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## KPPU and the Brazil-Russia-India-China (BRIC) International Competition Conference



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# What's New?

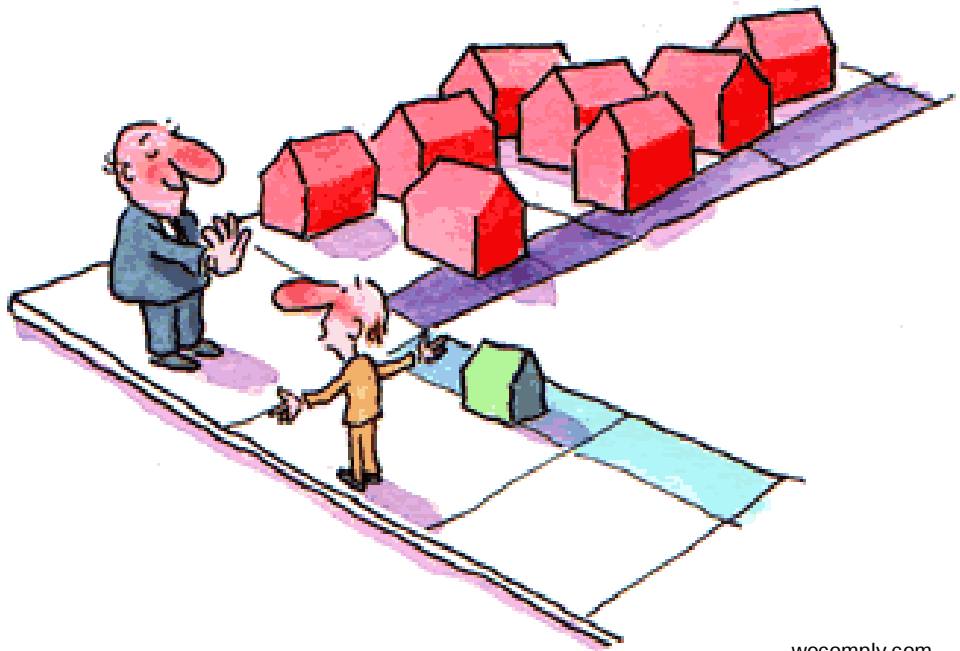
## ***KPPU published Several Draft Guidelines***

Provision on Article 35 point (f) Law No 5/1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition give an authority to KPPU in compiling guidelines and or publications related to the competition law. The guideline is needed to give explanation and clarification on articles and other matters yet to explain clearly. It also expected to give better understanding for government, business actors and public on the definition and purpose of articles in Law No. 5/1999.

Up to 2009, KPPU issued 8 (eight) guidelines. KPPU always ask for public opinion (through KPPU's official website) on any draft guideline to increase transparency and consistency in the formulation. It is expected that public could provide their different insight on provisions within the guideline.

Apart from this, KPPU also send respective drafts to several law faculties at public university to gain their view on the consistency in theory and the provisions of the guideline. There are three guidelines open simultaneously to the public for their comments. These guidelines are guideline on predatory pricing, price discrimination, and interlocking directorate.

Guideline of Article 20 concerning Predatory Pricing aims to provide clear understanding on the application of predatory pricing provision. Predatory pricing was a pricing strategy by business actor to remove his competitor from the relevant market to maintain his position as monopolist or dominant company. In the short term, predatory pricing could benefit the consumer because they could enjoy lower price for certain good and service. But in the long term, after the competitors elimi-



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nated from the market, the business actor could increase its product price.

Price Discrimination was one of the prohibited agreements stated in Law No. 5/1999 that could be conducted through the determination of different price for same product and service by business actor, or the imposition of different price for different customer based on unreasonable addition on the marginal cost. The Guideline of Article 6 concerning Price Discrimination aims to emphasize the KPPU's point of view about the price discrimination definition as stated in Article 6 Law No. 5/1999, as well to clarify the type of price discrimination resulting in unfair business competition. With the existence of the Guideline, business actors and other stakeholders could easily understand the price discrimination practice that against the fair competition principles causing a consumer loss and violated the law and legislation.

