



DECISION OF COMMISSION FOR THE SUPERVISION OF BUSINESS COMPETITION  
NUMBER : 297.1 /KPPU/Kep/IX/2008

CONCERNING  
OFFICIAL ALTERATION ON DECISION OF COMMISSION FOR THE SUPERVISION OF  
BUSINESS COMPETITION

NUMBER : 252 /KPPU/Kep/VII/2008

CONCERNING  
GUIDELINES FOR IMPLEMENTATION OF PROVISIONS OF ARTICLE 47  
LAW NUMBER 5 YEAR 1999 CONCERNING PROHIBITION OF MONOPOLISTIC  
PRACTICES AND UNFAIR BUSINESS COMPETITION

COMMISSION FOR THE SUPERVISION OF BUSINESS COMPETITION  
THE REPUBLIC OF INDONESIA

2008

**GUIDELINES FOR IMPLEMENTATION OF PROVISIONS OF ARTICLE 47  
LAW NUMBER 5 YEAR 1999 CONCERNING PROHIBITION OF MONOPOLISTIC  
PRACTICES AND UNFAIR BUSINESS COMPETITION**

COMMISSION FOR THE SUPERVISION OF BUSINESS COMPETITION  
THE REPUBLIC OF INDONESIA

## Foreword

Commission for the Supervision of Business Competition, (*Komisi Pengawas Persaingan Usaha*) abbreviated as KPPU, whose existence is mandated by Article 30 paragraph (1) and Article 34 paragraph (1) of Law Number 5 Year 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition, was established by virtue of Presidential Decree Number 75 Year 1999, dated July 8, 1999.

KPPU was formed with duties among others to carry out supervision to the implementation of Law Number 5 Year 1999.

Law Number 5 Year 1999, not only provides for the :

- a. prohibited agreement;
- b. prohibited activities;
- c. dominant position;
- d. Commission for the Supervision of Business Competition; and
- e. law enforcement (sanction),

Provisions concerning the sanctions as stipulated in Article 47 of Law Number 5 Year 1999 represent administrative measures imposed against business actors proven to violate the provisions stipulated in Law Number 5 Year 1999.

Violations to the competition law may harm the welfare of some consumers and/or business actors. Therefore, KPPU, as a body responsible for enforcing the competition law, has the authority to impose administrative sanctions with view to preventing and/or recovering such loss of welfare.

Calculation on economic loss resulting from the violations of competition law requires extensive considerations and shall be based on prudence in undertaking an action. Therefore, KPPU deems it necessary to prepare guidelines on Implementation of Article 47 of Law Number 5 Year 1999 as contained in the Decision of Commission for the Supervision of Business Competition, Number: 252/KPPU/Kep/VII/2008.

It is expected that this Guidelines could provide a clearer direction to all parties particularly business actors and KPPU in performing their respective activities as per their requirements.

We welcome any constructive comments, criticism and suggestions for the improvement of this Guidelines which will provide benefits for all parties.

Jakarta, July 31, 2008

Commission for the Supervision of Business Competition

Chairman,

Syamsul Maarif

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Commission for the Supervision of Business Competition of the Republic of Indonesia

DECISION OF COMMISSION FOR THE SUPERVISION OF BUSINESS COMPETITION  
NUMBER : 297.1 /KPPU/Kep/IX/2008

CONCERNING  
OFFICIAL ALTERATION ON DECISION OF COMMISSION FOR THE SUPERVISION OF  
BUSINESS COMPETITION  
NUMBER : 252 /KPPU/Kep/VII/2008

CONCERNING  
GUIDELINES FOR IMPLEMENTATION OF PROVISIONS OF ARTICLE 47  
LAW NUMBER 5 YEAR 1999 CONCERNING PROHIBITION OF MONOPOLISTIC  
PRACTICES AND UNFAIR BUSINESS COMPETITION

