

GOVERNMENT REGULATION OF THE REPUBLIC OF INDONESIA

NUMBER 57 YEAR 2010

CONCERNING

MERGER OR CONSOLIDATION OF BUSINESS ENTITIES

AND ACQUISITION OF SHARES OF COMPANIES WHICH MAY

CAUSE MONOPOLISTIC PRACTICES AND

UNFAIR BUSINESS COMPETITION

WITH THE BLESSING OF GOD THE ALMIGHTY

THE PRESIDENT OF THE REPUBLIC OF INDONESIA,

Considering : whereas in order to implement the provision of Article 28 paragraph (3) and Article 29 paragraph (2) of Law Number 5 Year 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition, it is necessary to stipulate a Government Regulation concerning Merger or Consolidation of Business Entities and Acquisition of Shares of Companies which May Cause Monopolistic Practices and Unfair Business Competition;

In view of : 1. Article 5 paragraph (2) of the 1945 Constitution of the Republic of Indonesia;

 2. Law Number 5 Year 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition (State Gazette of the Republic of Indonesia Year 1999 Number 33, Supplement to the State Gazette of the Republic

of Indonesia Number 3817);

HAS DECIDED TO:

Stipulate : GOVERNMENT REGULATION CONCERNING MERGER OR CONSOLIDATION OF BUSINESS ENTITIES AND ACQUISITION OF SHARES OF COMPANIES WHICH MAY CAUSE MONOPOLISTIC PRACTICES AND UNFAIR BUSINESS COMPETITION.

CHAPTER I

GENERAL PROVISIONS

Article 1

Referred to herein as:

1. Merger shall be a legal action taken by one or more Business Entities in order to merge with another existing Business Entity causing the assets and liabilities of the merging Business Entity to pass by law to the surviving Business Entity and the former status of the merging Business Entity shall subsequently terminate by law.
2. Consolidation shall be a legal action taken by two or more Business Entities to consolidate themselves by establishing a new Business Entity which shall acquire the assets and liabilities of the consolidating Business Entities by law and the former status of the consolidating Business Entities shall terminate by law.

3. Acquisition shall be a legal action taken by a Business Actor in order to acquire the shares of a Business Entity causing the transfer of control of the Business Entity concerned.
4. Monopolistic Practice shall be the centralization of economic power by one or more Business Actor(s) causing the control of production and/or marketing of certain goods and/or services so as to result in unfair business competition and adversely affect the public interest.
5. Unfair Business Competition shall be a competition among Business Actors in engaging in the activities of production and/or marketing of goods or services conducted in a dishonest or unlawful manner or hampering the business competition.
6. Business Entity shall be a company or business entity, either incorporated or unincorporated, engaging in a permanent and continuous type of business with the objective of gaining profits.
7. Commission shall be the Commission for the Supervision of Business Competition as intended in Law Number 5 Year 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition.
8. Business Actor shall be any individual person or Business Entity, incorporated or unincorporated, established and having its domicile or engages in activities in the jurisdiction of the Republic of Indonesia both severally and jointly through an agreement to engage in various business activities in the economic sector.

9. Law shall be Law Number 5 Year 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition.

CHAPTER II

MERGER AND CONSOLIDATION OF BUSINESS ENTITIES

AND ACQUISITION OF SHARES OF COMPANIES

Article 2

- (1) Business Actors shall be prohibited from conducting a Merger of Business Entities, a Consolidation of Business Entities or an Acquisition of shares of other companies that may cause Monopolistic Practices and/or Unfair Business Competition.
- (2) The Monopolistic Practices and/or Unfair Business Competition as intended in paragraph (1) shall occur in the event that a Business Entity resulting from a Merger, a Business Entity resulting from a Consolidation or Business Actors acquiring the shares of another company is alleged:
 - a. to have entered into a prohibited agreement;
 - b. to have engaged in a prohibited activity; and/or
 - c. to have abused a dominant position.

Article 3

- (1) The Commission shall assess Merger of Business Entities, Consolidation of Business Entities or Acquisition of shares of a

company which have been legally in effect and is alleged to cause Monopolistic Practices and/or Unfair Business Competition.

