

**LAW OF THE REPUBLIC OF INDONESIA  
NUMBER 5 OF 1999  
CONCERNING  
PROHIBITION OF MONOPOLIES  
AND UNFAIR COMPETITION**

**BY THE GRACE OF GOD ALMIGHTY**

**THE PRESIDENT OF THE REPUBLIC OF INDONESIA**

Considering that:

- a. development of the economy should be directed towards bringing into being a prosperous people based on *Pancasila* and the 1945 Constitution;
- b. democracy in the economy requires equal opportunities for every citizen to participate in the production and marketing of goods and/or services, in a fair, effective, and efficient business environment and so support economic growth and the working of an equitable market economy;
- c. without any evasion of agreements entered into by the Republic of Indonesia with regard to international treaties, every person doing business in Indonesia should face a situation of fair and equitable competition such that there does not arise a concentration of economic power in certain enterprises;
- d. in order to bring about the points in a, b, and c, above, on an initiative of Parliament (*Dewan Perwakilan Rakyat*), it has become necessary to draft the Prohibition of Monopolies and Unfair Competition Act;

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

with the approval of

PARLIAMENT

HAS DECIDED TO

promulgate: THE PROHIBITION OF MONOPOLIES AND UNFAIR  
COMPETITION ACT.

*GENERAL ELUCIDATION*

*Economic development in the First Long Term Development has brought about much progress in, amongst others, increasing the people's prosperity. This progress in development has been supported by developmental policies in various sectors, including the economic sector development policies set*

*forth in the Garis-Garis Besar Haluan Negara (Broad Outlines in the Nation's Direction) and Five Year Development Plans and various other economic policies.*

*Despite the progress made during the First Long Term Development, which was demonstrated by high economic growth, there are still many challenges or problems, particularly in the economic sector, which have yet to be solved in line with the current tendency towards globalisation of the economy and the dynamism and growth in the private sector since the early 1990s.*

*The business opportunities created over the last three decades have not in fact enabled the whole of the community to participate in developing the various economic sectors. On the one hand, the growth in the private sector during this period has been characterised by less than appropriate Government policies resulting in market distortions. On the other hand, growth in the private sector has in fact mostly been a concomitant of conditions of unfair competition.*

*The above phenomena have developed and been supported by the close direct and indirect relationships between decision makers and enterprises, which has worsened the situation. The management of the national economy has paid insufficient attention to the mandate of Article 33 of the 1945 Constitution, and has shown extreme monopolistic tendencies.*

*Business people close to the power elite have obtained excessive facilities, causing a negative impact on social balance. The appearance of conglomerates and a small group of powerful business people unsupported by a spirit of free enterprise has been one factor holding back the economy and making it fragile and uncompetitive.*

*Contemplation of the situation and condition mentioned above demands we re-examine and restructure business in Indonesia so that the business community can grow and develop in a fair and appropriate fashion, thus creating fair competition and avoiding the centralisation of economic power in the hands of certain individuals or groups in the form of among others monopolistic practices or unfair competition, which has had a deleterious effect on society and conflicts with the goals of social justice.*

*For these reasons it has become necessary to draft the Prohibition of Monopolistic practices and Unfair Competition Act, which is intended to reinforce legal practice and give equal protection to all business practitioners in an attempt to create fair competition.*

*This Act guarantees legal certainty in order to give more support for the acceleration of economic development in an attempt to increase social welfare and implements the soul and spirit of the 1945 Constitution.*

*In order that the implementation of this Act and its implementing regulations will proceed effectively in accordance with its principles and purpose, a Business Competition Supervisory Commission needs to be formed, i.e., an independent institution free from the influence of the government and other parties and with the authority to supervise competition and impose penalties. Such penalties would take the form of administrative action, while criminal penalties would come under the courts.*

*In general, the contents of this Prohibition of Monopolistic practices and Unfair Competition Act consist of six (6) groups of regulations:*

- 1. prohibited agreements*
- 2. prohibited actions*
- 3. dominant positions*
- 4. The Business Competition Supervisory Commission*
- 5. law enforcement*
- 6. miscellaneous provisions*

*This Act was drafted based on Pancasila and the 1945 Constitution, and takes as its guiding principles economic democracy with due attention to the balance between the interests of business practitioners and the public interest with the goal of upholding the public interest and protecting consumers; encouraging a pro-business climate through the creation of fair competition and guaranteeing equal opportunities for all to engage in business; preventing monopolistic practices or unfair competition brought about by business practitioners; and creating business effectiveness and efficiency in a context of increasing national economic efficiency as one of the means of improving the people's prosperity.*

## CHAPTER I

### GENERAL PROVISIONS

#### Article 1

In this Act the following terms have the following meanings:

1. "Monopoly" means the control of production and/or marketing of particular goods and/or utilisation of particular services by a single business practitioner or group of business practitioners.
2. "Monopolistic practices" means the concentration of economic power by one or more business practitioners resulting in the control of production and/or marketing of particular goods and/or services, and so giving rise to unfair competition and possibly damaging the public interest.
3. "Concentration of economic power" means the actual control of a relevant market by one or more business practitioners such that they are able to determine prices for goods and/or services.
4. "Dominant position" means a situation where an business practitioner does not have any significant competitor in the relevant market with regard to the market share controlled or the business practitioner has the most prominent position among the competitors in the relevant market with regard to financial means, access to supplies or sales, and ability to affect the supply of or demand for particular goods and services.

