

1. COMMENTARY BY THE GOVERNMENT OF INDONESIA ON THE COMPETITION LAW OF INDONESIA

Background

Indonesian economic development during the first long term development produced a tremendous amount of progress. It was motivated by development in various sectors, including economic development policy stipulated in the broad outlines of the nation's direction and the five year development and various kinds of other economic policies as well. Although there were a lot of progress which was shown by high economic growth, there are also still many challenges or economic problems in Indonesia. In reality, business opportunities created during the past three decades have not been able to make the whole population to afford and to participate in the development of various economic sectors.

The development of private business during that period, on one hand was marred by all kinds of inefficient government policies that caused market distortion. On the other hand, the development of private business in reality occurred mostly due to the condition of unfair business competition. The above phenomena was developed and supported by a close relationship between the decision makers and business actors. Furthermore, the business actors having close relationship to ruling elite, acquired excessive facilities that created a social gap. The emergence of conglomerate and a small group of strong business actors without being supported by a spirit of true entrepreneurship was one of the factors that caused the economic stamina to become very fragile and unable to compete.

Due to the bad climate on business competition and the need to provide equal protection and to create a fair business competition, the government of Indonesia and the Indonesian parliament agreed to enact the Law number 5 of 1999 concerning the prohibition on monopolistic practices and unfair business competition.

Objectives

Indonesian business actors in doing their business shall be based on economic democracy with due attention to the equilibrium between the business actors' interest and the public interests. Considering the principle of the philosophy on Indonesian competition policy, the objectives of the Indonesian competition law are:

- a. to safeguard the interests of the public and to improve economic efficiency as one of the efforts to improve the people's welfare;
- b. to create a conducive business climate through the stipulation of fair business competition in order to ensure the certainty of equal business opportunities for large , middle and small-scale undertakings in Indonesia;
- c. to prevent monopolistic practices and/or unfair/unhealthy business competition that may be committed by undertakings, and
- d. the creation of effectiveness and efficiency in business activities.

The Substance of the Act Number 5 of 1999

The substance of the Indonesian competition law which is under the coverage of the Act Number 5 of 1999 are:

A. Prohibited Agreements

This chapter covers Oligopoly, Price Fixing, Price Discrimination, Resale Price Maintenance, Market Allocation, Boycott, Cartels, Trust, Oligopsony, Vertical Integration, Exclusive Dealing or Closed Agreement.

Most of business practices are placed under the coverage of ride of reason approach. Only a few of the articles are considered as per se illegal; one of which is price fixing. Further more, agreement among business actors which may be considered as oligopoly is if two or three business actors or a group of business actors jointly control production and/or marketing of goods and/or services more than 75% of the market share of a certain type of goods or services. The 75% of the market share in this article is only a presumption.

B. Prohibited Activities

This chapter covers monopoly, monopsony, market control, predatory pricing, conspiracy. Like oligopoly, the criteria to decide whether there is a monopoly or monopsony are only presumption.

C. Dominant Position

This chapter covers interlocking directorate, share ownership, merger and acquisition. Business actors shall have a dominant position if a business actor or a group of business actors controls 50% of market share or more, or two or three business actors or group business actors control 75% or more of the market share.

D. Business Competition Supervisory Commission

This chapter covers the Commission status, membership, duties and its authority.

E. Procedure in Handling Business Competition Cases

F. Sanction/Punishment

This chapter covers administrative action, criminal penalties and additional criminal penalties.

G. Other Provisions

Exempted from the provisions of this act are

- a. actions and/or agreements with the intention to implement the existing law;
- b. agreements related to intellectual property rights such as licence, patent, trademark, copyright, industrial product design, integrated circuit and trade secrets, and agreements related to franchise; or
- c. agreements on technical standardisation of products of goods and/or services which do not restrict and/or hamper competition; or
- d. agreements for a distribution purpose which do not stipulate to re-supply of goods and/or services with the price lower than the price agreed upon in the agreement; or
- e. agreement of research cooperation for the purpose of promoting or improving the living standards of the people in general; or
- f. international agreements which have been ratified by the government of the Republic of Indonesia; or
- g. agreement and/or actions intended to export which do not distract domestic trade and/or market supply; or
- h. undertakings categorized engaging in small-scale business; or
- i. co-operative business activities serving specifically only for its member

Sources of Legislation

Model Law on Restrictive Business Practices issued by UNCTAD (Rev 5) and other legislation from other countries.

