



LAW
NUMBER 5 YEAR 1999
CONCERNING
THE PROHIBITION OF
MONOPOLISTIC PRACTICES
AND
UNFAIR BUSINESS COMPETITION

COMMISSION FOR THE SUPERVISION OF BUSINESS COMPETITION
OF THE REPUBLIC OF INDONESIA

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LAW OF THE
REPUBLIC OF INDONESIA
NUMBER 5 YEAR 1999
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THE PROHIBITION
OF MONOPOLISTIC
PRACTICES
AND UNFAIR BUSINESS
COMPETITION



THE PRESIDENT OF THE REPUBLIC INDONESIA

**LAW OF THE REPUBLIC OF INDONESIA
NUMBER 5 YEAR 1999
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UNFAIR BUSINESS COMPETITION**

BY THE GRACE OF THE ALMIGHTY GOD

THE PRESIDENT OF THE REPUBLIC OF INDONESIA,

- Considering:
- a. whereas development in the field of economy must be directed towards the achievement of the people's welfare based on Pancasila and the 1945 Constitution;
 - b. whereas democracy in the field of economy calls for equal opportunity for every citizen to participate in the process of production and marketing of goods and or services, in a fair, effective and efficient business environment, so as to be able to promote economic growth and the functioning of a reasonable market economy;
 - c. whereas anyone engaging in business in Indonesia must be in the condition of fair and normal competition, thus not causing a concentration of economic power around certain business actors, while observing the commitments made by the State of the Republic of Indonesia with regard to International Conventions;
 - d. whereas in order to achieve the matters as intended in items a, b and c, based on the initiative proposed by the Dewan Perwakilan Rakyat (People's Legislative Assembly), a Law concerning the Prohibition of Monopolistic Practices and Unfair Business Competition needs to be formulated;

In view of: Article 5 paragraph (1), Article 21 paragraph (1), Article 27 paragraph (2) and Article 33 of the 1945 Constitution,

With the approval of
THE PEOPLE'S LEGISLATIVE ASSEMBLY
OF THE REPUBLIC OF INDONESIA

HAS DECIDED TO:

Stipulate: LAW CONCERNING THE PROHIBITION OF MONOPOLISTIC PRACTICES AND UNFAIR BUSINESS COMPETITION

CHAPTER I GENERAL PROVISIONS

Article 1

Referred to in this law as:

1. Monopoly shall be control of the production and or marketing of goods and or the use of certain services by one business actor or by one group of business actors.
2. Monopolistic practices shall be the concentration of economic power by one or more business actors, resulting in the control of the production and or marketing of certain goods and or services thus causing unfair business competition and being potentially harmful to the public interest.
3. The centralization of economic power shall be the actual control of a market by one or more business actors, enabling them to determine the price of goods and or services.
4. Dominant position shall be a condition in which a business actor has no substantial competitors in the relevant market in relation to the market share controlled, or a business actor has the highest position among its competitors in the relevant market in terms of financial capacity, capacity to access supply or sales, and the capability to adjust supply or demand of certain goods or services.
5. Business actors shall be any individual or business entity, either incorporated or not incorporated as legal entity, established and domiciled or conducting activities within the jurisdiction of the state of the Republic of Indonesia, either individually or jointly based on agreement, conducting various business activities in the field of economy.

6. Unfair business competition shall be competition among business actors in conducting activities for the production and or marketing of goods and or services in an unfair or unlawful manner impeding competition.
7. Agreement shall be the act of one or more business actors to bind themselves with one or more other business actors under any name, either in writing or in non-written form.
8. Conspiracy or business conspiracy shall be a form of cooperation undertaken by one business actor with another with the intention of controlling the relevant market in the interest of the conspiring business actors.
9. Market shall be an economic institution in which sellers and buyers are able to conduct, either directly or indirectly, transactions for the trading of goods and or services.
10. Relevant market shall be the market related to a certain marketing range or area by business actors in respect of goods and or services of the same or similar type or substitutes for such goods and or services.
11. Market structure shall be market conditions providing indicators of aspects having significant impact on business actors' behavior and market performance, among other things the number of sellers and buyers, barriers to enter and exit the market, product variety, distribution system, and market share control.
12. Market behavior shall be conduct undertaken by business actors in their capacity as suppliers or buyers of goods and or services with the aim of achieving the company's objectives, among other things for gaining profits, increasing assets, sales targets and competition methods applied.
13. Market share shall be the percentage of the sale or purchase value of certain goods or services controlled by a certain business actor in the relevant market within a certain calendar year.
14. Market price shall be the price paid in transactions of goods and or services in accordance with the agreement reached among the parties concerned in the relevant market.
15. Consumers shall be any user and or utilizer of goods and or services, either for their own interest or for the interest of other parties.
16. Goods shall be any physical objects, either tangible or intangible, movable or immovable, which can be traded, used, utilized or exploited by consumers or business actors.

17. Services shall be any services in the form of work or performance traded in society with the purpose of being utilized by consumers or business actors.
18. Commission for the Supervision of Business Competition shall be a commission formed to oversee business actors in conducting their business activities in order to ensure that they do not conduct monopolistic practices and or unfair business competition.
19. District Court shall be the court, as intended under applicable laws and regulations, at the legal domicile of the business of the business actors concerned.

CHAPTER II PRINCIPLES AND PURPOSES

Article 2

Business actors in Indonesia must conduct their business activities based on the principles of economic democracy, with due observance of the equilibrium between the interests of business actors and the public interest.

Article 3

The purposes of enacting this law shall be as follows:

- a. safeguard the public interest and enhance the efficiency of the national economy as one of the endeavors aimed at improving the people's welfare;
- b. create a conducive business climate by regulating fair business competition in order to ensure certainty in equal business opportunities for large-, middle- as well as small-scale business actors;
- c. prevent monopolistic practices and or unfair business competition caused by business actors; and
- d. creating effectiveness and efficiency in business activities.

