

MERGER OR CONSOLIDATION OF COMPANIES AND ACQUISITION OF CORPORATE SHARES POTENTIAL TO CAUSE MONOPOLY AND UNFAIR BUSINESS COMPETITION

(Government Regulation Number 57 Year 2010 dated July 20, 2010)

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

CHAPTER I
GENERAL
Article 1

Considering:

That in order to implement provisions of Article 28 paragraph (3) and Article 29 paragraph (2) of Law Number 5 Year 1999 concerning Prohibition on Monopoly and Unfair Business Competition, it is necessary to stipulate a government regulation regarding Merger or Consolidation of Companies and Acquisition of Corporate Shares Potential To Cause Monopoly and Unfair Business Competition;

In view of:

1. Article 5 paragraph (2) of the Constitution of 1945;
2. Law Number 5 Year 1999 (*BN No. 6288 pages 1A-7A and so on*) concerning Prohibition on Monopoly and Unfair Business Competition (Statute Book of the Republic of Indonesia Year 1999 Number 33, Supplement to Statute Book of the Republic of Indonesia Number 3817);

D E C I D E S :

To stipulate:

THE GOVERNMENT REGULATION REGARDING MERGER OR CONSOLIDATION OF COMPANIES AND ACQUISITION OF CORPORATE SHARES POTENTIAL TO CAUSE MONOPOLY AND UNFAIR BUSINESS COMPETITION

Referred to in this government regulation

as:

1. Merger shall be a legal action taken by a business entity or more to merge with other business entities already existing, which cause assets and liabilities of the merging business entities to shift legally to business entities receiving the merger and later the status of the merging business entities changes because of law.
2. Consolidation shall be a legal action taken by two business entities or more to consolidate by establishing a new business entity, which secure assets and liabilities of the consolidating business entities because of law and status of the consolidating business entities comes into an end because of law.
3. Acquisition shall be a legal action taken by business communities to take over shares of business entity/entities that causes the control over the business entity/entities to shift.
4. Monopoly shall be the centralization of economic forces by one business community or more, which results in control over the production and/or marketing of certain goods or services so as to cause unfair business competition and be potential to affect the public interest.
5. Unfair Business Competition shall be competition between business communities in producing and/or marketing goods or services by

methods, which are dishonest or contravene law or impede business competition.

6. Business entities shall be companies or business establishments in the form of statutory body or not. Which conduct a business permanently and continuously to ear profit.
7. Commission shall be the Business Competition Supervisory Commission as referred to in Law Number 5 Year 1999 concerning Prohibition on Monopoly and Unfair Business Competition.
8. Business Communities shall be individuals or business entities in the form of statutory body or not, which are established and domiciled or undertaking activities in the jurisdiction of the Republic of Indonesia individually or collectively through an agreement to implement various business activities in the economic sector.
9. Law shall be Law Number 5 Year 1999 regarding Prohibition on Monopoly and Unfair Business Competition.

CHAPTER II

MERGER AND CONSOLIDATION OF BUSINESS ENTITIES AS WELL AS ACQUISITION OF CORPORATE SHARES

Article 2

- (1) Business communities shall be prohibited from merging business entities, consolidating business entities or acquiring shares of other companies, which is potential to cause monopoly and/or unfair business competition.
- (2) The monopoly and/or unfair business competition as referred to in paragraph (1) shall occur if business entities resulting from merger, business entities resulting from consolidation or business communities acquiring shares of other companies shall be allegedly committing:

- a. forbidden agreement;
- b. forbidden activities; and/or
- c. misuse of dominant position.