ANNEX I

INDONESIA

**THE PEOPLE'S LEGISLATIVE ASSEMBLY
OF THE REPUBLIC OF INDONESIA**

**LAW OF THE REPUBLIC OF INDONESIA
NUMBER.....YEAR.....
CONCERNING
PROHIBITION OF MONOPOLISTIC PRACTICES
AND
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 social welfare based on Pancasila and the 1945 Constitution;
 - b. whereas democracy in the field of the economy calls for equal opportunity for the every citizen to participate in the process of production and marketing of goods and/or services a fair, effective and efficient business environment, so as to be able to promote the growth of economy and the functioning of a reasonable market economy;
 - c. whereas anyone engaging in business in Indonesia must exist in an atmosphere of fair and natural competition, hence there shall be no concentration of economic power in the hands of certain business actors, notwithstanding the commitments or conventions executed by the State of the Republic of Indonesia with regard to International Conventions;
 - d. whereas in order to achieve the intentions mentioned in letters a, b and c herein, or DPR (People's Legislative assembly), a Law regarding the Prohibition of Monopolistic Practices and Unfair Business Competition needs to be set fourth;

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 REGARDING THE PROHIBITION OF MONOPOLISTIC

PRACTICES AND UNFAIR BUSINESS COMPETITION.
CHAPTER 1

GENERAL PROVISIONS

Article 1

Referred to in this Law as:

1. Monopoly shall be the control over the production and/or marketing of goods and/or over the utilization of certain services by one business actor or by one group of business actors.
2. Monopolistic practices shall be the centralization of economic power by one or more business actors, resulting in the control of the production and/or marketing of goods and/or services by certain business actors thus resulting in unfair business competition and potentially harmful to the interests of the public.
3. The centralization of economic power shall be the actual control of a market by one or more business actors, enabling to determine prices of goods and/or services.
4. Dominant position shall be a situation in which a business actor has no substantial competitor in the market concerned in relation to the market segment controlled, or a business actor has the strongest position among its competitors in the market concerned in relation to financial capacity, access capacity to 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 Republic of Indonesia, either independently or jointly based on agreement, conducting various business activities in the economic field.
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 or anti-competition manner.
7. Agreement shall be the action of one or more business actors for binding themselves to one or more other business actors under whatever name, either in writing or not in writing.
8. Conspiracy or business conspiracy shall be a form of cooperation conducted by one business actor with another with the intention of controlling the market concerned in the interest of the conspiring business actors.
9. Market shall be an economic institution in which sellers and buyers, either directly or indirectly, can conduct trading transactions of goods/or services.
10. The market concerned shall be the market related to certain marketing scope or substitute of such goods and/or services.
11. Market structure shall be a market condition comprising of indicators concerning aspects with significant impact on business actors' behaviour and market performance, among other things the number of sellers and buyers, barriers to entering and leaving the market, product variety, distribution system and control of market segment.
12. Market behaviour shall be acts undertaken by business actors in their capacity as suppliers or buyers of goods and/or services in order to achieve the company's objectives among other things to achieve profits, growth of assets, sales targets and competition methods applied.
13. Market share shall be the percentage of the value of sales or purchase of certain goods or

services controlled by a certain business actor on the market concerned in 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 on the market concerned.
15. Consumers shall be every user of goods and/or services, both for personal use or well as for the interests of other people.
16. Goods shall be any physical objects, either tangible or intangible, movable or immovable, which may be traded, used, utilized or exploited by consumers or business actors.
17. Services shall be services in the form of work or performance traded in society to be utilized by consumers or business actors.
18. Business Competition Supervisory Committee shall be a committee formed to supervise business actors in conducting their business activities so that they do not conduct monopolistic practices and/or unfair business competition.
19. The District Court shall be a court as intended in prevailing laws and regulations, at the legal domicile of the business of the business actors concerned.