**CHAPTER III
PROHIBITED AGREEMENTS**

Part One

Oligopoly

Article 4

- (1) Business actors shall be prohibited from entering into agreements with other business actors for jointly controlling the production and or marketing of goods and or services which may potentially cause the occurrence of monopolistic practices and or unfair business competition.
- (2) Business actors shall be reasonably suspected or deemed to be jointly involved in the control of the production and or marketing of goods and or services, as intended in paragraph (1), if 2 (two) or 3 (three) business actors or a group of business actors control more than 75% (seventy-five per cent) of the market share of a certain type of goods or services.

Part Two

Price Fixing

Article 5

- (1) Business actors shall be prohibited from entering into agreements with their business competitors to fix the price of certain goods and or services which must be paid by consumers or customers in the same relevant market.
- (2) The provisions intended in paragraph (1) shall not be applicable to the following:
 - a. an agreement entered into in the context of a joint venture; or
 - b. an agreement entered into based on prevailing laws.

Article 6

Business actors shall be prohibited from entering into agreements causing a buyer having to pay a price which is different from that payable by other buyers for the same goods and or services.

Article 7

Business actors shall be prohibited from entering into agreements with their business competitors to fix prices below market prices, which may potentially cause unfair business competition.

Article 8

Business actors shall be prohibited from entering into agreements with other business actors setting forth the condition that parties receiving the goods and or services shall not sell or resupply the goods and or services received by them, at a price lower than the contracted price, potentially causing unfair business competition.

Part Three

Dividing Territories

Article 9

Business actors shall be prohibited from entering into agreements with their business competitors which have the purpose of dividing marketing territories or allocating the market for goods and or services, potentially causing monopolistic practices and or unfair business competition.

Part Four

Boycott

Article 10

- (1) Business actors shall be prohibited from entering into agreements with their business competitors which may impede other business actors in engaging in the same business, either for domestic or overseas market purposes.
- (2) Business actors shall be prohibited from entering into agreements with their business competitors to refuse to sell any goods and or services of other business actors, whereby such act:
 - a. causes a loss or may be suspected of potentially causing a loss to other business actors; or

- b. poses constraint on other business actors in selling or buying any goods and or services from the relevant market.

Part Five

Cartel

Article 11

Business actors shall be prohibited from entering into agreements with their business competitors, with the intention of influencing prices by arranging the production and or marketing of certain goods and or services, which may cause monopolistic practices and or unfair business competition.

Part Six

Trust

Article 12

Business actors shall be prohibited from entering into agreements with other business actors to engage in cooperation by establishing a joint company or a larger company, by keeping and maintaining the continuity of each respective company or its members, with the aim of controlling the production and or marketing of goods and or services, which may cause monopolistic practices and or unfair business competition.

Part Seven

Oligopsony

Article 13

- (1) Business actors shall be prohibited from entering into agreements with other business actors with the aim of jointly controlling the purchase or acquisition of supplies in order to control prices of goods and or services in the relevant market, which may cause monopolistic practices and or unfair business competition.
- (2) Business actors shall be reasonably suspected or deemed to be jointly controlling the purchase or acquisition of supplies as intended in paragraph (1) if 2 (two) or 3 (three) business actors or a group of business actors control more than 75% (seventy-five per cent) of the market share of a certain type of goods or services.

Part Eight

Vertical Integration

Article 14

Business actors shall be prohibited from entering into agreements with other business actors with the aim of controlling the production of several goods constituting products which are included in the production chain of certain related goods and or services whereby each production series is the end product of processing or further processing, either in a direct or indirect series, which may potentially cause unfair business competition and or may be harmful to society.

Part Nine

Exclusive Dealing

Article 15

- (1) Business actors shall be prohibited from entering into agreements with other business actors setting forth the condition that the party receiving the goods and or services shall only resupply or shall refrain from resupplying the aforementioned goods and or services to certain parties and or at a certain place.
- (2) Business actors shall be prohibited from entering into agreements with other parties setting forth the condition that the party receiving certain goods and or services must be prepared to purchase other goods and or services from the supplying business actor.
- (3) Business actors shall be prohibited from entering into agreements concerning prices or certain price discounts for goods and or services, setting forth the condition that the business actor receiving goods and or services from the supplying business actor:
 - a. must be prepared to purchase other goods and or services from the supplying business actor; or
 - b. shall not purchase the same or similar goods and or services from other business actors that are the competitors of the supplying business actor.

Part Ten
Agreements With Foreign Parties

Article 16

Business actors shall be prohibited from entering into agreements with other parties overseas setting forth conditions which may cause monopolistic practices and or unfair business competition.

CHAPTER IV
PROHIBITED ACTIVITIES

Part One

Monopoly

Article 17

- (1) Business actors shall be prohibited from controlling the production and or marketing of goods and or services which may cause monopolistic practices and or unfair business competition.
- (2) Business actors shall be reasonably suspected or deemed to control the production and or marketing of goods and or services as intended in paragraph (1) in the following events:
 - a. there is no substitute available yet for the goods and or services concerned; or
 - b. causing other business actors to be unable to enter into business competition for the same goods and or services; or
 - c. one business actor or a group of business actors controls more than 50% (fifty per cent) of the market share of a certain type of goods or services.

Part Two
Monopsony

Article 18

- (1) Business actors shall be prohibited from controlling the acquisition of supplies or from acting as sole buyer of goods and or services in the relevant market which may potentially cause monopolistic practices and or unfair business competition.

