraan dalam Kebijakan Fiskal", *Jurnal Konstitusi* 9, No. 3 (2012): 456–458.

27 Del Granado, Coady, and Gillingham., "The Unequal Benefits of Fuel Subsidies", *World Development* 40, No. 11 (2012): 2234–2236.

28 Rentschler and Bazilian., *Op.cit* : 900–903

digitalization of subsidies through the MyPertamina system; and third is formulate legal and institutional reform directions toward a subsidy system that is fiscally efficient, institutionally transparent, and socially just.²⁹

B. RESEARCH METHODS

This study employs a normative juridical. Normative research methods are intellectual guessing activities to find legal norms as the basis for justifying a legal phenomenon.³⁰ Normative juridical research essentially focuses on the analysis of data or materials that refer to legal norms codified in statutory regulations.³¹ The data are derived from various written sources, including books, journal articles, seminar proceedings, academic papers, legal dictionaries, legal encyclopedias, and other relevant legal materials.³²

C. RESULTS AND DISCUSSION

1. Efficiency of the Peralite Subsidy Policy Based on the Kaldor-Hicks Criterion

The energy subsidy policy, particularly for the Peralite type of fuel oil (BBM), represents one of the most significant forms of fiscal intervention in maintaining national economic stability. The government implements this policy to suppress inflation, maintain purchasing power, and protect low-income groups from fluctuations in global oil prices. However, in the context of public economic law, the effectiveness of a subsidy cannot be measured solely by its ability to stabilize prices but must also be evaluated in terms of how efficient and legally accountable the policy is.³³

The Kaldor-Hicks Efficiency theory, introduced by Nicholas Kaldor and John Hicks, states that a public policy is considered efficient if the parties who gain benefits can, in theory, compensate those who are disadvantaged without reducing the overall level of social welfare.³⁴ In the context of energy subsidies, a policy is regarded as efficient if the total social benefit (TSB) exceeds the total social cost (TSC). Conversely, if the TSC is greater than the TSB, the policy creates a deadweight loss or a net welfare loss. In Indonesia's economic law, this concept is relevant because it links fiscal efficiency with the state's legal obligations as stipulated in Article 3 paragraph (1) of Law Number 17 of 2003 on State Finance, which emphasizes that state finances must be managed in an orderly, efficient, economical, effective, transparent, and accountable manner for the prosperity of the people.

29 E. Indriyani dan W. W. Purwanto, "Fiscal Sustainability and Welfare Trade-offs in Indonesia's Fuel Subsidy Policy," *Energy Economics* 127 (2024): 107024

30 Tunggul Ansari Setia Negara, Normative Legal Research in Indonesia: Its Originis and Approaches. *Audito Comparative Law Journal (ACLJ)* 4, No. 1, (2023): 1–9.

31 Soerjono Soekanto dan Sri Mahmudji., *Penelitian Hukum Normatif, Suatu Tinjauan Singkat*, (Jakarta: Raja Grafindo Persada, 2003): 13

32 Muhaimin., *Metode Penelitian Hukum*, (Mataram: Mataram University Press, 2020): 124

33 Nicholas Kaldor., *Op.Cit* : 549–552

34 John R. Hicks., *Op.Cit* : 696–712.

The assessment of the efficiency of the Pertilite subsidy policy in this study is based on the cost–benefit analysis (CBA) approach as an instrument of social welfare analysis commonly used in the perspective of economic law. This approach positions policy efficiency on the comparison between the social benefits generated and the social costs borne by the state and society. In the context of energy subsidies, social benefits include direct benefits received by targeted consumers as well as indirect benefits in the form of macroeconomic stabilization, while social costs consist of the fiscal burden of the subsidy and the opportunity cost of allocating state budget resources away from potentially more productive sectors. Formally, direct benefits are calculated as the difference between the economic price and the retail price multiplied by the volume of consumption and the percentage of targeted consumers, around 80% of Pertilite consumption is used by lower-middle-income groups and MSME actors.³⁵ With an economic price of IDR 11,700 per liter and a retail price of IDR 10,000 per liter, and a total consumption of 33 billion liters. Based on this calculation, the estimated direct beneficiaries amount to approximately IDR 44.88 trillion. Additional indirect benefits in the form of inflation stabilization are estimated at IDR 3 trillion.³⁶ Accordingly, the total social benefit (TSB) is estimated at approximately IDR 48 trillion.