Article 3

- (1) The Commission shall evaluate the merger of business entities, consolidation of business entities or acquisition of corporate shares already affective judicially and allegedly causing monopoly and/or unfair business competition.
- (2) The evaluation as referred to in paragraph (1) shall be done by using analysis of:
 - a. market concentration;
 - b. market access constraint;
 - c. potential of anti-competition behavior;
 - d. efficiency; and/or
 - e. bankruptcy.
- (3) In certain cases, the Commission may evaluate by using analyses other than those as referred to in paragraph (2).
- (4) The analyses as referred to in paragraph (3) shall be governed by a regulation of commission.
- (5) In executing the evaluation as referred to in paragraph (1) and paragraph (3), the Commission may seek information from business communities and/or other parties.

Article 4

- (1) The Commission shall be authorized to impose sanction in the form of administrative sanction on business communities violating the provision as referred to in Article 2 paragraph (1) in accordance with the provision in the law.
- (2) The sanction as referred to in paragraph (1) shall be imposed by the commission after passing procedures for handling case in accordance with the provisions of the law.

CHAPTER III
NOTIFICATION ABOUT MERGER AND
CONSOLIDATION OF BUSINESS ENTITIES AS WELL AS
ACQUISITION OF CORPORATE SHARES

Part One

Asset or Sales Value

Article 5

(1) Merger of business entities, consolidation of business entities or acquisition of shares of other companies causing asset value and/or sales value to exceed the certain amount shall be notified in writing to the Commission in no later than 30 (thirty) working days as from the date when the merger of business entities, consolidation of business entities or acquisition of corporate shares is effective judicially.

(2) The certain amount as referred to in paragraph (1) shall consist of:

a. asset value amounting to Rp 2,500,000,000,000.00 (two trillion five hundred billion rupiah); and/or

b. sales value amounting to Rp5,000,000,000,000.00 (five trillion rupiah).

(3) In the case of business communities engaging in the banking sector, the obligation to submit the notification in writing as referred to in paragraph (1) shall apply if the asset value exceeds Rp20,000,000,000,000.00 (twenty trillion rupiah).

(4) The asset value and/or sales value as referred to in paragraph (1) and paragraph (2) shall be counted on the basis of the sum of asset value and/or sales value of:

a. business entities resulting from merger, or business entities resulting from consolidation or business entities acquiring shares of other companies and the acquired business entities; and

b. business entities directly or indirectly controlling or controlled by business entities resulting from merger, business entities resulting consolidation or business entities acquiring shares of other companies and the acquired business entities.

Article 6

In the case of business communities not submitting the written notification as referred to in Article 5 paragraph (1) and paragraph (3), the business communities shall be subject to sanction in the form of administrative fine amounting to Rp1,000,000,000.00 (one billion rupiah) per every-day of lateness, with the provision that the total amount of administrative fine is maximally Rp25,000,000,000.00 (twenty five billion rupiah).

Article 7

The obligation to submit the notification in writing as referred to in Article 5 paragraph (1) and paragraph (3) shall not apply to business communities committing merger, consolidation or acquisition between affiliated companies.

Part Two

Procedure for Submitting Notification

Article 8

(1) The written notification as referred to in Article 5 paragraph (1) and paragraph (3) shall be done by completing form already stipulated by the Commission.

(2) The form as referred to in paragraph (1) shall contain at least:

a. names, addresses, names of leaders or executives of business entities executing merger, consolidation or acquisition of shares of other companies;

- b. summary of plan of merger of business entities, consolidation of business entities or acquisition of corporate shares; and
- c. asset or sales value of business entities.

(3) The form as referred to in paragraph (1) shall be:

- a. signed by leaders or executives of merging or consolidating business entities or business entities acquiring shares of other companies; and
- b. accompanied by supporting documents related to merger of business entities, consolidation of business entities or acquisition of corporate shares.

Part Three

Evaluation by Commission

Article 9

- (1) Based on the written notification as referred to in Article 5 paragraph (1) and paragraph (3), the Commission shall evaluate to make opinion whether the merger of business entities, consolidation of business entities or acquisition of corporate shares contain substance of monopoly and/or unfair business competition.
- (2) The evaluation as referred to in paragraph (1) shall be done in no later than 90 (ninety) working days as from the date of receipt of complete notification document by the Commission.
- (3) The provisions as referred to in Article 3 paragraph (2), paragraph (3), and paragraph (5) shall apply to the evaluation as referred to in paragraph (1).
- (4) In the case of the opinion of the commission as referred to in paragraph (1) certifying that the substance of monopoly and/or unfair business competition exists, the Commission shall take

action in accordance with its authority as governed in the law.