- (2) Business actors shall be reasonably suspected or deemed to control the acquisition of supplies or to be acting as sole buyer as intended in paragraph (1) if one business actor or a group of business actors controls more than 50% (fifty per cent) of the market share of a certain type of goods or services.

Part Three Market Control

Article 19

Business actors shall be prohibited from engaging in one or several activities, either individually or jointly with other business actors, which may cause monopolistic practices and or unfair business competition, in the form of the following:

- a. reject and or impede certain other business actors in conducting the same business activities in the relevant market; or
- b. impede consumers or customers of their competitors in engaging in a business relationship with such business competitors; or
- c. restrain the distribution and or sales of goods and or services in the relevant market; or
- d. engage in discriminatory practices against certain business actors.

Article 20

Business actors shall be prohibited from supplying goods and or services at a price below cost or by setting extremely low prices with the aim of eliminating or ruining the business of their competitors in the relevant market which may cause monopolistic practices and or unfair business competition.

Article 21

Business actors shall be prohibited from engaging in unfair practices in determining production cost and other costs as part of the price component of goods and or services which may potentially cause unfair business competition.

**Part Four
Conspiracy**

Article 22

Business actors shall be prohibited from conspiring with other parties with the aim of determining the awardees of tenders which may cause unfair business competition.

Article 23

Business actors shall be prohibited from conspiring with other parties with the aim of obtaining information regarding the business activities of their competitors classified as company secret which may cause unfair business competition.

Article 24

Business actors shall be prohibited from conspiring with other parties in order to impede the production and or marketing of goods and or services of their competitors with the aim of causing the goods and or services offered or supplied in the relevant market to diminish, either in the quantity, quality or timeliness required.

**CHAPTER V
DOMINANT POSITION**

Part One

General

Article 25

- (1) Business actors shall be prohibited from using dominant position either directly or indirectly to:
 - a. determine the conditions of trading with the aim of preventing and or impeding consumers from obtaining competitive goods and or services, both in terms of price as well as quality; or
 - b. restrain the market and technology development; or
 - c. hamper other potential business actors from entering the relevant market.

- (2) Business actors shall have a dominant position as intended in paragraph (1) in the following events:
- a. one business actor or a group of business actors controls more than 50% (fifty per cent) of the market share of a certain type of goods or services; or
 - b. two or three business actors or a group of business actors control more than 75% (seventy-five per cent) of the market share of a certain type of goods or services.

Part Two Interlocking Directorate

Article 26

A person holding the position as a member of the board of directors or as a commissioner of a company, shall be prohibited from concurrently holding the position as a member of the board of directors or a commissioner in another company, in the event that such companies:

- a. are in the same relevant market; or
- b. have a strong connection in the field and or type of business activities concerned; or
- c. are jointly capable of controlling the market share of certain goods and or services,

which may result in monopolistic practices and or unfair business competition.

Part Three Share Ownership

Article 27

Business actors shall be prohibited from owning majority shares in several companies of the same type conducting business activities in the same field in the same relevant market, or from establishing several companies with the same business activities in the same relevant market, if such ownership causes:

- a. one business actor or a group of business actors to control more than 50% (fifty per cent) of the market share of a certain type of goods or services;
- b. two or three business actors or a group of business actors to control more than 75% (seventy-five per cent) of the market share of a certain type of goods or services.

Part Four
Mergers, Consolidations and Acquisitions

Article 28

- (1) Business actors shall be prohibited from conducting mergers or consolidations of business entities which may cause monopolistic practices and or unfair business competition.
- (2) Business actors shall be prohibited from conducting the acquisition of shares in other companies if such action may cause monopolistic practices and or unfair business competition.
- (3) Further provisions regarding the prohibition of mergers or consolidations of business entities as intended in paragraph (1), and provisions concerning the acquisition of shares in companies as intended in paragraph (2) shall be set forth in a Government Regulation.

Article 29

- (1) The Commission must be notified of mergers or consolidations of business entities, or acquisition of shares as intended in Article 28 resulting in the asset value and or selling price thereof exceeding a certain amount, by no later than 30 (thirty) days from the date of such merger, consolidation or acquisition.
- (2) Provisions regarding the determination of the asset value and or the selling price as well as the procedure for giving notice as intended in paragraph (1) shall be set forth in a Government Regulation.

CHAPTER VI
COMMISSION FOR THE SUPERVISION OF BUSINESS COMPETITION

Part One
Status

Article 30

- (1) A Commission for the Supervision of Business Competition, hereinafter referred as the Commission, shall be formed to oversee the implementation of this Law.
- (2) The Commission shall be an independent institution free from the influence and authority of the Government and other parties.

- (3) The Commission shall be responsible to the President.

Part Two Membership

Article 31

- (1) The Commission shall consist of a Chairperson acting concurrently as member, a Vice Chairperson acting concurrently as member, and not less than 7 (seven) members.
- (2) Members of the Commission shall be appointed and dismissed by the President upon the approval of the People's Legislative Assembly.
- (3) Members of the Commission shall be appointed for a term of office of 5 (five) years and they shall be eligible for reappointment for 1 (one) subsequent term of office.
- (4) If due to the expiration of the term of office a vacancy occurs in the Commission's membership, the term of office of members may be extended until a new member is appointed.

Article 32

The requirements for membership in the Commission shall be as follows:

- a. citizen of the Republic of Indonesia, at least 30 (thirty) years of age and not older than 60 (sixty) years at the time of appointment;
- b. loyal to Pancasila and the 1945 Constitution;
- c. believes in and devoted to The Almighty God;
- d. honest, fair and having good conduct;
- e. residing within the territory of the State of the Republic of Indonesia;
- f. experienced in the field of business or possessing knowledge and expertise in the field of law and or economics;
- g. has never been convicted of a crime;
- h. has never been declared bankrupt by a court of justice; and
- i. is not affiliated with a particular business entity.

