

LAW OF THE REPUBLIC OF INDONESIA

NO.5 OF 1999

CONCERNING

**THE BAN ON MONOPOLISTIC PRACTICES AND UNFAIR BUSINESS
COMPETITION**

**UPON THE MERCY OF GOD THE ALMIGHTY
PRESIDENT OF THE REPUBLIC OF INDONESIA,**

Considering:

- a. that the development in economic sector must be directed toward the realization of public welfare based on Pancasila and the 1945 Constitution;
- b. that democracy in the economic sector demands equal opportunity for its citizens to participate in the production process and marketing of goods and/or services, in a healthy, effective and efficient business climate, so that it can boost economic growth and market economy to function properly;
- c. that every person engaged in business in Indonesia must be in a fair and proper competitive situation, so that it doesn't cause centralization of economic power on certain entrepreneurs, without disregarding the agreements already made by the Republic of Indonesia under international contracts;
- d. that in order to realize Points a, b, and c referred to above, on the initiative of the House of Representative, it is deemed necessary to draft a Bill Concerning the Ban on Monopolistic Practices and Unfair Business Competition;

Bearing in mind:

Article 5 Paragraph (1), Article 21 Paragraph (1), Article 27 Paragraph (2), and Article 33 of the 1945 Constitution,

Upon the Approval of

THE HOUSE OF REPRESENTATIVES OF THE REPUBLIC OF INDONESIA

HAS DECIDED:

To enact:

THE LAW CONCERNING BAN ON MONOPOLISTIC PRACTICES AND UNFAIR BUSINESS COMPETITION

CHAPTER I GENERAL PROVISIONS

Article 1

In this Law, that which is intended by:

1. Monopoly is the control of production and/or marketing of certain goods and/or use of services by one entrepreneur or a group of entrepreneurs.
2. Monopolistic practices is the centralization of economic power by one or more entrepreneurs causing the control of production and/or marketing of certain goods and/or services, resulting in an unfair business competition and can cause damage to the public interests.
3. Centralization of economic power is the obvious control of the relevant market by one or more entrepreneurs which enables them to fix prices of the goods and./or services.
4. Dominant position is a situation where an entrepreneur does not have any significant competitor in the relevant market with regard to the market share being controlled, or the entrepreneur is in the highest position among its competitors in the relevant market with regard to its financial capability, ability to have access to the suppliers or sales, and ability to adapt to the supply and demand of certain goods or services.
5. Entrepreneur is an individual person or a company, in the form of legal or non-legal entity established and domiciled or engaged in activities within the legal territory of the Republic of Indonesia, conducting various kinds of business activities in economic sector through contracts, both individually or collectively.
6. Unfair business competition is the competition among entrepreneurs in conducting their production activities and/or in marketing goods and/or services, conducted in a manner which is unfair or contradictory to the law or hampering business competition.
7. Contract is an action by one or more entrepreneurs to bind themselves with one or more other entrepreneurs under any name, either made in writing or not.
8. Business conspiracy is a form of cooperation conducted by entrepreneurs with other entrepreneurs with the intention to control the relevant market in the sole interest of the conspiring entrepreneurs

9. Market is an economic institution in which the buyers and sellers can directly or indirectly conduct trading transaction of goods and/or services.
10. Relevant market is a market related to the range or certain marketing area of the entrepreneurs for the same kind or type of goods and/or services or substitutes of the said goods and/or services.
11. Market structure is the market condition which provides indications on the aspects of important influence to the entrepreneur's behavior or market performance which consists of, among others, the number of sellers and buyers, restriction of entrance and exit to the market, product diversity, distribution system, and market share control.
12. Market behavior is any action taken by the entrepreneur in their capacity as suppliers or buyers of goods and/or services in order to achieve the goals of the companies, for example in profit, asset growth, sales target and competition methods used.
13. Market share is the percentage of selling or buying value of certain goods or services controlled by the entrepreneurs in the relevant market in a certain calendar year.
14. Market price is the price paid in the transaction of goods and/or services in accordance with the agreement achieved among the parties in the relevant market.
15. Consumer is any user and/or consumer of goods and/or services, both for his/her own usage or consumption or for other people's benefits.
16. Goods is any object, both tangible or intangible, movable or immovable, that can be traded, used, utilized, or taken advantaged by the consumers or entrepreneurs.
17. Services is any service in the form of work or performance traded in the society to be used by the consumers or entrepreneurs.
18. Business Competition Supervisory Commission is a commission formed to oversee entrepreneurs in conducting their business activities to ensure that they do not conduct monopolistic practices and/or unfair business competition.
19. District Court is a court, as referred to in the existing legislation regulation, in which the domicile of the entrepreneurs are located.

CHAPTER II

PRINCIPLE AND OBJECTIVE

Article 2

Entrepreneurs in Indonesia in conducting their business activities are based on economic democracy by considering the balances between entrepreneurs' interest and public interest.

