

REGULATION OF THE GOVERNMENT OF THE REPUBLIC OF INDONESIA
NUMBER 44 OF 2021
ON
IMPLEMENTATION OF PROHIBITION OF MONOPOLY AND UNFAIR BUSINESS
COMPETITION PRACTICES¹

BY THE GRACE OF GOD ALMIGHTY

PRESIDENT OF THE REPUBLIC OF INDONESIA,

Considering:

that in order to implement provisions under Article 118 and Article 185 letter b of Law [Number 11 of 2020](#) on Job Creation, it is deemed necessary to establish Regulation of the Government on Implementation of Prohibition of Monopoly and Unfair Business Practices;

In view of:

1. Article 5 paragraph (2) of 1945 Constitution of the Republic of Indonesia;
2. Law [Number 5 of 1999](#) on Prohibition of Monopoly and Unfair Business Competition Practices (State Gazette of the Republic of Indonesia of 1999 Number 33, Supplement to the State Gazette of the Republic of Indonesia Number 3817);
3. Law [Number 11 of 2020](#) on Job Creation (State Gazette of the Republic of Indonesia of 2020 Number 245, Supplement to the State Gazette of the Republic of Indonesia Number 6573);

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HAS DECIDED:

To establish:

REGULATION OF THE GOVERNMENT ON IMPLEMENTATION OF PROHIBITION OF MONOPOLY AND UNFAIR BUSINESS COMPETITION PRACTICES.

CHAPTER 1

GENERAL PROVISIONS

Article 1

Under this Regulation of the Government, the following definitions are employed:

1. Monopoly means control of production and/or marketing of goods and/or of use of certain service by a single Business Party or a group of business parties.
2. Business Party means any natural person or business entity, either in the forms of incorporated entity or unincorporated entity which is incorporated and domiciled or operates activity within the state jurisdiction of the Republic of Indonesia, either individually or jointly under an agreement, to organize various business activities within economic sector.
3. Agreement means an act of one or more Business Parties to bind themselves to one or several other businesses under any name, either written or orally.
4. Conspiracy or business conspiracy means a form of cooperation which is performed by business party with another Business Party with the intention of controlling the relevant market in the interest of conspired Business Party.
5. Market means economic institution where buyers and sellers, either directly or indirectly, able to perform transaction of trading of goods and/or services.
6. Relevant Market means market which relates to the reach or certain marketing area of Business Party over the same or similar goods and/or services or substitution of such goods and/or services.
7. Consumer means any utilizer and/or user of goods and/or services, either for personal interest or for the interest of another party.

8. Business Competition Supervisory Commission, hereinafter referred to as Commission, means commission that is constituted in order to supervise Business Parties in operating their business activities, so that they do not perform monopoly and/or unfair business competition practices.
9. Law means Law [Number 5 of 1999](#) on Prohibition of Monopoly and Unfair Business Competition Practices as amended by Law [Number 11 of 2020](#) on Job Creation.

Article 2

This Regulation of the Government addresses these provisions:

- a. authority of Commission;
- b. criteria for sanction, type of sanction, and sum of fines; and
- c. examination of objection and cassation to decision of Commission.

CHAPTER III

AUTHORITY OF BUSINESS COMPETITION SUPERVISORY COMMISSION

Article 3

Commission has the authority as referred to under Article 36 of Law.

Article 4

- (1) In the event of enforcement of authority as referred to under Article 3, for the purpose of case examination up to imposition of sanction in the forms of administrative measure against Business Parties which violate provisions under the Law, including supervision of decision, Panel of Commission is constituted.
- (2) Panel of Commission imposes sanction in the forms of administrative measure against the defendant whom is proven to commit violation:
 - a. in the forms of prohibited agreement, as referred to under Article 4, Article 5, Article 6, Article 7, Article 8, Article 9, Article 10, Article 11, Article 12, Article 13, Article 14, Article 15, and/or Article 16 of Law;
 - b. in the forms of prohibited act, as referred to under Article 17, Article 18, Article 19, Article 20, Article 21, Article 22, Article 23, and/or Article 24 of Law; and/or

- c. of Article 25, Article 26, Article 27, and/or Article 28 of Law.