Article 33

Membership in the Commission shall terminate due to the following reasons:

- a. demise;
- b. resignation upon the person's own request;
- c. residing outside the territory of the state of the Republic of Indonesia;
- d. continuous physical or mental illness;
- e. expiration of term of membership in the Commission; or
- f. dismissal.

Article 34

- (1) The formation of the Commission and its organizational structure, duties and functions shall be stipulated by a Presidential Decree.
- (2) For the uninterrupted implementation of its duties, the Commission shall be assisted by a secretariat.
- (3) The Commission may form a working group.
- (4) Provisions regarding the organizational structure, duties and functions of the secretariat and working group shall be further regulated in a decision of the Commission.

Part Three Duties

Article 35

The duties of the Commission shall include the following:

- a. assess agreements that may result in monopolistic practices and or unfair business competition as set forth in Article 4 up to and including Article 16;
- b. assess business activities and or actions of business actors which may cause monopolistic practices and or unfair business competition as stipulated in Article 17 up to and including Article 24;

- c. assess the existence or absence of the abuse of dominant position which may cause monopolistic practices and or unfair business competition as set forth in Article 25 up to and including Article 28;
- d. undertake actions in accordance with the Commission's authority as set forth in Article 36;
- e. provide advice and opinion concerning Government policies related to monopolistic practices and or unfair business competition;
- f. prepare guidelines and or publications related to this Law;
- g. submit periodic reports on the results of the Commission's work to the President and the People's Legislative Assembly.

Part Four Authorities

Article 36

The Commission's authorities shall include the following:

- a. receive reports from the public and or business actors regarding allegations of the existence of monopolistic practices and or unfair business competition;
- b. conduct research concerning allegations of the existence of business activities and or actions of business actors which may cause monopolistic practices and or unfair business competition;
- c. conduct investigation and or examination of allegations of cases of monopolistic practices and or unfair business competition reported by the public or by business actors or discovered by the Commission as a result of its research;
- d. make conclusions regarding the results of its investigation and or examination as to whether or not there are any monopolistic practices and or unfair business competition;
- e. summon business actors alleged of having violated the provisions of this law;
- f. summon and present witnesses, expert witnesses, and any persons deemed to have knowledge about the violation of the provisions of this law;
- g. seek the assistance of investigators to present business actors, witnesses, expert witnesses, or any persons as intended in sub-articles e and f, who are not prepared to appear in response to the Commission's summons;

- h. request the statement of Government institutions related to the investigation and or examination of business actors who have violated the provisions of this law;
- i. obtain, examine and or assess letters, documents or other instruments of evidence for the purpose of investigation and or examination;
- j. determine and stipulate the existence or non-existence of losses suffered by other business actors or society;
- k. notify the business actors alleged of having engaged in monopolistic practices and or unfair business competition about the Commission's decisions;
- l. impose administrative sanctions on business actors violating the provisions of this Law.

Part Five

Funding

Article 37

Expenses related to the performance of the Commission's duties shall be charged to the State Revenues and Expenditures Budget and or other sources permitted by applicable laws and regulations.

CHAPTER VII CASE HANDLING PROCEDURE

Article 38

- (1) Any person having knowledge of the occurrence of or reasonably suspecting that a violation of this Law has occurred, may report it in writing to the Commission with a clear statement concerning the occurrence of violation, attaching the identity of the reporting party.
- (2) A party suffering losses as a result of the violation of this Law may file a written report to the Commission with a complete and clear statement regarding the occurrence of violation and the losses inflicted, attaching the identity of the reporting party.
- (3) The identity of the reporting party as intended in paragraph (1) must be kept confidential by the Commission.

- (4) The reporting procedure as intended in paragraph (1) and paragraph (2) shall be stipulated further by the Commission.

Article 39

- (1) Based on the report as intended in Article 38 paragraph (1) and paragraph (2), the Commission shall be obligated to conduct a preliminary examination, and within 30 (thirty) days after receiving the report concerned, the Commission shall be obligated to determine whether or not follow-up examination is required.
- (2) In follow-up examination, the Commission shall be obligated to examine the business actor against whom the report was filed.
- (3) The Commission shall be obligated to keep confidential the information obtained from business actors classified as company secret.
- (4) If deemed necessary, the Commission may hear the statement of witnesses, expert witnesses and or other parties.
- (5) In conducting activities as intended in paragraph (2) and paragraph (4), members of the Commission shall be provided with warrants.

Article 40

- (1) The Commission may conduct examination of business actors if there is an allegation of the occurrence of violations of this Law even though no report is filed.
- (2) Examinations as intended in paragraph (1) shall be conducted in compliance with the procedure set forth in Article 39.

Article 41

- (1) Business actors and or other parties examined shall be required to submit instruments of evidence required in the investigation and or examination.
- (2) Business actors shall be prohibited from refusing to be examined, from refusing to provide information required for investigation and or examination, or from impeding the investigation and or examination process.
- (3) Violations of the provisions of paragraph (2) shall be submitted by the

Commission to a criminal investigator for conducting criminal investigation in accordance with prevailing provisions.

Article 42

Instruments of evidence in investigations by the Commission shall be in the form of the following:

- a. witness statement,
- b. expert statement,
- c. letters and or documents,
- d. indication,
- e. statement by business actors.

Article 43

- (1) The Commission shall be obligated to complete follow-up examination within 60 (sixty) days from the start of follow-up examination as intended in Article 39 paragraph (1).
- (2) If required, the time frame for follow-up examination as intended in paragraph (1) may be extended by not more than 30 (thirty) days.
- (3) The Commission shall be obligated to determine whether or not a violation of this Law occurred within 30 (thirty) days from the completion of follow-up examination as intended in paragraph (1) or paragraph (2).
- (4) The Commission's decision as intended in paragraph (3) must be read out in a hearing open to the public and the business actor concerned must be notified forthwith thereof.