Article 3

The objectives of this law:

- a. to maintain public interest and improve the efficiency of the national economy as one of the means to improve public welfare;
- b. to create a conducive business climate through healthy business competition, thus securing equal business opportunity for large, middle and small scale entrepreneurs;
- c. to prevent monopolistic practices and/or unfair business competition by the entrepreneurs; and
- d. to create effectiveness and efficiency in business activities.

CHAPTER III

PROHIBITED CONTRACTS

Part One

Oligopoly

Article 4

- (1) Entrepreneurs are prohibited from making any contracts with other entrepreneurs with the intention to jointly control the production and/or the marketing of goods and services that can cause monopolistic practices and/or unfair business competition.
- (2) Any entrepreneur can be suspected or considered as jointly controlling production and/or marketing of goods and/or services, as referred to under Paragraph (1) of this article, if two or three entrepreneurs or groups of entrepreneurs own more than 75% (seventy five percent) of the market share of one type of certain goods or services.

Part Two

Price Fixing

Article 5

- (1) Entrepreneurs are prohibited from making any contract with other business competitors in order to fix prices on certain goods and/or services to be borne by the consumers or clients in the same relevant market.
- (2) Provisions as referred to under Paragraph (1) of this article shall not be applicable to:
 - a. a contract made in a joint partnership; or
 - b. a contract made based on the existing law.

Article 6

Entrepreneurs are prohibited from making contracts which cause buyers to pay a different price from the price that must be paid by other buyers for the same type of goods and/or services.

Article 7

Entrepreneurs are prohibited from making any contract with other business competitors in order to fix the price below the market price, that can cause unfair business competition.

Article 8

Entrepreneurs are prohibited from making any contract with other entrepreneurs which sets the condition that the receivers of the goods and/or services are not to resell or resupply the goods and/or services they receive, under a price lower than the price agreed upon, thus causing unfair business competition.

Part Three

Area Distribution

Article 9

Entrepreneurs are prohibited from making any contract with other business competitors with the intention to divide the marketing areas or market allocation of the goods and/or services that can cause monopolistic practices and/or unfair business competitions.

Part Four

Boycotting

Article 10

- (1) Entrepreneurs are prohibited from making any contract with other business competitors, that could hamper other entrepreneurs in engaging in the same type of business, either for domestic or export purposes.
- (2) Entrepreneurs are prohibited from making any contract with other business competitors in order to refuse to sell goods and/or services from the other entrepreneurs which:
 - a. causes losses or could be suspected to cause damage to other entrepreneurs;
or
 - b. restricts other entrepreneurs to sell or buy goods and/or services from the relevant market.

Part Five

Cartel

Article 11

Entrepreneurs are prohibited from making any contract with other business competitors with the intention to influence the price by determining production and/or marketing of goods and/or services, that can cause monopolistic practices and/or unfair business competition.

Part Six

Trust

Article 12

Entrepreneurs are prohibited from making any contract with other entrepreneurs in a form of joint cooperation by combining the companies into a bigger holding company or larger limited liability, by keeping and maintaining the continuation of each subsidiary or member company, with the intention to control production and/or marketing of goods and/or services, thus causing monopolistic practices and/or unfair business competition.

Part Seven

Oligopsonies

Article 13

- (1) Entrepreneurs are prohibited from making any contract with other entrepreneurs with the intention to jointly control the buying or receiving of supplies in order to control prices of the goods and/or services in the relevant market, that can cause monopolistic practices and/or unfair business competition.
- (2) Entrepreneurs can be suspected or considered as jointly controlling the buying or receiving of supplies as referred to under Paragraph (1) of this article if two or three entrepreneurs or group of entrepreneurs control more than 75% (seventy five percent) of the market share of one type of certain foods or services.

Part Eight

Vertical Integration

Article 14

Entrepreneurs are prohibited from making any contract with other entrepreneurs with the intention to control production of several products belonging to a chain of certain goods and/or services production in which each chain of production is a result of the continued process, either in one direct or indirect chain, which can cause unfair business competition and/or damages to the public.

Part Nine

Closed Contracts

Article 15

- (1) Entrepreneurs are prohibited from making any contract with other entrepreneurs which imposes terms by which the parties receiving the goods and/or services shall or shall not resupply the said goods and/or services to certain parties and/or at certain places.
- (2) Entrepreneurs are prohibited from making any contract with other parties which imposes terms by which the parties receiving certain goods and/or services must be willing to purchase goods and/or other services from the supplier company.
- (3) Entrepreneurs are prohibited from making any contract regarding prices or certain discount prices of the goods and/or services, which impose terms by which the entrepreneurs receiving the goods and/or services from the supplier company:
 - a. must be willing to purchase the goods and/or other services from the supplier company;

- b. shall not purchase the same or similar type of goods and/or services from other entrepreneurs which are the competitors of the supplier company.

Part Ten

Contracts with Foreign Parties

Article 16

Entrepreneurs are prohibited from making any contract with other parties overseas which imposes provisions that can cause monopolistic practices and/or unfair business competition.