CHAPTER III

CRITERIA FOR SANCTION, TYPE OF SANCTION, AND SUM OF FINES

First Division

Criteria for Sanction

Article 5

- (1) Sanction in the forms of administrative measure is imposed:
 - a. in accordance with the level or impact of violation that is committed by Business Parties;
 - b. with regards given to the continuity of business activity of Business Parties; and/or
 - c. based on clear consideration and ground.
- (2) Imposition of sanction as referred to in paragraph (1) is performed based on criteria which fulfills the element of violation of provisions under the Law.

Second Division

Type of Sanction

Article 6

- (1) Commission is authorized to impose sanction in the forms of administrative measure against Business Parties which violate provisions under laws and regulations.
- (2) Administrative measure as referred to in paragraph (1) takes forms as:
 - a. stipulation on annulment of Agreement;
 - b. order to Business Parties to cease vertical integration;
 - c. order to Business Parties to cease activity which is proven to create Monopoly practices, cause unfair business competition, and/or injure the public;
 - d. order to Business Parties to cease the abuse of dominant position;

- e. stipulation on annulment of merger or consolidation of business entities and acquisition of shares;
- f. stipulation on payment of indemnity; and/or
- g. imposition of fines, IDR 1,000,000,000 (one billion rupiahs) at minimum, with consideration given to provisions on the sum of fines as addressed under this Regulation of the Government.

Article 7

- (1) Administrative measure in the forms of stipulation on annulment of Agreement as referred to under Article 6 paragraph (2) letter a is imposed in case Business Parties violate provisions under Article 4, Article 5, Article 6, Article 7, Article 8, Article 9, Article 10, Article 11, Article 12, Article 13, Article 15, and/or Article 16 of Law.
- (2) Administrative measure in the forms of stipulation on annulment of Agreement as referred to in paragraph (1) may be imposed against:
 - a. partial Agreement; or
 - b. the whole Agreement.
- (3) Administrative measure in the forms of stipulation on annulment of partial Agreement as referred to in paragraph (2) letter a is imposed in case a part of provisions under the Agreement is decided by Panel of Commission to be in violation to provisions under the Law.
- (4) Administrative measure in the forms of stipulation on annulment of the whole Agreement as referred to in paragraph (2) letter b is imposed in case the whole provisions or almost all provisions under the Agreement are decided by Panel of Commission to be in violation to provisions under the Law.

Article 8

Administrative measure in the forms of order to Business Parties to cease vertical integration as referred to under Article 6 paragraph (2) letter b is imposed in case Business Parties violate provisions under Article 14 of Law.

Article 9

- (1) Administrative measure in the forms of order to Business Parties to cease activity as referred to under Article 6 paragraph (2) letter c is imposed in case Business Parties violate provisions under Article 17, Article 18, Article 19, Article 20, Article 21, Article 22, Article 23, Article 24, Article 26, and/or Article 27 of Law.
- (2) Administrative measure in the forms of order to Business Parties to cease activity as referred to in paragraph (1) takes forms as:
 - a. cease of activity which causes the control of production or marketing of goods or services;
 - b. cease of activity which causes the control of receipt of supply or position as single buyer of goods or services;
 - c. cease of refusal or act of preventing certain Business Parties to perform the same business activity;
 - d. cease of activity which prevents Consumer or regular customer of competing Business Parties in engaging business relationship with such competing Business Parties;
 - e. cease of activity which restricts the circulation or sale of goods or services in the Relevant Market;
 - f. cease of discrimination;
 - g. cease of selling at a loss or determination of a very low selling price;
 - h. cease of fraud in determining production cost and other costs which become the component of goods or services;
 - i. cease of Conspiracy in fixing or determining the winner of tender;
 - j. cease of Conspiracy in order to obtain information on business activity of competing Business Parties which are classified as secret of company;
 - k. cease of Conspiracy in order to hinder production and/or marketing of competing Business Parties;
 - l. order to Business Parties to terminate board of directors or commissioner who acts in interlocking directorate; and/or
 - m. order to affiliated Business Parties to release cross holding.