5. "Business practitioner" means any natural person or business entity, whether or not in the form of a legal entity, established and domiciled in or with activities in the territory of the Republic of Indonesia, whether individually or jointly under a contract, who or which conducts business operations in the economic sector.
6. "Unfair competition" means competition between business practitioners in undertaking production and/or marketing of goods and/or services which is carried out in a dishonest or illegal fashion or which restricts competition.
7. "Contract" means an action whatever it may be called whereby one or more business practitioners binds itself/themselves to one or more other business practitioners whether or not in writing.
8. "Business collaboration or conspiracy" means a form of cooperation entered into by business practitioners with other business practitioners with an intent to gain control of the relevant market in the interests of the conspiring business practitioners.
9. "Market" means an economic institution where buyers and sellers are directly or indirectly able to do trade transactions in goods and/or services.
10. "Relevant market" means a market linked to a business practitioner's particular marketing range or district for the same or similar goods and/or services or for a substitute for those goods and/or services.
11. "Market structure" means the market conditions which provide indications of aspects which have a significant influence on the behaviour of business practitioners and market performance, such as the number of buyers and sellers, barriers to market entry and exit, variety of products, distribution systems, and control of market share.
12. "Market behaviour" means the actions taken by business practitioners in their capacities as suppliers or purchasers of goods and/or services to achieve the goals of the company, such as achievement of profits, growth of assets, sales targets, and the methods of competition used.
13. "Market share" means the percentage of the value of sales or purchases of particular goods or services controlled by an business practitioner in the relevant market in a particular calendar year.
14. "Market price" means the price paid in a transaction of goods and/or services in accordance with an agreement between the parties in the relevant market.
15. "Consumer" means any person who uses and/or utilises goods and/or services whether in his/her own interests or those of another.
16. "Goods" means any tangible or intangible object whether moveable or immoveable capable of being traded in, used, utilised, or made use of by a consumer or business practitioner.

17. “Service” means any assistance in the form of work or performed obligation traded in the community for use by consumers or business practitioners.
18. “Business Competition Supervisory Commission” means the commission formed to supervise business practitioners in their business activities so that they do not engage in monopolistic practices and/or unfair competition.
19. “District Court” means the court, as defined in prevailing regulations having the force of law, in the legal domicile of an business practitioner’s business.

*Elucidation of Article 1*

*Item 1*  
*Sufficiently Clear*

*Item 2*  
*Sufficiently Clear*

*Item 3*  
*Sufficiently Clear*

*Item 4*  
*Sufficiently Clear*

*Item 5*  
*Sufficiently Clear*

*Item 6*  
*Sufficiently Clear*

*Item 7*  
*Sufficiently Clear*

*Item 8*  
*Sufficiently Clear*

*Item 9*  
*Sufficiently Clear*

*Item 10*  
*Sufficiently Clear*

*Item 11*  
*Sufficiently Clear*

*Item 12*

*Sufficiently Clear*

*Item 13*  
*Sufficiently Clear*

*Item 14*  
*Sufficiently Clear*

*Item 15*  
*Sufficiently Clear*

*Item 16*  
*Sufficiently Clear*

*Item 17*  
*Sufficiently Clear*

*Item 18*  
*Sufficiently Clear*

*Item 19*  
*Sufficiently Clear*

## CHAPTER II

### BASIC PRINCIPLE AND PURPOSE

#### Article 2

Business practitioners in Indonesia shall in doing their business take as their basic principle economic democracy and pay due attention to the balance between the business practitioners' own interests and the public interest.

*Elucidation of Article 2*  
*Sufficiently Clear*

#### Article 3

The purpose of framing this act is to:

- a. uphold the public interest and increase national economic efficiency as one of the means of improving the people's prosperity;
- b. bring about a pro-business climate through the creation of fair competition, thus guaranteeing equal opportunities for large, medium, and small scale business practitioners;

- c. prevent monopolistic practices or unfair competition brought about by business practitioners; and
- d. create business effectiveness and efficiency.

*Elucidation of Article 3*  
*Sufficiently Clear*

## CHAPTER III FORBIDDEN CONTRACTS

### First Part

#### Oligopolies

##### Article 4

- (1) Business practitioners are forbidden to make contracts with other business practitioners to jointly take control of the production and/or marketing of goods and/or services which could cause the occurrence of monopolistic practices and/or unfair competition.
- (2) Business practitioners may reasonably be suspected of having or assumed to have jointly taken control of the production and/or marketing of goods and/or services, as contemplated in paragraph (1) if two (2) or (3) business practitioners or groups of business practitioners control more than seventy-five per cent (75%) market share of a particular type of goods or services.

*Elucidation of Article 4*

*Paragraph (1)*  
*Sufficiently Clear*

*Paragraph (2)*  
*Sufficiently Clear*

### Second Part

#### Price Fixing

##### Article 5

- (1) Business practitioners are forbidden to make contracts with competing business practitioners to fix the prices for a type of goods and/or a service which are to be paid in the same relevant market by consumers or customers.
- (2) The provisions of paragraph (1) do not apply to:
  - a. a contract made in a joint venture; or

- b. a contract based on prevailing legislation.

*Elucidation of Article 5*

*Paragraph (1)*  
*Sufficiently Clear*

*Paragraph (2)*  
*Sufficiently Clear*

Article 6

Business practitioners are forbidden to make contracts which would result in one purchaser having to pay a different price from that which must be paid by other purchasers for the same goods and/or services.

*Elucidation of Article 6*  
*Sufficiently Clear*

Article 7

Business practitioners are forbidden to make contracts with competitors to fix prices below market prices, which could cause the occurrence of unfair competition.

*Elucidation of Article 7*  
*Sufficiently Clear*

Article 8

Business practitioners are forbidden to make contracts with other business practitioners which contain conditions that the recipient of goods and/or services may not re-sell or re-supply the goods and/or services received at a lower price than that contracted, thus possibly causing the occurrence of unfair competition.

*Elucidation of Article 8*  
*Sufficiently Clear*

Third Part  
Divisions of Territory

Article 9

Business practitioners are forbidden to make contracts with competitors with the purpose of dividing up marketing territories or allocating markets for goods and/or services, thus possibly causing the occurrence of monopolistic practices and/or unfair competition.