CHAPTER IV

BANNED ACTIVITIES

Part One

Monopoly

Article 17

- (1) Entrepreneurs are prohibited from controlling any production and/or marketing of goods and/or services that can cause monopolistic practices and/or unfair business competition.
- (2) Entrepreneurs can be suspected or considered as controlling production and/or marketing of goods and/or services as referred to under Paragraph (1) of this article if:
 - a. the said goods and/or services do not have substitutions at that time; or
 - b. it causes other entrepreneurs to not be able to enter business competition for the same type of goods and/or services; or
 - c. one entrepreneur or one group of entrepreneurs controls more than 50% (fifty percent) of the marketing share of one type of certain goods or services.

Part Two

Monopsony

Article 18

- (1) Entrepreneurs are prohibited from controlling the supplies receiving or being the sole buyers of goods and/or services in the relevant market which can cause monopolistic practices and/or unfair business competition.

(2) Entrepreneurs can be suspected or considered as controlling the supplies receiving or being the sole buyer as referred to under Paragraph (1) of this article if one entrepreneur or a group of entrepreneurs controls more than 50% (fifty percent) of the market share of the same type of certain goods or services.

Part Three
Market Controlling
Article 19

Entrepreneurs are prohibited from conducting one or more activities, either separately or jointly with other entrepreneurs, which can cause monopolistic practices and/or unfair business competition by:

- a. refusing and/or hampering certain entrepreneurs from conducting the same type of business in the relevant market; or
- b. hampering the consumers or clients of their company's competitors from conducting any business contact with those company's competitors; or
- c. restricting distribution and/or selling of the goods and/or services in the relevant market; or
- d. conducting discrimination practices against certain entrepreneurs.

Article 20

Entrepreneurs are prohibited from supplying goods and/or services by selling without making any profits or by setting a very low price with the intention to eliminate or end their competitors' business in the relevant market, thus causing monopolistic practices and/or unfair business competition.

Article 21

Entrepreneurs are prohibited from cheating in setting the production cost and other expenses which is part of the goods' and/or services' component, that can cause unfair business competition.

Part Four
Conspiracy
Article 22

Entrepreneurs are prohibited from conspiring with other parties to arrange and/or determine the winner of the tender thus causing unfair business competition.

Article 23

Entrepreneurs are prohibited from conspiring with other parties to obtain information of their competitor's business activities classified as company's secret thus causing unfair business competition.

Article 24

Entrepreneurs are prohibited from conspiring with other parties to hamper production and/or marketing of the goods and/or services of their competitors with the intention to reduce the quantity, quality, and the required delivery punctuality of the goods and/or services offered or supplied in the relevant market.

CHAPTER V DOMINANT POSITION

Part One

General

Article 25

- (1) Entrepreneurs are prohibited from taking advantage of their dominant position, either directly or indirectly, in order to:
 - a. impose trade terms with the intention to prevent and/or hamper the consumers to acquire competitive goods and/or services, both in prices or quality; or
 - b. restrict the market and technology development; or
 - c. hamper other entrepreneurs having the potential to become their competitors to enter the relevant market.
- (2) Entrepreneurs are in the dominant position as referred to under Paragraph (1) of this article if:
 - a. one entrepreneur or a group of entrepreneurs controls 50% (fifty percent) or more of the market share on one type of goods or service; or
 - b. two or three entrepreneurs or groups of entrepreneurs control 75% (seventy five percent) or more of the market share on one type of certain goods or services

Part Two

Double Position

Article 26

A person who serves as the director or commissioner of a company is prohibited from concurrently being the director or commissioner at other enterprises, if the said enterprises:

- a. are in the same relevant market; or
- b. are closely related to the field and/or type of business; or
- c. can jointly control the market share of certain goods and/or services, which could cause monopolistic practices and/or unfair business competition.

Part Three

Share Ownership

Article 27

Entrepreneurs are prohibited from holding majority shares at several firms engaged in the same business sector in the same relevant market, or establish several firms engaged in the same business activities in the same relevant market, if the said ownership causes:

- a. one entrepreneur or a group of entrepreneurs to control 50% (fifty percent) or more of the market share on one type of goods or service; or
- b. two or three entrepreneurs or groups of entrepreneurs to control 75% (seventy five percent) or more of the market share on one type of certain goods or services

Part Four

Merger, Dissolution and Acquisition

Article 28

- (1) Entrepreneurs are prohibited from conducting merger or dissolving companies that might cause monopolistic practices and/or unfair business competition.
- (2) Entrepreneurs are prohibited from acquiring shares of other entrepreneurs if the said action can cause monopolistic practices and/or unfair business competition.
- (3) More detailed provisions concerning prohibited merger of companies as referred to under Paragraph (1) of this article, and provisions concerning acquisition of company shares as referred to under Paragraph (2) of this article, are stipulated in the government regulation.

Article 29

- (1) Merger of the companies or acquisition of shares as referred to under Article 28, causing its assets value and/or sales value to exceed a certain amount, must be reported to the Commission at the latest within a period of 30 (thirty) days after the merger or acquisition takes places.
- (2) Provisions regarding determination of the assets value and/or sales value and procedure of reporting as referred to under Paragraph (a) of this article are stipulated in the government regulation.

