

Implications of the Dual Position of Deputy Ministers as Commissioners of State-Owned Enterprises Contrary to Good Corporate Governance Principles

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Abstract

Introduction: State-Owned Enterprises (BUMN) are strategic instruments of national economic development, requiring strong governance oversight. The Board of Commissioners plays a critical supervisory role; however, the practice of Deputy Ministers concurrently holding commissioner positions in BUMN creates significant legal and governance tensions.

Purposes: This study aims to analyze the legal certainty of the prohibition on Deputy Ministers holding concurrent positions as BUMN commissioners, and to examine the implications of such dual roles on Good Corporate Governance (GCG) principles.

Methods: This research employs normative legal research with statutory and conceptual approaches, drawing on legislation, Constitutional Court decisions, and relevant legal doctrine.

Results: The study finds that while the prohibition on dual roles has been normatively affirmed through Constitutional Court Decision No. 128/PUU-XXIII/2025 and Law No. 16 of 2025 on BUMN, the two-year transitional period creates legal uncertainty and risks undermining GCG principles—particularly accountability, independence, and responsibility. Approximately 30 Deputy Ministers continued to serve concurrently as BUMN commissioners at the time of writing, threatening the integrity of supervisory functions.

Keywords: Conflict of Interest; Corporate Governance; Dual Position; BUMN; Deputy Minister.

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INTRODUCTION

State-Owned Enterprises (*Badan Usaha Milik Negara*, hereinafter BUMN) represent the concrete embodiment of the state's role in managing strategic sectors to support national economic development and to realize public welfare as mandated by Article 33 of the 1945 Constitution of the Republic of Indonesia. Operating alongside private enterprises and cooperatives, BUMN are designed not only as profit-oriented entities but also as instruments for the equitable distribution of development benefits and the fulfillment of public service obligations.

Within the organizational structure of BUMN Persero—the state-owned limited liability company—the Board of Commissioners (*Dewan Komisaris*) occupies a pivotal position. Pursuant to Article 27F(1) of Law No. 1 of 2025 (the Third Amendment to the BUMN Law), the Board of Commissioners is charged with supervising the policy and management of the company and providing advisory opinions to the Board of Directors. This supervisory function is fundamental to upholding the principles of good corporate governance within state enterprises.

Notwithstanding these normative requirements, the phenomenon of Deputy Ministers (*Wakil Menteri*, hereinafter Wamen) simultaneously holding positions on the Board of Commissioners of BUMN has persisted in Indonesian governance practice. At the time this research was conducted, at least 30 Deputy Ministers retained concurrent commissioner appointments across various state enterprises. This practice generates legal tensions and raises concerns regarding conflicts of interest between ministerial duties in the executive branch and corporate supervisory responsibilities within BUMN.

Indonesia's constitutional framework explicitly recognizes the rule of law principle: Article 1(3) of the 1945 Constitution declares that Indonesia is a state of law (*negara hukum*). This principle requires that all state conduct, including the appointment and regulation of public officials, be grounded in law. The constitutional

guarantee of legal certainty under Article 28D(1) further demands that legal regulations be implemented consistently and without ambiguity.

The legal landscape governing dual-role prohibitions has evolved significantly. The Constitutional Court's landmark Decision No. 128/PUU-XXIII/2025—rendered upon the petition of advocate Viktor Santoso Tandiasa—expanded the scope of the prohibition in Article 23 of Law No. 39 of 2008 on State Ministries to explicitly include Deputy Ministers. The Court held that the prohibition on concurrent positions as commissioner or director of state-owned or private companies, previously applicable only to Ministers, must be interpreted as applying equally to Deputy Ministers. This decision was subsequently reinforced by Law No. 16 of 2025 (the Fourth Amendment to the BUMN Law), which, while confirming the prohibition, granted a two-year transitional period for its full implementation.

Against this background, this article examines two central questions: (i) How does Indonesian law regulate the prohibition on Deputy Ministers holding concurrent positions as BUMN commissioners? (ii) What are the implications of such dual roles for the implementation of Good Corporate Governance (GCG) principles in BUMN? This article argues that while the normative framework is now largely clear, the transitional period creates residual legal uncertainty and sustains conditions conducive to conflict of interest, thus threatening the accountability, independence, and responsibility pillars of GCG.

METHODS

This research employs a normative legal methodology (*penelitian hukum normatif*), consistent with the approach articulated by Peter Mahmud Marzuki, whereby law is analyzed as a normative system to identify legal rules, principles, and norms applicable to the subject under examination. Normative legal research is appropriate here because the central inquiry concerns the interpretation and application of statutory provisions, constitutional mandates, and judicial decisions—rather than empirical social phenomena.

