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Retail Fuel Sales in a Regulatory Grey Area: Consumer Protection and Civil Liability Perspectives

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Abstract

Retail fuel sales have evolved into a form of informal energy distribution, driven by the limited reach of Indonesia's formal fuel distribution system. Despite its growing role in supporting community mobility and microeconomic activities, the practice simultaneously raises legal concerns regarding consumer protection, public safety, and civil liability. This study aims to examine the characteristics of civil legal relations arising from retail fuel sales practices, the implications of the absence of regional regulations on the liability of business actors, and the urgency of developing a more adaptive risk-based regulatory framework. The research employs a normative juridical method strengthened by contextual empirical analysis through statutory, doctrinal, and conceptual approaches related to consumer protection, tort law, and risk-based regulation. The findings show that retail fuel sales create a high-risk private legal relationship because the transaction involves flammable substances distributed without adequate safety standards, metrological supervision, or operational safeguards. The absence of regional regulations has resulted in unclear standards of care, disproportionate allocation of legal risks, and weakened legal protection for both consumers and micro-scale business actors. In this context, Pertamini operates within a regulatory grey area because it functionally resembles a fuel sub-distributor while lacking a clear legal classification within Indonesia's downstream oil and gas regulatory regime. This study argues for the establishment of a risk-based regulatory framework that recognizes retail fuel sales as a supervised micro-enterprise subject to limited legality, minimum safety standards, proportional supervision mechanisms, and stronger consumer protection measures.

A. Introduction

The distribution of fuel oil (BBM) in Indonesia is fundamentally governed through a centralized national energy management system supported by strict safety standards and direct state supervision.[1] This regulatory framework is based on the understanding that fuel constitutes a strategic commodity with a high level of risk, requiring its distribution process to remain under clear legal control and limited to officially authorized distribution entities.[2] Nevertheless, contemporary developments in energy governance indicate that the formal fuel distribution system has not always been capable of meeting community needs evenly across different regions. This condition becomes particularly visible in urban and semi-urban areas

[1] Riza Dian Triwibowo and Sidik Pramono, "Kajian Implementasi Pengawasan Subsidi Bahan Bakar Minyak (BBM) Di Indonesia: Perspektif Teori Daniel A. Mazmanian Dan Paul A. Sabatier," *Jurnal Nasional Pengelolaan Energi MigasZoom* 7, no. 1 (2025): 61–72, https://doi.org/https://doi.org/10.37525/mz/2025-1/1090.
[2] Suharyati et al., *Outlook Energi Indonesia 2023* (Jakarta: Sekretariat Jenderal Dewan Energi Nasional, 2023), https://suaraenergi.com/wp-content/uploads/2024/01/Buku-Outlook-Energi-Indonesia-2023-2033-suaraenergi.com .pdf.

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where growing microeconomic activities are not consistently accompanied by adequate fuel distribution infrastructure. As a consequence, various informal distribution mechanisms have gradually emerged to fill the gap between public demand and the limited accessibility of formal fuel services.

One of the most prominent manifestations of this phenomenon is the increasing practice of retail fuel sales conducted through small kiosks, roadside stalls, residential premises, and, more recently, through "Pertamini" fuel dispensers that imitate the operational appearance of formal gas stations.[3] In practice, retail fuel sales are no longer perceived merely as temporary subsistence activities, but rather as relatively permanent economic enterprises closely connected to the daily mobility needs of local communities. This phenomenon can be found in many regions throughout Indonesia, including Ternate City, where retail fuel vendors continue to operate extensively despite the absence of a clear and comprehensive regulatory framework governing their activities. Various local media reports further demonstrate that retail fuel sellers, particularly those utilizing Pertamini machines, continue to conduct fuel distribution under limited supervision, even in circumstances where fuel allocation should primarily prioritize public consumer needs.[4]

The expansion of such practices simultaneously raises serious legal and public safety concerns because fuel distribution activities are conducted using facilities that were never designed for the storage and circulation of flammable substances. Several incidents of fire hazards associated with retail fuel sales have intensified public debate regarding the urgency of government intervention. The Regional House of Representatives (DPRD) of Ternate City, for instance, has identified uncontrolled retail fuel sales as one of the contributing factors to increasing fire risks within residential areas.[5] The existence of fuel kiosks operating near densely populated settlements is considered capable of endangering public safety while increasing the potential for localized fires and property damage. These circumstances indicate that the issue surrounding retail fuel sales extends beyond administrative licensing violations and directly concerns the broader protection of public safety and consumer interests.

From a legal perspective, the problem becomes more complex because retail fuel sales continue to operate amid the absence of regional regulations specifically governing operational standards, licensing mechanisms, safety requirements, and supervisory procedures. Within the framework of administrative law and energy law, this condition may be understood as a form of regulatory omission, namely a situation in which social and economic activities continue to develop outside the formal structure of legal certainty despite their persistent existence within society.[6] In this position, local governments face a regulatory dilemma between enforcing administrative order and accommodating socioeconomic realities in which communities still rely heavily upon informal fuel distribution systems. Existing policy discussions largely remain at the level of regulatory discourse without a clear direction

[3] MAPID, "Ketimpangan Energi Di Indonesia: Studi Kasus Distribusi SPBU Dan Bensin Eceran," mapid.co.id, 2025, https://mapid.co.id/blog/geodata-ketimpangan-energi-di-indonesia-studi-kasus-distribusi-spbu-dan-bensin-eceran.
[4] Redaksi Haliyora, "Soal Regulasi Penjualan BBM Eceran, Pemkot Ternate Butuh Formula Yang Tepat," haliyora.id, 2025, https://haliyora.id/2025/07/02/soal-regulasi-penjualan-bbm-eceran-pemkot-ternate-butuh-formula-yang-tepat/.
[5] Redaksi Haliyora, "Kerap Picu Kebakaran, Komisi I Minta Pemkot Ternate Atur Pengecer BBM," haliyora.id, 2025, https://haliyora.id/2025/06/11/kerap-picu-kebakaran-komisi-i-minta-pemkot-ternate-atur-pengecer-bbm/.
[6] Ridwan HR., *Hukum Administrasi Negara*, Ed. Revisi (Jakarta: Rajawali Pers, 2018).