CHAPTER VI BUSINESS COMPETITION SUPERVISORY COMMISSION

Part One

Status

Article 30

- (1) To oversee the implementation of this law, a Business Competition Supervisory Commission is formed, hereinafter referred to as Commission.
- (2) The Commission is an independent institution, free from government or other parties influence or power.
- (3) The Commission is accountable to the President.

Part Two

Membership

Article 31

- (1) The Commission consists of one Chairman concurrently functioning as member, a Vice Chairman concurrently functioning as a member and at least (seven) members.
- (2) Members of the Commission are appointed and dismissed by the President upon the approval of the House of Representative.
- (3) The office term of a Commission member is 5 (five) years and can be reappointed for the next office term.
- (4) If a termination of an office term creates a vacancy in the membership of the Commission, then the office term of that particular member can be extended until a new member is appointed.

Article 32

Membership requirements of the Commission, are:

- a. a citizen of the Republic of Indonesia, at least 30 (thirty) years old and not more than 60 (sixty) years old at the time of appointment;
- b. loyal to Pancasila and the 1945 Constitution;
- c. faithful and devout to God the Almighty;
- d. honest, just and of good moral behavior;
- e. domiciled in the territory of the Republic of Indonesia;
- f. have experience in the business sector or has knowledge and expertise in law and/or economy;
- g. have never been convicted;
- h. have never been declared bankrupt by the court; and
- i. not affiliated to any company.

Article 33

Commission memberships may end, as a result of:

- a. death; or
- b. resignation upon request; or
- c. domicile outside the territory of the Republic of Indonesia; or
- d. infliction of a long term illness, either physically and spiritually; or
- e. the end of membership office term at the Commission; or
- f. dismissal.

Article 34

- (1) The formation of the Commission and the structure of its organization, duties and function shall be determined by a Presidential Decree.
- (2) For a smooth implementation of its duties, the Commission will be assisted by a secretariat.
- (3) The Commission may form a working group.
- (4) Provisions regarding the structure of the organization, duties, and secretariat function and working group shall be regulated by the Commission's decision.

Part Three

Duties

Article 35

Duties of the Commission are:

- a. conducting evaluations of contracts that might cause monopolistic practices and/or unfair business competition as regulated under Articles 5 through 16;
- b. conducting evaluations of business activities and/or entrepreneurs' behavior that might cause monopolistic practices and/or unfair business competition as regulated under Articles 17 through 24;
- c. conducting evaluations if there is any abuse or not in the dominant position that might cause monopolistic practices and/or unfair business competition as regulated under Articles 25 through 28;
- d. taking actions based on the authority of the Commission as regulated under Article 36;
- e. providing suggestions and consideration on Government policy related to monopolistic practices and/or business competition;
- f. set up guidelines and/or publication related to this Law;
- g. providing periodic report on the work results of the Commission to the President and the House of Representative.

Part Four

Authority

Article 36

Authorities of the Commission are:

- a. receiving reports from the public and/or entrepreneurs concerning allegations of monopolistic practices and/or unfair business competition;
- b. conducting investigations on allegations of any business activity and/or actions by entrepreneurs that might cause monopolistic practices and/or unfair business competition;
- c. conducting investigations and/or examination on allegation cases of monopolistic practices and/or unfair business competition reported by the public or by entrepreneurs or based on the findings by the commission as a result of its investigation;
- d. concluding the results of the investigation and/or examination whether there is any monopolistic practices and/or unfair business competition or not;
- e. summoning entrepreneurs alleged to have violated the provisions in this law;

- f. summoning and bringing witnesses, expert witnesses and anybody considered knowing of any violation to the provisions in this law;
- g. requesting assistance from the investigators to bring the entrepreneurs, witness, expert witness or anybody as referred to under Paragraph e and f of this article, who are not willing to fulfill the summon by the Commission to appear;
- h. requesting information from the Government agency with regard to the investigation and/or examination of the entrepreneurs violating provisions in this law;
- i. obtaining, investigating and/or evaluating letters, documents, or other evidence for the purpose of investigation and/or examination;
- j. deciding and determining if there is any loss or not suffered by other entrepreneurs or the public;
- k. notifying the Commission's decision to the entrepreneurs alleged of conducting monopolistic practices and/or unfair business competition;
- l. imposing and administrative sanction to the entrepreneurs violating provisions in this law.

Part Five

Funding

Article 37

Funding for the implementation of the duties of the Commission shall be borne by the State Budget and Revenues and/or other sources permitted under the existing law.

CHAPTER VII

CASE HANDLING PROCEDURE

Article 38

- (1) Anybody who knows or suspects entrepreneurs to have violated this law may report in writing to the Commission, along with the identity of the reporter, stating detailed information about the violation.
- (2) Parties that have suffered losses as a result of violation to this law may report in writing to the Commission, along with the identity of the reporter, stating detailed and clear information about the violation and the damages suffered.
- (3) Identity of the reporter as referred to under Paragraph (1) of this article shall be kept confidential by the Commission.