Meanwhile, the total social cost (TSC) includes subsidy compensation of IDR 56.1 trillion plus an opportunity cost of approximately IDR 5 trillion (9% of the total subsidy equals IDR 61.1 trillion). Consequently, the resulting net social benefit (NSB) is negative, amounting to IDR –13.1 trillion, indicating a welfare deficit of IDR 13.1 trillion. The negative value indicates that the Pertilite subsidy policy is not yet efficient either economically or legally.³⁷

The gap reflects a direct form of price intervention by the state to maintain public purchasing power stability, while also revealing significant fiscal pressure on the State Budget (APBN).³⁸ From the perspective of economic law, this condition raises concerns regarding the rationality and sustainability of the policy, particularly when the subsidy is not fully targeted and is potentially enjoyed by groups that are not economically intended as primary beneficiaries. The perspective of public economic law, such an unequal allocation raises issues of efficiency and intersectoral justice because public funds tend to flow toward short-term

35 Dunn, William N., *Public Policy Analysis: An Introduction*, 6th ed, (New York: Routledge, 2018): 90

36 Boardman, Anthony E., David H. Greenberg, Aidan R. Vining, and David L. Weimer, *Cost–Benefit Analysis: Concepts and Practice*, 5th ed (Cambridge: Cambridge University Press, 2018): 64

37 Mishan, E. J., and Euston Quah., *Cost–Benefit Analysis*, 5th ed, (London: Routledge, 2007): page.46–48.

38 Kementerian Keuangan Republik Indonesia., *APBN Kita Desember 2024: Subsidi dan Kompensasi untuk Stabilisasi Harga*, (Jakarta: Kemenkeu, 2024): 5

consumption rather than long-term economic development.³⁹

Accordingly, it can be argued that the Peralite subsidy policy does not yet meet the efficiency criteria within the framework of economic law. The imbalance between social benefits and social costs, the high fiscal burden, and the limited effectiveness of subsidy distribution indicate the need for normative and institutional restructuring. Energy subsidy reform should therefore be directed toward improving targeting accuracy, strengthening data governance, and shifting toward a beneficiary-based subsidy model to ensure alignment with the principles of efficiency and social justice in the management of state resources.

Based on the cost-benefit analysis calculation in Table 3, the negative Net Social Benefit (NSB) value in all scenarios shows that the Peralite subsidy has not met the efficiency criteria according to the Kaldor-Hicks Efficiency approach. Economically, this means that the total social cost borne by the state is greater than the social benefit received by society.⁴⁰ From the perspective of economic law, these results reflect a form of institutional inefficiency, in which the large fiscal burden is not balanced by a proportional increase in public welfare. This also indicates the existence of government failure, because the administrative, monitoring, and distribution costs of the subsidy are higher than the social benefits produced.⁴¹ In this context, the Peralite subsidy policy has not fulfilled the basic principles of state financial law as stated in Article 3 paragraph (1) of Law Number 17 of 2003, which emphasizes that the management of state finances must be carried out efficiently, economically, effectively, transparently, and responsibly for the greatest prosperity of the people.

The perspective of public administrative law,⁴² the negative NSB value also becomes an indicator of a violation of the principles of fiscal accountability and administrative legality in the preparation and implementation of subsidy policies. The government, as the budget holder, is obliged to ensure that every policy using public funds produces a positive net social benefit. If the benefits generated are not proportional to the costs, then the policy loses its legal legitimacy. Therefore, the negative results in this efficiency analysis not only show an economic technical problem but also emphasize a normative issue, namely that public legal accountability in the use of energy subsidy budgets has not yet been realized.⁴³