Article 26 of the Law regulates individual holding a position as the board of director and/or the Commissioner in two or more companies if such companies are in the same relevant market; have close connection in the field or type of business activities; or are jointly capable of controlling the market share of certain goods and services, which may result in monopolistic practices and unfair business competition. The Guideline on Interlocking Directorates is aim to gave similar understanding and perception on interlocking directorates and to avoid any misinterpretation. It is inevitable that these guidelines will always evolve based on dynamic and developing business activities in Indonesia.

## ***Bid Rigging on the Procurement of Event Organizer Service for National Student Skill Competition in South Sulawesi***

Indonesian competition agency (KPPU) carried out investigation in Educational Agency of South Sulawesi related to the allegation of violation of Article 22 Law No. 5/1999 (tender conspiracy). The allegation takes place in the procurement of Event Organizer Service for National Student Skill Competition by the Educational Agency of South Sulawesi Province. Based on investigation results, KPPU determined two business actors (namely PT. Makassar Promosindo and PT. Cinggarindo Galba) and the Bid Committee as the Reported Parties. The tender which value was IDR 7,5 billion were a repeated tender with merit point system. The result nominated PT. Makassar Promosindo as the bid winner.

During the investigation process, KPPU found several indications for tender conspiracy. Firstly, the Bid Committee required tender participants to attach the Certificate of Performance from the Local Government (Makassar). KPPU considered that the

requirement potentially hamper business actors outside Makassar to join the bidding, because the Local Government is impossible to evaluate company outside of South Sulawesi. With this requirement, KPPU considered that Bid Committee tried to narrow the competition. Secondly, the Bid Committee made mistake in bid evaluation process. The committee said that PT. Cinggarindo Galba's documents were incomplete by not attaching the Certificate of Performance, but still being proposed as the runner-up winner.

Thirdly, in this second tender the Bid Committee revised the evaluation system from contest system to merit point system. This amendment is believed to advice by an Official in Educational Agency's office. KPPU considered that the new system enabled the Bid Committee to make subjective assessment on PT. Makassar Promosindo and PT. Cinggarindo Galba to assemble PT. Makassar as the bid winner. This also showed that the Bid Committee was