- (4) Procedure of submitting reports as referred to under Paragraph (1) and Paragraph (2) of this article shall be further regulated by the Commission.

Article 39

- (1) Based on the report as referred to under Article 38, Paragraphs (1) and (2), the Commission shall be obligated to conduct a preliminary investigation, and at the latest within a period of 30 (thirty) days upon receiving the report, the Commission must determine if it is necessary or not to conduct further investigation.
- (2) In the further investigation, the Commission shall be obligated to investigate the reported entrepreneurs.
- (3) The Commission shall be obligated to keep the confidentiality of the information classified as company's secret obtained from the entrepreneurs.
- (4) If it is deemed necessary, the Commission might need to listen to information from witnesses, expert witnesses and/or other parties.
- (5) In conducting their activities as referred to under Paragraphs (2) and (4) of this article, members of the Commission must be supplied with warrant.

Article 40

- (1) The Commission may conduct investigation of the entrepreneurs if there is an alleged violation to this law even though no report is submitted.
- (2) The investigation as referred to under Paragraph (1) of this article shall be conducted pursuant to the procedure stipulated under Article 39.

Article 41

- (1) Entrepreneurs and/or other parties being investigated shall be obligated to submit evidence required for the investigation and/or examination.
- (2) Entrepreneurs are prohibited from refusing to be investigated, refusing to provide information required for the investigation and/or examination, or from hampering an investigation and/or examination process.
- (3) If there is any violation to the provision under Paragraphs (2) of this article, the Commission shall assign investigators to conduct investigation pursuant to the applicable laws.

Article 42

Evidence used by the Commission for the investigation are:

- a. witness testimony;
- b. expert testimony;
- c. letters and/or documents;
- d. information;
- e. entrepreneurs' testimony.

Article 43

- (1) The Commission shall be obligated to complete further investigations within a maximum period of 60 (sixty) days counted from the date of further investigation as referred to under Article 39, Paragraph (1).
- (2) If it is deemed necessary, the period of further investigation as referred to under Paragraph (1) of this article may be extended at the longest within a period of 30 (thirty) days.
- (3) The Commission shall be obligated to decide whether there is any violation to this law within a maximum period of 30 (thirty) days.
- (4) The Commission's decision as referred to under Paragraph (3) of this article must be read in a session open to the public and immediately notified to the entrepreneurs.

Article 44

- (1) Within a period of 30 (thirty) days counted from the date the entrepreneurs receive notification of the Commission's decision as referred to under Article 43, Paragraph (4) above, the entrepreneurs shall be obligated to carry that decision and deliver the implementation report to the Commission.
- (2) Entrepreneurs may submit a position of objection to the District Court within a maximum period of 14 (fourteen) days upon receiving notification of the Commission's decision.
- (3) Entrepreneurs who do not submit a petition of objection within a period as referred to under Paragraph (2) of this Article shall be regarded as to have accepted this Commission's decision.
- (4) If provisions as referred to under Paragraph (1) and Paragraph (2) of this article are not carried out by the entrepreneurs, the Commission shall hand over the said decision to the investigators for investigation pursuant to the existing law.

- (5) The Commission's decision as referred to under Article 43, Paragraph (4) constitutes a preliminary evidence which is sufficient for the investigators to conduct investigation.

Article 45

- (1) The District Court must examine the objection by the entrepreneurs as referred to under Article 44, Paragraph (2), within a period of 14 (fourteen) days counted from the date the objection is received.
- (2) The District Court must make a decision within a period of 30 (thirty) days counted from the date the objection begins to be examined.
- (3) The parties objection to the District Court's decision as referred to under Paragraph (2) of this article, within a period of 14 (fourteen) days, may submit a petition for cassation to the Supreme Court of the Republic of Indonesia.
- (4) The Supreme Court must make a decision within a period of 30 (thirty) days counted from the date the cassation petition is received.

Article 46

- (1) If there is no objection, the Commission's decision as referred to under Article 43, Paragraph (3) shall be final and binding.
- (2) Enforcement of the Commission's decision as referred to under Paragraph (1) of this article shall be requested to the District Court.

CHAPTER VIII SANCTION

Part One

Administrative Sanctions

Article 47

- (1) The Commission is authorized to impose administrative sanctions to the entrepreneurs who have violated the provisions in this law.
- (2) Administrative sanctions as referred to under Paragraph (1) of this article shall be:
- a. to revoke contracts as referred to in Articles 4 through 13, Article 15; and/or
 - b. to order the entrepreneurs to end vertical integration as referred to under Article 14; and/or

- c. to order the entrepreneurs to stop activities proven to have caused monopolistic practices and/or unfair business competition and/or damages to the public; and/or
- d. to order the entrepreneurs to end the abuse of their dominant position; and/or
- e. to revoke the merger of the companies and acquisition of shares as referred to under Article 28; and/or
- f. to impose compensation for damages; and/or
- g. to impose a fine at the lowest in the amount of Rp. 1,000,000,000 (one billion rupiah) and at the highest in the amount of Rp. 25,000,000,000 (twenty five billion rupiah).