39 Badan Perencanaan Pembangunan Nasional (Bappenas), *Kajian Reformasi Subsidi Energi dan Dampaknya terhadap Ketimpangan Fiskal*, (Jakarta: Bappenas, 2023): 11

40 Nicholas Kaldor., *Op.Cit* : 549–552

41 Joseph E. Stiglitz., *Economics of the Public Sector*, 4th ed, (New York: W.W. Norton & Company, 2020): 101

42 Nurhadi, Sitta Saraya, Andri Winjaya Laksana, Kusroh Lailiyah, and Yusrina Handayani., "Synergy of Administrative Law and Criminal Law in Combating Corruption in Indonesia: Sinergi Hukum Administrasi dan Hukum Pidana Dalam Penanggulangan Korupsi di Indonesia." *Mendapo: Journal of Administrative Law* 6, No. 2 (2025): 106-120.

43 Rachmadi Usman, *Hukum Keuangan Negara*, (Jakarta: Sinar Grafika, 2022): 88.

2. Structural Factors and Challenges in the Implementation of Peralite Subsidy Digitalization

The sustainability of efficiency in the Peralite subsidy policy is determined not only by fiscal aspects but also by institutional factors that affect implementation in the field. The government, through PT Pertamina Patra Niaga, introduced the MyPertamina digitalization system to improve targeting accuracy and transparency of energy subsidies. However, the implementation of this digitalization faces several structural obstacles that directly affect policy effectiveness, particularly related to data integration, beneficiary verification, and the readiness of digital infrastructure in the regions.⁴⁴

The 2024 report of the Downstream Oil and Gas Regulatory Agency (BPH Migas) recorded that out of 5,518 Public Fuel Filling Stations (SPBU) operating, only around 78 percent have been fully connected to the MyPertamina system. This condition causes the potential for subsidy leakage to remain high, especially in non-urban areas. In addition, the data verification mechanism based on the Population Identification Number (NIK) and vehicle registration number (license plate) has not yet operated optimally, so that some subsidy recipients do not meet the criteria as stipulated in Presidential Regulation Number 191 of 2014 concerning the Supply, Distribution, and Retail Selling Price of Fuel Oil.

From the perspective of administrative law,⁴⁵ this condition shows a discrepancy between policy norms and the institutional capacity of the implementer. Legal instruments have indeed regulated the principles of accountability and subsidy supervision, but the technical capacity of the bureaucracy has not yet fully supported implementation in the field. In the context of the Peralite subsidy, this weak institutional capacity affects the effectiveness of supervision and the accuracy of subsidy recipient data.⁴⁶

The energy subsidy policy also involves various institutions such as the Ministry of Energy and Mineral Resources (ESDM), the Ministry of Finance, Bappenas, Pertamina, and BPH Migas. The lack of interagency coordination causes subsidy recipient data to be unsynchronized, resulting in duplication of recipients and making evidence-based policy evaluation difficult. In public administrative law, this condition can be categorized as a form of structural maladministration, where coordination among government units does not function according to the principles of effectiveness and accountability.⁴⁷

44 BPH Migas., *Laporan Tahunan 2024*, (Jakarta: BPH Migas, 2024): 42

45 Laksana, Andri Winjaya, Adhi Budi Susilo, Peni Rinda Listyawati, Setiawan Widiyoko, and Toni Triyanto., "Legal Uncertainty in Law Enforcement for Drug Addicts Resulting in Criminal Disparity." *Yuridika* 40, No. 2 (2025): 253-270.

46 Kementerian ESDM., *Evaluasi Implementasi Subsidi BBM Tahun 2024*, (Jakarta: KESDM, 2024): 29.

47 BPH Migas., *Laporan Pengawasan Subsidi Energi 2024*, (Jakarta: BPH Migas, 2024): 48.

The most of the public considers the MyPertamina digitalization system to still be complicated and to increase administrative burdens, especially for rural communities. Low digital literacy slows down the registration process, causes long queues, and generates resistance toward the new system.⁴⁸ The digitalization that is intended to increase efficiency instead has the potential to create new inefficiencies in the distribution of subsidized fuel (BBM).