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concerning the scope of regional authority and the legal mechanisms necessary to govern such activities effectively.

The absence of regional regulations concerning business classification, operational standards, safety requirements, and supervision mechanisms has consequently placed retail fuel sales within a regulatory grey area. The activity is neither explicitly legalized nor strictly prohibited under existing regional governance structures. Several contemporary studies emphasize that regulatory grey areas constitute one of the primary sources of legal uncertainty because they create unclear standards of conduct, weaken public protection mechanisms, and simultaneously expose micro-business actors to disproportionate legal risks.[7;8] Under these conditions, state responses have predominantly relied upon sporadic administrative enforcement and incidental prohibition measures that primarily frame retail fuel sales as issues of licensing and public order. In reality, however, the practice also creates a continuous private legal relationship between business actors and consumers that cannot be separated from the principles of consumer protection and civil liability.[9]

Every retail fuel transaction essentially constitutes a sale and purchase agreement that generates reciprocal rights and obligations between the seller and the consumer.[10] The legal problem arises because the object of the transaction involves hazardous and highly flammable substances distributed without adequate operational safeguards, standardized safety procedures, or reliable information concerning product quality and storage conditions. Such circumstances create significant risks of physical injury, property damage, and economic loss. In modern private law theory, business actors distributing dangerous products are required to exercise a heightened duty of care and may bear legal responsibility for losses arising from unsafe business practices.[11] Yet, within the practice of retail fuel sales, those obligations continue to operate without clear normative standards capable of defining the boundaries of reasonable conduct and legal accountability. Consequently, the distribution of legal risk becomes increasingly imbalanced because consumers and micro-scale business actors are forced to bear substantial risks in the absence of adequate state protection and regulatory certainty.

The complexity of this issue becomes more apparent through the emergence of Pertamini businesses that functionally resemble small-scale fuel sub-distributors while lacking a definitive legal classification within Indonesia's downstream oil and gas regulatory regime. This ambiguity generates fundamental legal questions concerning the boundaries of civil liability, the allocation of operational risks, and the legitimacy of semi-formal fuel distribution activities conducted within public spaces. Under these circumstances, the absence of regional regulation can no longer be viewed merely as an administrative gap, but rather as a structural

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[7] Farhan Setyo Oetomo and Trubus Rahardiansah, "Kesenjangan Regulasi Dan Praktik Dalam Implementasi Hukum Bisnis Di Indonesia Perspektif Ilmu Sosial," *AT-TAKLIM : Jurnal Pendidikan Multidisiplin* 2, no. 6 (2025): 702–15, https://doi.org/https://doi.org/10.71282/at-taklim.v2i6.465.

[8] F. Salguero-Caparrós et al., "Management of Legal Compliance In Occupational Health and Safety: A Literature Review," *Safety Science* 121 (2020): 111–18, https://doi.org/https://doi.org/10.1016/j.ssci.2019.08.033.

[9] Hani Riadho Nasution and Abd Harris, "Kedudukan Konsumen Dalam Hubungan Hukum Dengan Pelaku Usaha Di Indonesia," *Locus Journal of Academic Literature Review* 4, no. 6 (2025): 470–84, https://doi.org/https://doi.org/10.56128/ljoalr.v4i6.572.

[10] Triyana Syahfitri and Wandi, "Tinjauan Yuridis Jual Beli Menurut Hukum Perdata," *Jurnal Hukum Das Sollen* 2, no. 2 (2018): 1–13, https://ejournal.unisi.ac.id/index.php/das-sollen/article/view/971/648.

[11] Windi Eka Oktaviani, "Tanggung Jawab Pelaku Usaha Terhadap Kerugian Konsumen Akibat Produk Cacat," *Reformasi Hukum* 20, no. 2 (2016): 217–43, https://doi.org/https://doi.org/10.46257/jrh.v20i2.9.

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legal problem affecting public safety, consumer protection, and the equitable distribution of legal responsibility among the parties involved.

Based on these concerns, this study focuses on two principal legal issues. First, it examines the characteristics of civil legal relations arising from retail fuel sales practices in Ternate City. Second, it analyzes how the absence of regional regulation affects the civil liability of business actors and weakens legal protection for consumers. Furthermore, this research seeks to formulate the need for a more adaptive and risk-based regulatory framework capable of balancing public protection with the sustainability of micro-scale economic activities. By positioning retail fuel sales as a high-risk private legal relationship operating within a regulatory grey area, this study aims to fill the existing gap in legal scholarship, which has thus far been dominated by administrative and policy-oriented perspectives, while simultaneously contributing to the development of more contextual, proportional, and socially responsive regional regulatory models.

B. Methodology

This study employs a normative juridical research method strengthened by contextual empirical analysis because the legal issues surrounding retail fuel sales are closely related to the examination of private law principles concerning sale and purchase agreements, civil liability, consumer protection, and the distribution of legal risks arising from high-risk commercial activities. The research focuses on analyzing legal norms governing downstream oil and gas distribution, business licensing, consumer protection, and tort liability within the broader framework of Indonesian administrative and private law. The study utilizes both primary and secondary legal materials. Primary legal materials consist of statutory regulations relevant to downstream fuel distribution, consumer protection, and risk-based business licensing, including the Indonesian Civil Code, Law Number 8 of 1999 concerning Consumer Protection, Government Regulation Number 36 of 2004 concerning Downstream Oil and Gas Business Activities, Government Regulation Number 28 of 2025 concerning Risk-Based Business Licensing, and regulations issued by the Downstream Oil and Gas Regulatory Agency (BPH Migas). Secondary legal materials comprise legal doctrines, academic books, scholarly journals, and contemporary scientific studies discussing consumer protection, duty of care, tort liability, legal risk allocation, and risk-based regulatory frameworks. To strengthen the contextual relevance of the analysis, this study also incorporates limited empirical data derived from credible media reports and publicly accessible information concerning retail fuel sales practices in Ternate City. The use of such contextual evidence is intended to support the understanding of the social realities underlying the legal issues examined rather than to transform the research into empirical field research.[12] This approach reflects the contemporary development of legal research methodologies that increasingly recognize the interaction between legal norms and evolving social practices.[13] The research adopts a qualitative analytical framework using descriptive-analytical and prescriptive methods. The descriptive-analytical method is employed to identify the characteristics of civil legal relations between retail fuel business actors and consumers, including the distribution of legal risks and obligations arising from such transactions, while the prescriptive approach is directed toward

[12] Christopher Mccrudden, "Legal Research and The Social Sciences," *The Law Quarterly Review* 122 (2006): 632–50, https://www.researchgate.net/publication/228183697_Legal_Research_and_the_Social_Sciences.
[13] Julia Black, "Risk-Based Regulation: Choices, Practices and Lessons Learnt," in *Risk and Regulatory Policy: Improving the Governance of Risk* (Paris: OECD, 2010), 185–224, http://eprints.lse.ac.uk/id/eprint/36387.