Article 10

Administrative measure in the forms of order to Business Parties to cease the abuse of dominant position as referred to under Article 6 paragraph (2) letter d is imposed in case Business Parties violate provisions under Article 25 of Law.

Article 11

Administrative measure in the forms of stipulation on annulment of merger or consolidation of business entities and acquisition of shares as referred to under Article 6 paragraph (2) letter e is imposed in case Business Parties violate provisions under Article 28 of Law.

Third Division

Sum of Fines

Article 12

- (1) Administrative measure in the forms of fines as referred to under Article 6 paragraph (2) letter g is principal fines, and imposition of administrative measure in the forms of fines by Commission is performed based on the following provisions:
 - a. at the rate of 50% (fifty percent) of net profit which is gained by Business Parties in the Relevant Market, during the term when violation of the Law occurs, at maximum; or
 - b. at the rate of 10% (ten percent) of total sales in the Relevant Market, during the term when violation of the Law occurs, at maximum.
- (2) As a guarantee for fulfillment of decision of Commission which addresses administrative measure in the forms of fines, the defendant must handover sufficient bank guarantee, 20% (twenty percent) of sum of fines at maximum, no later than 14 (fourteen) business days of receipt of notice on decision of Commission.

Article 13

- (1) Administrative measure in the forms of fines which are addressed in decision of Commission, which has been final and binding, are state receivable and deposited into state treasury as non-tax state revenue.
- (2) In case the defendant fails to enforce decision of Commission as referred to in paragraph (1), Commission enters into coordination with authorized governmental institution within the sector of state receivable affairs and/or law enforcer in accordance with provisions under laws and regulations.

Article 14

Determination of sum of fines as referred to under Article 12 paragraph (1) is based on:

- a. negative effect which is caused due to violation;
- b. duration of violation;
- c. discharging factor;
- d. charging factor; and/or
- e. ability of Business Parties to pay.

Article 15

Discharging factor as referred to under Article 14 letter c consists of:

- a. Business Parties perform activity which shows the existence of compliance effort to principles of fair business competition which encompasses code of ethics, training, counseling, socialization, and its kind;
- b. Business Parties voluntarily cease anti-competitive behavior since the occurrence of case;
- c. Business Parties have never committed the same or similar violation in relation to Monopoly and unfair business competition practices as addressed under the Law;
- d. Business Parties do not commit violation on the basis of intentionality;
- e. Business Parties do not act as leader/initiator of violation; and/or
- f. impact of violation is insignificant against competition.

Article 16

Charging factor as referred to under Article 14 letter d consists of:

- a. Business Parties have ever committed the same or similar violation as addressed under the Law within the term of shorter than 8 (eight) years based on a final and binding decision; and/or
- b. Business Parties act as initiator to the violation.

Article 17

Ability of Business Parties to pay as addressed under Article 14 letter e is based on financial condition of company which may cause the company to be no longer in operation if it is imposed with a certain rate of fines.

Article 18

- (1) Commission may give leniency in the enforcement of payment of fines based on written application from Business Parties, as accompanied with supporting data.
- (2) Leniency as referred to in paragraph (1) takes form as payment may be made in installments or within a certain time period based on valid, reasonable, and transparent ground with consideration given toward financial condition or business continuity of Business Parties.

CHAPTER IV

EXAMINATION OF OBJECTION AND CASSATION TO DECISION OF BUSINESS COMPETITION SUPERVISORY COMMISSION

Article 19

- (1) Business Parties are able to file objection to Commercial Court that is in accordance with the domicile of Business Parties, no later than 14 (fourteen) business days of the receipt of notice on decision of Commission.

- (2) Examination of objection at Commercial Court as referred to in paragraph (1) is performed both relating to formal aspect and merit aspect of the facts which become the ground for decision of Commission.
- (3) Examination as referred to in paragraph (2) is performed within a time period of no shorter than 3 (three) months and no longer than 12 (twelve) months.
- (4) Unless it is deemed otherwise under this Regulation of the Government, procedures for examination of objection at Commercial Court are performed in accordance with civil procedural law.

