

**PROHIBITION AGAINST MONOPOLISTIC PRACTICES AND UNFAIR
BUSINESS COMPETITION**

(Law of the Republic of Indonesia No. 5/1999 dated March 5, 1999)

**BY THE GRACE OF GOD THE ALMIGHTY
THE PRESIDENT OF THE REPUBLIC OF INDONESIA**

Considering:

- a. that the development in the economic sector must be geared towards the realization of People's welfare on the basis of Pancasila and the Constitution of 1945;
- b. that democracy in the economic sector requires the availability of equal opportunities to every citizen to participate in a production and marketing of goods and or services in healthy, effective and efficient business climate, so that the economic growth and proper working of the market economy can be promoted;
- c. that everyone conducting a business in Indonesia must be in situation in which competition is healthy and proper so that there shall be no concentration of economic power in particular business agents, not regardless of the agreement given by the state of the Republic of Indonesia to international treaties;
- d. that to translate into reality those referred to in letters a, b and c, at the initiative proposed by the House of People's Representatives, it is necessary to establish the Law on a Prohibition against Monopolistic Practices and Unfair Business Competition;

In view of:

Article 5 sub-article (1), Article 21 sub-article (1), Article 27 sub-article (2) and Article 33 of the Constitution of 1945

With the approval of
THE HOUSE OF PEOPLE REPRESENTATIVES OF THE REPUBLIC OF INDONESIA

D E C I D E S

To stipulate:

THE LAW ON A PROHIBITION AGAINST MONOPOLISTIC PRACTICES AND UNFAIR BUSINESS
COMPETITION

CHAPTER I
GENERAL PROVISIONS

Article 1

Referred to in this law as:

1. Monopoly shall be control over production and or marketing of goods and or the use of certain services by one business agent or one group of business agents.
2. A monopolistic practice shall be the concentration of economic power by one or more business agents leading to the control over production and or marketing of certain goods and or services so that unfair business competition shall be brought about and public interests shall be harmed.
3. The concentration of economic power shall be actual control over a market concerned by one or more business agents so that the prices of goods and or services can be determined.
4. A dominant position shall be a condition in which a business agent does not have any significant competitor in the market concerned in connection with the market share controlled, or one in which a business agent occupies the highest position among the competitors in the market concerned in connection with financial capability, the capacity of access into supplies or sales and capacity to adjust the supplies of or demand for certain goods or services.
5. A business agent shall be any individual or business enterprise, either in the form at a statutory body or a non-statutory body, established and domiciled or conducting activities in the legal territory of the state at the Republic of Indonesia, either individually or separately through an agreement, conducting various business activities in the economic sector.
6. An unfair business competition shall be the competition between business agents in conducting production activities and or marketing of goods and or services in an unfair manner or in ways violating the law or hampering business competition.
7. An agreement shall be an act of one or more business agents to commit themselves to one or more other business agents under whatever name, either in writing or not in writing.
8. A business conspiracy shall be a form of cooperation pursued by a business agent with another business agent view to controlling the market concerned in the interest of the business agents involved in the conspiracy.
9. A market shall be an economic institution in which buyers and sellers, both directly and indirectly, can conduct the commercial transactions of goods and or services.

10. The Market concerned shall be a market connected with a certain marketing scope or area on the part of a business agent in regard of the same or similar goods and or services or the substitutions of the said goods and or services.
11. A market structure shall be a market condition providing clues about the aspects with a significant influence over the behavior of business agents and market performance, namely, among others the number of sellers and buyers, the constraints in market entry and exit, the diversity of products, the system of distribution and the control over market share.
12. Market behavior shall be the acts by a business agent in his capacity as a supplier or a buyer of goods and or services in order to achieve the goal of the company, namely among others, profit achievement, the growth of assets, a sales target and the competition method adopted.
13. Market share shall be the percentage of the selling or buying value of certain goods or services controlled by a business agent in the market concerned in a particular calendar year.
14. Market price shall be the price paid in a transaction of goods and or services in accordance with the agreement between the parties in the market concerned.
15. A consumer shall be everyone putting on or using goods and or services, for the purpose of their own interest or other parties'.
16. Goods shall be every object, tangible or otherwise and movable or otherwise, which may be traded, put on, used or utilized by consumers or business agents.
17. Services shall be every service in the form of a job or achievement which is traded in the society in order to be utilized by consumers or business agents.
18. A Supervisory Commission on Business Competition shall be a commission set up to exercise supervision over business agents in conducting their business activities to ensure that they shall not resort to monopolistic practices and or unfair business competition.
19. A district court shall be a court of law, as meant in the prevailing laws, where the business of a business agent is legally domiciled.

CHAPTER 11 PRINCIPLE AND PURPOSE

Article 2

In conducting their business activities, business agents in Indonesia will adhere to the principle of economic democracy and take into account the balance between the interests of business agents and those of the public.