COMMISSION FOR THE SUPERVISION OF BUSINESS COMPETITION,

- Considering :
- a. whereas, in order to avoid any misinterpretation and achieve legal certainty on the implementation of the provisions of Article 47 of Law Number 5 Year 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition, it is deemed necessary to establish the guidelines for implementation of provisions of Article 47 as above stated;
  - b. whereas, pursuant to the provisions of Article 35 point f of Law Number 5 Year 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition, Commission for the Supervision of Business Competition is responsible to establish a guidelines and/or publication with regard to Law Number 5 Year 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition;
  - c. whereas, on the basis of the premise as stated in point a and b, it is deemed necessary to stipulate the Decision of Commission for the

Supervision of Business Competition on Guidelines for Implementation of Provisions of Article 47 of Law Number 5 Year 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition;

- In view of :
1. 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; Supplementary State Gazette of the Republic of Indonesia, Number 3817);
  2. Presidential Decree Number 75 Year 1999 concerning Commission for the Supervision of Business Competition, dated July 8, 1999;
  3. Decision of Commission for The Supervision of Business Competition Number: 252/KPPU/Kep/VII/2008 concerning Guideline for Implementation of Provisions of Article 47 Law Number 5 Year 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition.

DECIDES :

To stipulate : DECISION OF COMMISSION FOR THE SUPERVISION OF BUSINESS COMPETITION CONCERNING GUIDELINES FOR IMPLEMENTATION OF PROVISIONS OF ARTICLE 47 LAW NUMBER 5 YEAR 1999 CONCERNING PROHIBITION OF MONOPOLISTIC PRACTICES AND UNFAIR BUSINESS COMPETITION

FIRSTLY : Changing page 19 (nineteen) appendix of Decision of Commission for The Supervision of Business Competition Number: 252/KPPU/Kep/VII/2008 concerning Guideline for Implementation of Provisions of Article 47 Law Number 5 Year 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition by omitting sentence “ As a general guideline, the proportion of the sales which is calculated up to 10 % of the sales.”

SECONDLY : This Decision of Commission for the Supervision of Business Competition shall be effective as of its stipulation.

Enacted in Jakarta  
on September 19, 2008

COMMISSION FOR THE SUPERVISION OF  
BUSINESS COMPETITION  
CHAIRMAN,

DR. SYAMSUL MAARIF, SH., LL.M

Appendix to Decision of Commission for the  
Supervision of Business Competition  
Number: 252/KPPU/Kep/VII/2008  
Dated, July 31, 2008

Guidelines for Implementation of Provisions of Article 47 Law Number 5 Year 1999  
Concerning Prohibition of Monopolistic Practices and Unfair Business Competition

## **CHAPTER I**

### **BACKGROUND**

Commission for the Supervision of Business Competition (KPPU) is an independent institution which has a major duty to enforce competition law by virtue of Law Number 5 Year 1999. In performing its duties, KPPU is authorized to impose administrative measures against business actors proven to violate competition law. (see Article 38 point (j) and Article 47 of Law Number 5 Year 1999).

It is realized that every violation to competition law may result in the loss of the welfare of some consumers and/or business actors. KPPU as an institution responsible for enforcing competition law is mandated to take legal steps in preventing and/or recover the loss of such welfare. Therefore, in imposing administrative measures, KPPU needs to consider the economic damages in respect of degrading welfare resulting from the anti-competition actions.

The preparation of the guidelines on imposition of administrative measures represents the implementation of the KPPU's duties pursuant to the provisions stipulated in Article 35 point f of Law Number 5 Year 1999. This guidelines are prepared to provide clearer explanation to related parties with regard to the considerations taken by KPPU in imposing administrative measures.

Finally, this guidelines is expected to provide legal certainty to business actors and improve their rationality not to do any monopolistic practices and/or unfair business competition.