Part Four

Consultation

Article 10

- (1) Business communities planning to merge, consolidate or acquire shares of other companies that cause the asset and/or sales value to exceed the certain amount as referred to in Article 5 paragraph (2) and paragraph (3) may consult verbally or in writing with the Commission.
- (2) The written consultation as referred to in paragraph (1) shall be done by completing form and submitting the documents required by the Commission.

Article 11

- (1) Based on the form and documents received by the Commission as referred to in Article 10 paragraph (2), the Commission shall evaluate.
- (2) Based on the evaluation as referred to in paragraph (1), the Commission shall provide written recommendation, counseling and/or opinion about the plan to merge, consolidate or acquire shares of other companies to business communities.
- (3) The written recommendation, counseling and/or opinion as referred to in paragraph (2) shall be granted in no later than 90 (ninety) working days as from the date of receipt of complete form and documents by the Commission.
- (4) The evaluation granted by the Commission as referred to in paragraph (2) shall be neither approval or disapproval of merger, consolidation or acquisition plan and shall not abolish the

authority of the Commission to evaluate after the merger or consolidation of business entities or acquisition of shares of other companies is effective judicially.

Article 12

Further provision on the consultation as referred to in Article 10 and Article 11 shall be governed by a regulation of the Commission.

CHAPTER IV

CONCLUSION

Article 13

The government regulation shall come into force as from the date of promulgation.

For public cognizance, the government regulation shall be promulgated by placing it in Statute Book of the Republic of Indonesia.

Stipulated in Jakarta

On July 20, 2010

THE PRESIDENT OF THE REPUBLIC OF INDONESIA,

sgd

DR. H. SUSILO BAMBANG YUDHOYONO

Promulgated in Jakarta

On July 20, 2010

THE MINISTER OF LAW AND HUMAN RIGHTS OF

THE REPUBLIC OF INDONESIA,

sgd.

PATRIALIS AKBAR

ELUDICATION

ON

GOVERNMENT REGULATION OF
THE REPUBLIC OF INDONESIA
NUMBER 57 YEAR 2010

REGARDING MERGER OR CONSOLIDATION OF BUSINESS ENTITIES AND ACQUISITION OF CORPORATE POTENTIAL TO CAUSE MONOPOLY AND UNFAIR BUSINESS COMPETITION

I. GENERAL

Developments of business communities extremely influenced by business communities have changed directly or indirectly changed condition and situation of national economy. In view of the condition and situation, it's necessary to observe and re-arrange activities of business communities so that business entities can grow and develop fairly or without causing monopoly and/or unfair business competition.

The position of this government regulation in business sector is very important to provide legal certainty for business communities, particularly in encountering the increasingly complicated economic globalization and liberalization. In relation thereto, it's necessary to take efforts to create a fair and efficient business climate so as to open up opportunities for business communities to grow and develop properly and fairly in accordance with the mandate of Article 33 of the Constitution of 1945.

Based on the above-mentioned thoughts, efforts to create a fair and efficient business climate may not lead to control over economic sources and centralization of economic forces in a certain group. In relation thereto, merger, consolidation and acquisition potential to control or drive the occurrence of monopoly and/or unfair business competition must be avoided as from the beginning or in the other word,

merger, consolidation and acquisition should continue to regard interests of consumers and other business communities.

Even though the principles of monopoly, monopsony, market control and connivance have been governed in Law Number 5 Year 1999 regarding Prohibition on Monopoly and/or Unfair Business Competition, procedures for merger, consolidation and acquisition potential to cause monopoly and/or unfair business competition need to be specified further by a government regulation.