CHAPTER II PRINCIPLES AND PURPOSES

Article 2

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

Article 3

The purpose of enacting this Law shall be as follows:

- a. to safeguard the interests of the public and to improve economic efficiency as one of the efforts to improve the people's welfare;
- b. to create a conducive business climate through the stipulation of fair business competition in order to ensure the certainty of equal business opportunities for large-, middle- as well as small-scale business actors in Indonesia;
- c. to prevent monopolistic practices and/or unfair business competition that may be committed by business actors; and
- d. the creation of 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 while may potentially cause the occurrence of monopolistic practices and/or unfair business competition.
- (2) Business actors may be suspected or denied to be jointly involved in the control of the production and/or marketing of goods and/or services, as intended in Article (1) herein, if two or three business actors or a group of business actors Control over 75 % (seventy-five percent) of the market segment of a certain type of goods or services.

Part Two Price Determination

Article 5

- (1) Business actors shall be prohibited from entering into agreements with their business competitors for the determination of the price of certain goods and/or services payable by consumers or customers on the same market.
- (2) The provisions intended in paragraph (1) of this Article shall not be applicable to the following:
 - a. an agreement entered into 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 forcing a buyer to pay a price which is different from that payable b), other buyers for the same goods and/or services.

Article 7

Business actor shall be prohibited from entering into agreements with their business competitors to determine prices below market prices, which may potentially result in 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 goods and/or services shall not sell or re-supply goods and/or services received by them, at a price lower than the contracted price, potentially causing unfair business competition.

Part Three
Division of Territory

Article 9

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

Part Four
Boycott

Article 10

(1) Business actors shall be prohibited from entering into agreements with other business actors which could prevent other business actors from engaging in the same business, either for domestic or overseas market purposes.

(2) Business actors shall be prohibited from entering into agreements with other business actors for refusing to sell any goods and/or services from other business actors, so that such act:

- a. causes a loss or may be suspected of potentially causing a loss to other business actors; or
- b. limits other business actors in selling and or buying any goods and/or services from the market concerned.

Part Five
Cartels

Article 11

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

Part Six

Trust

Article 12

Business actors shall be prohibited from entering into agreements with other competing business actors for cooperation by establishing a joint company or a larger company, by keeping and maintaining the continuity of each company or its member, with the aim of controlling production and/or marketing of goods and/or services, which may result in 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 for controlling prices of goods and/or services on the market concerned, which may result in 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) of this Article if two or three business actors or a group of business actors control over 75 (seventy-five percent) of the market segment 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 intention of controlling the production of several goods which are products included in the production chain of certain related goods and/or services where each product link is the end product of the production process or of further processing, either in one direct link or indirect link, which may potentially result in unfair business competition and/or harmful to society.

Part Nine
Closed Agreements

Article 15

- (1) Business actors shall be prohibited from entering into agreements with other business actors, stipulating that the party receiving the goods and/or services shall only re-supply or not re-supply 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 stipulating that the party receiving certain goods and/or services must be prepared to buy other goods and/or services of 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, stipulating that the business actor receiving goods and/or services from the supplying business actor:
 - a. must be prepared to buy other goods and/or services from the supplying business actor; or
 - b. shall not buy, the same or similar goods and/or services from other business actors, competitors of the supplying business actor.

Part Ten
Agreement With Foreign Parties

Article 16

Business actors shall be prohibited from entering into agreements with foreign parties setting forth conditions that may result in 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 result in monopolistic practices and/or unfair business competition.
- (2) Business actors may be reasonably suspected or deemed to control the production and/or marketing of goods and/or services as intended in paragraph (1) of this article 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 over 50% (fifty per cent) of the market segment 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 on the market concerned which may potentially result in monopolistic practices and/or unfair business competition.

(2) Business actor shall be reasonably suspected of controlling the acquisition of supplies or acting as sole buyer as intended in paragraph (1) of this article if a business actor controls over 50% (fifty per cent) of the market segment of a certain type of goods or services.

Part Three
Market Control

Article 19

Business actors shall be prohibited from engaging in one or more activities, either individually or jointly with other business actors, which may result in monopolistic practices and/or unfair business competition, in the following forms:

- a. refuse and/or impede certain other business actors in conducting the same business activities on the market concerned; or
- b. bar consumers or customers of their competitors from engaging in business relationship with such of their competitors; or
- c. limit the distribution and/or sales of goods and/or services on the market concerned; or engage in discriminative practices towards certain business sectors.

Article 20

Business actors shall be prohibited from supplying goods and/or services by selling while making a loss or by determining extremely low prices with the aim of eliminating or ruining the business of their competitors on the market concerned which may potentially result in monopolistic practices and/or unfair business competition.