*Elucidation of Article 9*

*The contracts may be vertical or horizontal in nature. These contracts are forbidden because business practitioners eliminate or reduce competition by dividing up marketing territories or allocating markets. Marketing territories could mean the territory of the Republic of Indonesia or a part thereof such as a kabupaten, province or other region. Sharing marketing territories or allocating markets means sharing territories for obtaining or supplying goods, services, or goods and services, or determining who may obtain or supply goods, services, or goods and services.*

Fourth Part  
Boycotts

Article 10

- (1) Business practitioners are forbidden to make contracts with competitors which could prevent other business practitioners from conducting the same business whether directed at domestic or foreign markets.
- (2) Business practitioners are forbidden to make contracts with their competitors to refuse to sell any good and/or service supplied by another business practitioner so that the action would:
  - a. injure or could be suspected of injuring the other business practitioner; or
  - b. restrain the other business practitioner in the sale or purchase of goods and/or services in the relevant market.

*Elucidation of Article 10*

*Paragraph (1)  
Sufficiently Clear*

*Paragraph (2)  
Sufficiently Clear*

Fifth Part  
Cartels

Article 11

Business practitioners are forbidden to make contracts with competitors with the intention of influencing prices by regulating production and/or marketing of any good and/or service, which could cause the occurrence of monopolistic practices and/or unfair competition.

*Elucidation of Article 11  
Sufficiently Clear*

Sixth Part

## Trusts

### Article 12

Business practitioners are forbidden to make contracts with other business practitioners to cooperate by forming a larger combination of corporations or companies which still maintains and preserves the continued existence of each member corporation or company with the purpose of controlling production and/or marketing of goods and/or services, thus possibly causing the occurrence of monopolistic practices and/or unfair competition.

*Elucidation of Article 12*  
*Sufficiently Clear*

## Seventh Part Oligopsonies

### Article 13

- (1) Business practitioners are forbidden to make contracts with other business practitioners with the purpose of jointly taking control of the purchase or receipt of supplies in order to control the price of goods and/or services in the relevant market, which could cause the occurrence of monopolistic practices and/or unfair competition.
- (2) Business practitioners may reasonably be suspected of having or assumed to have jointly taken control of the purchase or receipt of supplies, as contemplated in paragraph (1) if two (2) or three (3) business practitioners or groups of business practitioners control more than seventy-five per cent (75%) market share of a particular type of goods or services.

*Elucidation of Article 13*

*Paragraph (1)*  
*Sufficiently Clear*

*Paragraph (2)*  
*Sufficiently Clear*

## Eighth Part Vertical Integration

### Article 14

Business practitioners are forbidden to make contracts with other business practitioners with the purpose of controlling production of a number of products in a chain of production for particular goods and/or services where each element in the chain is the result of manufacturing or the continuation of a process in a direct or indirect series, which could cause the occurrence of unfair competition and/or have a deleterious effect on society.

*Elucidation of Article 14*

*“Controlling production of a number of products in a chain of production” or vertical integration as it is usually called means control by a particular business practitioner of a series of production processes for certain goods from upstream to downstream or the continuation of a process for a particular service. Although the practice of vertical integration may produce goods and services at a low price, it can give rise to unfair competition damaging to the economic foundations of society. Such practices are forbidden in so far as they give rise to unfair competition and/or harm society.*

Ninth Part  
Exclusive Contracts

Article 15

- (1) Business practitioners are forbidden to make contracts with other business practitioners with provisions that the party receiving goods and/or services will only supply or will not re-supply goods and/or services to certain parties and/or in certain places.
- (2) Business practitioners are forbidden to make contracts with other parties with provisions that the party receiving particular goods and/or services must be prepared to purchase other goods and/or services from the supplying business practitioner
- (3) Business practitioners are forbidden to make contracts regarding particular prices or discounted prices for goods and/or services with provisions that the business practitioner receiving the goods and/or services from the supplying business practitioner:
  - a. must be prepared to purchase other goods and/or services from the supplying business practitioner; or
  - b. will not purchase the same or similar goods and/or services from the supplying business practitioner’s competitors.

*Elucidation of Article*

*Paragraph (1)*

*The meaning of “supply” includes providing supplies of goods or services in sales and purchases, rentals, hire purchases, and capital leases.*

*Paragraph (2)*

*Sufficiently Clear*

*Paragraph (3)*

*Item a*

*Sufficiently Clear*

*Item b*

*Sufficiently Clear*

Tenth Part  
Contracts with Foreign Parties

Article 16

Business practitioners are forbidden to make contracts abroad with other parties which contain provisions which could cause the occurrence of monopolistic practices and/or unfair competition.

*Elucidation of Article 16*  
*Sufficiently Clear*

CHAPTER IV  
FORBIDDEN ACTIVITIES

First Part  
Monopolies

Article 17

- (1) Business practitioners are forbidden to take control of the production and/or marketing of goods and/or services which could cause the occurrence of monopolistic practices and/or unfair competition.
- (2) Business practitioners may reasonably be suspected of having or assumed to have taken control of the production and/or marketing of goods and/or services, as contemplated in paragraph (1) if
  - a. there are no substitutes for the goods and/or services concerned; or
  - b. the result is that other business practitioners are unable to enter into competition with regard to the same goods and/or services; or
  - c. one business practitioner or group of business practitioners controls more than fifty per cent (50%) of the market share for a particular type of goods or services.