Two primary methodological approaches are adopted. First, the *statutory approach* examines and systematically analyzes the relevant legislative framework, including: (a) the 1945 Constitution; (b) Law No. 40 of 2007 on Limited Liability Companies; (c) Law No. 39 of 2008 on State Ministries; (d) Law No. 25 of 2009 on Public Services; (e) Law No. 30 of 2014 on State Administration; (f) Law No. 1 of 2025 (Third Amendment to the BUMN Law); (g) Law No. 16 of 2025 (Fourth Amendment to the BUMN Law); and (h) Constitutional Court Decision No. 128/PUU-XXIII/2025. Second, the *conceptual approach* draws on doctrinal frameworks and scholarly literature on good corporate governance, separation of powers, and conflict of interest to construct analytical arguments from legal concepts and principles.

Primary legal materials—constituting the authoritative sources of law—are supplemented by secondary legal materials including scholarly texts, journal articles, and institutional reports. Legal analysis proceeds prescriptively, formulating legal arguments and prescriptions in response to the identified legal issues.

RESULTS AND DISCUSSION

A. Legal Regulation of the Prohibition on Dual Positions of Deputy Ministers as BUMN Commissioners

The regulation of dual-role prohibitions in the Indonesian legal order is grounded in the foundational principle of the rule of law (*supremasi hukum*), which demands that all governmental actors, including cabinet members, be subject to legal constraints rather than operating by mere political prerogative. This section systematically traces the regulatory architecture governing the prohibition.

1. The BUMN Law Framework

The foundational statutory prohibition is found in Article 27B of Law No. 1 of 2025 (Third Amendment to the BUMN Law), which prohibits members of the Board of Commissioners from concurrently holding directorships, commissioner positions, or supervisory board memberships in other BUMN, BUMN subsidiaries, or regional enterprises (*badan usaha milik daerah*). Critically, Article 27B(b) extends this prohibition to 'other positions as provided under statutory regulations.'

The subsequent Fourth Amendment—Law No. 16 of 2025—provided the decisive clarification. The explanatory note to Article 27B(2) was amended to specify that 'other positions' expressly include Ministers and Deputy Ministers. This textual amendment removed the interpretive ambiguity that had previously existed and delivered a clear normative signal that the separation of governmental and corporate functions is constitutionally and legislatively required.

The rationale for this separation reflects a broader doctrine of separation of competences (*pemisahan kewenangan*). BUMN are established to pursue commercial profit through business mechanisms—objectives that are fundamentally distinct from the policy functions of the executive branch. Article 4B of Law No. 16 of 2025 confirms this separation by providing that profits and losses of a BUMN belong to the enterprise itself, reflecting the principle of legal personality separating the state as shareholder from the enterprise as a legal entity.

2. Law No. 25 of 2009 on Public Services

Article 17(a) of the Public Services Law explicitly prohibits public service implementors—including officials from government agencies and BUMN—from simultaneously holding commissioner or management positions in business organizations. This provision reinforces the dual-role prohibition from a public administration perspective, ensuring that public service functions are discharged independently, objectively, and free from the influence of commercial interests.

The normative logic of this provision is compelling: when a public official holds concurrent positions in both the public and corporate spheres, the integrity of decision-making in both realms is compromised. The official faces competing obligations and may be unable to discharge supervisory duties impartially, as private commercial considerations may influence judgments that should be made purely on the basis of public interest.

3. Law No. 30 of 2014 on State Administration

Article 10(1) of the State Administration Law mandates that all governmental officials comply with the General Principles of Good Governance (*Asas-Asas Umum Pemerintahan yang Baik*, AUPB), which include: legal certainty (*kepastian hukum*); impartiality (*ketidakberpihakan*); prohibition of misuse of authority (*larangan penyalahgunaan wewenang*); and the principle of good public service. The practice of a Deputy Minister simultaneously occupying a BUMN commissioner role constitutes a violation of the non-misuse of competence principle (*non-misuse of competence*), which requires that public officials exercise their authority strictly in accordance with the purpose for which such authority was granted.

4. Constitutional Court Decision No. 128/PUU-XXIII/2025

The Constitutional Court's authority to review legislation against the 1945 Constitution derives from Article 24C(1) of the Constitution and is confirmed by Article 10(1)(a) of Law No. 24 of 2003 on the Constitutional Court (as amended). In the petition filed by advocate Viktor Santoso Tandiasa, the Court was asked to review the scope of Article 23 of Law No. 39 of 2008 on State Ministries, which prohibited Ministers—but was silent on Deputy Ministers—from concurrently serving as commissioner or director of state-owned or private companies.

The Court granted the petition and declared Article 23 of the State Ministries Law to be conditionally unconstitutional insofar as it was not interpreted to include Deputy Ministers. In its operative holding, the Court mandated that the prohibition be read as applying to both Ministers and Deputy Ministers with respect to: (a) other state positions as provided by law; (b) commissioner or director positions in state-owned or private companies; and (c) leadership of organizations funded from the state or regional budget.