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evaluating the legal implications of regulatory uncertainty and formulating a more proportional and adaptive regulatory model based on the principles of consumer protection and risk governance.[14] The interpretation techniques applied in this study include statutory, systematic, and conceptual interpretation aimed at examining the coherence between private law obligations, administrative regulatory structures, and the need for a more responsive legal framework capable of addressing the regulatory grey area surrounding retail fuel sales practices.

C. Results and Discussion

The Characteristics of Retail Fuel Sales as a Civil Legal Relationship

The practice of retail fuel sales fundamentally creates a continuous private legal relationship between business actors and consumers. This relationship cannot merely be viewed as an informal economic activity, but must also be understood as a legal relationship generating reciprocal civil rights and obligations between the parties involved. Every retail fuel transaction reflects an agreement concerning goods and price, followed by the transfer of fuel from the seller and payment from the buyer.[15] From a civil law perspective, such transactions fulfill the essential elements of a sale and purchase agreement, even though their implementation frequently occurs outside the formal business licensing system.

The distinctive characteristic separating retail fuel sales from ordinary commercial transactions lies in the hazardous nature of the goods being distributed. Fuel constitutes a highly flammable substance with inherent risks to public safety and property.[16] Consequently, the legal relationship arising from retail fuel transactions cannot be interpreted solely through conventional contractual principles, but must also incorporate broader obligations relating to safety and precautionary conduct. In this context, the principles of good faith and propriety are not limited to the fulfillment of payment and delivery obligations, but also extend to the responsibility of ensuring proper storage, safe handling procedures, and adequate information for consumers regarding the risks associated with the product.[17] Retail fuel sales conducted without sufficient safety standards and operational safeguards therefore demonstrate an imbalanced distribution of legal risks between business actors and consumers.

In practice, retail fuel sales in Indonesia operate through various business forms ranging from conventional bottle-based fuel kiosks to Pertamini dispensers designed to resemble small-scale gas stations. These operational differences significantly influence the legal character of the relationship established between sellers and consumers.[18] Traditional retail

[14] Reza Banakar, *Normativity in Legal Sociology: Methodological Reflections on Law and Regulation in Late Modernity* (Switzerland: Springer, 2015).
[15] Muhammad Syamsudin Rizky Mahulette, Rory Jeff Akyuwen, and Sarah Selfina Kuahaty, "Legalitas Penjual Bahan Bakar Minyak Eceran," *Kanjoli: Business Law Review* 1, no. 2 (2023): 70–80, https://doi.org/https://doi.org/10.47268/kanjoli.v1i2.11504.
[16] Nurika Falah Ilmania, "Legalitas Terhadap Penjualan Bahan Bakar Minyak Bersubsidi Eceran Di Indonesia Berdasarkan Undang-Undang Nomor 22 Tahun 2001 Tentang Minyak Dan Gas" (University of Islam Malang, 2023), https://repository.unisma.ac.id/bitstream/handle/123456789/8921/S2_MIH_22202021012_NURIKA FALAH ILMANIA.pdf?sequence=2.
[17] Suhaimi, Isdiyana Kusuma Ayu, and Yandri Radhi Anadi, "Penerapan Asas Itikad Baik Dalam Perjanjian Pengikatan Jual Beli Dan Kuasa Menjual (Studi Kasus Putusan Nomor 3439 K/Pdt/2020)," *Dinamika: Jurnal Ilmiah Ilmu Hukum* 30, no. 1 (2020): 8897–8914, https://jim.unisma.ac.id/index.php/jdh/article/view/23575/17627.
[18] Sulastri Sonbai Feto, Rudepel Petrus Leo, and Debi F. Ng. Fallo, "Analisis Yuridis Tentang Aktivitas Pembelian Bahan Bakar Minyak (BBM) Di SPBU Menggunakan Jeriken Untuk Dijual Kembali Ditinjau Dari Undang-Undang Nomor 22 Tahun 2001 Tentang Minyak Dan Gas Bumi Yang Didirikan Pada Tanggal 10 Desember 1957 , Dengan

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fuel sellers generally operate on a limited scale and primarily serve local community needs, whereas Pertamini businesses tend to function more permanently with higher transaction frequencies and semi-formal operational systems resembling formal fuel distribution facilities.[19] Although both models commonly operate outside the formal licensing regime, the level of operational risk and the corresponding standards of legal responsibility attached to each business model cannot reasonably be equated. Such distinctions become important in determining the proportional scope of civil liability that may arise from retail fuel distribution activities.

From the consumer's perspective, retail fuel transactions also reflect an unequal legal relationship. Consumers frequently depend on the availability of retail fuel sellers while possessing limited access to information concerning fuel quality, measurement accuracy, and storage safety. This condition creates an imbalance in bargaining power and weakens the consumer's position within the contractual relationship. In modern private law theory, transactions involving hazardous products require stronger legal protection for the more vulnerable party, particularly where significant safety risks are involved.[20] However, in the context of retail fuel sales, such protection remains inadequate due to the absence of clear operational standards and effective regulatory supervision.

These conditions indicate that retail fuel sales constitute a high-risk civil legal relationship operating within an uncertain regulatory environment. The legal problems arising from such practices are therefore not limited to questions of business legality, but also concern the quality of contractual relations, the distribution of operational risks, and the effectiveness of legal protection afforded to both consumers and micro-scale business actors. This understanding becomes essential for assessing the broader implications of regulatory absence on civil liability and consumer protection within the practice of retail fuel distribution.

