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**THE PRESIDENT OF THE REPUBLIC OF INDONESIA**

**ELUCIDATION**

**ON**

**THE LAW OF THE REPUBLIC OF INDONESIA**

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**CONCERNING**

**THE PROHIBITION OF MONOPOLISTIC PRACTICES AND UNFAIR  
BUSINESS COMPETITION**

**GENERAL**

Economic development in the First Long Term Development has resulted in much progress, among other things with the improvement of social welfare. The aforementioned progress achieved in development, has been supported by development policies in various fields, including policies in the field of economy as set forth in the State Guidelines Policy and Five Year Development Plan, as well as in various other economic policies.

Despite the substantial progress achieved in the First Long Term Development, reflected in high economic growth, many challenges or issues still remain, especially in the economic development that is not yet divided up, alongside the trend of globalisation in

the economy and the dynamics and development of private businesses since the early 1990s.

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

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

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

The above situation and condition have caused us to have to study and rearrange business activities in Indonesia, so that businesses can grow and develop in a fair and appropriate way, leading to the creation of a fair business competition climate, and in order to avoid the concentration of economic power around one certain person or group, among other things, in the form of monopolistic practices and unfair business competition harmful to society, which are contradictory to the ideals of social justice.

Therefore, it is necessary to stipulate the Law Concerning the Prohibition of Monopolistic Practices and Unfair Business Competition intended for the enforcement of provisions of law and providing equal protection for every business actor in an effort to create fair business competition.

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

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

In general, the substance of the Law Concerning the Prohibition of Monopolistic Practices and Unfair Business Competition consists of 6 (six) regulatory parts such as :

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

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

## ARTICLE BY ARTICLE

### Article 1

#### Sub-Article 1

Self-explanatory.

Sub-Article 2

Self-explanatory.

Sub-Article 3

Self-explanatory.

Sub-Article 4

Self-explanatory.

Sub-Article 5

Self-explanatory.

Sub-Article 6

Self-explanatory.

Sub-Article 7

Self-explanatory.

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Self-explanatory.

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Self-explanatory.

Sub-Article 10

Self-explanatory.

Sub-Article 11

Self-explanatory.

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Self-explanatory.

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Self-explanatory.

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Self-explanatory.

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Self-explanatory.

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Self-explanatory.

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Self-explanatory.

Sub-Article 18

Self-explanatory.

Sub-Article 19

Self-explanatory.

Article 2

Self-explanatory.

Article 3

Self-explanatory.

Article 4

Paragraph (1)

Self-explanatory.

Paragraph (2)

Self-explanatory.

Article 5

Paragraph (1)

Self-explanatory.

Paragraph (2)

Self-explanatory.

Article 6

Self-explanatory.

Article 7

Self-explanatory.

Article 8

Self-explanatory.

Article 9

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

Article 10

Paragraph (1)

Self-explanatory.

Paragraph (2)

Self-explanatory.

Article 11

Self-explanatory.

Article 12

Self-explanatory.

Article 13

Paragraph (1)

Self-explanatory.

Paragraph (2)

Self-explanatory.

Article 14

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

Article 15

Paragraph (1)



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

Paragraph (2)

Self-explanatory.

Paragraph (3)

Sub-Paragraph a

Self-explanatory.

Sub-Paragraph b

Self-explanatory.

Article 16

Self-explanatory.

Article 17

Paragraph (1)

Self-explanatory.

Paragraph (2)

Sub-Paragraph a

Self-explanatory.

Sub-Paragraph b

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

Sub-Paragraph c

Self-explanatory.

Article 18

Paragraph (1)

Self-explanatory.

Paragraph (2)

Self-explanatory.

Article 19

Sub-Article a

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

Sub-Article b

Self-explanatory.

Sub-Article c

Self-explanatory.

Sub-Article d

Self-explanatory.

Article 20

Self-explanatory.

Article 21

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

Article 22

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

Article 23

Self-explanatory.

Article 24

Self-explanatory.

Article 25

Paragraph (1)

Sub-Paragraph a

Self-explanatory.

Sub-Paragraph b

Self-explanatory.

Sub-Paragraph c

Self-explanatory.

Paragraph (2)

Sub-Paragraph a

Self-explanatory.

Sub-Paragraph b

Self-explanatory.

Article 26

Sub-Article a

Self-explanatory.

Sub-Article b

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

Sub-Article c

Self-explanatory.

Article 27

Sub-Article a

Self-explanatory.

Sub-Article b

Self-explanatory.

Article 28

Paragraph (1)

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

Paragraph (2)

Self-explanatory.

Paragraph (3)

Self-explanatory.

Article 29

Paragraph (1)

Self-explanatory.

Paragraph (2)

Self-explanatory.

Article 30

Paragraph (1)

Self-explanatory.

Paragraph (2)

Self-explanatory.

Paragraph (3)

Self-explanatory.

Article 31

Paragraph (1)

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

Paragraph (2)

Self-explanatory.

Paragraph (3)

Self-explanatory.

Paragraph (4)

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

Article 32

Sub-Article a

Self-explanatory.