Pursuant to Article 2 of Law No. 16 of 2025, the transitional arrangements allow existing dual-role arrangements to continue for a maximum period of two years from the date of the Constitutional Court's decision. While this transitional period is pragmatically understandable—allowing time for the orderly replacement of commissioner positions—it simultaneously creates a window of legal uncertainty during which the conditions generating conflict of interest persist.

B. Implications for Good Corporate Governance Principles

Good Corporate Governance (GCG) is a system of mechanisms, policies, and practices that directs, controls, and oversees corporate operations with transparency, accountability, independence, responsibility, and fairness—commonly captured by the acronym TARIF (*Transparansi, Akuntabilitas, Responsibilitas, Independensi, Fairness*). In the context of BUMN, the application of GCG is mandatory under the explanatory provisions of the BUMN Law and the Limited Liability Companies Law (UU PT), which require that all persons adhere to GCG principles. This section examines how the practice of dual roles by Deputy Ministers threatens three key GCG principles: accountability, independence, and responsibility.

1. Accountability (Akuntabilitas)

The accountability principle requires clarity of roles, organizational structures, systems, and responsibilities within the enterprise so that management operates effectively and conflicts of interest are avoided. The Board of Commissioners, as the supervisory organ of BUMN, is expected to maintain a clear institutional identity, separate from the government's regulatory functions, and to direct its accountability exclusively toward the company and its stakeholders.

When a Deputy Minister simultaneously serves as a BUMN commissioner, the lines of accountability become blurred. On one hand, the commissioner is accountable to the RUPS (General Meeting of Shareholders) for supervising the Board of Directors and ensuring adherence to corporate governance standards. On the other, the Deputy Minister remains accountable to the Minister and ultimately to the President as head of government, with obligations that are fundamentally public and political in nature. This structural ambiguity creates a situation where neither accountability relationship can be fully satisfied, as the dual-role holder must divide attention, time, and professional judgment between two distinct institutional mandates.

The risk is not merely theoretical. Where a BUMN operates in a sector regulated by the Deputy Minister's portfolio—such as energy, telecommunications, or agriculture—the commissioner-official may face situations where the commercial interests of the enterprise diverge from the policy objectives of the ministry. In such circumstances, accountability to the company may be compromised by deference to ministerial priorities, or vice versa.

2. Independence (Kemandirian/Independensi)

The independence principle holds that BUMN must be managed professionally, free from conflicts of interest and undue interference from any party that contravenes applicable law or sound corporate governance standards. This principle is especially critical for the Board of Commissioners, whose supervisory effectiveness depends on its ability to assess and challenge management decisions without being subject to external pressures.

The dual role of Deputy Minister–Commissioner structurally undermines this independence. The government, acting through the Ministry of State-Owned Enterprises, is both the shareholder representative and the appointing authority for BUMN commissioners. When the same individual serves as both Deputy Minister and commissioner, the government's influence over the enterprise effectively penetrates both the shareholder sphere and the supervisory organ simultaneously. The result is that the Board of Commissioners—which should function as an independent check on management—becomes an extension of governmental control, negating its capacity for objective oversight.

This concern is amplified by the requirement for Independent Commissioners (*Komisaris Independen*) in publicly listed companies and banks, who must by definition have no affiliations with majority shareholders, directors, or other commissioners. A Deputy Minister serving as commissioner, regardless of formal designation, cannot satisfy this affiliation-free requirement given their integral relationship with the principal shareholder.

3. Responsibility (Responsibilitas/Pertanggungjawaban)

The responsibility principle requires the company to comply with all applicable laws and to fulfill its social responsibilities to the community and the environment, including through corporate social responsibility (CSR) initiatives. For the Board of Commissioners, this principle entails comprehensive oversight of the company's compliance with all regulatory obligations, risk management systems, financial reporting standards, and long-term strategic plans.

A Deputy Minister concurrently serving as BUMN commissioner faces a fundamental challenge in discharging these responsibilities fully. The volume and complexity of responsibilities attached to each position—ministerial duties in policy formulation, regulatory oversight, and inter-institutional coordination on one side; and continuous corporate supervision, audit committee work, and strategic advisory functions on the other—are individually demanding and collectively excessive for a single person to execute at a consistently high standard.

The risk of attention deficit and attenuated diligence is therefore real. When corporate crises emerge requiring prompt and intensive supervisory intervention, a commissioner who is simultaneously managing ministerial obligations may be unable to respond with the requisite speed and depth. This structural inadequacy erodes the

quality of corporate decision-making and, in extreme cases, can expose the BUMN to governance failures with broad economic and social consequences.