Consumer Protection in Retail Fuel Sales Practices

Consumer protection constitutes one of the most fundamental legal issues within retail fuel sales practices because the object being traded involves hazardous substances with significant risks to public safety and property.[21] Normatively, consumers possess the right to safety, the right to obtain accurate information, and the right to receive goods that comply with proper quality and measurement standards as recognized under consumer protection principles.[22] Nevertheless, retail fuel sales practices, particularly those occurring in Ternate City, demonstrate that the fulfillment of such rights continues to operate within a weak legal protection framework and without adequate regulatory supervision.

Nama," *MANDUB: Jurnal Politik, Sosial, Hukum Dan Humaniora* 2, no. 2 (2024): 77–87, https://doi.org/https://doi.org/10.59059/mandub.v2i2.1162.

[19] Anak Agung Rossa Gracia Prameswari, "Legalitas Penyediaan Bahan Bakar Minyak Ecer Di Pertamini Kota Denpasar," *Vidhisastya: Journal for Legalscholars* 1, no. 1 (2024): 1–25, https://doi.org/https://doi.org/10.38043/Legalitas.

[20] Ariel Putra Yusriansyah et al., "Perlindungan Hukum Konsumen Terhadap Kualitas BBM Di SPBU Dalam Konteks Dugaan Pengoplosan Pertamax Di Indonesia," *Letterlijk: Jurnal Hukum Perdata* 2, no. 1 (2025): 54–63, https://doi.org/https://doi.org/10.25134/jise.v1i2.xx.

[21] Yatini et al., "Legal Reconstruction of Subsidized Products from the Perspective of Consumer Protection," *Jurnal Ilmiah Global Education* 6, no. 2 (2025): 1053–63, https://doi.org/https://doi.org/10.55681/jige.v6i2.3790.

[22] Presiden Republik Indonesia, "Undang-Undang Republik Indonesia Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen" (1999). Pasal 4 huruf (a) (b) dan (c)

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Safety concerns represent the most critical aspect of this issue. Fuel products are distributed within residential areas and public spaces through storage and operational systems that frequently fail to meet minimum safety standards, lack proper fire mitigation equipment, and operate without measurable safety procedures. Even within formal fuel distribution systems such as official gas stations, fuel storage and distribution activities have long been categorized as high-risk operations capable of causing fires, explosions, and occupational accidents.[23] A study examining 47 fuel stations revealed that areas surrounding fuel dispensers were classified as intolerable fire-risk zones in 85.1% of observed locations due to the high concentration of flammable vapor exposure and the presence of multiple ignition sources.[24] The risks associated with retail fuel sales practices operating without technical supervision and standardized safety measures are therefore potentially far greater.

Under these circumstances, consumers possess no certainty regarding whether the fuel they purchase has been stored, transferred, and distributed through safe operational procedures. Safety risks consequently extend beyond the moment of transaction and continue throughout the stages of fuel usage and storage by consumers themselves. From a private law perspective, this condition demonstrates an imbalanced allocation of legal risks because consumers are forced to bear dangers that should reasonably be minimized through adequate business standards and responsible operational practices.[25]

Consumer vulnerability is further intensified by the absence of reliable information regarding fuel quality, storage conditions, and product authenticity. Retail fuel sales are generally conducted without transparent explanations concerning the origin of the fuel, potential product alteration, storage duration, or operational risks associated with its use. Consumers therefore lack the ability to determine whether the fuel has undergone contamination, quality degradation, or unsafe storage practices exceeding acceptable safety thresholds. This absence of information creates a substantial asymmetry of knowledge between business actors and consumers, placing consumers in a position where they are unable to independently assess the safety and quality of the product being consumed. In consumer protection theory, such informational imbalance often produces unequal transactional relationships because one party lacks sufficient capacity to make rational and fully informed decisions.[26] As a result, consumers tend to accept hidden risks as a normal consequence of the transaction due to limited access to accurate and verifiable information.

Another significant issue concerns the uncertainty surrounding fuel quality and measurement accuracy within retail fuel transactions. Retail fuel sales generally utilize simple measuring devices that lack standardization and cannot be independently verified by

[23] Okan Özbakır, "Occupational Health and Safety in Fuel Stations: Hazard Analysis and Risk Assessment," *Gümüşhane Sağlık Bilimleri Dergisi* 13, no. 3 (2024): 1158–73, https://doi.org/https://doi.org/10.37989/gumussagbil.1459055.

[24] Sunisa Chaiklieng et al., "Fire Risk Assessment in Fire Hazardous Zones of Gasoline Stations," *Journal of Occupational Health* 62 (2020): 1–8, https://doi.org/https://doi.org/10.1002/1348-9585.12137 wileyonlinelibrary.com/journal/joh2.

[25] Aryo Wibowo, Fatma Lestari, and Robiana Modjo, "Development and Validity Test of Fuel Station Consumer Safety Behavior Questionnaire," *Journal La Medihealtico* 4, no. 6 (2023): 258–65, https://doi.org/https://doi.org/10.37899/journallamedihealtico.v4i6.985.

[26] N. Mazaraki, A Gerasymenko, and V Kovtun, "Information Asymmetry as A Determinant of Competition," *Scientific Bulletin of National Mining University* 2 (2020): 148–52, https://doi.org/https://doi.org/10.33271/nvngu/2020?2/148.

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consumers.[27] The quantity of fuel distributed therefore depends entirely upon the seller's measuring instruments, including pump dispensers and storage containers that frequently lack certified metrological verification.[28] Such conditions create opportunities for inaccurate measurements, quality manipulation, and operational misconduct that are difficult for consumers to detect or legally prove. Consequently, the legal relationship established between sellers and consumers relies predominantly upon trust and good faith rather than institutionalized legal mechanisms capable of guaranteeing fairness and accountability.