From the perspective of public governance law, this condition shows a gap between normative policy and implementation reality. Conceptually, digitalization is in line with the principles of good governance, but empirically it has not yet been able to close the gap of subsidy leakage caused by weak institutional coordination and legal supervision.⁴⁹ Therefore, institutional strengthening and the integration of cross-sectoral digital systems with a clear legal foundation are required to ensure accountability and legitimacy in the governance of national energy subsidy policy.⁵⁰

3. Legal and Policy Reform of the Peralite Subsidy Toward Efficiency and Social Equity

In the theory of law and economics, a public policy is considered efficient if the social benefits it produces are greater than the social costs borne by the state.⁵¹ However, fiscal efficiency cannot be separated from the principle of equity. The price-subsidy model such as Peralite does not fulfill this principle because all consumers both high-income and low-income receive the same benefit. Based on data from Bappenas (2023), around 60–70 percent of subsidies are actually enjoyed by non-target groups.⁵²

Reform is directed toward a beneficiary-based subsidy system (targeted transfer), which places subsidies as a legal right of low-income citizens, not a consumptive right of all energy users. Beneficiaries are verified using the Integrated Social Welfare Data (DTKS) and population data (Dukcapil) so that the distribution of subsidies can be accounted for both administratively and legally. This approach reduces transaction costs and strengthens the principle of accountability in public policy.⁵³

Thus, subsidies are not only economic instruments but also legal mechanisms for redistributing welfare, reaffirming the function of the state as a social regulator and an economic balancer. Within the

48 LPEM FEB UI., *Survei Efektivitas Digitalisasi Subsidi BBM di Indonesia*, (Jakarta: LPEM FEB UI, 2023): 15.

49 Kementerian Keuangan Republik Indonesia., *Kajian Fiskal Kebijakan Subsidi Energi Nasional*, (Jakarta: Kemenkeu, 2024): 33.

50 Kementerian ESDM., *Rencana Penguatan Sistem Digitalisasi Subsidi Energi 2024–2025*, (Jakarta: KESDM, 2024): 37.

51 Nicholas Kaldor., *Op.Cit*, page.549

52 Badan Perencanaan Pembangunan Nasional, *Evaluasi Subsidi Energi Nasional Tahun 2023*, (Jakarta: Bappenas, 2023): 42

53 Joseph E. Stiglitz, *Loc.Cit* : 317

framework of economic law, when a subsidy is predominantly enjoyed by groups that are not the intended policy targets, it loses its legal character as an instrument of social protection and instead becomes a disproportionate consumptive policy. Accordingly, energy subsidies should be positioned as conditional legal entitlements for low-income citizens, the applicability of which is determined through administrative verification based on population and welfare data.⁵⁴ This argument underscores that subsidy rationalization is not merely a matter of fiscal policy choice, but rather a legal obligation of the state to ensure that every public expenditure generates measurable and equitable social benefits.

The main weakness of the subsidy policy in Indonesia lies in institutional fragmentation. The Ministry of Energy and Mineral Resources (ESDM), the Ministry of Finance, BPH Migas, and Pertamina Patra Niaga still manage data separately without national integration, resulting in unsynchronized recipient data and increasing the risk of budget misuse.⁵⁵

Institutional reform is needed through the development of an integrated national cross-agency database. This model enables real-time verification of subsidy recipients and supports public audit as well as legal supervision over energy spending. Data integration represents a form of institutional efficiency that ensures the policy can be evaluated based on fiscal and administrative evidence.⁵⁶

In addition, the aspect of legal protection of personal data must become a priority. Evaluations by APTIKOM (2023) and BPH Migas (2024) found potential data leakage of MyPertamina users due to the absence of a cross-agency encryption system and weak cyber auditing. The implementation of Law Number 27 of 2022 concerning Personal Data Protection serves as an important legal basis to strengthen the legitimacy of subsidy digitalization policy while protecting citizens' rights to data security.