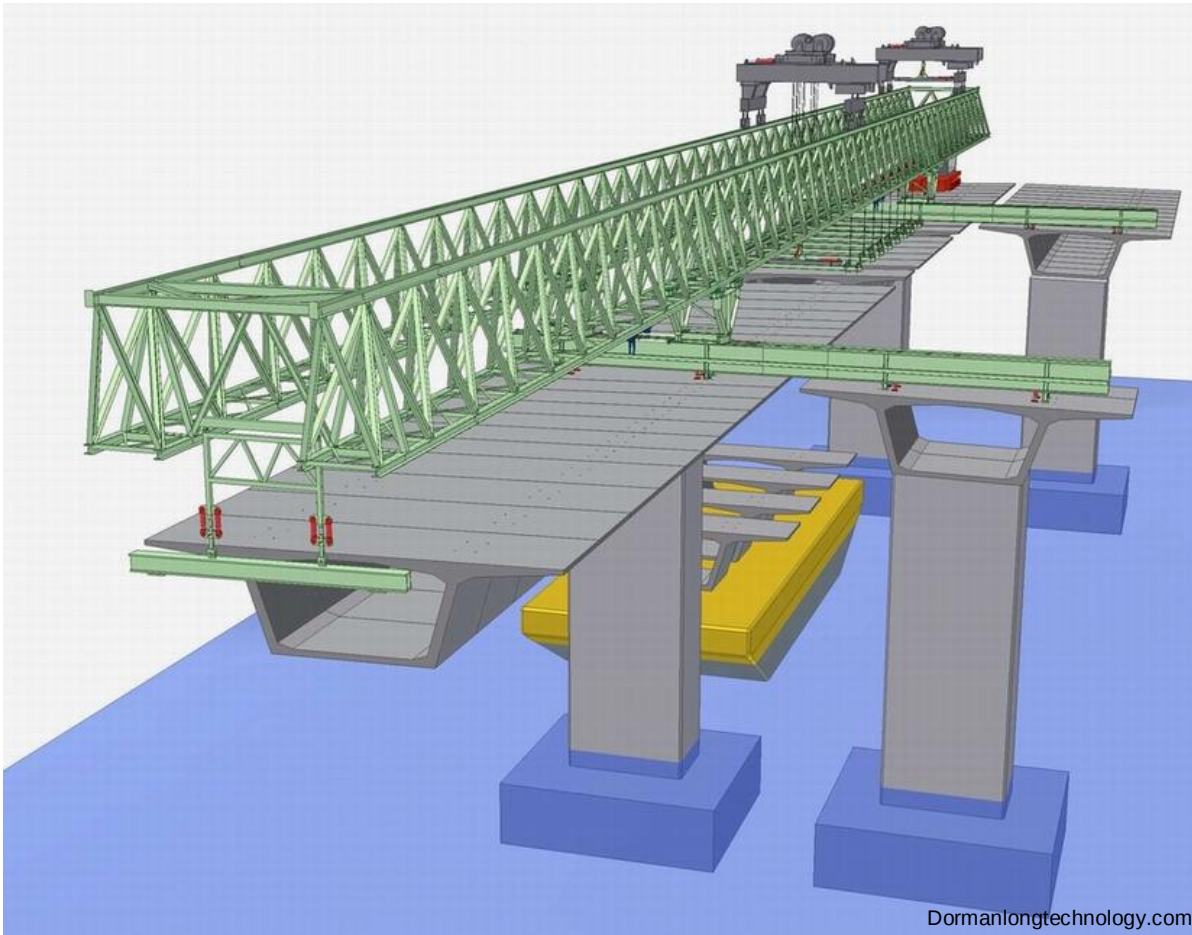
dependent by accepting suggestion from non-Committee party. As whole, the KPPU's Commission Council considered the Bid Committee to not carrying out evaluation properly and had tendency to organize PT. Makassar as the bid winner.

Based on evidences and considerations above, the Commission Council decided that the Bid Committee was proven to breach Article 22 of the Law 5/1999, while PT. Makassar Promosindo and PT. Cinggarindo Galba were unproven to violate competition law. As the decision, the Commission Council decide to give advice and recommendation to the Head of Educational Agency of South Sulawesi to impose sanctions on the Bid Committee for not undertaking tender process correctly and intentionally facilitated PT. Makassar as the bid winner. The Commission Council also suggested the Governor of South Sulawesi to order the entire Educational Agency's Officer to make and conduct tender process in accordance with fair competition principles.



xtupload.com (edited)

## ***Bid Rigging in the Procurement of the Concrete Bridge Replacement and the Road Foundry in Banyuasin Region***



Based on examination results by the Examination Team, the Commission Council decided the Bid Committee, CV. Dewi Padi Permai, CV. Sukses Sarrie Kintano, and CV. Karya Utama Bangun Nusa were convincingly breached Article 22 of the Law.

As consequences, the Commission Council imposed administrative fine of IDR 120 million for CV. Dewi Padi Permai, while the other two alleged parties (CV. Sukses Sarrie Kintano and CV. Karya Utama Bangun Nusa) are banned to enter any procurement of goods

The Commission for Supervision of Business Competition (KPPU) conducted the inspection and issued a decision towards Case No. 06/KPPU-L/2009 concerning the violation of Article 22 of the Law in the procurement of the concrete bridge replacement and the road foundry in Banyuasin Regency. This tender project consisted of 3 work packages, namely the Work Package of Concrete Bridge Replacement in Padang Rejo Village, the Work Package of the Road Foundry in Tanah Mas, and the Work Package of the Road Foundry in Serasi Road, with value price revolving between IDR 640 million to IDR 2 billion.