Article 3

The purpose of the establishment of this law shall be as follows:

- a. to maintain public interests and promote national economic efficiency as one of the efforts to promote people's welfare;
- b. to translate into reality a conducive business climate through the regulation of fair business competition so that there shall be a guarantee for certainty in equal business opportunities to major business agents, medium-scale business agents and small-scale business agents;
- c. to prevent business agents from resorting to monopolistic practices and or unfair business competition; and
- d. to create effectiveness and efficiency in business activities.

CHAPTER III PROHIBITED AGREEMENTS

First Part

Oligopoly

Article 4

- (1). A business agent shall be prohibited to draw up an agreement with another business agent to jointly control the production and or marketing of goods and or services which lead to monopolistic practices and or unfair business competition.
- (2). Business agents should be assumed or considered as jointly controlling the production and or marketing of goods and or services as meant in sub-article (1) if 2 (two) or 3 (three) business agents or groups of business agents control over 75% (seventy-five percent) of the market share of one particular kind of product or service.

Second Part

Price Setting

Article 5

- (1). A business agent shall be prohibited to draw up an agreement with his business competitor to set the price of a particular kind of goods and or service which must be paid by consumers or customers in the same market concerned.
- (2). The stipulation as meant in sub-article (1) shall not apply in the event of:
 - a. an agreement drawn up in a joint venture business undertaking; or
 - b. an agreement based on the prevailing law.

Article 6

A business agent shall be prohibited to draw up an agreement which shall result in one buyer having to pay a different price from the price which must be paid by another buyer for the same goods and or services.

Article 7

A business agent shall be prohibited to draw up an agreement with his business competitor to set a price below the market price., an act leading to unfair business competition.

Article 8

A business agent shall be prohibited to draw up with another business agent an agreement containing a condition that the recipient of goods and or services shall not re-sell or re-supply the goods and or services already received at a price lower than that already agreed upon so that this may lead to unfair business competition.

Third Part Area Division

Article 9

A business agent shall be prohibited to draw up an agreement with his business competitor with a view to dividing marketing areas or market allocation with respect to certain goods and or services so that this may lead to monopolistic practices and or unfair business competition.

Fourth Part Boycotting Article 10

- (1). A business agent shall be prohibited to draw up with his business competitor an agreement which may prevent another business agent from conducting the same business, with either the domestic or foreign market as the target.
- (2). A business agent shall be prohibited to draw up an agreement with his business competitor to refuse to sell any goods and or services from another business agent so that this act:
 - a. shall disadvantage or may be assumed to disadvantage another business agent. or
 - b. shall restrict another business agent in selling or purchasing any goods and or services from the market concerned.

Fifth Part Cartels Article 11

A business agent shall be prohibited to draw up an agreement with his business competitor with a view to influencing prices by regulating the production and or marketing of a particular kind of goods and or service so that this may lead to monopolistic practices and or unfair business competition.

Sixth Part Trust Article 12

A business agent shall be prohibited to draw up an agreement with another business agent to establish cooperation by means of setting up a larger association of companies or partnerships while at the same time maintaining the existence of each member company or partnership, with a view to controlling the production and or marketing of goods and or services so that this may lead to monopolistic practices and or unfair business competition.

Seventh Part Oligopsony Article 13

- (1). A business agent shall be prohibited to draw up an agreement with another business agent with a view to jointly controlling the purchase or receipt of supplies so that they may control the prices of the goods and or services in the market concerned, an act which may lead to monopolistic practices and or unfair business competition.
- (2). A business agent should be assumed or considered as jointly controlling the purchase or receipt of supplies as meant in sub-article (1) if 2 (two) or 3 (three) business agents or groups of business agents control over 75% (seventy-five percent) of the market share of one particular kind of goods or service.

Eighth Part Vertical Integration Article 14

A business agent shall be prohibited to draw up an agreement with another business agent. with a view to controlling the production of a number of products included in a series of production of a particular kinds of goods and or

service with each production series being the result of further processing, either in a direct series or otherwise, so that this may result in unfair business competition and or may disadvantage the community.

Ninth Part
Closed Agreement
Article 1 5

- (1). A business agent shall be prohibited to draw up with another business agent an agreement containing a condition that the party receiving the goods and or services shall only re-supply or not re-supply the said goods and or services to certain parties and or at certain places.
- (2). A business agent shall be prohibited to draw up with another party an agreement containing a condition that the party receiving certain goods and or services must be willing to purchase other goods and or services from the supplier business agent.
- (3). A business agent shall be prohibited to draw up an agreement on certain prices or discounts with respect to goods and or services, containing a condition that a business agent receiving the goods and or services from the supplier business agent:
 - a. must be willing to purchase other goods and or services from the supplier business agent; or
 - b. shall not purchase the same or similar goods and or services from another business agent posing as competitor to the supplier business agent.

Tenth Part
Agreement with Foreign Parties
Article 1 6

A business agent shall be prohibited to draw up an agreement with another party abroad containing a provision which may lead to monopolistic practices and or unfair business competition.