*Elucidation of Article 17*

*Paragraph (1)*  
*Sufficiently Clear*

*Paragraph (2)*  
*Item a*  
*Sufficiently Clear*

*Item b*

*“Other business practitioners” means business practitioners who have a significant ability to compete in the relevant market.*

*Item c*  
*Sufficiently Clear*

Second Part  
Monopsonies

Article 18

- (1) Business practitioners are forbidden to take control of the receipt of supplies or to become the sole purchaser of goods and/or services in the relevant market, which could cause the occurrence of monopolistic practices and/or unfair competition.
- (2) Business practitioners may reasonably be suspected of having or assumed to have taken control of the receipt of supplies become the sole purchaser, as contemplated in paragraph (1) if one business practitioner or group of business practitioners controls more than fifty per cent (50%) of the market share for a particular type of goods or services.

*Elucidation of Article 18*

*Paragraph (1)*  
*Sufficiently Clear*

*Paragraph (2)*  
*Sufficiently Clear*

Third Part  
Control of Markets

Article 19

Business practitioners are forbidden to perform by themselves or with other business practitioners one or more of the following actions, which could cause the occurrence of monopolistic practices and/or unfair competition:

- a. to restrain and/or prevent particular business practitioners from doing the same business in the relevant market; or
- b. to prevent consumers or customers of competitors from entering into business relationships with those competitors; or
- c. to limit the circulation and/or sale of goods and/or services in the relevant market; or
- d. to discriminate against particular business practitioners.

*Elucidation of Article 19*

*Item a*

*The not allowing or prevention of particular business practitioners by unreasonable means or for non-economic reasons such as differences of ethnic group, race, social status, etc. is not permitted.*

*Item b*

*Sufficiently Clear*

*Item c*

*Sufficiently Clear*

*Item d*

*Sufficiently Clear*

Article 20

Business practitioners are forbidden to supply goods and/or services by selling at a loss or fixing very low prices with the intention of eliminating or killing off a competitor's business in the relevant market, thus possibly causing the occurrence of monopolistic practices and/or unfair competition.

*Elucidation of Article 20*

*Sufficiently Clear*

Article 21

Business practitioners are forbidden to commit fraud in fixing production costs and other costs which constitute components of the price of goods and/or services, which could cause the occurrence of unfair competition.

*Elucidation of Article 21*

*"Fraud in fixing production costs and other costs" means an infringement of prevailing regulations having the force of law in order to obtain costs of production factors which are lower than they should be.*

Fourth Part  
Conspiracies

Article 22

Business practitioners are forbidden to conspire with other parties to arrange and/or determine the winner of a tender, thus possibly causing the occurrence of unfair competition.

*Elucidation of Article 22*

*A tender is an offer submitting a price for contracting for works, for procuring goods, or for providing services.*

## Article 23

Business practitioners are forbidden to conspire with other parties to obtain information classified as trade secrets concerning a competitor's business activities, thus possibly causing the occurrence of unfair competition.

*Elucidation of Article 23*  
*Sufficiently Clear*

## Article 24

Business practitioners are forbidden to conspire with other parties to obstruct the production and/or marketing of a competitor's goods and/or services with the intent that the goods and/or services offered or supplied in the relevant market become deficient in respect of the quantity, quality, or timeliness required.

*Elucidation of Article 24*  
*Sufficiently Clear*

# CHAPTER V DOMINANT POSITION

## First Part General

## Article 25

- (1) Business practitioners are forbidden to directly or indirectly exploit a dominant position in order to:
  - a. determine trade conditions with the purpose of restraining and/or preventing consumers from obtaining competing goods and/or services whether from the point of view of price or quality; or
  - b. limit markets and the development of technology; and
  - c. block other business practitioners with the potential to become competitors from entering the relevant market.
- (2) Business practitioners have a dominant position as referred to in paragraph (1) if:
  - a. one business practitioner or a group of business practitioners controls a fifty per cent (50%) or more market share in a particular type of goods and/or services; or
  - b. two or three business practitioners or groups of business practitioners control a seventy-five per cent (75%) or more market share in a particular type of goods and/or services.

*Elucidation of Article 25*

*Paragraph (1)*

*Item a*

*Sufficiently Clear*

*Item b*

*Sufficiently Clear*

*Item c*

*Sufficiently Clear*

*Paragraph (2)*

*Item a*

*Sufficiently Clear*

*Item b*

*Sufficiently Clear*

Second Part  
Dual Positions

Article 26

Anyone holding the position of director or commissioner of a company is forbidden to also become director or commissioner of another company at the same time, if the companies:

- a. are in the same relevant market; or
- b. have close links in their field and/or type of business; or
- c. jointly could control the market share in particular goods and/or services,

which could cause the occurrence of monopolistic practices and/or unfair competition.

*Elucidation of Article 26*

*Item a*

*Sufficiently Clear*

*Item b*

*Companies have “close links” if they support each other or are directly related in the processes of production, marketing, or production and marketing.*

*Item c*

*Sufficiently Clear*



Third Part  
Share Ownership

Article 27

Business practitioners are forbidden to have majority shareholdings in a number of similar companies doing business in the same sector in the same relevant market or to establish a number of companies with the same line of business in the same relevant market if the ownership would result in:

- a. one business practitioner or a group of business practitioners controlling more than fifty per cent (50%) of the market share for a particular type of goods or services;
- b. two or three business practitioners or groups of business practitioners controlling more than seventy-five per cent (75%) of the market share for a particular type of goods or services.

*Elucidation of Article 27*

*Item a*  
*Sufficiently Clear*

*Item b*  
*Sufficiently Clear*

Fourth Part  
Mergers, Consolidations, and Acquisitions

Article 28

- (1) Business practitioners are forbidden to perform mergers or consolidations of business entities, which could cause the occurrence of monopolistic practices and/or unfair competition.
- (2) Business practitioners are forbidden to acquire shares in other companies if such an action could cause the occurrence of monopolistic practices and/or unfair competition.
- (3) Further provisions on the forbidden mergers and consolidation contemplated in paragraph (1) and provisions on the acquisition of company shares contemplated in paragraph (2) shall be made in Government Regulations.