Based on the examination result, KPPU determined the Bid Committee and seven tender participants as the reported parties. During the tender process, the Bid Committee changed the method for the delivery of bid document from Single Cover Method into Dual Cover Method without stipulating it in the Aanwijzing Report. Amongst the seven alleged parties, KPPU evidencing a cross ownership that lead to tender conspiracy between CV. Dewi Padi Permai, CV. Sukses Sarrie Kintano, and CV. Karya Utama Bangun Nusa. The Investigator Team found the existence of bid document adjustment amongst their bid documents.

and service held by government agency in Banyuasin Regency for 1 (one) year commencing from the affirmation of decision. As for the Bid Committee, the Commission Council recommended the Section Head of Public Work Agency of Banyuasin Regency to give sanctions on Bid Committee for not undertaking the tender process correctly and deliberately facilitated conspiracy among three tender participants. The Commission Council also gave suggestion to the Regent of Banyuasin to make and conduct the tender rule in accordance with fair competition principles.

## ***Outreach Activities in Five Major Cities in Indonesia***

In September 2009, the Commission for Supervision of Business Competition (KPPU) held series of Fair Competition Seminar in five major cities, namely Manado, Padang, Banjarmasin, Yogyakarta and Semarang. The theme of seminar was "The Public Procurement and Franchise Business in the Perspective of Fair Competition". The seminar conducted as part of KPPU's advocacy activities to internalize the fair competition principles to KPPU's stakeholder. This seminar attended by delegations from regional government's agency, business actors, academicians and mass media.

At the seminar, KPPU explained benefits gained from the implementation of competition law in creating fair competition to achieve efficient market economy, efficient allocation of natural resources, large choices for consumer, product innovation, and fair price for goods and service. Whereas the objectives of Law No.5/1999 is to maintain

the public's interests, increased economic efficiency to increase people's welfare, created a conducive business climate guaranteeing business' assurance, prevented monopoly practices and or unfair business competition; as well as created the effective and efficient business activities.

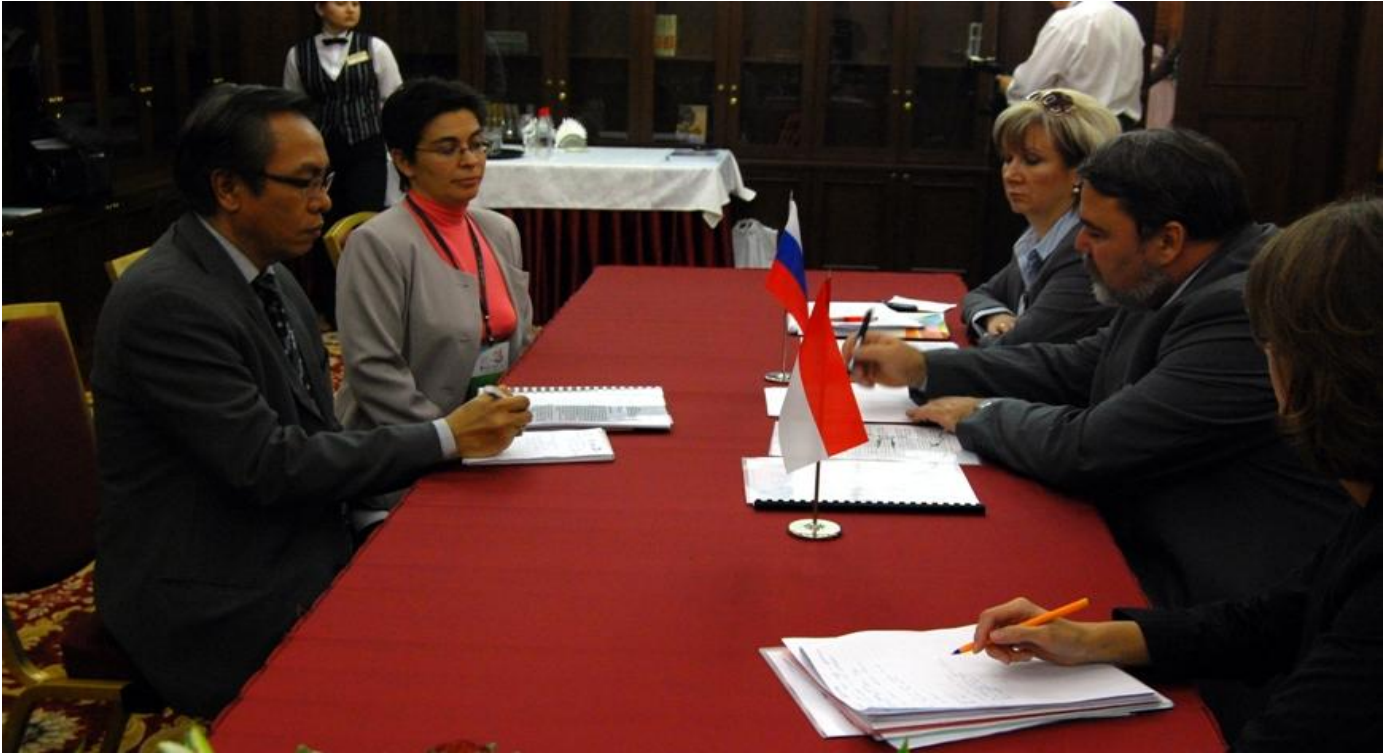
In connection with the procurement process of goods and services, KPPU highlighted several subjects on tender conspiracy stipulate by Article 22 Law No. 5/1999, namely (i) indications for the existence of tender conspiracy, (ii) impact of tender conspiracy, and (iii) types of tender conspiracy. The procurement process of good and service in the perspective of competition law is important to be socialized intensively, considering most of competition cases is dominated by tender conspiracy on public procurement.