Article 21

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

Part Four
Conspiracy

Article 22

Business actors shall be prohibited from entering into conspiracies with other parties in order to determine awardees of tenders which may potentially result in unfair business competition.

Article 23

Business actors shall be prohibited from conspiring with other parties for obtaining information regarding the business activities of their competitors classified as company secret which may potentially result in 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 to the market concerned to become less, either in quantity, quality or in 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 intention of preventing and/or barring consumer from obtaining competition goods and/or services, both in terms of price and quality; or
 - b. limiting markets and technology developments; or
 - c. bar other potential business actor from entering the market concerned
- (2) Business actors shall have a dominant position as intended in paragraph (1) of this article in the following events:
 - a. if one business actor controls over 50% (fifty per cent) of the market segment of certain type of goods or services; or
 - b. if two or three business actors or a group of business actors control over 75% (seventy-five percent) of the market segment of a certain type of goods or services.

Part Two
Multiple Positions

Article 26

A person concurrently holding the position as a member of the Board of Directors or as a Commissioner of a company shall be prohibited from simultaneously holding position as a member of the Board of Directors or commissioner in other companies, in the event that such companies.

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

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

Part Three
Share Ownership

Article 27

Business actors shall be prohibited from owing majority shares in several similar companies conducting business activities in the same field on the same market, or establishing several companies with the same business activities in the same market, if such ownership causes:

- a. one business actor or a group of business actors to control over 50% (fifty per cent) of the market segment of certain type of goods or services;
- b. two or three business actors or a group of business actors to control over 75 (seventy-five per cent) of the market segment 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 resulting in 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 result in monopolistic practices and/or unfair business competition.
- (3) Further provision regarding the prohibition of mergers or consolidations of business entities as intended in paragraph (1) of this article and provisions concerning the acquisition of shares in companies as intended in paragraph (2) of this article shall be set forth in a government regulation.

Article 29

(1) The committee must be notified of mergers or consolidations of business entities, or acquisition of shares as intended in Article 28 resulting in the assets 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 assets value and/or the selling price as well as the procedure for giving notice as intended in paragraph (1) of this article shall be stipulated in a government regulation.

CHAPTER VI
BUSINESS COMPETITION SUPERVISORY COMMITTEE
Part One
Status

Article 30

(1) For the supervision of the implementation of this law, a Business Competition Supervisory Committee shall be formed, hereinafter referred to as the Committee.

(2) The Committee shall be an independent institution free from the Government's and other parties' influence and authority.

(3) The Committee shall be responsible to the President.

Part Two
Membership

Article 31

(1) The Committee shall consist of a Chairperson acting concurrently as member, and of not less than 7 (seven) members

(2) Members of the Committee shall be appointed and dismissed by the President upon the approval of the People's Legislative Assembly.

(3) The Members of the Committee shall be appointed for a term of office of 5 (five) 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 Committee's membership, the term of office of members may be extended until new members are appointed.

Article 32

Requirements for membership in the Committee shall be as follows:

- a. citizens 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. Believers in the devout to The Almighty God;
- d. Honest, fair and having good conduct;
- e. Residing with the territory 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 imposed a criminal penalty;
 - h. Has never been declared bankrupt by a court of justice; and
 - i. Is not affiliated with a certain business entity.

Article 33

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

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

Article 34

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

Part Three Duties

The duties of the Committee shall include the following:

- a. Evaluate agreements that may potentially result in monopolistic practices and/or unfair business competition as set forth in Article 4 up to and including Articles 16;
- b. Evaluate business activities and/or actions of business actors which may potentially result in monopolistic practices and/or unfair business competition as stipulated in Article 17 up to and including Article 24;
- c. Evaluate the existence of misuse of dominant position which may potentially result in monopolistic practices and/or unfair business competition set forth in Article 25 up to and including Article 28;
- d. Undertake actions in accordance with the authority of the Committee as set forth in Article 36;
- e. Provide advice and opinion concerning Government policies related to monopolistic practices and/or publications related to this law;
- f. Prepare guidelines and/or publications related to this law;

Submit periodic reports on the results of the Committee's work to the President and the People's

Legislative Assembly (DPR).