From the perspective of public law, this reform also represents the application of the principle of economic efficiency in law enforcement,⁵⁷ in which the efficiency of public policy is measured not only by fiscal savings but also by the government's ability to ensure distributive justice and administrative transparency. In this context, the

54 R. Kaharudin Gobel, B. S. Laksmono, M. Huseini & M. Siscawati., "Equity and Efficiency: An Examination of Indonesia's Energy Subsidy Policy and Pathways to Inclusive Reform", *Sustainability* 16, No. 407 (2024): 7

55 Kementerian Energi dan Sumber Daya Mineral (KESDM)., *Laporan Tahunan Subsidi BBM 2024*, (Jakarta: KESDM, 2024): 27.

56 Richard A. Musgrave dan Peggy B. Musgrave., *Public Finance in Theory and Practice*, (New York: Fifth Edition, McGraw-Hill, 1989): 226.

57 Laksana, Andri Winjaya, Anis Mashdurohatun, Sri Endah Wahyuningsih, and Yudha Purnawan Sudijanto. "Reconstruction Of Law Enforcement Regulation Against Criminal Actions Performed By Children Based On The Value Of Justice Of Pancasila." *Russian Law Journal* 11, No. 5 (2023): 2489-2497.

effectiveness of public legal policy is determined not only by the precision of legal instruments and institutional capacity but also by social acceptance of the legal norms themselves. In line with Ade Saptomo's view, legal culture is a normative value that connects the formal legal system with the social behavior of the community. Without attention to legal culture, public legal policy tends to lose its sociological legitimacy. Therefore, digital-based energy subsidy reforms such as MyPertamina need to be aligned with the community's legal culture so that the achieved fiscal efficiency continues to carry social legitimacy and a sense of justice that lives within society.⁵⁸

The legal reform of energy subsidies is not only aimed at reducing the state's fiscal burden but also at ensuring that subsidies reach the groups of society that truly need them. The principles of fiscal efficiency and social equity must go hand in hand: efficiency saves public funds, while equity ensures that the benefits are accurately targeted.⁵⁹ The government can reallocate price subsidies into direct energy assistance (Energy Cash Transfer/BLT Energi) or incentives for public transportation based on national population data. This approach maintains the purchasing power of low-income groups without causing price distortions and without increasing the burden on the State Budget (APBN).⁶⁰

Legally verified digitalization system, energy subsidies can become policy instruments that are efficient, measurable, and equitable not merely short-term fiscal political tools. From the perspective of administrative law and public finance law, subsidy policies that fail to generate a positive net social benefit and are not properly targeted may be regarded as violating the principles of proportionality and the lawful purpose of public financial expenditure.⁶¹ Accordingly, the transformation of price-based subsidies into direct energy assistance or population data-based incentives is not merely a policy solution, but a legal consequence of the state's obligation to manage public finances in a responsible manner. This view expands the meaning of social justice from a purely normative objective into a juridical standard that can be employed to assess the legality of energy subsidy policies.

The experience of energy subsidy reforms in various countries provides important lessons for Indonesia. India, through the PAHAL (Direct Benefit Transfer) program, channels LPG subsidies directly into recipients' bank accounts using the Aadhaar digital identity system. This program succeeded in saving more than 30 percent of the subsidy

58 Ade Saptomo., *Budaya Hukum dan Efektivitas Penegakan Hukum di Indonesia*, (Jakarta: Universitas Borobudur Press, 2025): 45.

59 Kementerian Keuangan Republik Indonesia., *Kajian Fiskal Kebijakan Subsidi Energi Nasional*, (Jakarta: Kemenkeu, 2024): 33

60 World Bank., *Indonesia Public Expenditure Review: Spending for Better Results*, World Bank Group, Jakarta, 2023, page.48.

61 M. Zainul Abidin., "Konstitusionalitas Kebijakan Belanja Subsidi Bahan Bakar Minyak dalam Anggaran Pendapatan dan Belanja Negara", *Jurnal Konstitusi* 10, No. 2 (2013): 270.

budget and significantly reduced leakage.⁶² The reform of LPG subsidies through the Direct Benefit Transfer (PAHAL) scheme is not merely regarded as a fiscal cost-saving measure, but also as a reconfiguration of state authority in ensuring that subsidies are granted as conditional entitlements to citizens who are legally verified through the national digital identity system.