CHAPTER IV
PROHIBITED ACTIVITIES

First Part
Monopoly
Article 1 7

- (1). A business agent shall be prohibited to control the production and or marketing of goods and or services which may lead to monopolistic practices and or unfair business competition.
- (2). A business agent should be assumed or considered as controlling the production and or marketing of goods or services as meant in sub-article (1) if:
 - a. the goods and or services concerned have no substitution yet; or
 - b. this act shall result in another business agent being unable to take part in the business competition of the same goods and or services; or
 - c. one business agent or one group of business agents control over 50% (fifty percent) of the market share of one particular kind of goods or service

Second Part
Monopsony
Article 18

- (1). A business agent shall be prohibited to control the receipt of supplies or act as a sole buyer of goods and or services in the market concerned as this may lead to monopolistic practices and or unfair business competition.
- (2). A business agent should be assumed or considered as controlling the receipt of supplies or becoming a sole buyer as meant in sub-article (1) if one business agent or one group of business agents controls over 50% (fifty percent) of the market share of one particular kind of goods or service-

Third Part
Market Control
Article 1 9

A business agent shall be prohibited to conduct one activity or several of them, either individually or jointly along with another business agent. which may lead to monopolistic practices or unfair business competition in the form of the following:

- a. to reject and or prevent a certain business agent from conducting the same business activity in the market concerned; or
- b. to prevent consumers or patrons of his business competitor from conducting business relations with this business competitor: or
- c. to restrict the distribution and or sales of goods and or services in the market concerned: or
- d. to discriminate from certain business agents.

A business agent shall be prohibited to supply goods and or services by means of selling at a loss or setting very low prices with a view to eliminating his business competitor or putting his business competitor out of business in the market concerned so that this may lead to monopolistic practices and or unfair business competition.

Article 2 1

A business agent shall be prohibited to resort to fraudulence in setting production and other costs which shall constitute the components of the price of goods and or services so that this may lead to unfair business competition.

Fourth Part Conspiracy Article 22

A business agent shall be prohibited to establish a conspiracy with another party with a view to regulating and or determining the winner of a tender so that this may lead to unfair business competition.

Article 23

A business agent shall be prohibited to conspire with another party to ferret out information about the business activities of his competitor classified as corporate secrets so that this may lead to unfair business competition.

Article 24

A business agent shall be prohibited to conspire with another party to obstruct the production or marketing of the goods and or services of his business competitor with a view to making the goods and services offered or supplied in the market decrease in terms of quantity, quality and punctuality required.

CHAPTER V DOMINANT POSITION

First Part General Article 25

- (1). A business agent shall be prohibited to make use of a dominant position either directly or indirectly to:
 - a. set trade terms with a view to preventing and or obstructing, consumers from obtaining goods and or services which are competitive in terms of price and quality: or
 - b. restrict, the market and technological development: or
 - c. obstruct another potential business agent from becoming a competitor to enter the market concerned.
- (2). A business agent shall assume a dominant position as meant in sub-article (1) if:
 - a. one business agent or one group of business agents controls 50 % (fifty percent) or more of the market share of one particular kind of goods or service: or
 - b. two or three business agents, or groups of business agents control 75% (seventy-five percent) or more of the market share of one particular kind of goods or service.

Second Part Dual Position Article 26

Someone assuming the position of a member of the board of directors or a commissioner of a company shall be prohibited to concurrently assume the position of a member of the board of directors of commissioner at another company if the said companies:

- a. exist in the same market concerned: or
- b. maintain a close link in the business sector and or type: or
- c. can jointly control the market share of certain goods and or services, so that this may lead to monopolistic practices and or unfair business competition.

Third Part Share Ownership Article 27

A business agent shall be prohibited to own majority shares in a number of similar companies conducting business activities in the same area in the same market concerned, or set up a number of companies undertaking the same business activities in the same market concerned, if the said ownership shall result in:

- a. one business agent or one group of business agents controlling over 50% (fifty percent) of the market share of one particular kind of goods or service;
- b. two or three business agents or groups of business agents controlling over 75% (seventy-five percent) of the market share of one particular kind of goods or service.

Fourth Part

Merger, consolidation and acquisition

Article 28

- (1) Business agents shall be prohibited to merge or consolidate business undertakings in ways which may lead to monopolistic practices and or unfair business competition.
- (2) A business agent shall be prohibited to acquire the shares of another company if this act may lead to monopolistic practices and or unfair business competition.
- (3) Further provisions on the merger or consolidation of business undertakings subjected to the prohibition as meant in sub-article (1) and the provision on the acquisition of corporate shares as meant in sub-article (2) shall be regulated in a government regulation.

Article 29

- (1) The merger or consolidation of business undertakings or acquisition of shares as meant in Article 28 resulting in the value of the assets and or the value of the sales exceeding a particular amount shall, by way of obligation, be reported to the Commission, at the latest 30 (thirty) days as from the date of the said merger, amalgamation or acquisition.
- (2) The provision on the determination of the value of the assets and or the value of the sales and the procedure for notification as meant in sub-article (1) shall be regulated in a government regulation.

CHAPTER VI

SUPERVISORY COMMISSION ON BUSINESS COMPETITION

First Part

Status

Article 30

- (1) To supervise the enforcement of this law, a Supervisory Commission on Business Competition shall be established and shall hereinafter be referred to as the Commission.
- (2) The Commission shall be an independent institution free from the influence and authority of the government and parties.
- (3) The Commission shall be accountable to the President.