Moreover in connection with franchise agreement, KPPU highlighted anti-

competitive behaviors emerged in franchise agreement. At present, franchise business is booming in Indonesia. The franchise sector itself was excluded in Law No.5/1999. Nevertheless not all of substances in the franchise agreement could be excluded, because some conditions in a franchise agreement often had potential impact on the creation of fair competition. Some of which are price fixing, requirement to buy supplies from franchiser or certain producer, requirement to buy other goods and or service from the franchiser, territory restriction, as well as the requirement not to conduct same business activities for certain period of time after the termination of franchise agreement.



## ***KPPU's Participation on the Brazil-Russia-India-China (BRIC) International Competition Conference***



On 31 August – 2 September 2009, KPPU attended the BRIC International Competition Conference that was held in Kazan, Russia. This conference focused on topical issues of competition development in the fast-growing economies. The conference discussed various aspects of competition policy development and implementation, including topical issues of competition development, role of competition in elaborating measures aimed at recovery of the financial and other sectors of economy, necessity of competition advocacy and anti-cartel activity in the countries with the fast-growing economies. The conference was attended by over 300 representatives from competition authorities, judiciary, business community, academicians and civil society institutions. BRIC itself was used to define four economies with the most rapidly growing GDP and capitali-

zation of stock market, namely Brazil, Russia, India and China. BRIC includes the leading states with steadily growing role in the international politics, economy and finance. BRIC International Competition Conference is organized by the Federal Antimonopoly Service of the Russian Federation, together with competition authorities from Brazil, India and China.

The conference was divided into 3 sessions. On session 1, delegations discussed on issues and methods of detecting and receiving evidence of cartel activity, such as leniency programs in cartel enforcement, role of merger analysis in anti-cartel activity, possible justifications of cartel activity and exemption of certain types of cartels from the competition law enforcement. On session 2, delegations shared their country's experiences when fighting

cartels, enforcing competition law and imposing sanctions. While in session 3, several experts from certain Competition Authorities presented their experience on successful implementation of competition advocacy programs for state authorities, civil society institutions and business community.