Article 20

- (1) Party who objects the decision of Commercial Court as referred to under Article 19 is able to file cassation petition to the Supreme Court of the Republic of Indonesia within the time period of 14 (fourteen) business days of the receipt of notice on decision of Commercial Court.
- (2) Cassation examination at the Supreme Court of the Republic of Indonesia as referred to in paragraph (1) is performed in accordance with provisions under laws and regulations.

CHAPTER V

REGULATION OF THE BUSINESS COMPETITION SUPERVISORY COMMISSION

Article 21

- (1) Commission, in the course of supporting its performance of duty, addresses Regulation of the Commission.
- (2) Regulation of the Commission as referred to in paragraph (1) is addressed in accordance with the law on establishment of laws and regulations.

CHAPTER VI FINAL PROVISIONS

Article 22

When this Regulation of the Government enters into force, handling of cases by Commission which have entered the proceeding of Panel of Commission, but there is yet to be any decision, are continued in accordance with provisions under this Regulation of the Government.

Article 23

When this Regulation of the Government enters into force, all implementing regulations which address provisions on prohibition of Monopoly and unfair business competition practices, which have existed prior to this Regulation of the Government, are declared to continue to prevail, provided that they are not in contradictory with provisions under this Regulation of the Government.

Article 24

Commission makes adjustment to laws and regulations which are addressed by Commission to be in accordance with this Regulation of the Government, no later than the time period of 4 (four) months of the entry into force of this Regulation of the Government.

Article 25

This Regulation of the Government enters into force on its promulgation date.

For the purposes of public cognizance, it has been ordered that the promulgation of this Regulation of the Government should be achieved through its publication in the State Gazette of the Republic of Indonesia.

Established in Jakarta

on 2 February 2021

PRESIDENT OF THE REPUBLIC OF INDONESIA,

signed.

JOKO WIDODO

Promulgated in Jakarta

on 2 February 2021

MINISTER OF LAW AND HUMAN RIGHTS OF THE REPUBLIC OF INDONESIA,

signed.

YASONNA H. LAOLY

STATE GAZETTE OF THE REPUBLIC OF INDONESIA OF 2021 NUMBER 54

**ELUCIDATION
OF
REGULATION OF THE GOVERNMENT OF THE REPUBLIC OF INDONESIA
NUMBER 44 OF 2021
ON
IMPLEMENTATION OF PROHIBITION OF MONOPOLY AND UNFAIR BUSINESS
COMPETITION PRACTICES**

I. GENERAL

That based on Law [Number 11 of 2020](#) on Job Creation, amendment has been made against several provisions under the Law [Number 5 of 1999](#) on Prohibition of Monopoly and Unfair Business Competition Practices, especially in relation to sanction in the forms of administrative measure which is available to be imposed by Commission, examination of objection to decision of Commission, and rationalization against provisions relating to criminal sanction, as well as making adjustment to implementing regulations of the Law [Number 5 of 1999](#) on Prohibition of Monopoly and Unfair Business Competition Practices.

With such amendment, it is expected that the subsequent enforcement of Law [Number 5 of 1999](#) on Prohibition of Monopoly and Unfair Business Competition Practices may be performed in parallel with the spirit that is contained under the Law [Number 11 of 2020](#) on Job Creation, in order to create and expand job opportunity through improvement of investment ecosystem and business activity, therefore, business practice that is more conducive and gives more focus toward fair business competition within the scope of supervision by professional and accountable Commission is able to be created.

For enforcement purpose, it is deemed to be necessary to establish Regulation of the Government which addresses provisions on:

- a. authority of Commission;
- b. criteria for sanction, type of sanction, and sum of fines; and
- c. examination of objection and cassation to decision of Commission.

Considering that regulation on prohibition of Monopoly and unfair business competition practices remains as a very dynamic condition, thus this Regulation of the Government is formulated with the aim that Commission is able to perform its duty and function in a more professional, measured, accountable manners, as well as keep building and implementing best practice (*praktek terbaik*) which is necessary.

Based on such consideration, it is deemed to be necessary to establish Regulation of the Government on Implementation of Prohibition of Monopoly and Unfair Business Competition Practices.

II. ARTICLE BY ARTICLE

Article 1

Self-explanatory.

Article 2

Self-explanatory.

Article 3

Self-explanatory.

Article 4

Self-explanatory.