Second Part

Membership

Article 31

- (1) The Commission shall comprise a chairperson concurrently a member, a deputy chairperson concurrently a member and at least 7 (seven) members.
- (2) A Commission member shall be appointed and discharged by the President at the approval of the House of People's Representatives.
- (3) The term of office of a Commission member shall be 5 (five) years and a member may be re-appointed for another term of office.
- (4) If, owing to the termination of the term of office, there shall be a vacuum in the Commission membership, the term of office of a member may be extended until the appointment of a new member.

Article 32

The requirements set for membership of a Commission shall be:

- a. being a citizen of the Republic of Indonesia, aged at least 30 (thirty) years old and at most 60 (sixty) years old at the time of appointment.
- b. being loyal to Pancasila and the Constitution of 1945.
- c. having faith and resignation in God the Almighty;
- d. being honest, fair and of a good conduct,.
- e. domiciled in the territory of the Republic of Indonesia;
- f. experienced in the business sector or being knowledgeable and having expertise in the legal and or economic sector;
- g. never having been criminally convicted;
- h. never having been declared bankrupt by the court of law, and
- i. not being affiliated with a business undertaking.

Article 33

Membership in the commission shall terminate owing to:

- a. death;
- b. withdrawal at one's own request.
- c. being domiciled outside the territory of the Republic of Indonesia.
- d. a continuous physical or mental illness;
- e. the termination of the term of office of membership in the Commission; or

- f. being discharged.

Article 34

- (1) The establishment of the Commission and the organizational structure, tasks and functions shall be stipulated in a presidential decree.
- (2) To expedite the performance of its tasks, the Commission shall be assisted by a secretariat.
- (3) The Commission may set up a working group.
- (4) The provision on the organizational structure, tasks and functions of the secretariat and the working group shall be further regulated in a decision of the Commission.

Third Part

Tasks

Article 35

The tasks of the Commission shall encompass:

- a. evaluating agreements which may lead to monopolistic practices and or unfair business competition as regulated in Article 4 up to Article 16;
- b. evaluating the business activities and or acts committed by a business agent which may lead to monopolistic practices and or unfair business competition as regulated in article 17 up to Article 24;
- c. evaluating the presence or the absence of the abuse of the dominant position which may lead to monopolistic practices and or unfair business competition as regulated in Article 25 up to Article 28;
- d. taking measures in accordance with the authority of the Commission as regulated in Article 36;
- e. providing suggestions and consideration regarding the policies of the government related to monopolistic practices and or unfair business competition;
- f. drawing up a guideline and or publication related to this Law;
- g. conveying periodic reports on the outcome of the work of the Commission to the President and the House of People's Representatives.

Fourth Part

Authority

Article 36

The authority of the Commission shall encompass:

- a. receiving reports from the community and or business agents regarding alleged monopolistic practices and or unfair business competition;
- b. surveying allegations of business activities and or acts committed by business agents which may lead to monopolistic practices and or unfair business competition;
- c. investigating and or examining cases of alleged monopolistic practices and or unfair business competition reported by the community or by a business agent or found by the Commission as a result of its surveys;
- d. making a conclusion of the result of the investigation into and or examination of the presence or absence of monopolistic practices and or unfair business competition;
- e. summoning business agents alleged as having violating the provisions of this law;
- f. summoning and presenting witnesses, expert witnesses and anybody assumed to have knowledge about the violation of the provisions of this law;
- g. seeking assistance from an investigation to present business agents, witnesses, expert witnesses or anybody as meant in letters e and f, not in a position to fulfil the summons of the Commission;
- h. requesting information from government agencies in connection with an investigation into and or examination of a business agent violating the provisions of this law;
- i. obtaining, examining and or evaluating letters, documents or other evidences for the purpose of the investigation and or examination;
- j. deciding and stipulating whether losses have or have not been inflicted to other business agents or the community;
- k. notifying the decision of the Commission to business agents allegedly committing monopolistic practices and or unfair business competitions
- l. imposing a sanction in the form of an administrative measure on a business agent violating the provisions of this law.

Fifth Part

Financing

Article 37

The funds for the performance of the tasks of the Commission shall be derived from the state's budget of revenue and expenditure and from other sources permitted by the prevailing laws.

Article 38

- (1) Anybody having knowledge that violation of this Law has been committed or should be assumed as having been committed may give a written report, setting out information clearly, to the Commission that a violation has been committed, along with the identity of the party making the report.
- (2) The party disadvantaged by the violation of this Law may report in writing to the Commission, setting out full and clear information, the violation already committed and the losses inflicted. along with the identity of the party making the report.
- (3) The Commission shall be obligated to keep confidential the identity of the party making the report as meant in sub-article (1).
- (4) The procedure for the conveyance of the report as meant in sub-articles (1) and (2) shall be regulated further by the Commission.