Part Two

Criminal Punishment

Article 48

- (1) Violations to the provisions in Article 4, Articles 9 through 14, Articles 16 through 19, Article 25, Article 27 and Article 28 of this law is subject a criminal fine in the amount of at least Rp. 25,000,000,000 (twenty five billion rupiah) and in the amount of Rp. 100,000,000,000 (one hundred billion rupiah) at the most, or imprisonment at a maximum period of 6 (six) months.
- (2) Violations to the provisions under Article 5 through 8, Article 15, Articles 20 through 24, and Article 26 of this law is subject to a criminal fine in the amount of at least Rp. 5,000,000,000 (five billion rupiah) and in the amount of Rp. 25,000,000,000 (twenty five billion) rupiah at the most, or imprisonment at a maximum period of 5 (five) months.
- (3) Violations to the provisions under Article 41 of this law is subject to a criminal fine in the amount of at least Rp. 1,000,000,000 (one billion rupiah) and at in the amount of Rp. 5,000,000,000 (five billion rupiah) at the most, or imprisonment at a maximum period of (three) months.

Part Three

Additional Criminal Punishment

Article 49

With reference to the provisions under Article 10 of the Criminal Code concerning crime as referred to under Article 48, additional criminal punishment might be added in the form of:

- a. revocation of business permit; or
- b. prohibition for the entrepreneurs who are proved to have violated this law to hold a position as director or commissioner at least within a period of 2 (two) years and at the longest within a period of 5 (five) years; or
- c. termination of certain activities or actions that cause damage to other parties.

CHAPTER IX OTHER PROVISIONS

Article 50

Exempted from the provisions of this law are:

- a. actions and/or contracts with the intention to implement the existing law;
- b. contracts related to intellectual property rights such as license, patent, trade brand, copy right, industrial product design, integrated electronic series, and trade secrets, and contracts related to franchise; or
- c. contracts on technical standardization of products of goods and/or services which do not restrict and/or hamper competition; or
- d. contracts for a distribution purposes which do not stipulate to resupply of goods and/or services with the price lower than the price agreed upon in the contract;
or
- e. contracts of research cooperation for the purposes of promoting or improving the living standards of the people in general; or
- f. international contracts which have been ratified by the Government of the Republic of Indonesia; or
- g. contracts and/or actions intended for export which do not distract domestic needs and/or market supply; or
- h. entrepreneurs categorized as engaging in small scale business; or
- i. cooperative business activities serving specifically only its members.

Article 51

Monopoly and/or centralization of activities related to the production and/or marketing of goods and/or services which control the needs of people in general and production branches vital to the state shall be regulated under the law and shall be

performed by the State Owned Companies and/or entities or institutions established or appointed by the Government.

CHAPTER X
TRANSITIONAL PROVISIONS

Article 52

- (1) From the time of promulgation of this Law, every legislation which regulates or is related to the practice of monopoly and/or business competition shall be considered still in effect as long as it does not contradicts or have been replaced under the provisions of this Law.
- (2) Entrepreneurs who have concluded a contract and/or have conducted acts or practices which are not in accordance with the provisions in this Law shall be given a 6 (six) months period within which to make any necessary adjustments.

CHAPTER XI
CONCLUDING PROVISION

Article 53

This Law shall be in effect in 1 (one) year since its promulgation

In order to publicize this regulation, it's promulgation shall be declared in the State Gazette of the Republic of Indonesia.

Promulgated in Jakarta

March 5th, 1999

PRESIDENT OF THE REPUBLIC OF INDONESIA

Signed

BACHARUDDIN JUSUF HABIBIE

Promulgated in Jakarta

March 5th 1999

STATE SECRETARY

REPUBLIC OF INDONESIA

Signed

ABAR TANDJUNG

STATE GAZETTE OF THE REPUBLIC OF INDONESIA 1999 NUMBER 33

**ELUCIDATION
OF THE
LAW OF THE REPUBLIC OF INDONESIA
NO.5 OF 1999

CONCERNING
THE BAN ON MONOPOLISTIC PRACTICES AND UNFAIR BUSINESS
COMPETITION**

GENERAL

Economic development in the First Long-Term Development has produced a tremendous amount of progress with, among others, the improvement of the public welfare. The above mentioned development progress was motivated by development policies in various sectors, including economic development policy stipulated in the Broad Outlines of the Nation's Direction and the Five Year Development Plan, and various kinds of other economic policies.

Although there has been a lot of progress achieved during the First Long Term Development which was shown by high economic growth, there are still many challenges or problems, along with the tendency of economic globalization and the dynamics and development of private business since the early 1990's.

In reality, business opportunities created during the past three decades have not been able to empower and enable the whole population 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 entrepreneurs, either directly and indirectly, making the condition much worse. The implementation of national economy has not been quite in accordance with the mandate under Article 33 of the 1945 Constitution, and tends to be very monopolistic.