The vulnerability of consumers becomes increasingly apparent because retail fuel sales practices rarely provide effective complaint procedures or dispute resolution mechanisms. In cases involving vehicle damage, fuel contamination, fires, or losses arising from unsafe storage practices, consumers generally bear the burden of proving causation, negligence, and fault independently.[29] This condition illustrates that consumer protection within retail fuel sales remains largely informal and dependent upon social tolerance rather than supported by a structured legal protection system.[30] Consumers ultimately occupy the most vulnerable position within the distribution of operational and legal risks because the absence of safety standards, supervision mechanisms, and enforceable guarantees directly weakens the effectiveness of consumer protection principles.[31]

These circumstances demonstrate that consumer protection in retail fuel sales practices cannot be separated from the urgent need for regional regulatory frameworks capable of establishing minimum safety standards, operational supervision mechanisms, and clearer forms of legal accountability. Without adequate regulation, hazardous business practices risk becoming socially normalized despite the significant dangers posed to consumers and surrounding communities.[32] Consequently, the development of a more proportional and risk-based regulatory framework becomes essential to ensure that consumer protection principles operate effectively within the context of informal and semi-formal fuel distribution activities.

The Implications of the Absence of Regional Regulation on Civil Liability

The absence of regional regulations specifically governing retail fuel sales practices creates significant consequences for the construction of civil liability arising from such activities. When the state fails to provide clear legal standards concerning licensing mechanisms, operational safety procedures, and business classifications, the legal relationship between business actors and consumers develops within a framework

[27] Miskawati, "Efektivitas Peran Dinas Perdagangan Dalam Pengawasan Penjualan Bensin Eceran Dan Pemenuhan Hak-Hak Konsumen Di Kota Palopo" (Universitas Islam Negeri Palopo, 2026).
[28] Ariel Putra Yusriansyah, Dinda Apriandini, and Vita Alliciana, "Metrologi Legal Dalam Perlindungan Konsumen Di Kabupaten Lampung Barat," *Journal of Economic and Management (JEM)* 2, no. 2 (2025): 79–103, https://doi.org/https://doi.org/10.25134/letterlijk.v2i1.1081.
[29] Muhammad Rizal Muhari, Teng Berlianty, and Theresia Louize Pesulima, "Perlindungan Konsumen Dalam Praktik Jual Beli Bahan Bakar Minyak (BBM) Menggunakan Mesin Pertamini Di Kota Masohi," *Pattimura Law Study Review* 1, no. 1 (2023): 51–59, https://doi.org/https://doi.org/10.47268/palasrev.v1i1.10830.
[30] Firsi Nurhasanah, Sabrina Naila Malihah, and Vania Therecia Situmorang, "Analisis Hukum Perlindungan Konsumen Terhadap Praktik Pengoplosan Bahan Bakar Minyak Pertamax Berdasarkan Undang-Undang Nomor 8 Tahun 1999," *Demokrasi: Jurnal Riset Ilmu Hukum, Sosial Dan Politik* 3, no. 2 (2026): 77–87, https://doi.org/https://doi.org/10.62383/demokrasi.v3i2.1649.
[31] Muhari, Berlianty, and Pesulima, "Perlindungan Konsumen Dalam Praktik Jual Beli Bahan Bakar Minyak (BBM) Menggunakan Mesin Pertamini Di Kota Masohi."
[32] Ni Putu Sintiya Puspitasari et al., "Kerugian Konsumen Akibat Penggunaan Bahan Bakar Minyak Pertalite Dibawah Standarisasi Dalam Perspektif Keadilan," *Locus: Jurnal Konsep Ilmu Hukum* 5, no. 3 (2025): 229–41, https://doi.org/https://doi.org/10.56128/jkih.v5i3.601.

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characterized by substantial uncertainty. This problem extends beyond administrative concerns and directly affects the determination of legal responsibility when losses or accidents occur as a result of retail fuel distribution activities. Consequently, the allocation of legal risks becomes increasingly unclear, making it difficult to determine which party should proportionally bear the resulting consequences.

Losses arising from retail fuel sales practices, including fires, explosions, environmental damage, and property destruction, may fundamentally be classified as unlawful acts under Article 1365 of the Indonesian Civil Code.[33] The essential elements of unlawful acts, namely the existence of conduct, fault, damage, and causal relationship,[34] are generally easier to identify where highly flammable substances are distributed without adequate operational safeguards and safety standards. However, legal complexity emerges in proving the elements of negligence and fault because no operational regulations currently establish objective standards regarding the level of precaution required within retail fuel distribution activities. The absence of such standards ultimately creates subjective interpretations concerning what constitutes negligent conduct and increases the possibility of disproportional legal burdens in civil disputes.

This issue is closely connected to the application of the duty of care principle rooted in the broader framework of civil liability.[35] In principle, every person conducting activities with foreseeable risks is required to exercise reasonable precaution to prevent harm to others. Within retail fuel sales practices, this obligation should logically be placed at a higher threshold because the object being distributed involves hazardous and flammable materials capable of endangering public safety. Nevertheless, the obligation to exercise heightened precaution is not accompanied by objective legal standards formulated through regional regulations that clearly define acceptable operational conduct and minimum safety requirements. Under such conditions, micro-scale business actors become vulnerable to excessive civil liability because they operate without clear legal guidance concerning the standards expected from their business activities, while consumers simultaneously remain without adequate legal protection.[36]

The absence of regional regulation also creates uncertainty regarding the potential application of strict liability principles within retail fuel sales practices. Theoretically, strict liability is commonly applied to activities categorized as inherently dangerous or involving abnormal operational risks, thereby reducing the necessity of proving fault as the primary basis of legal responsibility. However, the implementation of strict liability within retail fuel distribution remains problematic because no regulatory framework explicitly classifies retail fuel sales as hazardous business activities subject to a specific liability regime. This normative gap weakens legal certainty and creates inconsistency in determining responsibility when accidents or losses occur. Moreover, the direct application of strict liability without a proportional regulatory structure may generate further imbalance because micro-scale business actors would potentially bear excessive legal burdens despite operating under

[33] Raafid Febriansyah et al., "Perbuatan Melawan Hukum (PMH) Sebagai Perikatan Yang Lahir Karena Undang-Undang: Implikasi Terhadap Penentuan Ganti Rugi," *Media Hukum Indonesia (MHI)* 2, no. 4 (2024): 597–604, https://doi.org/https://doi.org/10.5281/zenodo.14242631.
[34] I Ketut Oka Setiawan, *Hukum Perikatan*, Ed. Cet. K (Jakarta: Sinar Grafika, 2018).
[35] Rosa Agustina, *Perbuatan Melawan Hukum* (Jakarta: Pasca Sarjana FH Universitas Indonesia, 2003).
[36] Samuel Sembiring, "Perlindungan Hukum Konsumen Sebagai Korban Produk Berbahaya Dalam Perspektif Hukum Perdata," *Rio Law Jurnal* 4, no. 1 (2023): 25–31, https://doi.org/http://dx.doi.org/10.36355/.v1i2.