- (2) The assessment as intended in paragraph (1) shall be conducted by analyzing:
 - a. market concentration;
 - b. barriers to market entry;
 - c. potential of anti-competition behavior;
 - d. efficiency; and/or
 - e. bankruptcy.
- (3) In certain cases, the Commission may conduct the assessment by analyzing factors other than those intended in paragraph (2).
- (4) The analysis as intended in paragraph (3) shall be regulated by the Commission's Regulations.
- (5) In conducting the assessment as intended in paragraphs (1) and (3), the Commission may request for information from Business Actors and/or other parties.

Article 4

- (1) The Commission shall be authorized to impose sanctions in the form of administrative actions on Business Actors committing violations of the

provisions as intended in Article 2 paragraph (1) in accordance with the provisions of the Law.

- (2) The imposition of sanctions as intended in paragraph (1) shall be conducted after the Commission applies the procedures for the handling of cases in accordance with the provisions of the Law.

CHAPTER III

NOTICE OF MERGER AND CONSOLIDATION OF BUSINESS ENTITIES AND ACQUISITION OF SHARES OF COMPANIES

Part One

Asset Value or Sale Value

Article 5

- (1) Merger of Business Entities, Consolidation of Business Entities or Acquisition of shares of other companies causing the asset value and/or sale value exceeding a certain amount must be notified in writing to the Commission by no later than 30 (thirty) business days as from the date on which the Merger of Business Entities, the Consolidation of Business Entities or the Acquisition of shares of other companies is legally in effect.
- (2) A certain amount as intended in paragraph (1) shall consist of:
 - a. asset value in the amount of Rp2,500,000,000,000.00 (two trillion and five hundred billion rupiah); and/or

- b. sale value in the amount of Rp5,000,000,000,000.00 (five trillion rupiah).
- (3) As for Business Actors engaging in the banking sector, the obligation to provide written notice as intended in paragraph (1) shall be applicable in the event that the asset value exceeds Rp20,000,000,000,000.00 (twenty trillion rupiah).
- (4) The asset value and/or sale value as intended in paragraphs (2) and (3) shall be calculated based on the total of asset value and/or sale value of:
- a. Business Entity resulting from the Merger, Business Entity resulting from the Consolidation or Business Entity acquiring the shares of other company and the Business Entity acquired; and
 - b. Business Entity which directly or indirectly controls or is controlled by Business Entity resulting from the Merger, Business Entity resulting from the Consolidation or Business Entity acquiring shares of other companies and the Business Entity acquired.

Article 6

In the event that a Business Actor does not give written notice as intended in Article 5 paragraphs (1) and (3), the Business Actor concerned shall be subject to a sanction in the form of administrative penalty in the amount of Rp1,000,000,000.00 (one billion rupiah) for each day of delay, provided that

the maximum amount of administrative penalty shall be in the amount of Rp25,000,000,000.00 (twenty-five billion rupiah).

Article 7

The obligation to give the written notice as intended in Article 5 paragraphs (1) and (3) shall not be applicable to Business Actors conducting Merger of affiliated Business Entities, Consolidation of affiliated Business Entities or Acquisition of shares of inter-affiliated companies.

Part Two

Procedures for the Submission of Notice

Article 8

- (1) The written notice as intended in Article 5 paragraphs (1) and (3) shall be given by completing the form designated by the Commission.
- (2) The form as intended in paragraph (1) shall at least indicate:
 - a. the name, address, name of management or executive of the Business Entity conducting Merger of Business Entities, Consolidation of Business Entities or the Acquisition of shares of other companies;
 - b. the summary of plan of Merger of Business Entities, Consolidation of Business Entities or Acquisition of shares of other companies; and
 - c. the asset value or sale proceeds value of the Business Entity.

- (3) The form as intended in paragraph (1) must be:
 - a. signed by the management or executive of the Business Entity performing the Merger of Business Entities, the Consolidation of Business Entities or the Acquisition of shares of other companies; and
 - b. enclosed with supporting documents related to the Merger of Business Entities, the Consolidation of Business Entities or the Acquisition of shares of other companies.