Part Four
Authority

Article 36

The Committee's authority 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, the possibility of the existence of business activities and/or actions of business actors which may result in monopolistic practices and/or unfair business competition;
- c. Conduct investigation and/or inspection in allegations of cases of monopolistic practices and/or unfair business competition reported by the public or by business actors or discovered by the Committee as a result of its research;
- d. Make conclusion regarding the results of its investigation and/or inspection as to whether or not there are any monopolistic practices and/or unfair business competition;
- e. summon business actors suspected of having violated the provisions of this law;
- f. summon and invite witnesses, expert witnesses and any person deemed to have knowledge of violations of the provisions of this law;
- g. seek the assistance of investigator to invite business actors, witnesses, expert witnesses or any person as intended in Letters e and f of this article, who are not prepared to appear upon the Committee's invitation;
- h. request the statement of Government institutions related to the investigation and/or hearing of business actors in violation of the provisions of this law;
- i. obtain, examine and/or evaluate letters, documents or other instruments of evidence for investigation and/or hearing;
- j. determine and stipulate the existence or non-existence of losses on part of business actors or society;
- k. announce the Committee's decision to business actors suspected of having engaged in monopoly practices and/or unfair business competition;
- l. impose administrative sanctions on business actors violating the provisions of this law.

Part Five
Funding

Article 37

The expenses related to the performance of the duties of the Committee shall be charged to the State Revenues and Expenditures Budget and/or other sources permissible by virtue of the applicable laws and, regulations.

CHAPTER VII
DISPUTE SETTLEMENT PROCEDURE

Article 38

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

Article 39

- (1) Based on the report as intended in Article 38 paragraph (1) and paragraph (2), the Committee shall be obligated to conduct a preliminary investigation, and within 30 (thirty) days after receiving the report concerned, the Committee shall be obligated to determine whether or not further investigation is required.
 - (2) In further investigation the Committee shall be obligated to investigate the business actors against whom the report was submitted.
 - (3) The Committee shall be obligated to keep confidential the information obtained from business actors classified as company secret.
 - (4) If deemed necessary, the Committee may hear the testimony of witnesses, expert witnesses, and/or other parties.
- In conducting activities as intended in paragraph (2) and paragraph (4) of this article, members of the Committee shall be provided with a warrant.

Article 40

- (1) The Committee may conduct investigation of business actors if there is an allegation of the occurrence of violation of this law even though no report is filed.
- (2) Investigation as intended in paragraph (1) of this article shall be conducted in compliance with the procedure stipulated 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 hearing.
- (2) Business actors shall be prohibited from refusing to be heard, from refusing to provide information required for investigation and/or hearing, or from impeding the investigation and/or hearing process.
- (3) Violations of the provisions of paragraph (2) of this article shall be submitted by the Committee to the investigator for conducting investigation in accordance with the prevailing provisions.

Article 42

Instruments of evidence in the investigation by the Committee shall be in the form of:

- a. witness testimonies
- b. experts testimonies
- c. letters and/or documents
- d. information
- e. statement by business actors

Article 43

- (1) The Committee shall be obligated to complete follow-up investigation within 60 (sixty) days from the time a follow-up investigation is conducted as intended in Article 39 paragraph (1).
- (2) If required, the time frame for follow-up investigation as intended in paragraph (1) of this article may be extended by not more than 30 (thirty) days.
- (3) The Committee shall be obligated to determine whether or not a violation of this law occurred within 30 (thirty) days from the completion of the follow-up investigation as intended in paragraph (1) or paragraph (2) of this article.
- (4) The decision of the Committee as intended in paragraph (3) of this article 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 business actor concerned receives notice about the Committee's decision as intended in Article 43 paragraph (4), the business actor concerned shall be obligated to implement such decision and to submit an implementation report to the Committee.
- (2) Business actors may appeal to the District Court by no later than 14 (fourteen) days after receive notification of the aforementioned decision.
- (3) Business actors not appealing within the time frame as intended in paragraph (2) of this article shall be deemed to have accepted the Committee's decision.
- (4) In the event that the provisions of paragraph (1) and paragraph (2) of this article are not implemented by the business actor concerned, the Committee shall submit such decision to the investigator for conducting investigation in accordance with the provisions of prevailing laws and regulations.
- (5) Decisions of the Committee as intended in Article 43 paragraph (4) shall serve as initial evidence sufficient for investigators to conduct investigation.