*Elucidation of Article 28*

*Paragraph (1)*

*A business entity is a corporation or other form of business, which may or may not be a legal entity (such as a limited liability company) and which carries on a permanent and continuing business with the intention of gaining profits.*

*Paragraph (2)*  
*Sufficiently Clear*

*Paragraph (3)*  
*Sufficiently Clear*

#### Article 29

- (1) The Commission must be notified of mergers or consolidation of business entities, or acquisitions of shares, as contemplated in article 28 which result in the value of assets and/or sales exceeding a certain amount no later than thirty (30) days from the date of the merger, consolidation, or acquisition.
- (2) Provisions regarding the determination of the value of assets and/or sales and the procedure for the notification contemplated in paragraph (1) shall be made in Government Regulations.

*Elucidation of Article 29*

*Paragraph (1)*  
*Sufficiently Clear*

*Paragraph (2)]*  
*Sufficiently Clear*

### CHAPTER VI THE BUSINESS COMPETITION SUPERVISORY COMMISSION

First Part  
Status

#### Article 30

- (1) In order to supervise the implementation of this Act, a Business Competition Supervisory Commission (hereinafter called the Commission) shall be formed.
- (2) The Commission shall be an independent institution free from the influence and control of the Government and other parties.
- (3) The Commission shall be responsible to the President.

*Elucidation of Article 30*

*Paragraph (1)*  
*Sufficiently Clear*

*Paragraph (2)*

*Sufficiently Clear*

*Paragraph (3)*  
*Sufficiently Clear*

Second Part  
Membership

Article 31

- (1) The Commission shall consist of one member-Chair, one member-Vice Chair, and at least seven (7) members.
- (2) The members of the Commission shall be appointed and dismissed by the President with the approval of Parliament.
- (3) The term of office of the members of the Commission shall be five (5) years and they may be re-appointed once for a further term of office.
- (4) If because of the expiry of a member's term of office, there occurs a vacancy in the membership of the Commission, the member's term of office may be extended until the appointment of a new member.

*Elucidation of Article 31*

*Paragraph 1*  
*The Chair and Vice Chair shall be chosen from and by the Members of the Commission.*

*Paragraph 2*  
*Sufficiently Clear*

*Paragraph 3*  
*Sufficiently Clear*

*Paragraph 4*  
*The extension of the membership period of the Commission to avoid a vacancy shall not be for more than one (1) year.*

Article 32

The conditions for membership of the Commission are:

- a. Indonesian citizenship, a minimum age of thirty (30) years and a maximum age of sixty (60) years at the time of appointment;
- b. loyalty to *Pancasila* and the 1945 Constitution;

- c. devoutness and faith in God Almighty;
- d. honesty, fairness, and good character;
- e. residence in the territory of the Republic of Indonesia;
- f. experience in the business sector, or knowledge and expertise in the fields of law and/or economics;
- g. no criminal convictions;
- h. never having been declared bankrupt by a court; and
- i. no affiliations with any business entity.

*Elucidation of Article 32*

*Item a*  
*Sufficiently Clear*

*Item b*  
*Sufficiently Clear*

*Item c*  
*Sufficiently Clear*

*Item d*  
*Sufficiently Clear*

*Item e*  
*Sufficiently Clear*

*Item f*  
*Sufficiently Clear*

*Item g*  
*“No criminal convictions” means never having been convicted of a serious offence or immorality.*

*Item h*  
*Sufficiently Clear*

*Item i*  
*“No affiliations with a business entity” means the member concerned, from when he becomes a member of the Commission, may not be:*  

- 1. a member of the Board of Commissioners or Supervisors, or Board of Directors of a company;*
- 2. a member of the management or inspectorate of a cooperative;*
- 3. a party rendering services to a company, such as a consultant, public accountant, or assessor;*

4. *a majority shareholder of a company.*

### Article 33

Membership of the Commission shall cease in the event of:

- a. death;
- b. resignation at the member's own request;
- c. residence outside the territory of the Republic of Indonesia;
- d. chronic physical or mental illness;
- e. expiry of term of office as member of the Commission; or
- f. dismissal.

#### *Elucidation of Article 33*

*Item a*  
*Sufficiently Clear*

*Item b*  
*Sufficiently Clear*

*Item c*  
*Sufficiently Clear*

*Item d*  
*To be stated in a declaration from an authorised doctor.*

*Item e*  
*Sufficiently Clear*

*Item f*  
*Dismissal caused amongst other reasons by no longer fulfilling the conditions of membership of the Commission described in Article 32.*

### Article 34

- (1) The formation of the Commission and its organisational structure, duties, and functions shall be determined by Presidential decree;
- (2) To expedite the performance of its duties, the Commission shall be assisted by a secretariat.

- (3) The Commission may form working groups.
- (4) Further provisions regarding the organisational structure, duties, and functions of the secretariat and working groups shall be made by resolutions of the Commission.

*Elucidation of Article 34*

*Paragraph (1)*  
*Sufficiently Clear*

*Paragraph (2)*  
*“Secretariat” means an organisational unit to support or assist the Commission in the performance of its duties.*

*Paragraph (3)*  
*“Working group” means a professional team appointed by the Commission to assist the performance of defined duties for a defined period.*

*Paragraph (4)*  
*Sufficiently Clear*

Third Part  
Duties

Article 35

The Commission's duties cover:

- a. making an evaluation of contracts which could cause the occurrence of monopolistic practices and/or unfair competition as dealt with in Articles 4 to 16;
- b. making an evaluation of the business activities and/or actions of business practitioners which could cause the occurrence of monopolistic practices and/or unfair competition as dealt with in Articles 17 to 24;
- c. making an evaluation of whether there has been any abuse of a dominant position which could cause the occurrence of monopolistic practices and/or unfair competition as dealt with in Articles 25 to 28;
- d. taking action in accordance with the Commission's powers as dealt with in Article 36;
- e. giving suggestions and opinions on government policy in connection with monopolistic practices and/or unfair competition;
- f. compiling guides and/or publications in connection with this Act;

- g. making regular reports on the results of the Commission's work to the President and Parliament.