Part Three

Commission's Assessment

Article 9

- (1) Based on the written notice as intended in Article 5 paragraphs (1) and (3), the Commission shall conduct assessment in order to give an opinion on whether or not there is an allegation of Monopolistic Practices and/or Unfair Business Competition resulting from the Merger of Business Entities, the Consolidation of Business Entities or the Acquisition of shares of other companies.
- (2) The assessment as intended in paragraph (1) shall be conducted within a maximum period of 90 (ninety) business days as from the date of receipt of complete written notice documents by the Commission.

- (3) The provisions as intended in Article 3 paragraphs (2), (3) and (5) shall be applicable to the assessment as intended in paragraph (1).
- (4) In the event that the Commission's opinion as intended in paragraph (1) indicates that there is an allegation of Monopolistic Practices and/or Unfair Business Competition, the Commission shall take action in accordance with its authority as regulated by the Law.

Part Four

Consultation

Article 10

- (1) Business Actors intending to conduct Merger of Business Entities, Consolidation of Business Entities or Acquisition of shares of other companies making its asset value and/or sale value exceeds the certain amount as intended in Article 5 paragraphs (2) and (3) may hold written or oral consultation with the Commission.
- (2) The written consultation as intended in paragraph (1) shall be conducted by completing the form and submitting the documents required by the Commission.

Article 11

- (1) The Commission shall conduct the assessment based on the form and documents received by the Commission as intended in Article 10 paragraph (2).

- (2) Based on the assessment as intended in paragraph (1), the Commission shall provide written advice, guidance and/or opinion concerning the plan for Merger of Business Entities, Consolidation of Business Entities or Acquisition of shares of other companies to the relevant Business Actors.
- (3) The written advice, guidance and/or opinion as intended in paragraph (2) shall be provided within a maximum period of 90 (ninety) business days as from the date of receipt of complete form and documents by the Commission.
- (4) The assessment provided by the Commission as intended in paragraph (2) shall not constitute approval or rejection of the plan for Merger of Business Entities, Consolidation of Business Entities or Acquisition of shares of other companies to be implemented by the Business Actors and shall not remove the authority of the Commission to conduct assessment after the Merger of Business Entities, the Consolidation of Business Entities or the Acquisition of shares of other companies is legally in effect.

Article 12

Further provisions concerning the consultation as intended in Articles 10 and 11 shall be regulated by the Commission's Regulations.

CHAPTER IV
CLOSING PROVISION

Article 13

This Government Regulation shall be in force on the date of its enactment.

For the purpose of public cognizance, it is hereby ordered the enactment hereof by placing it in the State Gazette of the Republic of Indonesia.

Stipulated in Jakarta

on July 20, 2010

THE PRESIDENT OF THE REPUBLIC OF INDONESIA,

[Signed]

DR. H. SUSILO BAMBANG YUDHOYONO

Promulgated in Jakarta

on July 20, 2010

THE MINISTER OF LAW AND HUMAN RIGHTS

OF THE REPUBLIC OF INDONESIA,

[Signed]

PATRIALIS AKBAR

STATE GAZETTE OF THE REPUBLIC OF INDONESIA YEAR 2010 NUMBER 89

Issued as a true copy

THE STATE SECRETARIAT OF THE REPUBLIC
OF INDONESIA

Head of Laws and Regulations Bureau Economy
and Industry Division

Setio Sapto Nugroho

ELUCIDATION
TO
GOVERNMENT REGULATION OF THE REPUBLIC OF INDONESIA
NUMBER 57 YEAR 2010
CONCERNING
MERGER OR CONSOLIDATION OF BUSINESS ENTITIES
AND ACQUISITION OF SHARES OF COMPANIES WHICH MAY
CAUSE MONOPOLISTIC PRACTICES AND
UNFAIR BUSINESS COMPETITION

I. GENERAL

The development of the business sector, which is highly influenced by Business Actors, has changed the condition and situation of Indonesian economy, both directly and indirectly. By taking into account such condition and situation, it is necessary to observe and reorganize the activities of Business Actors in order to ensure that the business sector can grow and develop fairly or not creating Monopolistic Practices and/or Unfair Business Competition.