C. Empirical Profile of Dual-Role Arrangements

To illustrate the scale of the phenomenon, the following table presents a selection of Deputy Ministers identified as concurrently holding BUMN commissioner positions at the time of writing:

No.	Deputy Minister	Concurrent BUMN Commissioner Position
1	Dep. Minister of BUMN, Kartika Wirjoatmodjo	President Commissioner, PT Bank Rakyat Indonesia (Persero) Tbk
2	Dep. Minister of Agriculture, Sudaryono	President Commissioner, PT Pupuk Indonesia (Persero)
3	Dep. Minister of Public Works, Diana Kusumastuti	President Commissioner, Brantas Abipraya (Persero)
4	Dep. Minister of Transportation, Suntana	President Commissioner, PT Pelabuhan Indonesia (Persero)
5	Dep. Minister of Trade, Dyah Roro Esti Widya Putri	President Commissioner, PT Sarinah
6	Dep. Minister of Investment, Todotua Pasaribu	Vice President Commissioner, PT Pertamina (Persero)
7	Dep. Minister of Environment, Diaz Hendropriyono	President Commissioner, PT Telekomunikasi Seluler Tbk
8	Dep. Minister of Finance, Suahasil Nazar	Commissioner, PT Perusahaan Listrik Negara (Persero)
9	Dep. Minister of Law, Edward Omar Sharif Hiariej	Commissioner, PT Perusahaan Gas Negara Tbk
10	Dep. Minister of Culture, Giring Ganesha	Commissioner, PT Garuda Maintenance Facility Aero Asia Tbk

Source: Kompas.com, "UPDATE Daftar Wakil Menteri yang Rangkap Jabatan Jadi Komisaris BUMN," 17 September 2025 (selected entries).

The data presented above illustrates that the dual-role phenomenon is not an isolated anomaly but a systemic pattern involving senior officials across multiple ministerial portfolios and major state enterprises. The breadth of this practice underscores the urgency of rigorous implementation of the regulatory prohibitions discussed above and the need for decisive executive action within—and ideally before the expiry of—the two-year transitional period.

D. Critical Assessment of the Two-Year Transitional Period

The transitional period established under Article 2 of Law No. 16 of 2025 serves a pragmatic function: it provides time for the government to identify and appoint qualified independent professionals to replace Deputy Ministers currently serving as commissioners, thereby avoiding sudden gaps in BUMN governance. However, this practical justification must be weighed against the legal and governance costs of the transitional period.

From a legal certainty perspective, the situation is paradoxical: the Constitutional Court has definitively declared the dual-role practice to be contrary to the Constitution, yet the law simultaneously authorizes it to continue for up to two years. This conditional tolerance creates ambiguity for affected officials, enterprises, and courts that may be called upon to adjudicate disputes arising from decisions made during the transitional period by commissioner-officials.

From a GCG perspective, the conflicts of interest that the prohibition is designed to prevent do not automatically pause for two years. Any BUMN governance failure occurring during the transitional period—whether through inadequate supervision, compromised decision-making, or regulatory conflicts—may be attributable, at least in part, to the continuation of the dual-role structure. The transitional period should therefore be treated as a maximum outer limit, not a de facto authorization, and government action to accelerate the transition is both legally appropriate and governance-imperative.

CONCLUSION

This study has demonstrated that the Indonesian legal order now contains a clear and multi-layered prohibition on Deputy Ministers concurrently holding BUMN commissioner positions. This prohibition is grounded in the constitutional rule of law principle, the separation of powers doctrine, the requirements of good governance and good corporate governance, and a series of statutory provisions spanning the BUMN Law, the Public Services Law, and the State Administration Law. It has been definitively affirmed by Constitutional Court Decision No. 128/PUU-XXIII/2025 and reinforced by Law No. 16 of 2025.

Notwithstanding this normative clarity, the two-year transitional period creates a zone of legal uncertainty and sustains conditions inimical to effective corporate governance. The empirical evidence presented in this article confirms that, at the time of research, approximately 30 Deputy Ministers continued to hold dual roles across major BUMN. This pervasive practice demonstrably threatens the three GCG principles examined in this study: accountability, independence, and responsibility. The blurring of institutional roles, the structural compromise of supervisory independence, and the dilution of professional attention are governance deficits that carry real risks of impaired corporate performance and reduced public trust.

This article makes two principal recommendations. First, the government should treat the two-year transitional period as a maximum deadline and take proactive, systematic steps to accelerate the removal of Deputy Ministers from commissioner roles, prioritizing enterprises where the risk of conflict of interest is most acute. This includes expediting transparent and merit-based selection processes for qualified independent replacement commissioners. Second, BUMN themselves should strengthen the role and profile of their independent commissioners, ensuring that supervisory organs are populated by professionals with the competence, independence, and institutional commitment required to uphold GCG standards in the post-transitional environment.

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