The entrepreneurs who have been close to the ruling elite acquired excessive privileges that created a social gap. The emergence of conglomeracy and a small

group of strong entrepreneurs 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.

Considering the aforementioned situation and conditions, we are obligated to observe and restructure business activities in Indonesia, so that the business world may grow and develop in a fair and proper manner, thus creating a fair business competition climate, and prevent centralization of economic power against an individual or certain groups in the form of, among others, monopolistic practices and unfair business competition which cause damage to the public and which are in contradiction with the goals of social justice.

Therefore, it is deemed necessary to promulgate the Law concerning the Ban on Monopolistic Practices and Unfair Business Competition intended to establish legal procedure and provide equal protection to all entrepreneurs in an effort to create a fair business competition.

This law provides legal guarantee to further motivate the acceleration of economic development in an effort to improve the public welfare, and as the implementation of the spirit of the 1945 Constitution.

In order for the implementation of this law and the regulation of its implementation to run effectively pursuant to its principle and objectives, it is deemed necessary to establish a Business Competition Supervisory Commission, which is an independent institution free from government or other parties' influence, authorized to oversee business competition and impose sanctions. These sanctions are in the form of administrative sanctions, whereas criminal sanctions shall be the jurisdiction of the court.

In general, the materials of this Law Concerning the Ban on Monopolistic Practices and Unfair Business Competition has 6 (six) provisions consisting of:

1. prohibited contracts;
2. prohibited activities;
3. dominant position;
4. Business Competition Supervisory Commission;
5. legal enforcement;
6. other provisions.

This law has been promulgated based on Pancasila and the 1945 Constitution and based on economic democracy by observing the balance between interest of the entrepreneurs and interests of the public with the intention to: protect the public

interest and consumers; create conducive business competition by creating a healthy business competition; and create effectiveness and efficiency in business activities in order to promote national economic efficiency as one of the means to improve the public welfare.

ARTICLE BY ARTICLE

Article 1

Sufficiently clear

Article 2

Sufficiently clear

Article 3

Sufficiently clear

Article 4

Sufficiently clear

Article 5

Sufficiently clear

Article 6

Sufficiently clear

Article 7

Sufficiently clear

Article 8

Sufficiently clear

Article 9

The contracts can be in vertical and horizontal forms. This type of contract is prohibited because the entrepreneurs abolish or reduce the competition by dividing the market areas or marketing allocation. Marketing areas means the area of the Republic of Indonesia or part of the area of the Republic of Indonesia, such as regencies, provinces, or other regional areas. Dividing marketing areas or marketing allocation means dividing the areas in order to receive or supply goods, services or goods and services, determining who receives or supplies the goods, services, or goods and services.

Article 10

Sufficiently clear

Article 11

Sufficiently clear

Article 12

Sufficiently clear

Article 13

Sufficiently clear

Article 14

That which is intended by "controlling production of several products belonging to a chain of production" or commonly called vertical integration is controlling a chain of production process of certain goods starting from the upper to the lower process or a process that continues on certain services by certain entrepreneurs. Even though vertical integration may produce low-priced goods and services, however, it can cause unfair business competition, which destroys the principles of the public economy. Such practices are prohibited as long as they cause unfair business competition or damages to the public.

Article 15

Paragraph (1)

That which is intended by "supply" is to provide supplies, either in the form of goods or services, in a transaction of buy and sell, rental, and leasing.

Paragraph (2)

Sufficiently clear

Paragraph (3)

Point a

Sufficiently clear

Point b

Sufficiently clear

Article 16

Sufficiently clear

Article 17

Sufficiently clear

Paragraph (1)

Sufficiently clear

Paragraph (2)

Point a

Sufficiently clear

Point b

That which is intended by "other entrepreneurs" are other entrepreneurs who have the capability to compete significantly in the relevant market.

Point c

Sufficiently clear

Article 18

Sufficiently clear

Article 19

Point a

Refusing or hampering certain entrepreneurs should not be performed improperly or based on a non-economic reason, such as difference in race, social status, etc.

Point b

Sufficiently clear

Point c

Sufficiently clear

Point d

Sufficiently clear

Article 20

Sufficiently clear

Article 21

"Cheating in setting the production cost and other expenses" with the intention to get lower production factors cost than what it should be is a violation to the existing law.

Article 22

Tender is a bid to submit price quotations to acquire a certain contract work in order to procure goods or provide services.

Article 23

Sufficiently clear

Article 24

Sufficiently clear

Article 25

Sufficiently clear

Article 26

Point a

Sufficiently clear

Point b

Companies "are closely related" if the said companies support each other or are directly related in the process of production, marketing, or production and marketing.

Point c

Sufficiently clear

Article 27

Sufficiently clear

Article 28

Paragraph (1)

A company is a corporation or a form of business, both in the form of a legal entity (for example a limited liability) or non-legal entity, engaging in a type of a permanent and continuous business with the intention of making profit.