Article 44

- (1) Within 30 (thirty) days from the time at which the business actor concerned receives notice about the Commission's decision as intended in Article 43 paragraph (4), the business actor concerned shall be obligated to implement

such decision and to submit a report on the implementation of the same to the Commission.

- (2) The business actor concerned may appeal to the District Court by no later than 14 (fourteen) days after receiving notification of the aforementioned decision.
- (3) A business actor not appealing within the time frame as intended in paragraph (2) shall be deemed to have accepted the Commission's decision.
- (4) In the event that the provisions of paragraph (1) and paragraph (2) are not implemented by the business actor concerned, the Commission shall submit such decision to a criminal investigator for conducting a criminal investigation in accordance with the provisions of prevailing laws and regulations.
- (5) The Commission's decisions as intended in Article 43 paragraph (4) shall serve as sufficient initial evidence for a criminal investigator to conduct investigation.

Article 45

- (1) The District Court concerned must examine appeals filed by business actors as intended in Article 44 paragraph (2) within 14 (fourteen) days as from the receipt of the appeal concerned.
- (2) The District Court must render a decision within 30 (thirty) days as from the commencement of the examination of the aforementioned appeal.
- (3) A party filing an appeal in respect of the District Court's decision as intended in paragraph (2), may appeal to the Supreme Court of the Republic of Indonesia within 14 (fourteen) days.
- (4) The Supreme Court must render a decision within 30 (thirty) days from the time at which the appeal is received.

Article 46

- (1) In the event that there is no appeal, the Commission's decision as intended in Article 43 paragraph (3) shall have permanent legal force.
- (2) A stipulation on the execution of the Commission's decision as intended in paragraph (1) shall be requested from the District Court.

CHAPTER VIII SANCTIONS

Part One

Administrative Measures

Article 47

- (1) The Commission shall be authorized to impose sanctions in the form of administrative measures against business actors violating the provisions of this Law.
- (2) Administrative measures as intended in paragraph (1) may be in the form of the following:
 - a. stipulation on the annulment of agreements as intended in Article 4 up to and including Article 13, Article 15 and Article 16; and or
 - b. order to business actors to cease vertical integration as intended in Article 14; and or
 - c. order to business actors to cease activities proven to have caused monopolistic practices and or unfair business competition and or being harmful to society; and or
 - d. ordering business actors to cease the abuse of dominant position; and or
 - e. stipulation on the annulment of mergers or consolidations of business entities and acquisition of shares as intended in Article 28; and or
 - f. stipulation on the payment of compensation for losses; and or
 - g. imposition of a fine of not less than Rp.1,000,000,000,- (Rupiah one billion) and not more than Rp.25,000,000,000,- (Rupiah twenty- five billion).

Part Two

Principal Criminal Sanctions

Article 48

- (1) Violations of the provisions of Article 4, Article 9 up to and including Article 14, Article 16 up to and including Article 19, Article 25, Article 27, and Article 28 shall be subject to the criminal sanction of a fine of not less than Rp 25,000,000,000,- (Rupiah twenty-five billion) and not more than Rp 100,000,000,000,- (Rupiah

one hundred billion), or the criminal sanction of imprisonment as a replacement of fine for no longer than 6 (six) months.

- (2) Violations of the provisions of Article 5 up to and including Article 8, Article 15, Article 20 up to and including Article 24, and Article 26 of this Law shall be subject to the criminal sanction of a fine of not less than Rp.5,000,000,000,- (Rupiah five billion) or not more than Rp.25,000,000,000,- (Rupiah twenty-five billion), or a criminal sanction of imprisonment as replacement of fine for no longer than 5 (five) months.
- (3) Violations of the provisions of Article 41 of this Law shall be subject to a fine of not less than Rp.1,000,000,000,- (Rupiah one billion) and not more than Rp.5,000,000,000,- (Rupiah five billion) or the criminal sanction of imprisonment as replacement of fine for no longer than 3 (three) months.

Part Three

Additional Criminal Sanctions

Article 49

In compliance with the provisions of Article 10 of the Criminal Code, in addition to the criminal sanctions as set forth in Article 48, additional criminal sanctions may be imposed in the form of the following:

- a. revocation of business licenses; or
- b. prohibition of business actors proven to have violated this law from filling the position of director or commissioner for at least 2 (two) years and for no longer than 5 (five) years; or
- c. order to cease certain activities or actions causing losses to other parties.

CHAPTER IX

MISCELLANEOUS PROVISIONS

Article 50

Excluded from the provisions of this law shall be the following:

- a. actions and or agreements aimed at implementing applicable laws and regulations; or

- b. agreements related to intellectual property rights, such as licenses, patents, trademarks, copyright, industrial product design, integrated electronic circuits, and trade secrets as well as agreements related to franchise; or
- c. agreements for the stipulation of technical standards of goods and or services which do not restrain, and or do not impede competition; or
- d. agency agreements which do not stipulate the resupply of goods and or services at a price level lower than the contracted price; or
- e. cooperation agreements in the field of research for raising or improving the living standard of society at large; or
- f. international agreements ratified by the Government of the Republic of Indonesia; or
- g. export-oriented agreements and or actions not disrupting domestic needs and or supplies; or
- h. business actors of the small-scale group; or
- i. activities of cooperatives with the specific aim of serving their members.

Article 51

Monopoly and or concentration of activities related to the production and or marketing of goods and or services affecting the livelihood of society at large as well as branches of production of strategic importance to the state shall be stipulated in a law and shall be implemented by State-Owned Enterprises and or institutions formed or appointed by the Government.