Article 45

- (1) The District Court concerned must examine appeals by business actors as intended in Article 44 paragraph (2) within 14 (fourteen) days from the time the filing of such appeal is received.
- (2) The District Court must make a decision within 30 (thirty) days from the commencement of the hearing of the aforementioned appeal.
- (3) The party filing an appeal in respect of the decision of the District Court as intended in paragraph (2) of this article, may appeal to the Supreme Court of the Republic of Indonesia within 14 (fourteen) days.
- (4) The Supreme Court must make a decision within 30 (thirty) days from the time the appeal is received.

Article 46

- (1) In the event that there are no appeals, the decision of the Committee as intended in Article 43 paragraph (3) shall have permanent legal force.
- (2) The executive enforcement of the decision of the Committee as intended in paragraph (1) of this article shall be requested of the District Court

CHAPTER VIII

SANCTIONS

Part One

Administrative Measures

Article 47

- (1) The Committee shall be authorised 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) of this article may be in the following forms:
 - a. stipulations of declaring agreements intended in Article 4 up to and including Article 13, Article 15 and Article 16 as null and void; and/or
 - b. ordering business actors to stop vertical integration as referred to in Article 14; and/or
 - c. ordering business actors to stop activities proven to have been causing monopolistic practices and/or unfair business competition and/or being harmful to society; and/or
 - d. ordering business actors to stop the misuse of dominant position; and/or
 - e. determine the cancellation of mergers or consolidations of business entities and acquisition of shares as intended in Article 28; and/or
 - f. stipulation of compensation payment; and/or imposition of a minimum fine of Rp.1,000,000,000, (Rupiah one billion) and a maximum fine of Rp. 25,000,000,000, (Rupiah twenty-five billion).

Part Two

Basic 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 of this law shall be subject to the criminal sanction of a fine of minimum Rp. 25,000,000,000,- (Rupiah twenty-five billion) and maximum 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 minimum Rp. 5,000,000,000, (Rupiah five billion) or maximum 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) Violation of the provisions of Article 41 of this law shall be subject to a fine of minimum Rp. 1,000,000,000,- (Rupiah one billion) and maximum Rp. 5,000,000,000,- (Rupiah five billion) or the criminal sanction of imprisonment as replacement of the fine 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 sanctions set forth in Article 48 additional criminal sanctions may be imposed in the following of:

- a. revocation of business license; or
- b. prohibiting business actors proven to have violated this law from filling the positions of director or commissioner for at least 2 (two) years and for no longer than 5 (five) years; or ordering to stop certain activities or actions resulting in losses to other parties.

CHAPTER IX MISCELLANEOUS PROVISIONS

Article 50

Not included in the provision of this law shall be as follows:

- a. actions and or agreements intended to implement applicable laws and regulations; or
- b. agreements related to intellectual property rights, such as licenses, patents, trademarks, copyrights, 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 inhibit, and/or impede competition; or
- d. agency agreements which do not stipulate the re-supply of goods and/or services at a price level lower than the contracted price; or
 - e. cooperation agreements in the field of research for the upgrading and improvement of 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; or
 - i. activities of co-operatives aimed specifically at 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 and branches of production of strategic nature 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 effectiveness of this law, all laws and regulations stipulating or related to monopolistic practices and/or business competition shall be declared as remaining in effect in so far as not contradictory or not superseded by new ones by virtue of this law.

(2) Business actors having entered into agreement 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 promulgation.

Stipulated in Jakarta

On.....

THE PRESIDENT OF THEE REPUBLIC OF INDONESIA BACHARUDDIN JUSUF
HABIBIE

Promulgated in Jakarta
On.....

STATE MINISTER SECRETARY OF STATE OF THE REPUBLIC OF INDONESIA
AKBAR TANDJUNG
STATE GAZETTE OF THE REPUBLIC OF INDONESIA YEAR NUMBER.....

**THE PEOPLE'S LEGISLATIVE ASSEMBLY OF
THE REPUBLIC OF INDONESIA**

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

GENERAL

Economic development in the First Long Term Development has resulted in much progress, among other things with the improvement of social 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 General State Policy and Five Year Development Plan, as well as in various other economic policies.