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limited economic capacity, inadequate safety knowledge, and minimal access to institutional protection mechanisms.

These conditions demonstrate that the absence of regional regulation does not merely produce an administrative vacuum, but substantially affects the broader structure of civil liability itself. Unclear precautionary standards, disproportionate distribution of legal risks, and weak legal protection for both consumers and micro-scale business actors collectively reflect the structural consequences of regulatory omission within retail fuel distribution practices. The legal issues surrounding retail fuel sales therefore cannot simply be interpreted as matters of licensing violations or informal economic activity. Rather, they reveal a broader failure of regulatory governance in managing hazardous commercial activities through a legal framework capable of balancing public safety, consumer protection, proportional liability, and legal certainty for all parties involved.

Pertamini as a Legal Subject within a Regulatory Grey Area

Pertamini occupies an ambiguous legal position within Indonesia's fuel distribution system because, although it operates as a modern form of retail fuel sales, it does not possess formal legal status as an authorized downstream oil and gas business entity.[37] In practice, Pertamini functions within a regulatory grey area, namely a legal space in which an activity is neither fully recognized nor expressly prohibited under existing regulatory structures. This condition directly affects the determination of its legal status as a business entity while simultaneously increasing the potential scope of liability that may be imposed upon its operators.

The operational characteristics of Pertamini cannot be equated with officially licensed public fuel stations because downstream oil and gas distribution activities may only be conducted by business entities holding formal licenses issued by the government, as stipulated under Articles 2, 13 paragraph (1), and 43 of Government Regulation Number 36 of 2004 concerning Downstream Oil and Gas Business Activities.[38] These provisions require fuel trading activities to be conducted by legally established business entities possessing commercial licenses and complying with obligations relating to fuel quality standards, measurement accuracy, and technical operational requirements. Nevertheless, Pertamini also differs from conventional roadside fuel vendors because it utilizes pump dispensers, semi-modern distribution systems, and operational equipment visually resembling small-scale public fuel stations. This hybrid operational model places Pertamini between the categories of informal retail sellers and semi-formal fuel distributors, thereby creating substantial uncertainty regarding its legal classification.

The ambiguity surrounding Pertamini becomes more problematic because most of its operational activities occur outside formal supervision and technical control mechanisms established under Articles 3, 6, and 87 of Government Regulation Number 36 of 2004, which grant supervisory authority to the Minister and the Downstream Oil and Gas Regulatory Agency over safety standards, measurement systems, operational procedures, and licensing compliance. Under these circumstances, Pertamini operators potentially face criminal liability where fuel storage, transportation, or trading activities are conducted without the required

[37] Prameswari, "Legalitas Penyediaan Bahan Bakar Minyak Ecer Di Pertamini Kota Denpasar."
[38] Presiden Republik Indonesia, "Peraturan Pemerintah Republik Indonesia Nomor 36 Tahun 2004 Tentang Kegiatan Usaha Hilir Minyak Dan Gas Bumi" (2004).

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business licenses, as regulated under Article 94 paragraph (1) of the same regulation. The legal consequences become more severe when such activities involve the misuse or unauthorized distribution of subsidized fuel products, which may result in imprisonment and substantial financial penalties under Article 94 paragraph (3).[39] Although subsequent amendments through Government Regulation Number 30 of 2009 modified provisions concerning fuel pricing policies, the broader licensing obligations and supervisory framework governing downstream fuel distribution activities remain legally applicable.

The legal risks faced by Pertamini operators also differ significantly from those associated with traditional bottle-based fuel vendors. Conventional roadside sellers are generally perceived as informal retail traders operating through simple facilities and limited-scale transactions. By contrast, Pertamini businesses employ fuel pumps and operational systems that visually and functionally imitate formal fuel stations, thereby creating public expectations regarding safety standards, measurement accuracy, and service reliability.[40] This operational resemblance consequently increases the legal responsibilities borne by Pertamini operators, particularly when consumers experience losses arising from inaccurate fuel measurements, contaminated products, fires, or explosions.[41] From a consumer protection perspective, Law Number 8 of 1999 concerning Consumer Protection provides legal space for the application of liability principles based upon presumption of liability and, under certain circumstances, strict liability mechanisms toward business actors distributing hazardous products.[42] Accordingly, Pertamini operators cannot merely rely upon arguments concerning limited capital or small-scale business status where their operational activities create substantial risks for consumers and surrounding communities.

For this reason, the duty of care applicable to Pertamini operators should logically be positioned at a higher standard than that imposed upon traditional roadside fuel sellers. The use of pump dispensers, semi-permanent storage systems, and fuel distribution activities conducted within public spaces inherently create legal consequences requiring minimum guarantees of operational safety, measurement accuracy, fuel quality, and fire risk mitigation. However, these precautionary obligations continue to exist without a specific regulatory framework capable of clearly defining operational standards, supervisory mechanisms, and proportional boundaries of legal responsibility for Pertamini businesses as semi-formal fuel distribution enterprises.