**CHAPTER II**  
**GUIDELINES FOR ADMINISTRATIVE MEASURES**

**A. FRAMEWORK OF ADMINISTRATIVE MEASURES**

Pursuant to the provisions of Article 47 (1) of Law Number 5 Year 1999, KPPU shall be authorized to impose sanctions in the form of administrative measures against business actors violating the provisions of Law Number 5 Year 1999. Furthermore, in Article 47 (2) of Law Number 5 Year 1999, administrative measures as intended in paragraph (1) may be in the following forms:

- a. stipulation declaring agreements as intended in Article 4 up to and including Article 13, Article 15 and Article 16 as null and void; and or
- b. order to business actors to stop vertical integration as referred to in Article 14; and or
- c. order to business actors to stop activities proven to have been causing monopolistic practices and or unfair business competition and or being harmful to society; and or
- d. ordering business actors to stop the misuse of dominant position; and or
- e. stipulation of the cancellation of mergers or consolidations of business entities and acquisition of shares as intended in Article 28; and or
- f. stipulation of compensation payment; and or
- g. imposition of a minimum fine of Rp. 1,000,000,000,- (Rupiah one billion) and a maximum fine of Rp. 25,000,000,000,- (Rupiah twenty-five billion).

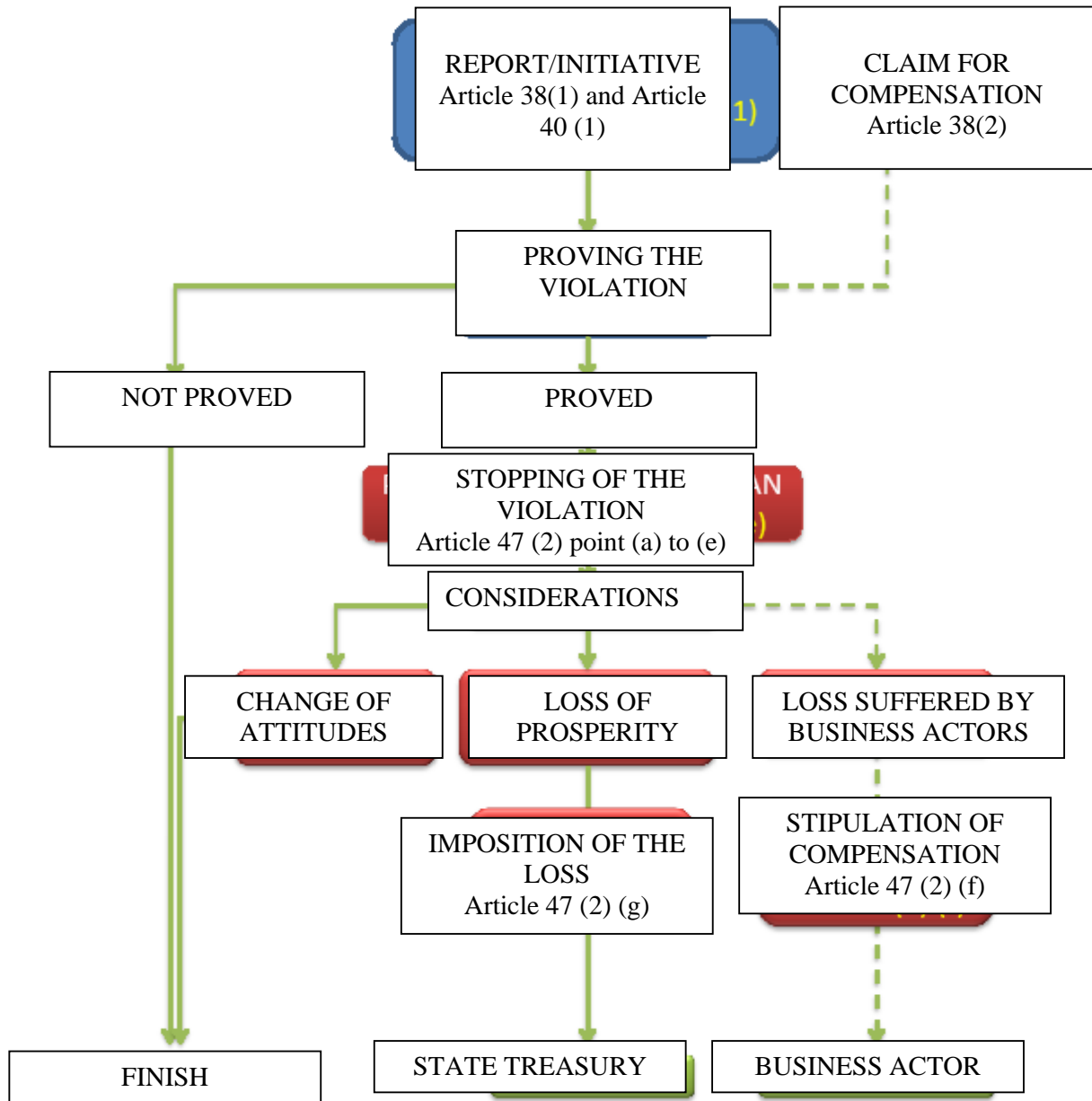
Based on the provisions of Article 47 (1), it can be concluded that KPPU is authorized to impose administrative measures as provided in article 47 paragraph (2) points (a) up to (g). Forms of administrative measures may include an order to stop the violations as contemplated in points (a) up to (e). In addition, KPPU may also order the payment of compensation (point f) and imposition of a fine (point g).