The existence of this Government Regulation in the business sector is vital in order to provide legal certainty for Business Actors, especially in facing the increasingly complex current of globalization and liberalization of the world economy. Therefore, it is necessary to create a sound and efficient business climate, which will provide good opportunities for Business Actors to grow and develop properly and

fairly in accordance with the mandate set forth in Article 33 of the 1945 Constitution of the Republic of Indonesia.

With such thought, the efforts for creating a sound and efficient business climate must not be aimed at the control of economic sources and centralization of economic power to a particular group or class. Therefore, Merger, Consolidation and Acquisition that can control and may cause Monopolistic Practice and/or Unfair Business Competition must be prevented at the early stage, or in other words, Merger, Consolidation and Acquisition should always take into account the interest of consumers and other Business Actors.

Although Law Number 5 Year 999 concerning Prohibition of Monopolistic Practices and/or Unfair Business Competition has regulated the principles related to monopoly, monopsony, market control and conspiracy, it is necessary to have a more detailed regulation on procedures for Merger, Consolidation and Acquisition which may lead to Monopolistic Practices and/or Unfair Business Competition, as mandated to be further regulated in a Government Regulation.

The provisions set forth in this Government Regulation include Merger or Consolidation of Business Entities and Acquisition of shares that may cause Monopolistic Practice and Unfair Business Competition, procedures for the submission of notifications, assessment by the Commission and consultation.

II. ARTICLE BY ARTICLE

Article 1

Self-explanatory.

Article 2

Paragraph (1)

Referred to as “company” shall be business entity in the form of limited liability company.

Paragraph (2)

Sub-paragraph a

Referred to as “prohibited agreement” in this provision shall include: oligopoly, price fixing, market allocation, boycotting, cartel, trust, oligopsony, vertical integration, closed agreement, agreement with overseas parties, as provided in Article 4 up to and including Article 16 of the Law.

Sub-paragraph b

Referred to as “prohibited activity” in this provision shall include: monopoly, monopsony, market control, conspiracy, as provided in Article 17 up to and including Article 24 of the Law.

Sub-paragraph c

Referred to as “dominant position” shall be a situation in which a Business Actor has no meaningful competitor in the relevant market in

terms of the market share controlled, or the Business Actor has the highest position among its competitors in the relevant market in terms of financial capacity, capacity of access to supply or sales and the capacity to adjust supply or demand for particular goods or services.

Referred to as “abuse of dominant position” in this provision shall include: concurrent holding of positions, shares ownership, as provided in Article 25 up to and including Article 27 of the Law.

Article 3

Paragraph (1)

Self-explanatory.

Paragraph (2)

Sub-paragraph a

Market concentration is the initial indicator for assessing whether a Merger of Business Entities, Consolidation of Business Entities or Acquisition of shares may cause Monopolistic Practice and/or Unfair Business Competition. Merger of Business Entities, Consolidation of Business Entities or Acquisition of shares causing low market concentration may not potentially cause Monopolistic Practice and/or Unfair Business

Competition. On the contrary, Merger of Business Entities, Consolidation of Business Entities or Acquisition of shares which causes high market concentration may potentially cause Monopolistic Practice and/or Unfair Business Competition, depending on other analysis on the relevant market.

Sub-paragraph b

Without any barrier to market entry, a Business Actor resulting from a Merger of Business Entities, Consolidation of Business Entities or Acquisition of shares with large control of market share will find it difficult to conduct anti-competition behaviors, since it will always face pressures of competition from new players in the market.

On the contrary, with high barrier to market entry, a Business Entity resulting from a Merger, Consolidation or a Business Actor performing Acquisition of other company's shares with moderate market control may abuse its position to hinder competition or exploit consumers since new players will find it difficult to enter the market and give pressures of competition on the Business Actor existing in the market.

Sub-paragraph c

Merger of Business Entities, Consolidation of Business Entities or Acquisition of company shares resulting in the creation of a Business Actor which is relatively dominant over other Business Actors in the market will make it easier for the Business Actor to abuse its dominant position in order to gain the maximum profits for the company and create loss for consumers.