Sub-Article b

Self-explanatory.

Sub-Article c

Self-explanatory.

Sub-Article d

Self-explanatory.

Sub-Article e

Self-explanatory.

Sub-Article f

Self-explanatory.

Sub-Article g

*Not having been convicted of a crime* means not having been imposed with a criminal penalty due to a serious criminal act or due to a violation of morality.

Sub-Article h

Self-explanatory.

Sub-Article i

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

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

### Article 33

#### Sub-Article a

Self-explanatory.

#### Sub-Article b

Self-explanatory.

#### Sub-Article c

Self-explanatory.

#### Sub-Article d

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

#### Sub-Article e

Self-explanatory.

#### Sub-Article f

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

### Article 34

#### Paragraph (1)

Self-explanatory.

Paragraph (2)

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

Paragraph (3)

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

Paragraph (4)

Self-explanatory.

Article 35

Sub-Article a

Self-explanatory.

Sub-Article b

Self-explanatory.

Sub-Article c

Self-explanatory.

Sub-Article d

Self-explanatory.

Sub-Article e

Self-explanatory.

Sub-Article f

Self-explanatory.

Sub-Article g

Self-explanatory.



Article 36

Sub-Article a

Self-explanatory.

Sub-Article b

Self-explanatory.

Sub-Article c

Self-explanatory.

Sub-Article d

Self-explanatory.

Sub-Article e

Self-explanatory.

Sub-Article f

Self-explanatory.

Sub-Article g

*Investigator* shall be an investigator as intended in Law Number 8 Year  
1981.

Sub-Article h

Self-explanatory.

Sub-Article i

Self-explanatory.

Sub-Article j

Self-explanatory.

Sub-Article k

Self-explanatory.

Sub-Article 1

Self-explanatory.

Article 37

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

Article 38

Paragraph (1)

Self-explanatory.

Paragraph (2)

Self-explanatory.

Paragraph (3)

Self-explanatory.

Paragraph (4)

Self-explanatory.

Article 39

Paragraph (1)

Self-explanatory.

Paragraph (2)

Self-explanatory.

Paragraph (3)

Self-explanatory.

Paragraph (4)

Self-explanatory.

Paragraph (5)

Self-explanatory.

Article 40

Paragraph (1)

Self-explanatory.

Paragraph (2)

Self-explanatory.

Article 41

Paragraph (1)

Self-explanatory.

Paragraph (2)

Self-explanatory.

Paragraph (3)

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

Article 42

Sub-Article a

Self-explanatory.

Sub-Article b

Self-explanatory.

Sub-Article c

Self-explanatory.

Sub-Article d

Self-explanatory.

Sub-Article e

Self-explanatory.

Article 43

Paragraph (1)

Self-explanatory.

Paragraph (2)

Self-explanatory.

Paragraph (3)

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

Paragraph (4)

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

Article 44

Paragraph (1)

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

Paragraph (2)

Self-explanatory.

Paragraph (3)

Self-explanatory.

Paragraph (4)

Self-explanatory.

Paragraph (5)

Self-explanatory.

Article 45

Paragraph (1)

Self-explanatory.

Paragraph (2)

Self-explanatory.

Paragraph (3)

Self-explanatory.

Paragraph (4)

Self-explanatory.

Article 46

Paragraph (1)

Self-explanatory.

Paragraph (2)

Self-explanatory.

Article 47

Paragraph (1)

Self-explanatory.

Paragraph (2)

Sub-Paragraph a

Self-explanatory.

Sub-Paragraph b

*Stopping vertical integration* shall be implemented , among other things, by cancellation of the agreement, transfer of a part of the company to another business actor, or change of the form of production series.

Sub-Paragraph c

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

Sub-Paragraph d

Self-explanatory.

Sub-Paragraph e

Self-explanatory.

Sub-Paragraph f

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

Sub-Paragraph g

Self-explanatory.

Article 48

Paragraph (1)

Self-explanatory.

Paragraph (2)

Self-explanatory.

Paragraph (3)

Self-explanatory.

Article 49

Sub-Article a

Self-explanatory.

Sub-Article b

Self-explanatory.

Sub-Article c

Self-explanatory.

Article 50

Sub-Article a

Self-explanatory.

Sub-Article b

Self-explanatory.

Sub-Article c

Self-explanatory.

Sub-Article d

Self-explanatory.

Sub-Article e

Self-explanatory.

Sub-Article f

Self-explanatory.

Sub-Article g

Self-explanatory.

Sub-Article h

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

Sub-Article i

Referred to as *servicing their members* shall be providing services only to their members and not to the public for the procurement of basic needs, the requirement of production facilities including credit and raw materials, and services for marketing and distributing products of members that shall not result in monopolistic practices and or unfair business competition.

Article 51

Self-explanatory.

Article 52



Paragraph (1)

Self-explanatory.

Paragraph (2)

Self-explanatory.

Article 53

Self-explanatory.

SUPPLEMENT TO THE STATE GAZETTE OF THE REPUBLIC OF INDONESIA

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