The persistence of this regulatory grey area demonstrates the urgent need for a more adaptive legal framework capable of granting limited legality while simultaneously ensuring measurable supervision over small-scale fuel distribution activities. Normative foundations for such an approach have gradually emerged through BPH Migas Regulation Number 1 of 2024, which recognizes the existence of “Sub-Penyalur BBM” (Fuel Sub-Distributors) as representatives serving consumers in regions not adequately reached by official fuel

[39] Indonesia.
[40] Yoga Permana, “Perlindungan Hukum Bagi Konsumen Terhadap Penjualan Bahan Bakar Bensin Oleh Pertamini Yang Tidak Tepat Takarannya Dihubungkan Dengan Undang-Undang Nomor 08 Tahun 1999 Tentang Perlindungan Konsumen (Studi Kasus: Di Kabupaten Pandeglang)” (Universitas Sultan Ageng Tirtayasa, 2025), http://eprints.untirta.ac.id/id/eprint/51747.
[41] Haris Suyanto and Fatimah Asyari, “Banyaknya Penjualan BBM Dengan Menggunakan Pom Mini Tanpa Dilengkapi Izin Di Kecamatan Muara Wahau Kabupaten Kutai Timur,” *Legalitas: Jurnal Ilmiah Ilmu Hukum* 4, no. 2 (2019): 104–22, https://doi.org/https://doi.org/10.31293/lg.v4i2.4501.
[42] Indonesia, Undang-Undang Republik Indonesia Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen.

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distributors, subject to approval by local governments and the Downstream Oil and Gas Regulatory Agency.[43] The regulation further establishes minimum requirements concerning storage facilities, transportation systems, operational safety standards, and periodic administrative supervision. This policy direction was reinforced through BPH Migas Regulation Number 1 of 2025, which extended the implementation of the Sub-Distributor scheme as part of the government's broader effort to accommodate regional fuel distribution needs.[44] These developments indicate that the state has gradually begun to acknowledge the practical necessity of non-formal fuel distribution systems, provided that such activities remain integrated within structured supervisory mechanisms.

Within this framework, Pertamini may be reconstructed as a form of supervised micro-scale fuel distributor operating under simplified licensing procedures, metrological supervision, safety control mechanisms, and cooperative distribution arrangements with PT Pertamina (Persero). Such a model would allow communities to maintain access to fuel distribution services while simultaneously strengthening legal certainty, consumer protection, and public safety within Indonesia's downstream fuel distribution system..

The Need for a Risk-Based Regulatory Model for Retail Fuel Sales

The predominantly repressive approach adopted toward retail fuel sales practices has demonstrated significant limitations in addressing the underlying legal and social problems associated with informal fuel distribution. Administrative enforcement measures such as temporary closures, equipment confiscation, and minor criminal sanctions have proven insufficient because they directly confront the continuing public demand for accessible and affordable fuel distribution services, particularly in regions where formal fuel stations remain limited.[45] Under these conditions, retail fuel sales cannot merely be interpreted as issues of licensing violations or public order, but must also be understood within the broader context of unequal energy distribution and limited access to public services. As long as the formal fuel distribution system remains unable to adequately accommodate local community needs, informal fuel distribution practices will continue to emerge and persist despite periodic enforcement measures.

The practical effectiveness of repressive enforcement also remains weak at the implementation level. In many cases, retail fuel business actors resume operations shortly after enforcement actions are completed because economic pressures and market demand continue to sustain such activities.[46] Empirical studies conducted in several regions of Indonesia demonstrate that socialization programs and verbal warnings alone are insufficient

[43] Kepala Badan Pengatur Hilir Minyak dan Gas Bumi Republik Indonesia, "Peraturan Badan Pengatur Hilir Minyak Dan Gas Bumi Republik Indonesia Nomor 1 Tahun 2024 Tentang Penyaluran Jenis Bahan Bakar Minyak Tertentu Dan Jenis Bahan Bakar Minyak Khusus Penugasan Pada Sub Penyalur Di Daerah Tertinggal, Terdepan, Terluar Atau Terp" (2024).
[44] Kepala Badan Pengatur Hilir Minyak dan Gas Bumi Republik Indonesia, "Peraturan Badan Pengatur Hilir Minyak Dan Gas Bumi Republik Indonesia Nomor 1 Tahun 2025 Tentang Perubahan Atas Peraturan Badan Pengatur Hilir Minyak Dan Gas Bumi Nomor 1 Tahun 2024 Tentang Penyaluran Jenis Bahan Bakar Minyak Tertentu Dan Jenis Bahan Baka" (2025).
[45] Fitri Zahrotin Kustina, "Penertiban Penjual Bahan Bakar Minyak (BBM) Eceran Dan Pom Mini Oleh Satuan Polisi Pamong Praja Di Kota Balikpapan Provinsi Kalimantan Timur" (Institut Pemerintahan Dalam Negeri, 2025), https://eprints.ipdn.ac.id/21293/.
[46] Noer Laili, Fatimatuz Zahroh, and Mohammad Mahmudi, "Tinjauan Hukum Positif Tentang Penjualan BBM Eceran (Studi Kasus Di Kecamatan Pakong Kabupaten Pamekasan)," *Jurnal Studi Islam Lintas Negara* 6, no. 2 (2024): 398–414, https://doi.org/https://doi.org/10.37567/cbjis.v6i2.4970.

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to significantly alter the behavior of retail fuel sellers where no adaptive regulatory framework exists to provide realistic compliance pathways for micro-scale business actors.[47] Similar findings were also identified in studies examining illegal Pertamini operations, which reveal that the simplicity of establishing such businesses, strong community acceptance, and low levels of legal awareness contribute to the continued expansion of semi-formal fuel distribution practices despite their inconsistency with downstream oil and gas regulations and legal metrology requirements.[48] These conditions illustrate that purely punitive approaches are incapable of resolving the structural causes underlying informal fuel distribution practices, particularly where economic necessity and public dependence remain substantial.

In this context, a risk-based regulatory approach becomes more relevant and proportionate for governing retail fuel sales activities. The concept of risk-based regulation was formally introduced through Law Number 11 of 2020 concerning Job Creation and subsequently reaffirmed through Law Number 6 of 2023, which places business risk levels as the principal basis for determining licensing requirements and supervisory mechanisms. This regulatory framework was further implemented through Government Regulation Number 5 of 2021 and later refined through Government Regulation Number 28 of 2025 concerning Risk-Based Business Licensing, which classifies business activities according to their potential impact on safety, health, environmental sustainability, and public welfare.[49] Under this system, licensing obligations and supervisory intensity are no longer uniformly applied to all business activities but are instead adjusted proportionally according to the operational risks posed by each type of enterprise.