*Elucidation of Article 35*

*Item a*  
*Sufficiently Clear*

*Item b*  
*Sufficiently Clear*

*Item c*  
*Sufficiently Clear*

*Item d*  
*Sufficiently Clear*

*Item e*  
*Sufficiently Clear*

*Item f*  
*Sufficiently Clear*

*Item g*  
*Sufficiently Clear*

Fourth Part  
Powers

Article 36

The Commission's powers cover:

- a. receiving reports of suspected occurrence of monopolistic practices and/or unfair competition from the public and/or business practitioners;
- b. analysing suspect business activities and/or actions of business practitioners which could cause the occurrence of monopolistic practices and/or unfair competition;
- c. enquiring into and/or examining cases of suspected monopolistic practices and/or unfair competition reported by the public and/or business practitioners or discovered by the Commission in its analysis;
- d. concluding from its enquiries and/or examination whether or not monopolistic practices and/or unfair competition exist;

- e. summoning business practitioners who are alleged to have infringed the provisions of this act;
- f. subpoenaing and causing the attendance of witnesses, expert witnesses, and any person who is thought to know of an infringement of the provisions of this act;
- g. seeking the assistance of an investigating officer to cause the attendance of business practitioners, witnesses, expert witnesses, or any person specified in items e and f who is unwilling to obey the summons or subpoena from the Commission;
- h. seeking information from Government agencies in connection with the enquiries and/or examination of business practitioners who infringe this act;
- i. obtaining, analysing, and/or evaluating letters, documents, or other evidence in the course of enquiries and/or examinations;
- j. deciding and determining whether or not there has been any harm done to other business practitioners or the public;
- k. informing the business practitioner alleged to have engaged in monopolistic practices and/or unfair competition of the Commission's decision;
- l. handing down penalties in the form of administrative action against business practitioners infringing the provisions of this Act.

*Elucidation of Paragraph 36*

*Item a*  
*Sufficiently Clear*

*Item b*  
*Sufficiently Clear*

*Item c*  
*Sufficiently Clear*

*Item d*  
*Sufficiently Clear*

*Item e*  
*Sufficiently Clear*

*Item f*  
*Sufficiently Clear*

*Item g*



*“Investigating officer” means an investigating officer within the meaning of Law Number 8 of 1981.*

*Item h  
Sufficiently Clear*

*Item i  
Sufficiently Clear*

*Item j  
Sufficiently Clear*

*Item k  
Sufficiently Clear*

*Item l  
Sufficiently Clear*

## Fifth Part Funding

### Article 37

The costs of implementing the Commission’s duties shall be a charge on the State Budget and/or other sources permitted by prevailing regulations having the force of law.

#### *Elucidation of Article 37*

*In principle, the State takes responsibility for the operational implementation of the Commission’s duties, granting funding therefor from the State Budget. However, since the scope and range of the Commission’s duties are so wide and varied, the Commission may obtain funds which are non-binding in nature from other sources which do not conflict with prevailing regulations having the force of law provided the independence of the Commission is not affected.*

## CHAPTER VII PROCEDURES FOR HANDLING CASES

### Article 38

- (1) Any person who knows or reasonably suspects there has occurred a contravention of this Act may report it in writing to the Commission with clear information about the occurrence and giving his or her identity.
- (2) Parties harmed as a result of the occurrence of a contravention of this Act may report it in writing to the Commission with complete, clear information about the occurrence of the contravention and the damage arising therefrom, and giving his or her identity.

- (3) The identity of the person making the report as contemplated in paragraph (1) shall be kept confidential by the Commission.
- (4) The procedure for making reports as contemplated in paragraphs (1) and (2) shall be further provided for by the Commission.

*Elucidation of Article 38*

*Paragraph (1)*  
*Sufficiently Clear*

*Paragraph (2)*  
*Sufficiently Clear*

*Paragraph (3)*  
*Sufficiently Clear*

*Paragraph (4)*  
*Sufficiently Clear*

Article 39

- (1) Based on the reports contemplated in Article 38 paragraphs (1) and (2), the Commission shall make a preliminary examination and no later than thirty (30) days after receiving the report, the Commission shall determine whether a further examination is needed.
- (2) In carrying out the further examination the Commission shall carry out an examination of the business practitioner who is the subject of the report.
- (3) The Commission shall ensure the confidentiality of all information obtained from the business practitioner which is categorised as a company secret.
- (4) If deemed necessary, the Commission shall hear information from witnesses, expert witnesses, and/or other parties.
- (5) In carrying out the activities specified in paragraphs (2) and (4), members of the Commission shall be furnished with a letter of authority.

*Elucidation of Article 39*

*Paragraph (1)*  
*Sufficiently Clear*

*Paragraph (2)*  
*Sufficiently Clear*

*Paragraph (3)*  
*Sufficiently Clear*

*Paragraph (4)*  
*Sufficiently Clear*

*Paragraph (5)*  
*Sufficiently Clear*

#### Article 40

- (1) The Commission may carry out an examination of a business practitioner if there is any suspicion of the occurrence of a contravention of this Act, even though no report has been made.
- (2) The inspection referred to in paragraph (1) shall be carried out in accordance with the procedure laid down in Article 39.