Despite the substantial progress achieved in the First Long Term Development, reflected in high economic growth. Many challenges or issues still remain, parallel to globalization trends in the economy and the dynamics and development of private businesses since the early 1990s.

The business opportunities created during the last three decades have in fact not enabled all levels of society to 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 inadequate Government policies leading to market distortion. 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 phenomenon has developed and has 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 quite adhered to the mandate of Article 33 of the 1945 Constitution, and has shown a very monopolistic tendency.

Businessmen close to the elite of power have obtained extreme facilities resulting in the creation of 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 caused the economic capacity to become extremely vulnerable and un-competitive:

The above situation and condition has caused us to have to study and rearrange business activities in Indonesia, so that businesses can grow and develop in a fair and appropriate way, leading to the creation of a fair business competition climate, and in order to avoid the concentration of economic power around one certain person or group, 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 stipulate the Law Concerning the Prohibition of Monopolistic Practices and Unfair Business Competition intended for the enforcement of provisions of law and providing equal protection for every business actor in an effort to create fair business competition.

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

For an effective implementation of this law and implementing regulations thereof in accordance with its principles and objectives, it is necessary to form a Business Competition Supervisory Committee, i.e. 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) regulatory parts such as:

1. prohibited agreements:
2. prohibited actions:
3. dominant position:
4. Business Competition Supervisory Committee:
5. Law enforcement
6. Miscellaneous provisions

This law has been drawn up based on the principles of Pancasila (State Philosophy) and the 1945 Constitution, and it has been based on economic democracy with due observance of equilibrium between the interests of business actors and public interest with the aim of: safe guarding public interest and protecting consumers; develop a conducive business climate through the creation of fair business competition, and ensure certainty in equal business opportunity for every person; preventing monopolistic practices and/or unfair business competition .created by business actors; and creating effectiveness and efficiency in business activities in the context of improving the efficiency of national economy as one of the efforts for improving social welfare.

ARTICLE BY ARTICLE

Article 1

Self-explanatory

Article 2

Self-explanatory

Article 3

Self-explanatory

Article 4

Self-explanatory

Article 5

Self-explanatory

Article 6

Self-explanatory

Article 7

Self-explanatory

Article 8

Self-explanatory

Article 9

Agreements may be vertical or horizontal in nature. These agreements are prohibited because business actors eliminate or reduce competition by dividing the market or market allocation. Marketing territory may mean the territory of the state of the Republic of Indonesia, for example regency, province, or other regional territory. Dividing marketing territory or market allocation means dividing territory in order to obtain or supply goods, services, or goods and services, determining parties from which goods, services, goods and services may be obtained or supplied.

Article 10

Self-explanatory.

Article 11

Self-explanatory.

Article 12

Self-explanatory.

Article 13

Self-explanatory.

Article 14

Referred to as controlling the production of a number of products being part of a production series which can be referred to as vertical integration shall be the control of a production process series of certain goods upstream to downstream or a process continuing for certain services by certain business actors. Even though vertical integration practices can result in low priced goods and services, these can cause unfair business competition which are harmful to economic cells in society. Such practices are prohibited in so far as they cause unfair business competition and or are harmful to society.

Article 15

Paragraph (1)

Supplying means making supplies available, either in the form of goods or services in the context of trading, lease, lease purchase and leasing activities.

Paragraph (2)

Self-explanatory.

Paragraph (3)

Letter a

Self-explanatory.

Letter b

Article 16

Self-explanatory.

Article 17

Paragraph (1)
Self-explanatory.

Paragraph (2)

Letter a
Self-explanatory.

Letter b

Referred to as other business actors are business actors possessing significant competitive capacity in the market concerned..

Letter c
Self-explanatory.

Article 19

Letter a

Rejecting or impeding certain business actors may not be done unreasonably or for non-economic reasons, for example due to difference in ethnic group, race, social status, and others.

Self-explanatory

Letter b

Self-explanatory.

Letter c

Self-explanatory.

Letter d

Self-explanatory.

Article 20

Self-explanatory.

Article 21

Unfair practices in determining production and other costs shall be violation of the prevailing laws and regulations for obtaining production factors lower than the actual.

Article 22

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

Article 23

Self-explanatory.

Article 24

Self-explanatory.

Article 25

Self-explanatory.

Article 26

Letter a

Self-explanatory.

Letter b

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

Letter c

Self-explanatory.