Article 5

Paragraph (1)

Law [Number 5 of 1999](#) on Prohibition of Monopoly and Unfair Business Competition Practices as amended by Law [Number 11 of 2020](#) on Job Creation is based on the balance between Business Parties and public interest with the aim of, among others, creation of effectiveness and efficiency in business activity.



Hence, against violation which is imposed with sanction in the forms of administrative measure:

1. Administrative sanction which is imposed is in accordance with the level of violation and calculates the impact which is caused due to violation that is committed by Business Parties.
2. Administrative sanction which is imposed does not result in the closing of business activity, but it is effective to prevent the occurrence of similar violation or other violations which will be committed by Business Parties. With business continuity, then economic activity will still be operated and produce economic benefit to the public through job opportunity, availability of goods or services, and increase economic growth.
3. Administrative sanction which is imposed should be accompanied with clear ground, namely consideration which is in detail, concrete, and based on valid and measured data.

Paragraph (2)

Self-explanatory.

Article 6

Self-explanatory.

Article 7

Self-explanatory.

Article 8

Self-explanatory.

Article 9

Self-explanatory.

Article 10

Self-explanatory.

Article 11

Self-explanatory.

Article 12

Paragraph (1)

Based on Law [Number 5 of 1999](#) on Prohibition of Monopoly and Unfair Business Competition Practices, as amended by Law [Number 11 of 2020](#) on Job Creation, it is addressed that administrative measure in the forms of fines which may be imposed by Commission is IDR 1,000,000,000 (one billion rupiahs) at minimum.

For legal certainty in the course of its enforcement, this Regulation of the Government addresses the maximum threshold for sum of fines which is available to be imposed by Commission, in relation to violation that is committed against the Law.

With consideration given to provisions under this Regulation of the Government, Commission is given choices to determine the maximum rate of sanction based on profit value or based on sales value that is gained from the result of violation of the Law, in the Relevant Market, and during the time period when such violation occurs.

In principle, the available choices are alternative in manner, and their implementation is case-by-case basis that is entrusted to the Commission.

In case Commission uses the calculation basis in the forms of net profit value that is gained from the result of violation of the Law, then Commission should consider facts on activities of Business Parties, condition of the Relevant Market, and time period of occurrence of violation in question.

Net profit value refers to profit which is gained by Business Parties after tax and state levy, as well as fixed cost which directly relates to business activity in question, are deducted from such profit, based on laws and regulations.

Otherwise, in case Commission uses the calculation basis in the forms of sales value which relates to violation of the Law, then Commission must give regards

to facts on activities of Business Parties, condition of the Relevant Market, and time period of occurrence of violation in question.

Sales value is determined based on the value prior to imposition of tax or state levy which directly relates to the sale of goods/services in the Relevant Market. Considering that the element of term of violation remains as important factor in determining the sum of fines which will be imposed, term of violation is determined based on number of years when violation occurs.

If it is shorter than 6 (six) months, then it is counted as $\frac{1}{2}$ (a half) year.

Otherwise, if it is longer than 6 (six) months, but it is not longer than 1 (one) year, then it is counted as 1 (one) full year.

Commission may subsequently use certain coefficient in determining time period of violation in monthly basis, during the time period of violation within the 1 (one) year period.

Paragraph (2)

Obligation to give such bank guarantee is not necessary if Business Parties accept and enforce decision of Commission and do not file objection to Commercial Court or the Supreme Court of the Republic of Indonesia.

Article 13

Self-explanatory.

Article 14

Self-explanatory.

Article 15

Self-explanatory.

Article 16

Self-explanatory.

Article 17

Self-explanatory.

Article 18

Paragraph (1)

“Supporting data” refers to financial statements which describe the ability of company to make payment of fines.

Paragraph (2)

Self-explanatory.

Article 19

Self-explanatory.

Article 20

Self-explanatory.

Article 21

Self-explanatory.

Article 22

Self-explanatory.

Article 23

Self-explanatory.

Article 24

Self-explanatory.



Article 25

Self-explanatory.

SUPPLEMENT TO THE STATE GAZETTE OF THE REPUBLIC OF INDONESIA
NUMBER 6656