Article 39

- (1) On the basis of the report as meant in Article 38 sub-articles (1) and (2), the Commission shall be obligated to conduct a preliminary examination and within a maximum period of 30 (thirty) days after the receipt of the report, the Commission shall be obligated to decide whether or not it is necessary to conduct further examination.
- (2) In a further examination, the Commission shall be obligated to examine the business agent reported.
- (3) The Commission shall be obligated to keep confidential the information obtained from a business agent and categorized as corporate secrets.
- (4) If deemed necessary, the Commission may hear the information from witnesses, expert witnesses and or other parties.
- (5) In conducting the activities as meant in sub-articles (2) and (4), a member of the Commission shall be completed with a letter of assignment.

Article 40

- (1) The Commission may examine a business agent in case of an alleged violation of this Law even in the absence of a report.
- (2) The examination as meant in sub-article (1) shall be conducted in accordance with the procedure as regulated in Article 39.

Article 41

- (1) A business agent and or another party subjected to an examination shall be obligated to surrender evidences needed in an investigation and or examination.
- (2) A business agent shall be prohibited to refuse an examination, refuse to provide the information needed in an investigation and or examination or hamper a process of investigation and or examination.
- (3) The Commission shall leave a violation of the provision of sub-article (2) to an investigator so that an investigation may be conducted pursuant to the prevailing provisions.

Article 42

Evidences for a Commission's examination shall be in the form of:

- a. witnesses' testimony;
- b. information from experts;
- c. letters and or documents;
- d. indications;
- e. information from business agents.

Article 43

- (1) The Commission shall be obligated to complete further examination at the latest 60 (sixty) days as from the date when further examination as meant in Article 39 sub-article (1) is conducted.
- (2) If necessary, the period of further examination as meant in sub-article (1) may be extended for a maximum of 30 (thirty) days.
- (3) The Commission shall be obligated to decide whether or not a violation of this law has been committed at the latest 30 (thirty) days as from the date when the further examination as meant in sub-article (1) or sub-article (2) is completed.
- (4) The decision made by the Commission as meant in sub-article (3) must be read out in a session declared open to the public and shall immediately be notified to the business agents.

Article 44

- (1) Within 30 (thirty) days as from the date when a business agent receives a notification on the decision made by the Commission as meant in Article 43 sub-article (4), the business agent shall be obligated to implement the said decision and convey a report on its implementation to the Commission.
- (2) A business agent can file an objection to the court of law at the latest 14 (fourteen) days after receiving a notification of the said decision.

- (3) A business agent failing to file an objection within the period of time as meant in sub-article (2) shall be considered as having accepted the decision made by the Commission.
- (4) If the provision as meant in sub-articles (1) and (2) is not complied with by a business agent, the Commission shall refer the said decision to an investigation so that an investigation may be conducted pursuant to the prevailing laws.
- (5) The Commission's decision as meant in Article 43 sub-article (4) shall constitute a sufficient initial evidence for an investigator to carry out his investigation.

Article 45

- (1) A district court must examine the objection filed by a business agent as meant in Article 44 sub-article (2) within 14 (fourteen) days as from the receipt of the said objection.
- (2) A district court must pass its ruling within 30 (thirty) days as from the date when the examination of the said objection commences.
- (3) A party having an objection to a ruling passed by a district court as meant in sub-article (2) shall, within 14 (fourteen) days, be able to file an application for an appeal to the Supreme Court of the Republic of Indonesia.
- (4) The Supreme Court must pass its ruling within 30 (thirty) days as from the receipt of the application for an appeal.

Article 46

- (1) In the absence of an objection, the decision of the Commission as meant in Article 43 sub-article (3) has a permanent legal force.
- (2) A request shall be made to a district court for its ruling on the execution of the decision of the Commission as meant in sub-article (1).

CHAPTER VIII

SANCTIONS

First Part

Administrative Measures

Article 47

- (1) The Commission shall be authorized to impose sanctions in the form of administrative measures against a business agent violating the provisions of this law.
- (2) The administrative measures as meant in sub-article (1) shall take the form of the following:
 - a. a stipulation that the agreement as meant in Article 4 up to Article 13, Article 15 and Article 16 should be canceled; and or
 - b. an order to a business agent to terminate the vertical integration as meant in Article 14; and or
 - c. an order to a business agent to terminate activities which have proved to lead to monopolistic practices and or cause unfair business competition and or disadvantage the community, and or
 - d. an order to a business agent to terminate the abuse of a dominant position; and or
 - e. a stipulation that the merger or consolidation of business undertakings and acquisition of shares as meant in Article 28 should be canceled; and or
 - f. a stipulation that compensation should be paid; and or imposition of a fine amounting to a minimum of Rp 1,000,000,000.00 (one billion rupiah) and a maximum of Rp 25,000,000,000.00 (twenty-five billion rupiah).