CHAPTER X TRANSITIONAL PROVISIONS

Article 52

- (1) As from the time at which this Law becomes effective, all laws and regulations regulating or related to monopolistic practices and or business competition shall be declared as remaining in effect insofar as not contradictory or not superseded by new ones by virtue of this Law.
- (2) Business actors having entered into agreements and or conducting activities and or undertaking actions not complying with the provisions of this law shall be given 6 (six) months from this Law's coming into effect to make adjustments.

**CHAPTER XI
CLOSING PROVISIONS**

Article 53

This Law shall become effective within 1 (one) year as from its enactment.

For public cognizance, it is hereby ordered that this Law be promulgated by announcement in the State Gazette of the State of the Republic of Indonesia.

Ratified in Jakarta
on March 5, 1999

THE PRESIDENT OF THE REPUBLIC OF INDONESIA

sgd.

BACHARUDDIN JUSUF HABIBIE

Enacted in Jakarta
On March 5, 1999

STATE MINISTER SECRETARY OF
STATE OF THE REPUBLIC OF INDONESIA

sgd.

AKBAR TANDJUNG

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CABINET SECRETARIAT OF THE REPUBLIC OF INDONESIA
Head of the Legislature Bureau I

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ELUCIDATION ON
THE LAW OF THE
REPUBLIC OF INDONESIA
NUMBER 5 YEAR 1999
CONCERNING
THE PROHIBITION
OF MONOPOLISTIC
PRACTICES AND UNFAIR
BUSINESS COMPETITION



THE PRESIDENT OF THE REPUBLIC INDONESIA

**ELUCIDATION ON
THE LAW OF THE REPUBLIC OF INDONESIA
NUMBER 5 YEAR 1999
CONCERNING
THE PROHIBITION OF MONOPOLISTIC PRACTICES AND UNFAIR
BUSINESS COMPETITION**

GENERAL

Economic development in the First Long Term Development has resulted in substantial progress, manifested in among other things the improvement of the people's welfare. The aforementioned progress achieved in development has been supported by development policies in various fields, including policies in the field of economy as set forth in the Broad Outlines of State Policy and the Five Year Development Plan, as well as in various other economic policies.

Despite the substantial progress achieved in the First Long Term Development, as reflected in high economic growth, there are still many challenges or unresolved issues, especially in economic development, alongside the trend of globalization in the economy and the dynamics and development of private businesses since the early 1990s.

In reality, the business opportunities created during the last three decades have not been able to ensure that all levels of society participate in development in various economic sectors. The development of the private sector during the above mentioned period has on the one hand been marked by various forms of not fully appropriate Government policies leading to market distortions. On the other hand, the development of the private sector has in fact been mainly the result of unfair business competition conditions.

The above described phenomena have developed and have been supported by the relationship between decision-makers and business actors, either directly or indirectly, leading to the further deterioration of the situation. The implementation of national economy has not fully adhered to the mandate of Article 33 of the 1945 Constitution, and has shown a highly monopolistic tendency.

Businessmen close to the elite of power have obtained excessive facilities resulting in the creation of a social gap. The emergence of conglomerates and a group of strong businessmen not supported by the spirit of real entrepreneurship has been one of the factors which have caused the economic resilience to become extremely vulnerable and uncompetitive.

In view of the above situation and conditions, there is a need for us to study and reorganize business activities in Indonesia, enabling businesses to grow and develop in a fair and appropriate way, leading to the creation of a fair business competition climate, and to avoid the concentration of economic power around certain individuals or groups, among other things, in the form of monopolistic practices and unfair business competition harmful to society, which are contradictory to the ideals of social justice.

Therefore, it is necessary to formulate the Law Concerning the Prohibition of Monopolistic Practices and Unfair Business Competition intended to uphold the rule of law and to provide equal protection to every business actor in an effort to create fair business competition.

This law provides for assurances of legal certainty for stimulating further rapid economic development in an effort to improve general welfare, as well as in implementation of the spirit and soul of the 1945 Constitution.

For an effective implementation of this law and implementing regulations thereof in accordance with its principles and objectives, there is a need to form a Commission for the Supervision of Business Competition, namely an independent institution free from the influence of the government and other parties, having the authority to conduct supervision of business competition and to impose sanctions. Such sanctions shall be in the form of administrative measures, whereas criminal sanctions shall be under the authority of the court of justice.

In general, the substance of the Law Concerning the Prohibition of Monopolistic Practices and Unfair Business Competition consists of 6 (six) parts being regulated namely as follows:

1. prohibited agreements;
2. prohibited actions;
3. dominant position;
4. Commission for the Supervision of Business Competition;
5. law enforcement;
6. miscellaneous provisions.

This law has been formulated based on the principles of Pancasila and the 1945 Constitution, and it has been based on the principles of economic democracy with due observance of the equilibrium between the interests of business actors and the public interest with the aim to: safe-guard public interest and protect consumers; develop a conducive business climate through the creation of fair business competition, and ensure certainty in equal business opportunity for every person; prevent monopolistic practices and or unfair business competition caused by business actors; and create effectiveness and efficiency in business activities in the context of improving the efficiency of the national economy as one of the endeavors in the context of enhancing the people's welfare.