#### *Elucidation of Article 40*

*Paragraph (1)*  
*Sufficiently Clear*

*Paragraph (2)*  
*Sufficiently Clear*

#### Article 41

- (1) The business practitioner and/or other party being examined shall hand over the evidence needed in the enquiries and/or examination.
- (2) The business practitioner is forbidden to refuse to be examined, to refuse to give information needed in the enquiries and/or examination, or to obstruct the enquiry and/or examination process.
- (3) Contravention of the provisions of paragraph (2) shall be submitted to an investigating officer for investigation in accordance with prevailing provisions.

#### *Elucidation of Article 41*

*Paragraph (1)*  
*Sufficiently Clear*

*Paragraph (2)*  
*Sufficiently Clear*

*Paragraph (3)*

*The matters to be submitted to the investigating officer by the Commission for investigation are not only the criminal acts or actions specified in paragraph (2) but also the underlying case being enquired into or examined by the Commission.*

#### Article 42

Evidence in the Commission's enquiries shall be in the form of:

- a. statements from witnesses,
- b. statements from expert witnesses,
- c. letters and/or documents,
- d. circumstantial evidence,
- e. statements from the business practitioner.

#### *Elucidation of Article 42*

*Item a*  
*Sufficiently Clear*

*Item b*  
*Sufficiently Clear*

*Item c*  
*Sufficiently Clear*

*Item d*  
*Sufficiently Clear*

*Item e*  
*Sufficiently Clear*

#### Article 43

- (1) The Commission shall complete its further examination no later than sixty (60) days after the beginning of the further examination specified in Article 39 paragraph (1).
- (2) If necessary the period for further examination specified in paragraph (1) may be extended no more than thirty (30) days.
- (3) The Commission shall decide whether or not a contravention of this act has occurred no later than thirty (30) days after the completion of the further examination specified in paragraph (1) or (2).
- (4) The decision of the Commission specified in paragraph (3) must be read out in a meeting declared open to the public and notification of the decision shall be given immediately to the business practitioner.

*Elucidation of Article 43*

*Paragraph (1)*  
*Sufficiently Clear*

*Paragraph (2)*  
*Sufficiently Clear*

*Paragraph (3)*  
*The Commission's decision specified in paragraph (3) must be taken in a session of a Council of at least three (3) members taken from the Commission members.*

*Paragraph (4)*  
*"Notification shall be given" means delivery to the business practitioner of an excerpt from the Commission's decision.*

Article 44

- (1) Within thirty (30) days of receiving notification of the Commission's decision as contemplated in Article 43 paragraph (4), the business practitioner shall implement the decision and submit a report on its implementation to the Commission.
- (2) The business practitioner may lodge an appeal to the District Court no later than fourteen (14) days of receiving the notification.
- (3) A business practitioner who does not lodge an appeal within the period specified in paragraph (2) shall be deemed to have accepted the Commission's decision.
- (4) If the provisions of paragraphs (1) and (2) are not carried out by the business practitioner, the Commission shall hand over the decision to an investigating officer for the officer to hold an investigation in accordance with prevailing regulations having the force of law.
- (5) The Commission's decision specified in Article 43 paragraph (4) constitutes sufficient *prima facie* evidence for the investigating officer to hold an investigation.

*Elucidation of Article 44*

*Paragraph (1)*  
*The thirty (30) days must be calculated from receipt of the excerpt from the Commission's decision by the business practitioner or his/her legal representative.*

*Paragraph (2)*  
*Sufficiently Clear*

*Paragraph (3)*  
*Sufficiently Clear*

*Paragraph (4)*  
*Sufficiently Clear*

*Paragraph (5)*  
*Sufficiently Clear*

#### Article 45

- (1) The District Court shall start to examine the business practitioner's appeal contemplated in Article 44 Paragraph (2) within fourteen (14) days of receipt of the appeal.
- (2) The District Court shall give its judgement within thirty (30) days from the commencement of the examination of the appeal.
- (3) The party appealing against the District Court's judgement contemplated in paragraph (2) may lodge an appeal to the Supreme Court of the Republic of Indonesia within fourteen (14) days.
- (4) The Supreme Court shall give its judgement within thirty (30) days from the receipt of the appeal to the Supreme Court.

#### *Elucidation of Article 45*

*Paragraph (1)*  
*Sufficiently Clear*

*Paragraph (2)*  
*Sufficiently Clear*

*Paragraph (3)*  
*Sufficiently Clear*

*Paragraph (4)*  
*Sufficiently Clear*

#### Article 46

- (1) If no appeal is made, the Commission's decision specified in Article 43 paragraph (3) shall have absolute legal force.
- (2) An executory decree of the District Court shall be sought for the Commission's decision specified in paragraph (1).

#### *Elucidation of Article 46*

*Paragraph (1)*

*Sufficiently Clear*

*Paragraph (2)*  
*Sufficiently Clear*

## CHAPTER VIII PENALTIES

### First Part Administrative Action

#### Article 47

- (1) The Commission has the power to impose penalties in the form of administrative action against business practitioners who contravene the provisions of this Act.
- (2) The administrative action contemplated in paragraph (1) may take the form of:
  - a. a decree cancelling the contracts contemplated in Articles 4 to 13, Article 15 and Article 16; and/or
  - b. an order to the business practitioner to cease the vertical integration contemplated in Article 14; and/or
  - c. an order to the business practitioner to cease activities proven to give rise to monopolistic practices and/or cause unfair competition and/or harm society; and/or
  - d. an order to the business practitioner to cease abuse of a dominant position; and/or
  - e. a decree cancelling a merger or consolidation of business entities or the acquisition of shares contemplated in Article 28; and/or
  - f. a decree for the payment of compensation; and/or
  - g. levying of a fine of between one billion rupiah (Rp. 1,000,000,000) as a minimum and twenty-five billion rupiah (Rp. 25,000,000,000) as a maximum.