Substances governed in this government regulation cover merger or consolidation of business entities, acquisition of shares, obligation of business communities, procedures for submitting notification, evaluation of written notification by the Commission and objection to result of evaluation by the Commission.

II. ARTICLE BY ARTICLE

Article 1

Sufficiently clear

Article 2

Paragraph (1)

Referred to as company is a business entity in the form of limited liability company.

Paragraph (2)

Letter a

Referred to in this provision as forbidden agreement is, for instance: oligopoly, pricing, area sharing, boycott, cartel, trust, oligopsony, vertical integration, exclusive agreement, agreement with foreign parties as governed in Article 4 up to Article 16 of the law.

Letter b

Referred to in this provision as forbidden activity is, for instance, monopoly, monopsony, market control, connivance, as governed in Article 17 up to Article 24 of the Law.

Letter c

Dominant position means a condition where a business entity has no significant competitor on the said market in relations to the controlled market share or a business entity has a higher position among its competitors on the said market in relations to financial capability, access to supply or sales, as well as capability of adjusting supply or demand for certain goods or services.

Misuse of dominant position is, for instance, double position, share ownership, as governed in Article 25 up to Article 27 of the law.

Article 3

Paragraph (1)

Sufficiently clear

Paragraph (2)

Letter a

Market concentration constitutes an initial indicator to judge whether the merger of business entities, consolidation of business entities or acquisition of corporate shares is potential to cause monopoly and/or unfair business competition. Merger of business entities, consolidation of business entities or acquisition of corporate shares creating low market concentration is not potential to cause monopoly and/or unfair business competition. Conversely, merger of business entities, consolidation of business entities or acquisition of corporate shares creating high market concentration that is

potential to cause monopoly and/or unfair business competition depends on other analyses on the said market.

Letter b

With the absence of obstacle to enter the market, business communities controlling a greater market share after merger or consolidation or acquisition of corporate shares will be difficult to implement anti-competition behavior because the business entities may face competition pressures from new players on the market at anytime.

Conversely, in the case of obstacle to enter the market being high, business entities resulting from merger or consolidation or business entities acquiring shares of other companies with medium market control are potential to misuse their position to impede competition or exploit consumers because new players will be difficult to enter the market and put competition pressures on business communities already existing on the market.

Letter c

Merger of business entities and/or acquisition of corporate shares resulting in a business community, which is relatively dominant against other business communities on the market facilitates the business community to misuse the dominant position for reaping profit maximally for the company and inflicting loss on consumers.

Conversely, in the case of merger of business entities or acquisition of corporate shares not resulting in dominant business community on the market but other significant competitors still existing, the merger of business entities, consolidation of business entities or acquisition of corporate shares facilitates the occurrence of

anti-competition measures executed in a coordinated manner with their competitors directly or indirectly.

Merger of business entities, consolidation of business entities or acquisition of corporate shares vertically may affect access of competitors to the upstream market or upstream market so as to reduce competition on the upstream or downstream market.

Letter d

In the case of the planned merger of business entities, consolidation of business entities or acquisition of corporate shares being intended to enhance efficiency, it's necessary to compare the produced efficiency to anti-competition impacts arising from the action. In the case of the value of anti-competition impact exceeding the value of efficiency hopefully achieved from the merger of business entities, consolidation of business entities or acquisition of corporate shares, fair competition will be rather prioritized by encouraging business communities to conduct efficiency. Fair competition will create directly or indirectly more efficient business communities on the market.

Letter e

In the case of merger of business entities, consolidation of business entities or acquisition of shares of other companies being intended to prevent the discontinuation of the business entities to operate in the market/industry, evaluation is needed. Worry about the reduction of competition rate in the market, in the form of monopoly and/or unfair business competition attributed to the merger of business entities, consolidation of business entities or acquisition of shares of the companies does

not exist, in the case of the consumer loss being bigger if the business entities come out of the market/industry, compared to condition if the business entities still exist and operate on the market/industry.