ARTICLE BY ARTICLE

Article 1

Sub-Article 1
Self-explanatory

Sub-Article 2
Self-explanatory

Sub-Article 3
Self-explanatory

Sub-Article 4
Self-explanatory

Sub-Article 5
Self-explanatory

Sub-Article 6
Self-explanatory

Sub-Article 7
Self-explanatory

Sub-Article 8
Self-explanatory

Sub-Article 9
Self-explanatory

Sub-Article 10
Self-explanatory

Sub-Article 11
Self-explanatory

Sub-Article 12
Self-explanatory

Sub-Article 13
Self-explanatory

Sub-Article 14
Self-explanatory

Sub-Article 15
Self-explanatory

Sub-Article 16
Self-explanatory

Sub-Article 17
Self-explanatory

Sub-Article 18
Self-explanatory

Sub-Article 19
Self-explanatory

Article 2
Self-explanatory

Article 3
Self-explanatory

Article 4
Paragraph (1)
Self-explanatory
Paragraph (2)
Self-explanatory

Article 5
Paragraph (1)
Self-explanatory

Paragraph (2)
Self-explanatory

Article 6
Self-explanatory

Article 7
Self-explanatory

Article 8
Self-explanatory

Article 9
Agreements may be vertical or horizontal in nature. Such agreements are prohibited because business actors eliminate or reduce competition by dividing the market or market allocation. Marketing territories may mean the territory of the state of the Republic of Indonesia, or parts of the territory of the state of the Republic of Indonesia, for example regency, province, or other regional territories. Dividing marketing territories or market allocation means dividing territories with the aim of obtaining or supplying goods, services, or goods and services, determining the parties from which goods, services, or goods and services may be obtained or supplied.

Article 10
Paragraph (1)
Self-explanatory
Paragraph (2)
Self-explanatory

Article 11
Self-explanatory

Article 12
Self-explanatory

Article 13

Paragraph (1)

Self-explanatory

Paragraph (2)

Self-explanatory

Article 14

Referred to as controlling the production of a number of products being part of a production chain which are normally referred to as vertical integration shall be the control of a production process series of certain goods from upstream to downstream or a process continuing for certain services by certain business actors. Even though vertical integration practices may result in low priced goods and services, these can cause unfair business competition which is harmful to the building blocks of the society's economy. Such practices are prohibited insofar as they cause unfair business competition and or are harmful to society.

Article 15

Paragraph (1)

Referred to as supplying shall include the procurement of supplies, either in the form of goods or services, in the context of sale and purchase, lease, lease purchase and leasing activities.

Paragraph (2)

Self-explanatory

Paragraph (3)

Sub-Paragraph a

Self-explanatory

Sub-Paragraph b

Self-explanatory

Article 16

Self-explanatory

Article 17

Paragraph (1)

Self-explanatory

Paragraph (2)

Sub-Paragraph a

Self-explanatory

Sub-Paragraph b

Referred to as other business actors shall be business actors possessing significant competitive capacity in the relevant market.

Sub-Paragraph c

Self-explanatory

Article 18

Paragraph (1)

Self-explanatory

Paragraph (2)

Self-explanatory

Article 19

Sub-Article a

It is not allowed to reject or impede certain business actors in an unreasonable manner or for non-economic reasons, for example due to difference in ethnic group, race, social status, and others.

Sub-Article b

Self-explanatory

Sub-Article c

Self-explanatory

Sub-Article d

Self-explanatory

Article 20

Self-explanatory

Article 21

Unfair practices in determining production cost and other costs shall be violation of prevailing laws and regulations with the aim of obtaining production factor costs which are lower than the actual cost.

Article 22

Tenders shall be bids submitted to contract certain work, for the procurement of goods, or the provision of services.

Article 23

Self-explanatory

Article 24

Self-explanatory

Article 25

Paragraph (1)

Sub-Paragraph a

Self-explanatory

Sub-Paragraph b

Self-explanatory

Sub-Paragraph c

Self-explanatory

Paragraph (2)

Sub-Paragraph a

Self-explanatory

Sub-Paragraph b

Self-explanatory

Article 26

Sub-Article a

Self-explanatory

Sub-Article b

Companies shall be closely related if such companies support each other or are in direct contact in the process of production, marketing, or production and marketing.

Sub-Article c

Self-explanatory

Article 27

Sub-Article a
Self-explanatory

Sub-Article b
Self-explanatory

Article 28

Paragraph (1)
Business entities shall be companies or forms of business, either incorporated as legal entities (e.g., limited liability companies) or not incorporated as legal entities, engaging in a type of business which is permanent and continuous in nature, with the purpose of generating profits.

Paragraph (2)
Self-explanatory

Paragraph (3)
Self-explanatory

Article 29

Paragraph (1)
Self-explanatory

Paragraph (2)
Self-explanatory

Article 30

Paragraph (1)
Self-explanatory

Paragraph (2)
Self-explanatory

Paragraph (3)
Self-explanatory

Article 31

Paragraph (1)

The Chairperson and the Vice Chairperson of the Commission shall be elected from among and by Members of the Commission.

Paragraph (2)

Self-explanatory

Paragraph (3)

Self-explanatory

Paragraph (4)

Extension of the term of membership in the Commission for the purpose of avoiding a vacancy may not exceed 1 (one) year.

Article 32

Sub-Article a

Self-explanatory

Sub-Article b

Self-explanatory

Sub-Article c

Self-explanatory

Sub-Article d

Self-explanatory

Sub-Article e

Self-explanatory

Sub-Article f

Self-explanatory

Sub-Article g

Not having been convicted of a crime shall mean a person's not having been imposed with a criminal sanction due to a serious criminal act or due to the violation of morality.

Sub-Article h

Self-explanatory

Sub-Article i

Not affiliated with a particular business entity shall mean that as from the time at which the person concerned becomes a member of the Commission, such person does not act as:

1. a member of the board of commissioners or supervisors, or of the board of directors of a company;
2. a member of the management or inspection body of a cooperative;
3. a party providing services to a company, such as consultant, public accountant and appraiser;
4. a majority shareholder in a company.