Article 27

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 of permanent and continuous nature, with the aim of generating profits.

Paragraph (2)

Self-explanatory.

Paragraph (3)

Self-explanatory.

Article 29

Self-explanatory.

Article 30

Self-explanatory.

Article 31

Paragraph (1)

The Chairperson and the Deputy Chairperson of the Committee shall be elected from among and by Members of the Committee.

Paragraph (2)

Self-explanatory.

Paragraph (3)

Self-explanatory.

Paragraph (4)

Extension of the term of membership in the Committee in order to avoid vacancy may not exceed 1 (one) year.

Article 32

Letter a

Self-explanatory.

Letter b

Self-explanatory.

Letter c

Self-explanatory.

Letter d

Self-explanatory.

Letter e

Self-explanatory.

Letter f

Self-explanatory.

Letter g

Not having been imposed with a criminal penalty means not having been imposed with a criminal penalty due to a capital criminal act or due to violation of moral.

Letter h

Self-explanatory.

Letter I

Not affiliated with a business entity means that as from the time the person concerned becomes member of the Committee, such person has not acted as:

1. Member of the Board of Commissioners or supervisors, or of the board of directors of a company.
2. Member of management or inspection body of a co-operative;
3. Party providing services to a company, such as consultant, public accountant and appraiser.
4. Majority shareholder in a company.

Article 33

Letter a

Self-explanatory.

Letter b

Self-explanatory.

Letter c

Self-explanatory.

Letter d

To be stated in the form of a statement by an authorised physician.

Letter e

Self-explanatory.

Letter f

Terminated, among other things, for the reason of no longer meeting requirements for committee membership as intended in Article 32.

Article 34

Paragraph (1)

Self-explanatory.

Paragraph (2)

Secretariat shall be the organisational unit supporting or assisting the Committee in the implementation of its duties.

Paragraph (3)

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

Paragraph (4)

Self-explanatory.

Article 35

Self-explanatory.

Article 36

Self-explanatory.

Letter a

Self-explanatory.

Letter b
Self-explanatory.

Letter c
Self-explanatory.

Letter d
Self-explanatory.

Letter e
Self-explanatory.

Letter f
Self-explanatory.

Letter g
Investigator shall be investigator as intended in Law Number 8 Year 1981.

Letter h
Self-explanatory.

Letter I
Self-explanatory.

Letter j
Self-explanatory.

Letter k
Self-explanatory.

Letter l
Self-explanatory.

Article 37

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

Article 38
Self-explanatory

Article 39

Self-explanatory

Article 40

Self-explanatory

Article 41

Paragraph (1)

Self-explanatory.

Paragraph (2)

Self-explanatory:

Paragraph.(3)

Submitted by the Committee to the investigators for investigation shall not only be criminal acts or actions as intended in paragraph (2) of this article, but also principal cases under investigation and caring by the Committee.

Article 42

Self-explanatory

Article 43

Paragraph (1)

Self-explanatory

Paragraph (2)

Self-explanatory

Paragraph (3)

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

Paragraph (4)

Referred to as notification shall be forwarding an excerpt from the Committee's decision to the business actor concerned.

Article 44

Paragraph (1)

30 (thirty) days as from the receipt of the excerpt from the Committee's decision by the business actor concerned or his local proxy.

Paragraph (2)

Self-explanatory

Paragraph (3)

Self-explanatory

Paragraph (4)

Self-explanatory.

Paragraph (5)

Self-explanatory

Article 45

Self-explanatory

Article 46

Self-explanatory.

Paragraph (I)

Self-explanatory

Paragraph (2)

Letter a

Self-explanatory

Letter b

Stopping vertical integration shall be, among other things by cancelling the agreement, transferring a party of the company to another business sector, or changing the form of production series.

Letter c

The termination of certain activities or actions shall be ordered, and not be the entire business activities of the business actor concerned.

Letter d

Self-explanatory

Letter e

Self-explanatory

Letter f

Indemnity shall be granted to the business actor concerned and to other parties having suffered a loss.

Letter g

Self-explanatory

Article 48

Self-explanatory

Article 49

Self-explanatory

Article 50

Letter a

Self-explanatory.

Letter b

Self-explanatory

Letter c

Self-explanatory

Letter d

Self-explanatory

Letter e

Self-explanatory.