On the contrary, if Merger of Business Entities, Consolidation of Business Entities or Acquisition of shares does not create a Business Actor which is dominant in the market, but there are still several significant competitors, such Merger of Business Entities, Consolidation of Business Entities or Acquisition of shares will allow the commission of anti-competition acts in coordination with the competitors, either directly or indirectly.

Merger of Business Entities, Consolidation of Business Entities or Acquisition of company shares performed vertically may block access for competitors, both in the upstream market and in the downstream market, which will decrease the

level of competition in such upstream market and downstream market.

Sub-paragraph d

In the event of Merger of Business Entities, Consolidation of Business Entities or Acquisition of company shares intended for increasing efficiency, it is necessary to conduct a comparison between the resulting efficiency and the resulting anti-competition effect. In the event that the anti-competition effect exceeds the value of efficiency expected to be achieved from the Merger of Business Entities, Consolidation of Business Entities or Acquisition of shares, fair competition shall be prioritized over the effort for increasing efficiency for the Business Actors. A fair competition both directly and indirectly shall automatically create more efficient Business Actors in the market.

Sub-paragraph e

In the event that the reason for Business Actors performing Merger of Business Entities, Consolidation of Business Entities or Acquisition of shares of other companies is to avoid the cessation of the Business Entity's operations in the

market/industry, an evaluation shall be required. In the event that consumer losses are greater when the Business Entity leaves the market/industry than the losses if the Business Entity remains operating in the market/industry, then there shall be no fear of decreasing level of competition in the market in the form of Monopolistic Practice and/or Unfair Business Competition resulting from the Merger of Business Entities, Consolidation of Business Entities or Acquisition of company shares.

Paragraph (3)

Referred to as “in certain cases” shall include in the event that there has been a development in the method of evaluation of the effect of Monopolistic Practice and/or Unfair Business Competition in addition to market concentration, barrier to market entry, potential of anti-competition behavior, efficiency and/or insolvency.

Paragraph (4)

Self-explanatory.

Paragraph (5)

Referred to as “other parties” in this provision shall include consumers, competing Business Actors, suppliers, relevant agencies or experts.

Article 4

Self-explanatory.

Article 5

Paragraph (1)

Self-explanatory.

Paragraph (2)

Sub-paragraph a

In the event that one of the parties conducting a Merger of Business Entities, Consolidation of Business Entities or Acquisition of shares has a discrepancy of 30% or more between the asset value in the most recent year and the asset value in the preceding year, the asset value shall be calculated based on the average of asset values during the last 3 (three) years.

Sub-paragraph b

The method for the calculation of sales value shall be similar to the method for asset value calculation.

Paragraph (3)

Self-explanatory.

Paragraph (4)

Sub-paragraph a

Self-explanatory.

Sub-paragraph b

Referred to as “controlled”, shall be:

- a. ownership of shares or control of votes of more than 50% (fifty percent) in the Business Entity; or
- b. ownership of shares or control of votes less than or equal to 50% (fifty percent) but able to influence and determine the policies of management of the Business Entity and/or influence and determine the management of the Business Entity.

Article 6

Self-explanatory.

Article 7

Referred to as “affiliated”, shall be:

- a. relationship between companies, either directly or indirectly, controlling or being controlled by the company;
- b. relationship between 2 (two) companies being controlled, either directly or indirectly, by the same party; or
- c. relationship between the company and the major shareholder.

Article 8

Paragraph (1)

Self-explanatory.

Paragraph (2)

Self-explanatory.

Paragraph (3)

Sub-paragraph a

Self-explanatory.

Sub-paragraph b

Referred to as “supporting documents” in this provision, shall include: the company’s articles of association, the company’s profile, financial reports for the last 3 (three) years, plan for Merger or Consolidation of the Business Entity, or plan for Acquisition of shares.

Article 9

Self-explanatory.

Article 10

Self-explanatory.

Article 11

Self-explanatory.

Article 12

Self-explanatory.

Article 13

Self-explanatory.

SUPPLEMENT TO STATE GAZETTE OF THE REPUBLIC OF INDONESIA

NUMBER 5144