Compensation payment shall be payable by the violating party against any loss resulting from the anti-monopoly actions committed. The amount of the compensation shall be specified by KPPU on the basis of evidences of loss as indicated by grieved business actors.

A fine is an effort taken by business actors to benefit from the anti-competition actions done. In addition, the fine is intended to produce a deterrent effect against business actors in order that he is prevented from repeating the same actions or prevent other business actors from committing the same action. In order that the deterrent effect can be achieved effectively, the fine shall considered by potential violators to have much higher expected cost than

expected benefit from violating the business competition law. Administratively, the fine shall be paid to the state treasury.

The following is a scheme on imposition of administrative measures depicting the above illustration:



## **B. FORMS OF ADMINISTRATIVE MEASURES**

In law, administrative measures is known as one of the administrative sanctions. Administrative sanction may be interpreted as an realization (*overheidshandeling*) of decision, verdict and stipulation.

### **Point a. Stipulation declaring agreements as intended in Article 4 up to and including Article 13, Article 15 and Article 16 as null and void;**

Stipulation is defined as a legal act (*rechtnandeling*) taken by the government with regard to an actual thing based on the special authority held by the competent officials. Stipulation may include instruction, order, validation, rejection, permission, arrangement and others. A stipulation is made in response to a request.

It is different from a decision or verdict. A decision depends on a stipulation, while a verdict is made by competent officials in case of a dispute.

According to the law, annulment of an agreement includes two (2) things :

1. Annulled by law

From the beginning, the agreement has been considered null and void and non-existent. Therefore, there no exists binding agreement at all.

2. Can be annulled

The agreement is not annulled by law, but made null. It remains to bind the parties as far as it is not annulled by competent authorities or on the request of the party entitled to ask for the annulment of such agreement.

An agreement is annulled by law means that the agreement shall be considered non-existent, all of its legal consequences shall also be considered non-existent as from its execution. It has different definition than an agreement can be annulled which means that the agreement shall not be effective as from the adoption of the KPPU's decision. In this matter, all legal consequences of the law during the effective date of the agreement shall remain enforceable, and thereafter shall be non-existence as it has been annulled.

An agreement as stipulated in Article 47 paragraph (2) point a can be annulled or categorized into being annulled by law if such agreement is proven to have violated the provisions of Article 4 up to Articles 13, 15, and 16 of Law Number 5 Year 1999. KPPU is authorized to stipulate the annulment of an agreement in this category included in the context of annulable.

Furthermore, an agreement can be categorized as being annulled by law if the process is referred to a court. It is different from KPPU which is only authorized to make decision by virtue of Law Number 5 Year 1999, meanwhile, the verdict of a court can refer to the Indonesian Civil Code (KUHPer) provided especially if it is not in compliance with the objective requirements for the validity of an agreement by virtue of Article 1320 of the Civil Code.

Article 1320 of the Civil Code (KUHPerdata) states that a valid agreement can be reached if four requirements can be met :

1. binding agreement;
2. competency in making a binding agreement;
3. certain subject matter;
4. permitted cause.