Malaysia implemented the MyKad and MySejahtera systems to link fuel purchases with population data, ensuring that subsidies are received only by low-income groups and small-vehicle owners.⁶³ Malaysia has adopted a similar approach by linking fuel subsidies to the national population identification system, thereby treating subsidies as a redistributive legal instrument subject to the principles of legality and administrative oversight.

Meanwhile, Iran carried out an extreme reform by converting energy subsidies into universal cash assistance for all households. The reform initially saved around USD 60 billion per year but triggered high inflation because the increase in energy prices was not accompanied by strict fiscal policies.⁶⁴ Iran's experience demonstrates that subsidy reforms which disregard the principles of proportionality and legal preparedness, although fiscally efficient at the initial stage, ultimately generate economic instability and a loss of social legitimacy.

These three examples show that the success of energy subsidy reform greatly depends on national data integration, legal preparedness, and effective public communication. This comparative perspective reinforces the legal argument that energy subsidies which are not beneficiary-based, lack data integration, and are not adequately protected by legal frameworks may violate the principles of efficiency and accountability in public financial management.

Indonesia is in a stronger position because it already has a solid population and welfare data system through Dukcapil and DTKS. The main challenge now lies in strengthening interagency legal coordination and affirming the legal foundation for public oversight.⁶⁵ Accordingly, the constitutional justification for the continuation of the Peralite subsidy policy can only be sustained if subsidy reform is positioned as a legal obligation of the state, aligned with international best practices, while remaining consistent with Article 33 of the 1945 Constitution of the Republic of Indonesia and the national legal system.

If this can be achieved, the Peralite subsidy policy has the potential to become a model for implementing legal efficiency and social

62 Govinda Rao dan Surabhi Tandon., *Direct Benefit Transfers in India: Impacts and Implications*, (New Delhi: National Institute of Public Finance and Policy, 2018): 27.

63 Yoon Ling Loke dan Soo Yin Tan., *Malaysia's Fuel Subsidy Reform and Digital Identification System*, (Kuala Lumpur: Institute of Strategic and International Studies, 2021): 33.

64 International Monetary Fund (IMF)., *Energy Subsidy Reform in the Middle East and Central Asia*, (Washington D.C: IMF Publications, 2023): 56

65 Kementerian Sosial Republik Indonesia., *Pedoman Teknis Pemutakhiran Data Terpadu Kesejahteraan Sosial (DTKS)*, (Jakarta: Kemensos RI, 2023): 9.

equity in national energy governance. Overall, the analysis results show that fiscal efficiency and social equity cannot be separated in energy subsidy policy. The Kaldor-Hicks Efficiency approach can only obtain legal legitimacy if the policy aligns with the principle of proportionality and the state's constitutional responsibility in managing public finances.⁶⁶ Therefore, the reform of the Peralite subsidy should be viewed not merely as a budget-saving effort but as a reinforcement of the rule of law in national energy governance.

D. Conclusion

The Peralite subsidy policy has not achieved the expected level of efficiency, both from an economic perspective and within the public law framework. This is evidenced by the results of the Kaldor-Hicks efficiency assessment, which shows that the net social benefit (NSB) remains negative, meaning that the total social costs borne by the state exceed the social benefits received by the community. This finding reflects the imbalance between the social objectives of the subsidy policy and the resulting fiscal burden, while also indicating that the principles of efficiency, proportionality, and accountability in state financial management have not been optimally implemented, as mandated by Law Number 17 of 2003 concerning State Finance and Article 33 of the 1945 Constitution of the Republic of Indonesia. Such reforms are needed to ensure that the energy subsidy policy is not only normatively legitimate but also capable of generating positive net social benefits, promoting social justice, and maintaining the country's long-term fiscal sustainability.

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66 Boedi Harsono., *Hukum Ekonomi dan Keadilan Sosial dalam Tata Kelola Energi Nasional*, (Jakarta: Ghalia Indonesia, 2022): 74.

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