Second Part

Principal Penalties

Article 48

- (1) Violation of the provisions of Article 4, Article 9 up to Article 14, Article 16 up to Article 19, Article 25, Article 27 and Article 28 shall be subject to a penalty in the form of a fine amounting to a minimum of Rp 25,000,000,000.00 (twenty-five billion rupiah) and a maximum of Rp 100,000,000,000.00 (a hundred billion rupiah) or a maximum of 5 (five) months of jail term in place of the fine.
- (2) Violation of the provisions of Article 5 up to Article 8, Article 15, Article 20 up to Article 24, and Article 26 of this Law shall be subject to a penalty in the form of a fine amounting to a minimum of Rp 5,000,000,000.00 (five billion rupiah) and a maximum of Rp 25,000,000,000.00 (twenty-five billion rupiah) or a maximum of 5 (five) months of jail term in place of the fine.
- (3) Violation of the provision of Article 41 of this Law shall be subject to a penalty in the form of a fine amounting to a minimum of Rp. 1 000,000,000.00 (one billion rupiah) and a maximum of Rp 5,000,000,000.00 (five billion rupiah) or a maximum of 3 (three) months of jail term in place of the fine.

Third Part

Additional Penalties

Article 49

With reference to the provision of Article 10 of the Criminal Code, the penalties as regulated in article 48 may be subject to additional penalties in the form of the following:

- a. revocation of a business license; or

- b. prohibition on the part of a business agent proved to have violated this law to assume the position of a member of the board of directors or that of a commissioner for a minimum of 2 (two) years and a maximum of 5 (five) years; or
- c. termination of activities or certain acts inflicting losses on other parties.

CHAPTER IX
OTHER PROVISIONS

Article 50

Excepted from the provisions of this law shall be:

- a. acts and or agreements aimed at enforcing the prevailing laws; or
- b. agreements linked with the right over intellectual property such as licenses, patents, trade marks, copyrights, designs of industrial products, integrated electronic series, and trade secrets, as well as agreements related to franchising; or
- c. agreements on the stipulation of a technical standard of a product and or service which shall not curb and or hamper competition; or
- d. agreements in the context of agency not containing stipulations to re-supply goods and or services at prices lower than those already agreed upon; or
- e. agreements on research cooperation to promote or improve the living standard of the broad community; or
- f. international agreements already ratified by the Government of the Republic of Indonesia; or
- g. agreements and or acts aimed at exporting without harming the domestic market demand and or supply; or
- h. business agent classified as small-scale business agents; or
- i. business activities of cooperatives specifically aimed at serving the members.

Monopoly and or concentration of activities related to the production and or marketing of goods and or services controlling the lives of many people and production branches important to the state shall be regulated by the law and undertaken by state-owned enterprises and or agencies or institutions set up or appointed by the government.

CHAPTER X
TRANSITIONAL PROVISIONS

Article 52

- (1) As from the enforcement of this law, all laws regulating or linked with monopolistic practices and or business competition shall remain valid as far as they do not contradict with this Law or have not been replaced by new ones on the basis of this Law.
- (2) Business agents already concluding agreements and or undertaking activities and or acts not conforming to the provisions of this law shall be allowed 6 (six) months as from the enforcement of this Law to make adjustments.

CHAPTER X]
CLOSING PROVISION

Article 53

This Law shall take effect 1 (one) year as from the date of its promulgation.

For public cognizance, this Law shall be promulgated by publishing it in the Statute Book of the Republic of Indonesia.

Promulgated in Jakarta
On March 5, 1999
STATE MINISTER/STATE SECRETARY
OF REPUBLIC OF INDONESIA
sgd.
AKBAR TANDJUNG

Validated in Jakarta
On March 5, 1999
.THE PRESIDENT OF THE REPUBLIC
OF INDONESIA
sgd.
BACHARUDDIN JUSUF HABIBIE

**ELUCIDATION
ON
LAW OF THE REPUBLIC OF INDONESIA NO. 5/1999
ON
PROHIBITION AGAINST MONOPOLISTIC PRACTICES AND UNFAIR BUSINESS COMPETITION**

GENERAL

Economic development in the First Long Term Development has generated a lot of progress, namely, among others, an improvement in people's welfare. The progress in development already attained as referred to above has been bolstered By development policies in various sectors including development policies in the economic area as expressed in the Broad Lines of the State's Course and the Five Year Development Plants and various economic policies.

Despite a lot of progress having been achieved in the First Long Term Development as shown by a high economic growth rate, a lot of challenges or problems, particularly in the economic development, remain unsolved, in line with the tendency of economic globalization and the dynamism and development of private businesses emerging since early 1 990s.

Business opportunities created in the past three decades, in reality, have not made the entire community capable of participating and able to participate in the development in various economic sectors. The development of private businesses during this period was on the one hand colored by various inappropriate government policies resulting in the distortion of the market. On the other, the development of private businesses has, in reality, mostly constituted the realization of unfair business competition.

This phenomenon has developed thanks to and been supported by relevant links between decision makers and business agents, either directly or indirectly, leading to the aggravation of this condition. The operation of the national economy has not fully referred to the mandate of Article 33 of the Constitution of 1 945 and has tended to show a highly monopolistic pattern.

.Businessmen close to the ruling elite have enjoyed excessive facilities. a situation leading to widening social gaps. The emergence of conglomeration and a small number of strong businessmen not supported by a true spirit of entrepreneurship shall constitute one of the factors leading to highly vulnerable economic resilience and non-competitiveness.