Paragraph (3)

Certain conditions are, among others, developments of evaluation methods of impacts of monopoly and/or unfair competition other than market concentration, market access constraints, potential of anti-competition behavior, efficiency and bankruptcy.

Paragraph (4)

Sufficiently clear

Paragraph (5)

Other parties mean consumers, competitor business communities, suppliers, related institutions or specialists.

Article 4

Sufficiently clear

Article 5

Paragraph (1)

Sufficiently clear

Paragraph (2)

Letter a

In the case of any of the parties involved in the merger of business entities, consolidation of business entities or acquisition of corporate shares having a difference of 30% or more in the value of assets in the latest year and the value of assets in

the previous year, the value of assets is counted on the basis of the average selling value in the last 3 (three) years.

Letter b

The calculation method of the sales value is the same as the calculation method of the value of assets.

Paragraph (3)

Sufficiently clear

Paragraph (4)

Letter a

Sufficiently clear

Letter b

Referred to as "controlled" is:

- a. share ownership or vote control in the business entity exceeds 50% (fifty percent); or
- b. share ownership or vote control is less than or equal to 50% (fifty percent) but the business entity can influence or determine management policies of the business entity and/or influence and determine the management of business entity.

Article 6

Sufficiently clear

Article 7

Referred to as "affiliated" is:

- a. inter-company relations directly or indirectly, controlling or controlled by the company;
- a. relations between 2 (two) companies controlled, directly or indirectly by the same party; or
- b. relations between companies and the main shareholder.

Article 8

Paragraph (1) and Paragraph (2)

Sufficiently clear

financial statements in the last 3 (three) years, plan for the merger or consolidation of business entities or plan for the acquisition of shares.

Paragraph (3)

Letter a

Sufficiently clear

Article 9 up to Article 13

Sufficiently clear

Letter b

Referred to in this provision as "supporting documents" is, among others, memorandum of association of companies, profile of companies,

SUPPLEMENT TO STATUTE BOOK OF
THE REPUBLIC OF INDONESIA NUMBER 5144

—==(R)==—

THE CHANGE IN CLASSIFICATION AND STIPULATION OF RATES OF IMPORT DUTY ON PARTICULAR IMPORTED GOODS IN THE CONTEXT OF COMMON EFFECTIVE PREFERENTIAL TARIFF SCHEME (CEPT)

(Regulation of the Minister of Finance Number 247/PMK.011/2009,
dated December 31, 2009)

WITH THE BLESSING OF THE ONE AND ONLY GOD
MINISTER OF FINANCE OF
THE REPUBLIC OF INDONESIA,

Considering:

a. that based on Regulation of the Minister of Finance Number 125/PMK.010/2006 concerning Decision of Tariff for Import Duty for Particular Imported Products in the Context of Common Effective Preferential Tariff Scheme (CEPT) and Regulation of the Minister of Finance Number 129/PMK.011/2007 concerning Decision of Tariff for Import Duty on Imported Goods in the Context of Common Effective Preferential Tariff Scheme (CEPT) as amended by Regulation of the Minister of Finance Number 127/PMK.011/2008, the tariff rate for import duty on imported goods from ASEAN countries has been stipulated;

b. that based on The Roadmap for The Integration of ASEAN (RIA), it has been decided that the 100% (one hundred percent) or the products that are included in Inclusion List (IL) of its import duty should have been reduced to 0% effective as of January 1, 2010;

c. that based on corrigendum of the ASEAN Harmonized Tariff Nomenclature (AHTN) Text 2007 as ratified by all ASEAN countries as stipulated in Regulation of the Minister of Finance Number 233/PMK.011/2008 concerning Amendment to Regulation of the Minister of Finance Number 110/PMK.011/2008 concerning Decision on Goods Classification and Imposition of Import Duty on Imported Goods, it is necessary to amend the classification system of goods in the context of Common Effective Preferential Tariff Scheme (CEPT);