Paragraph (2)

Sufficiently clear

Paragraph (3)

Sufficiently clear

Article 29

Sufficiently clear

Article 30

Sufficiently clear

Article 31

Paragraph (1)

The Chairman and Vice Chairman of the Commission shall be selected from and by the Commission Members

Paragraph (2)

Sufficiently clear

Paragraph (3)

Sufficiently clear

Paragraph (4)

The extension of Commission membership term is to avoid vacancy which should not exceed 1 (year).

Article 32

Point a

Sufficiently clear

Point b

Sufficiently clear

Point c

Sufficiently clear

Point d

Sufficiently clear

Point e

Sufficiently clear

Point f

Sufficiently clear

Point g

That which is intended by "has never been convicted" is: has never been convicted for committing a serious crime or indecent acts.

Point h

Sufficiently clear

Point i

That which is intended by "not affiliated with any company" is that since becoming a member of the Commission he/she is not

1. a member of the Board of Commissioners or Supervisory Board, or on the Board of Directors of a company;
2. a member of the executive board or auditor of a cooperative;
3. the party which provides services to a company, such as consultant, public accountant, and appraiser;
4. owner of the majority shares of a company

Article 33

Point a

Sufficiently clear

Point b

Sufficiently clear

Point c

Sufficiently clear

Point d

Declared by an authorized doctor's letter.

Point e

Sufficiently clear

Point f

Dismissed, among others, because he/she no longer meets the membership requirements of the Commission as referred to under Article 32.

Article 34

Paragraph (1)

Sufficiently clear

Paragraph (2)

That which is intended by "secretariat" is an organization unit to support or assist the implementation of the Commission duties.

Paragraph (3)

That which is meant by "working group" is a professional team appointed by the Commission to assist in the implementation of certain duties for a certain period of time.

Paragraph (4)

Sufficiently clear

Article 35

Sufficiently clear

Article 36

Sufficiently clear

Point a

Sufficiently clear

Point b

Sufficiently clear

Point c

Sufficiently clear

Point d

Sufficiently clear

Point e

Sufficiently clear

Point f

Sufficiently clear

Point g

That which is intended by "investigator" is an investigator as referred to in Law no. 8, 1981.

Point h

Sufficiently clear

Point i

Sufficiently clear

Point j

Sufficiently clear

Point k

Sufficiently clear

Point l

Sufficiently clear

Article 37

Basically, the Government is responsible for the operational implementation of the Commission's duties by providing funds through the State Budget and State Revenues. However, considering the very broad and varying scopes and coverage of the Commission's duties, the Commission, therefore, can receive its funding from other sources which is not in contradiction with the existing law, and which is not binding and shall not influence the independence of the Commission.

Article 38

Sufficiently clear

Article 39

Sufficiently clear

Article 40

Sufficiently clear

Article 41

Paragraph (1)

Sufficiently clear

Paragraph (2)

Sufficiently clear

Paragraph (3)

That which the Commission hands over to the investigators to be investigated is not only the deed or the crime as referred to under Paragraph (2) of this article, but also includes the case being investigated and examined by the commission.

Article 42

Sufficiently clear

Article 43

Paragraph (1)

Sufficiently clear

Paragraph (2)

Sufficiently clear

Paragraph (3)

The decision making by the Commission as referred to under Paragraph (3) of this article shall be made in a Council meeting attended by at least 3 (three) members of the Commission.

Paragraph (4)

That which is intended by "notified" is the delivery of the copy of the Commission's decision to the entrepreneur.

Article 44

Paragraph (1)

30 (thirty) days counted form the date a copy of the Commission's decision is received by the entrepreneurs or his proxy.

Paragraph (2)

Sufficiently clear

Paragraph (3)

Sufficiently clear

Paragraph (4)

Sufficiently clear

Paragraph (5)

Sufficiently clear

Article 45

Sufficiently clear

Article 46

Sufficiently clear

Article 47

Paragraph (1)

Sufficiently clear

Paragraph (2)

Point a

Sufficiently clear

Point b

"The end of vertical integration" shall be carried out by, among others, revoking the contracts, the transferring of part of the company to other entrepreneurs, or the change of its production chains.

Point c

That which is ordered to be stopped are certain activities or actions and not the entire business activities of the entrepreneurs.

Point d

Sufficiently clear

Point e

Sufficiently clear

Point f

Compensation shall be given to the entrepreneurs and other parties suffering damages.

Point g

Sufficiently clear

Article 48

Sufficiently clear

Article 49

Sufficiently clear

Article 50

Point a

Sufficiently clear

Point b

Sufficiently clear

Point c

Sufficiently clear

Point d

Sufficiently clear

Point e

Sufficiently clear

Point f

Sufficiently clear

Point g

Sufficiently clear

Point h

“Entrepreneurs categorized engaging in small scale business” are entrepreneurs categorized as such in Law No. 9, 1995 regarding Small Scale Business.

Point i

That which is intended by “serve its members” is to provide services only to its members and not to the public for the procurement of basic needs, production facility needs, including credit and raw materials, and services to market and distribute products of the members which will not cause monopolistic practices and/or unfair business competition.

Article 51

Sufficiently clear

Article 52

Sufficiently clear

Article 53

Sufficiently clear