*Elucidation of Article 47*

*Paragraph (1)*  
*Sufficiently Clear*

*Paragraph (2)*  
*Item a*  
*Sufficiently Clear*

*Item b*

*“To cease the vertical integration” would be carried out by, amongst others, cancelling contracts, transferring part of the company to other business practitioners, or changing the form of the production series for the product.*

*Item c*

*It is particular activities or actions cessation of which may be ordered, not the business activities of the business practitioner as a whole.*

*Item d*

*Sufficiently Clear*

*Item e*

*Sufficiently Clear*

*Item f*

*Compensation shall be awarded to business practitioners and other parties adversely affected.*

*Item g*

*Sufficiently Clear*

## Second Part Basic Criminal Penalties

### Article 48

- (1) Contraventions of the provisions of Articles 4, 9 to 14, 16 to 19, 25, 27, and 28 are liable to a fine of between twenty-five billion rupiah (Rp. 25,000,000,000) as a minimum and one hundred billion rupiah (Rp. 100,000,000,000) as a maximum, or to a custodial sentence in lieu of a fine for a maximum of six (6) months.
- (2) Contraventions of the provisions of Articles 5 to 8, 15, 20 to 24, and 26 of this Act are liable to a fine of between five billion rupiah (Rp. 5,000,000,000) as a minimum and twenty-five billion rupiah (Rp. 25,000,000,000) as a maximum, or to a custodial sentence in lieu of a fine for a maximum of five (5) months.
- (3) Contraventions of the provisions of Article 41 of this Act are liable to a fine of between one billion rupiah (Rp. 1,000,000,000) as a minimum and five billion rupiah (Rp. 5,000,000,000) as a maximum, or to a custodial sentence in lieu of a fine for a maximum of three (3) months.

### *Elucidation of Article 48*

*Paragraph (1)*

*Sufficiently Clear*

*Paragraph (2)*



*Sufficiently Clear*

*Paragraph (3)*  
*Sufficiently Clear*

Third Part  
Additional Criminal Penalties

Article 49

With reference to the provisions of Article 10 of the Criminal Code, additional criminal penalties to those governed in Article 48 may be handed down in the form of:

- a. revocation of business licence; or
- b. banning of business practitioners proved to have contravened this act from holding the position of director or commissioner for not less than two (2) years and not more than five (5) years; or
- c. the cessation of particular activities or actions causing losses to other parties.

*Elucidation of Article 49*

*Item a*  
*Sufficiently Clear*

*Item b*  
*Sufficiently Clear*

*Item c*  
*Sufficiently Clear*

CHAPTER IX  
OTHER PROVISIONS

Article 50

Exempted from the provisions of this Act are:

- a. actions and/or contracts with the purpose of implementing prevailing regulations having the force of law; or
- b. contracts connected with rights over intellectual property, such as licences, patents, trade marks, copyrights, industrial product designs, integrated electronic circuits, and trade secrets, and contracts connected with franchises; or
- c. contracts fixing technical standards for the production of goods and/or services which do not restrain or prevent competition; or

- d. agency contracts the contents of which do not contain provisions for the re-supply of the goods and/or services at a lower price than the price contracted; or
- e. research cooperation contracts to increase or improve the living standards of the community at large; or
- f. international contracts ratified by the Government of the Republic of Indonesia; or
- g. export-oriented contracts and/or actions which do not disrupt supply and/or demand in the domestic market; or
- h. business practitioners categorised as small businesses; or
- i. business activities of cooperatives with the specific purpose of serving their members.

*Elucidation of Article 50*

*Item a*  
*Sufficiently Clear*

*Item b*  
*Sufficiently Clear*

*Item c*  
*Sufficiently Clear*

*Item d*  
*Sufficiently Clear*

*Item e*  
*Sufficiently Clear*

*Item f*  
*Sufficiently Clear*

*Item g*  
*Sufficiently Clear*

*Item h*  
*“Business practitioners categorised as small businesses” are those contemplated by the Small Businesses Act (No. 9 of 1995).*

*Item i*  
*“Serving their members” means providing services only to their members and not to the general public for the provision of basic needs, production facility needs including credit and raw materials, and services for the marketing and distribution of members’ products which do not cause the occurrence of monopolistic practices and/or unfair competition.*

## Article 51

Monopolies and/or centralisation of activities connected with the production and/or marketing of goods and/or services affecting the lives of most people and branches of production important for the state shall be regulated by law and managed by State-Owned Enterprises and/or bodies or institutions formed or appointed by the Government.

*Elucidation of Article 51*  
*Sufficiently Clear*

## CHAPTER X TRANSITIONAL PROVISIONS

## Article 52

- (1) From the coming into effect of this act, all regulations having the force of law dealing with or connected with monopolistic practices and/or competition are declared still in effect provided they do not conflict with this Act or have not been replaced with new regulations having the force of law based on this Act.
- (2) Business practitioners who have made contracts and/or entered into activities and/or actions not in accordance with the provisions of this act are given six (6) months from when this Act comes into effect to make adjustments.

*Elucidation of Article 52*

*Paragraph (1)*  
*Sufficiently Clear*

*Paragraph (2)*  
*Sufficiently Clear*

## CHAPTER XI CLOSING PROVISIONS

## Article 53

This Act comes into effect one (1) year after the date of its promulgation.

So that all persons may know of it, it is ordered that the enactment of this act be placed in the Statute Book of the Republic of Indonesia.

Ratified in Jakarta  
on 5 March 1999

PRESIDENT OF THE REPUBLIC OF INDONESIA

*[signed]*

BACHARUDDIN JUSUF HABIBIE

Enacted in Jakarta  
on 5 March 1999

MINISTER OF STATE FOR THE STATE SECRETARIAT  
OF THE REPUBLIC OF INDONESIA

*[signed]*

AKBAR TANJUNG

STATUTE BOOK OF THE REPUBLIC OF INDONESIA 1999 NO. 33