After the conference, Head of the Federal Antimonopoly Service (FAS Russia) held a number of bilateral meetings with the heads of competition agencies of China, Brazil, India, Estonia, Portugal, Austria, Turkey, Romania, Hungary, Mongolia, Lithuania, Kazakhstan, Syria, and Indonesia. During the bilateral meeting, KPPU shared its national experience in protection and development of competition to promote the creation of effective competition law enforcement.

## ***The Second ASEAN Expert Group on Competition (AEGC) Workshop on Regional Guideline of Competition Policy***

KPPU attended the Second Workshop on Regional Guideline of Competition Policy held by AEGC (ASEAN Expert Group on Competition) in Manila, the Philippines in 29-30 September 2009 to formulate the contents of Regional Guideline. This guideline is expected to be a general guidance for competition regulatory bodies in ASEAN to introduce, implement, and develop competition law and policy in their respective country, in accordance with the characteristics of law and the economics situation in each country. The workshop attended by delegation from all member countries (including Indonesia), ASEAN Secretariat, InWent (as the donor agency), as well as expert from Fratini Fergano Europe, who assist AEGC in the formulation.

In this second workshop, the expert introduced several issues related to competition law and policy that can be put into Guideline, such as “procedural scheme of enforcement regime” and “administrative and judicial review system”. All delegations gave their review, comment, input against the draft of Regional Guideline, and reviewed each chapter in the Guideline. Their inputs revolved from the need of case studies from both developing and developed countries in Asia (such as Japan, Korea and Taiwan) to the need of specific explanation about Stated Owned Enterprises (SOE’s), since in several ASEAN Countries, the SOE’s were specially regulated by the Government. Other issue raised in workshop was consumer protection, because several countries had tendency to unite the competition law with consumer protection.

As the conclusion, all AEGC delegation agreed to change the title of guideline to “Guideline on Competition Policy” in



accordance with the ASEAN Economic Community Blueprint agreed by the ASEAN Leaders. The scope of guideline was limited on efforts to introduce competition policy and yet the competition law. The delegations are expected to give input before the next Regional Guideline workshop that will be held in Singapore on February 2010.

## **Forcing Foreign Drug Makers to Open Factories Won't Hurt Industry: KPPU**

The Business Competition Supervisory Commission says an upcoming Ministry of Health regulation on drug registration procedures and the establishment of production facilities will not have a negative impact on competition in the industry, a senior official from the state antitrust watchdog said.

The rule, which would come into effect in November 2010, requires pharmaceutical firms — including foreign companies — to partner with local firm to establish factories or team up with other companies that already have production facilities before registering drugs with the Food and Drug Monitoring Agency (BPOM).

“We conducted a survey from April to August that showed that the decree will help encourage foreign pharmaceutical firms to set up factories here and use Indonesia as an industrial base,” said Didik Achmadi, the deputy chairman of the antitrust agency, which is also known as the KPPU.

The survey was used to assess the likely impact of the decree on competition in the pharmaceutical industry, he said.

The decree has drawn strong criticism from foreign pharmaceutical producers that don't have factories in Indonesia. Parulian Simanjuntak, executive director of the International Pharmaceutical Manufacturers Group, said the decree would cause problems for foreign companies, given the high costs involved in the construction of pharmaceutical plants.

The IPMG has 29 members, including Bayer, GlaxoSmithKline and Schering-Plough. Parulian said that 12 of the group's 29 members were strongly op-

posed to the Health Ministry decree, saying that it might push them to withdraw from the domestic market.

Hanum Yahya, the IPMG's communications director, said that the 12 companies would be forced to at least temporarily stop registering new products with BPOM.

“They can't register any new drugs because they would first have to comply with the ministerial decree” and establish factories she said.

Hanum declined to identify the companies, but she said that all of them were importers and distributors with local offices.

Marius Widjajarta, a health analyst and chairman of the Indonesian Consumers Foundation for Health (YPKKI), on Friday said that the ministerial decree was justified.

He said that while it could lead to higher prices for some drugs, overall it would actually bring prices down between 30 percent and 50 percent. Marius also said foreign drug companies had long had an easy time in Indonesia.