AS we observe the above-mentioned situation and condition, it is demanded of us that we observe and re-arrange business activities in Indonesia so that the business community can grow and develop healthily and correctly to create a climate of fair business competition and avoid the concentration of economic power in certain individuals or groups, among others in monopolistic practices and unfair business competition disadvantageous to the community and contradicting the ideal of social justice.

Therefore, it is necessary to establish the Law on the Prohibition against Monopolistic Practices and Unfair Business Competition aimed at enforcing the law and providing equal protection to every business agent in an effort to create fair business competition.

This Law provides a guarantee of legal certainty to better promote the acceleration of economic development in an effort to improve public welfare and as the implementation of the spirit of the Constitution of 1 945.

To ensure that the implementation of this law and its enforcement regulation may run effectively in accordance with its principle and purpose, it is necessary to establish a Supervisory Commission on Business Competition, namely an independent institution free from the influence of the government and other parties and authorized to exercise supervision over business competition and pass sanctions. These sanctions shall take the form of administrative measures, while criminal sanctions shall be the authority of a court of law.

Generally, in terms of substance the Law on the Prohibition against Monopolistic Practices and Unfair Business Competition shall contain 6 (six) parts of regulation comprising:

1. prohibited agreements;
2. prohibited activities;
3. a dominant position;
4. the Supervisory Commission on Business Competition;
5. law enforcement;

6. other provisions.

This Law is established on the basis of Pancasila and the Constitution of 1945 and has economic democracy as its principle with account being taken of the equilibrium between the interests of business agents and public interests, with a view to: maintaining public interests and protecting consumers; fostering a conducive business climate through the creation of fair business competition, and guaranteeing certainty in equal business opportunities to everybody; preventing monopolistic practices and or unfair business competition brought about by a business agent; and creating effectiveness and efficiency in business activities in the framework of promoting national economic efficiency as one of the endeavors to promote people's welfare.

ARTICLE BY ARTICLE

Article 1

Figures 1 up to 19

Sufficiently clear.

Articles 2 and 3

Sufficiently clear.

Article 4

Sub-articles (1) and (2)

Sufficiently clear.

Article 5

Sub-articles (1) and (2)

Sufficiently clear.

Articles 6 up to 8

Sufficiently clear.

Article 9

An agreement may be vertical or horizontal in nature. This agreement is prohibited because a business agent abolishes or reduces competition by means of dividing market areas or market allocation. Marketing areas may mean the territory of the state of the Republic of Indonesia or parts of the territory of the state of the Republic of Indonesia, for example, districts, provinces or other regional areas. Dividing marketing areas or market allocation means dividing areas to procure or supply goods, services or goods and services, or determining which parties may procure or supply goods, services, or goods and services.

Article 10

Sub-articles (1) and (2)

Sufficiently clear

Sub-article (2)

Articles 11 and 12

Letter a and b

Sufficiently clear,

Article 13

Sub-articles (1) and (2)

Article 14

Referred to as *controlling the production of a number of products included in a series or production* or usually called a vertical integration shall be the control of a series of production processes of certain goods from the upstream to the downstream or continued processes of the provision of certain services by certain business agents. Although it may produce goods and services at a low price, the practice of a vertical integration may lead to unfair business competition harming the pillars of the society's economy. This practice is prohibited as long as it gives rise to unfair business competition and or is disadvantageous to the community.

Article 15

Sub-article (1)

Included in the definition of *supplying* shall be the provision of supplies, of goods and services, in transacting, renting, hire purchases and leasing activities.

Sub-article (2)

Sufficiently clear.

Sub-article (3)

Letters a and b

Sufficiently clear.

Article 16

Sufficiently clear.

Article 17

Sub-article (1)

Sufficiently clear.

Sub-article (2)

Letter a

Sufficiently clear.

Letter b

Referred to as *other business agents* shall be business agents having a significant capability of competition in the market concerned.

Letter c

Sufficiently clear.

Article 1 8

Sub-articles (1) and (2)

Sufficiently clear.

Article 1 9

Letter a

Refusing or preventing other business agents may not be counted in an improper manner or on non-economic grounds, for example owing to differences in ethnicity, racial background, social status and so forth.

Letters b up to d

Sufficiently clear.

Article 20

Sufficiently clear.

Article 2 1

Fraudulence in setting production and other costs shall be a violation of the prevailing laws intended to incur costs of production factors lower than they should be.

Article 22

A tender shall be an offer to put forward a price for the contract of a job, the supply of goods or the provision of services.

Articles 23 and 24

Sufficiently clear.

Article 25

Sub-article (1)

Letters a up to c

Sufficiently clear.

Sub-article (2)

Letters a and b

Sufficiently clear.

Article 26

Letter a

Sufficiently clear.

Letter b

Companies maintain a *close link* if the said companies support each other or are directly connected in a production process, marketing or production and marketing.

Letter c

Sufficiently clear.

Article 27

Letters a and b

Sufficiently clear.

Article 28

Sub-article (1)

A business undertaking shall be a company or a business form, in the form of a statutory body (for example a limited liability company) or a non-statutory body, running a particular kind of business regularly and continuously with a view to making profits.