Article 33

Sub-Article a

Self-explanatory

Sub-Article b

Self-explanatory

Sub-Article c

Self-explanatory

Sub-Article d

Stated in the form of a statement by an authorised physician.

Sub-Article e

Self-explanatory

Sub-Article f

Dismissed due to the reason of, among other things, no longer meeting the requirements for Commission membership as intended in Article 32.

Article 34

Paragraph (1)

Self-explanatory

Paragraph (2)

Secretariat shall be the organizational unit supporting or assisting the Commission in the implementation of its duties.

Paragraph (3)

Working unit shall be a professional team appointed by the Commission to assist in the implementation of certain tasks at a certain time.

Paragraph (4)

Self-explanatory

Article 35

Sub-Article a

Self-explanatory

Sub-Article b

Self-explanatory

Sub-Article c

Self-explanatory

Sub-Article d

Self-explanatory

Sub-Article e

Self-explanatory

Sub-Article f

Self-explanatory

Sub-Article g

Self-explanatory

Article 36

Sub-Article a

Self-explanatory

Sub-Article b

Self-explanatory

Sub-Article c

Self-explanatory

Sub-Article d

Self-explanatory

Sub-Article e

Self-explanatory

Sub-Article f
Self-explanatory

Sub-Article g
Investigator shall be an investigator as intended in Law Number 8 Year 1981.

Sub-Article h
Self-explanatory

Sub-Article i
Self-explanatory

Sub-Article j
Self-explanatory

Sub-Article k
Self-explanatory

Sub-Article l
Self-explanatory

Article 37

In principle, the State is responsible for the operational implementation of the Commission's duties by providing support in the form of funding through the State Revenues and Expenditures Budget. However, bearing in mind the broad and diverse scope and field of the Commission's duties, the Commission may obtain funds from other sources not contradictory to the prevailing laws and regulations, which are not binding in nature and will not influence the Commission's independence.

Article 38

Paragraph (1)
Self-explanatory

Paragraph (2)
Self-explanatory

Paragraph (3)
Self-explanatory

Paragraph (4)
Self-explanatory

Article 39

Paragraph (1)
Self-explanatory

Paragraph (2)
Self-explanatory

Paragraph (3)
Self-explanatory

Paragraph (4)
Self-explanatory

Paragraph (5)
Self-explanatory

Article 40

Paragraph (1)
Self-explanatory

Paragraph (2)
Self-explanatory

Article 41

Paragraph (1)
Self-explanatory

Paragraph (2)
Self-explanatory

Paragraph (3)
The Commission shall submit to the investigators for investigation not only criminal acts or actions as intended in paragraph (2) of this article, but also the principal cases under investigation and examination by the Commission.

Article 42

Sub-Article a
Self-explanatory

Sub-Article b
Self-explanatory

Sub-Article c
Self-explanatory

Sub-Article d
Self-explanatory

Sub-Article e
Self-explanatory

Article 43

Paragraph (1)
Self-explanatory

Paragraph (2)
Self-explanatory

Paragraph (3)
The Commission's decision making as intended in paragraph (3) of this Article shall be conducted in a Council meeting consisting of at least 3 (three) Commission members.

Paragraph (4)
Referred to as notified shall be conveying an excerpt from the Commission's decision to the business actor concerned.

Article 44

Paragraph (1)
30 (thirty) days shall be counted as from the receipt of the excerpt from the Commission's decision by the business actor concerned or its legal proxy.

Paragraph (2)
Self-explanatory

Paragraph (3)
Self-explanatory

Paragraph (4)
Self-explanatory

Paragraph (5)
Self-explanatory

Article 45

Paragraph (1)
Self-explanatory

Paragraph (2)
Self-explanatory

Paragraph (3)
Self-explanatory

Paragraph (4)
Self-explanatory

Article 46

Paragraph (1)
Self-explanatory

Paragraph (2)
Self-explanatory

Article 47

Paragraph (1)
Self-explanatory

Paragraph (2)

Sub-Paragraph a
Self-explanatory

Sub-Paragraph b
Ceasing vertical integration shall be implemented, among other things, by annulment of the agreement, transfer of a part of the company to another business actor, or change of the form of production series.

Sub-Paragraph c
The order shall be to cease certain activities or conduct, rather than the entire business activities of the business actor concerned.

Sub-Paragraph d
Self-explanatory

Sub-Paragraph e
Self-explanatory

Sub-Paragraph f
Compensation for losses shall be granted to the business actor concerned and to other parties having suffered a loss.

Sub-Paragraph g
Self-explanatory

Article 48

Paragraph (1)
Self-explanatory

Paragraph (2)
Self-explanatory

Paragraph (3)
Self-explanatory

Article 49

Sub-Article a
Self-explanatory

Sub-Article b
Self-explanatory

Sub-Article c
Self-explanatory

Article 50

Sub-Article a
Self-explanatory

Sub-Article b
Self-explanatory

Sub-Article c
Self-explanatory

Sub-Article d
Self-explanatory

Sub-Article e
Self-explanatory

Sub-Article f
Self-explanatory

Sub-Article g
Self-explanatory

Sub-Article h
Referred to as business actors of the small-scale group shall be as intended in Law Number 9 Year 1995 concerning Small-Scale Business.

Sub-Article i
Referred to as serving their members shall be providing services exclusively to their members and not to the public for the procurement of basic needs, production facilities requirements including credit and raw materials, as well as services for the marketing and distributing products of members which do not result in monopolistic practices and or unfair business competition.

Article 51
Self-explanatory

Article 52

Paragraph (1)
Self-explanatory

Paragraph (2)
Self-explanatory

Article 53
Self-explanatory

SUPPLEMENT TO
THE STATE GAZETTE OF THE REPUBLIC OF INDONESIA
NUMBER 3817