“It's only fair for the government to now ask foreign pharmaceutical firms to establish factories here, because the companies have done well in the local market,” Marius said.

“They should view Indonesia not just as a potential market, but also as an industrial base.”

It has been extremely easy for foreign pharmaceutical firms to operate in the country because they only needed a pharmaceutical distributor's permit

(PBF) to operate, he said.

“Before the regulation, all they had to do to get a PBF was open a representative office with nothing more than a skeleton staff,” he said.

He argued that the ministerial decree should not be seen as a problem, but rather as part of ongoing efforts to ensure the quality of drug products and protect consumers.

Anthony Sunarjo, chairman of the Indonesian Pharmaceutical Manufacturers Association (GP Farmasi), said that the association supported the ministerial decree because it would encourage foreign investment.

“The ministerial decree should also encourage more collaboration between local and foreign pharmaceutical firms, because they may enter into agreements with local companies that have factories, in order to keep operating in Indonesia,” he said.

Source:  
<http://thejakartaglobe.com/anufacturing/forcing-foreign-drug-makers-to-open-factories-wont-hurt-industry-kppu/329672>

## **Govt Insists on Marine Concession Plan for Fisheries**

The Maritime and Fishery Affairs Ministry will go ahead with plans to introduce cluster-like territorial water areas for fisheries where concession rights will be allocated to firms by tenders, arguing that this will not be detrimental to small-scale fishermen.

The ministry's head of central data, statistics and information, Soenan H. Poernomo, told *The Jakarta Post* on Wednesday that the planned cluster division system would in fact facilitate healthy competition among fishermen and fishing companies.

"The cluster divisions are basically also intended to help preserve natural resources in water territories," he said, adding that the planned cluster divisions were based on the Ministerial Regulation No. 5/2008 and may take effect as early as next year.

He said the system, similar to that of Forestry Ministry concessions for rights where holders can exploit a certain area of forest for a certain period of time, would be based on the concept of environmental sustainability.

"This will let big-scale and small-scale fishermen exploit water resources to a certain extent only, which will be decided after the research is completed," he said, adding that the first results of the related research would be published by the end of this year.

The research will also determine details on the sizes of the clusters, the maximum period of the fishing rights in each cluster, detailed mechanisms for the tenders, arrangements between central and local administrations, monitoring systems, and related issues.

The Indonesian Fishery Industry Association (Gappindo) however has already voiced its objections on concerns that the proposed system would pave the way for big industry players to dominate the country's proposed territorial water divisions.

Gappindo chairman Bambang Suboko argued the current system had been well implemented in the past, so that the proposed cluster divisions were not needed.

"No changes are necessary for the current system," he said, adding that the current system allowed fishermen to catch fish by obtaining licenses from regional administrations without any cooperation required with any big industry players.

He said the system of cluster divisions would force smaller fishermen to work together with big license holders, while the small firms only had weak bargaining power.

"This will hurt small-scale fishermen who have been fishing for decades," he said.

The Business Competition Supervisory Commission (KPPU) also has a say over the plan, similarly arguing that it will put small-scale fishing companies and fishermen at a disadvantage, if and when adopted.

"It will cause market entry discrimination," KPPU Commissioner, Ahmad Ramadhan Siregar said.

Data from the Ministry says that 80 percent of 3.4 million fishermen in the country are categorized as small-scale fishermen using only non-motorized boats when they are fishing.

The country expects this year to catch 5 million tons of fish, excluding the aquaculture industry, (fish farming) which produced 4.86 million tons last year.

The Ministry has set a target of 9 percent growth in the value of fish products to be exported this year, amounting to US\$2.8 billion.

The US, EU and Japan are the biggest importers of Indonesian fishery products, taking up 65 to 70 percent of the Indonesian market, followed by East Asia (Taiwan, Korea, China, Thailand, Singapore, and Malaysia) which took up about 24 percent. (nia)

Source:

<http://www.thejakartapost.com/news/2009/09/03/govt-insists-marine-concession-plan-fisheries.html>



## Fair Competition Brings People's Welfare

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