Sub-articles (2) and (3)

Sufficiently clear.

Article 29

Sub-articles (1) and (2)

Sufficiently clear.

Article 30

Sub-articles (1) up to (3)

Sufficiently clear.

Article 31

Sub-article (1)

The chairperson and the deputy chairperson of the Commission shall be elected from among and by members of the Commission.

Sub-articles (2) and (3).

Sufficiently clear.

Sub-article (4)

The extension of the tenure of a member of the Commission to avoid a vacuum shall only be for a maximum of 1 (one) year.

Article 32

Letters a up to f

Sufficiently clear.

Letter g

Referred to as *having never been criminally convicted* shall be never having been criminally convicted because of committing a major crime or because of an offense against decency.

Letter h

Sufficiently clear.

Letter i

Referred to as *not being affiliated to a business undertaking* shall be the fact that as from the time when the person concerned becomes a member of the Commission he/she no longer serves as:

1. a member of the board of commissioners or supervisors, or the board of executive directors in a company;
2. a member of the management or the board of inspectors of a cooperatives;
3. a party providing services to a company, such as a consultant, a public accountant and an appraiser;
4. the owner of majority shares in a company.

Article 33

Letters a up to c

Sufficiently clear.

Letter d

Stated in a certificate made by an authorized physician.

Letter e

Sufficiently clear.

Letter f

Being discharged because, among others, one no longer fulfills the requirements set for membership of the Commission as meant in Article 32.

Article 34

Sub-article (1)

Sufficiently clear.

Sub-article (2)

Referred to as *a secretariat* shall be an organizational unit supporting or assisting the implementation of the tasks of the Commission.

Sub-article (3)

Referred to as *a working group* shall be a professional team appointed by the Commission to assist the implementation of a particular assignment in a particular period.

Sub-article (4)

Sufficiently clear.

Article 35

Letters up to g Sufficiently clear.

Article 36

Letters a up to f

Sufficiently clear.

Letter g

Referred to as *an investigator* shall be an investigator as meant in Law No. 8/1981.

Letters h up to l

Sufficiently clear.

Article 37

Basically the state is responsible for the operational execution of the tasks of the Commission by providing a financial support through the state's budget of revenues and expenditures. However, considering that the scope and extent of the tasks of the Commission are very wide and diversified, the Commission may procure funds from other sources in ways not contradicting the prevailing laws without any strings and without any influence on the independence of the Commission.

Article 38

Sub-articles (1) up to (4)

Sufficiently clear.

Article 39

Sub-articles (1) up to (5)

Sufficiently clear.

Article 40

Sub-articles (1) and (2)

Sufficiently clear.

Article 41

Sub-articles (1) and (2)

Sufficiently clear.

Sub-article (3)

What the Commission hands over to an investigator for an investigation shall be not only criminal acts as meant in sub-article (2) but also the substance of a case that the Commission is investigating and examining.

Article 42

Letters a up to e

Sufficiently clear.

Article 43

Sub-articles (1) and (2)

Sufficiently clear.

Sub-article (3)

The decision of the Commission as meant in sub-article (3) shall be made in a council session comprising a minimum of 3 (three) Commission members.

Sub-article (4)

Referred to as *being notified* shall be the conveyance of an excerpt of the decision of the Commission to a business agent.

Article 44

Sub-article (1)

30 (thirty) days shall start as from the receipt of an excerpt of the decision of the Commission by a business agent or his legal proxy.

Sub-articles (2) up to (5) Sufficiently clear.

Article 45

Sub-articles (1) up to (4)

Sufficiently clear.

Article 46

Sub-articles (1) and (2)

Sufficiently clear.

Article 47

Sub-article (1)

Sufficiently clear.

Sub-article (2)

Letter a

Sufficiently clear.

Letter b

Termination of the vertical integration shall be executed among other things by the cancellation of agreements, the transfer of part of the company to another business agent, or a change in the form of the production series.

Letter c

Those ordered to be terminated shall be certain activities or acts and not a business agent's business activities as a whole.

Letters d and e

Sufficiently clear.

Letter f

Compensation shall be given to a business agent and to another party being disadvantaged.

Letter g

Sufficiently clear.

Article 48

Sub-articles (1) up to (3)

Sufficiently clear.

Article 49

Letters a up to c

Sufficiently clear.

Article 50

Letters a up to g

Sufficiently clear.

Letter h

Business agents classified as small-scale business agents shall be those as meant in Law No. 911995 on small-scale businesses.

Letter i

Referred to as *servicing the members* shall be the provision of services only to the members and not to the public with respect to the supplies of basic necessities, the needs for production facilities including credits and raw materials, and services to market and distribute the production output of the members in ways not leading to monopolistic practices and or unfair business competition.

Article 51

Sufficiently clear.

Article 52

Sub-articles (1) and (2)

Sufficiently clear.

Article 53

Sufficiently clear.

SUPPLEMENT TO STATUTE BOOK OF THE REPUBLIC
OF INDONESIA NO. 3817