A similar regulatory model has also been implemented in several comparative jurisdictions, including Australia, where tiered licensing systems prioritize assessments of public safety and environmental risk before determining the scope of operational supervision imposed upon business actors.[50] Such approaches are considered more rational because they emphasize preventive supervision and risk management rather than relying exclusively upon reactive law enforcement measures.[51] Through a risk-based regulatory framework, the state may distinguish between low-risk and high-risk forms of retail fuel distribution and impose regulatory obligations proportionate to the dangers associated with each operational model.

The implementation of risk-based regulation within retail fuel sales practices therefore requires a clearer classification of business activities according to their operational hazards and distribution capacity, particularly under Articles 128 to 132 of Government Regulation

[47] Revaldi Putra Jainis, Syaifullah Yophi Ardiyanto, and Tengku Arif Hidayat, "Problematika Penegakan Hukum Terhadap Penjual Bahan Bakar Minyak Eceran Bersubsidi Di Wilayah Hukum Kepolisian Resor Indragiri Hulu," *Jurnal Hukum Progresif* 8, no. 12 (2025): 40–60, https://oaj.jurnalhst.com/index.php/jhp/article/view/17654/18866.
[48] Gusti Muhammad Faruq Abdul Hakim Sutikno, "Eksistensi Dan Penegakan Hukum Terhadap Pertamini Ilegal Di Kabupaten Sragen" (Universitas Negeri Surakarta, 2021), https://digilib.uns.ac.id/dokumen/detail/84434/Eksistensi-dan-Penegakan-Hukum-Terhadap-Pertamini-Ilegal-di-Kabupaten-Sragen.
[49] Presiden Republik Indonesia, "Peraturan Pemerintah Republik Indonesia Nomor 28 Tahun 2025 Tentang Penyelenggaraan Perizinan Berusaha Berbasis Risiko" (2025).
[50] Merissa Bhernaded Lie, "Sistem Perizinan Berbasis Risiko: Sebuah Perbandingan Antara Negara Australia Dan Negara Indonesia," *Jurnal APHTN-HAN* 1, no. 2 (2022): 169–85, https://doi.org/https://doi.org/10.55292/japhtnhan.v1i2.30.
[51] Kenly Gosti, "Risk-Based Regulation Di Inggris, Australia, Kanada, Dan Penerapannya Pada Sistem Perizinan Berusaha Berbasis Risiko Di Indonesia" (Universitas Indonesia, 2022), https://lib.ui.ac.id/m/detail.jsp?id=20520627&lokasi=lokal.

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Number 28 of 2025.[52] Small-scale bottle-based fuel sales with limited storage capacity may reasonably be categorized as low-risk businesses subject only to simplified registration or notification mechanisms under Article 130. By contrast, Pertamini businesses utilizing fuel pumps, semi-permanent storage systems, and distribution methods resembling formal fuel stations should be classified as medium- to high-risk enterprises requiring operational permits, periodic safety audits, metrological verification, and regular technical supervision under Articles 131 and 132. Such regulation should additionally establish minimum operational standards concerning explosion-resistant storage systems, certified measuring devices, fire mitigation equipment, and location requirements ensuring safe distances from residential areas and potential ignition sources.

A regulatory framework constructed along these lines would provide local governments with the opportunity to formulate regional regulations focused not merely on prohibition, but on systematic and proportional risk management. Within this structure, Pertamini may be positioned as a supervised micro-enterprise operating under limited legality subject to compliance with safety standards, consumer protection obligations, and stricter fuel distribution supervision mechanisms. Such an approach would enable the government to concentrate intensive oversight upon businesses presenting higher operational risks while simultaneously preserving lawful economic opportunities for small-scale fuel distributors operating within socially necessary sectors.

This model is also consistent with the broader direction of Indonesia's downstream oil and gas governance policies, which increasingly recognize the importance of local government involvement in fuel distribution supervision. Presidential Regulation Number 191 of 2014 concerning Fuel Supply, Distribution, and Retail Pricing, together with its subsequent amendments through Presidential Regulations Number 69 of 2021 and Number 117 of 2021, provides normative space for coordination between regional governments and the Downstream Oil and Gas Regulatory Agency in monitoring fuel distribution and controlling fuel allocation mechanisms. Through such a coordinated supervisory framework, limited legalization of Pertamini businesses should not be interpreted as regulatory tolerance toward illegality, but rather as an administrative control mechanism intended to ensure that retail fuel distribution remains subject to safety standards, consumer protection principles, and legal certainty. Compared with purely prohibitive policies, this approach offers a more constructive solution because it integrates informal fuel distribution activities into a measurable supervisory system rather than allowing them to continue operating entirely outside state oversight.

D. Conclusion

Retail fuel sales practices have gradually evolved into continuous civil legal relationships emerging from the community's need for fuel access that has not been fully accommodated by Indonesia's formal distribution system. These activities can no longer be viewed merely as informal economic practices because retail fuel transactions generate reciprocal legal rights and obligations directly connected to consumer protection, risk allocation, and civil liability arising from the distribution of hazardous substances. In the absence of clear regional regulations, retail fuel sales practices, including Pertamini operations, remain situated within a regulatory grey area that creates uncertainty regarding operational safety standards,

[52] Indonesia, Peraturan Pemerintah Republik Indonesia Nomor 28 Tahun 2025 tentang Penyelenggaraan Perizinan Berusaha Berbasis Risiko.

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precautionary obligations, and the scope of legal responsibility borne by business actors. Under these conditions, consumers occupy the most vulnerable position because they are exposed to safety risks and potential losses without adequate legal protection, while micro-scale business actors simultaneously face disproportionate liability risks due to the absence of objective regulatory standards.

This study therefore emphasizes the urgent need for a risk-based regulatory framework capable of balancing public safety, consumer protection, and the sustainability of micro-scale economic activities. Such a framework should not merely function as a mechanism for legitimizing retail fuel sales, but rather as a proportional supervisory system integrating minimum safety standards, metrological control, operational licensing, and consumer protection mechanisms into local regulatory governance. Through this approach, Pertamini and other forms of small-scale fuel distribution may be positioned as supervised micro-enterprises operating under limited legality and measurable oversight, thereby enabling legal certainty, public safety, and community economic interests to coexist within a more adaptive and socially responsive regulatory structure.

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