The first and second requirements in the law shall be defined as subjective requirements, in which if one of the requirements is not complied with, such agreement "can be annulled", while the third and fourth requirements are called as the objective requirements, in which if one of the requirements is not complied with, the agreement shall be automatically "annulled by law.

The fourth requirements for the validity of an agreement shall be "a permitted cause" or frequently called "a rightful cause". This requirements will be further provided in article 1337 of the Indonesian Civil Code which says:

A cause is not rightful, if such cause is not allowed by the law or if it is in contrary thy the social norms or public order.

As illustrated above, an agreement which can be sanctioned as stipulated in Article 47 paragraph (2) of Law Number 5 Year 1999 shall be an agreement entered into by business actors, either in writing or orally, which violates the provisions of Article 4 up to Articles 13, 15, and 16 of Law Number 5 Year 1999. Therefore, such agreements do not comply with the fourth requirement for the validity of an agreement, i.e. a "permitted cause" .

An agreement which violates Law Number 5 Year 1999 shall be declared non-binding "due to reasons as stipulated by the law". It is based on the provisions of article 1338 of the Indonesian Civil Code which provides for:

All agreements executed in accordance with the applicable laws shall apply as a law to those executing it. The agreement shall be irrevocable except on the consent of both parties or due

to reasons as stipulated in the laws.

In determining a decision shall be annulled by law as it violates Law Number 5 Year 1999 or can be annulled, some aspects such the appropriateness of the decision to those involved in the agreement and its consequential effects to third party (other business actors and public) shall be considered.

**Point b. Order to business actors to stop vertical integration as referred to in Article 14**

In competition perspective, vertical integration is basically not prohibited as it may produce economic efficiency and reduce transaction cost. However, it may be misused and may lead to unfair business competition and inflict a loss to the public. The order to stop vertical integration may result in unfair business competition and/or a loss to the public if it deals with:

1. cancellation of the agreement; or
2. transfer part of the company's shares to other business actors; or
3. change of production chain.

**Point c. Order to business actors to stop activities proven to have been causing monopolistic practices and or unfair business competition and or being harmful to society**

Article 47 paragraph (2) point c can be defined that the Commission shall be authorized to impose administrative measures in the form of order to stop activities which have been causing:

1. Monopolistic practices  
Activities which have been causing monopolistic practices are stated in Article 4 paragraph (1), Article 9, Article 11, Article 12, Article 13 paragraph (1), Article 16, Article 17 paragraph (1), Article 18 paragraph (1), Article 19, Article 20, Article 26 point c, and Article 28 paragraphs (1) and (2).
2. Unfair business competition  
Activities which have been causing unfair business competition are stated in Article 4 paragraph (1), Article 7, Article 8, Article 9, Article 11, Article 12, Article 13 paragraph (1), Article 14, Article 16, Article 17 paragraph (1), Article 18 paragraph (1), Article 19, Article 20, Article 21, Article 22, Article 23, Article 26 point c, and Article 28 paragraphs (1) and (2).
3. Being Harmful to society  
Activities which are harmful to society are stated in Article 14.

**Point d. Ordering business actors to stop the misuse of dominant position; and/or**

Dominant position is basically not prohibited in Law Number 5 Year 1999 as society get benefits from economic size of a company with products more affordable prices, better quality and various types.

Furthermore, the definition of the misuse of dominant position which is prohibited by Law Number 5 Year 1999 is as stated in CHAPTER V of Law Number 5 Year 1999 concerning Dominant Position which includes Articles 25, 26, 27, 28 and 29.

**Point e. Stipulation of the cancellation of mergers or consolidations of business entities and acquisition of shares as intended in Article 28; and or**

Merger or consolidation of business entities and/or acquisition of shares are basically not prohibited as it may generate efficiency benefits to the society. However, if a merger or consolidation and/or acquisition are proven to result in monopolistic practices and/or unfair business competition, KPPU shall be authorized to cancel such merger, consolidation and acquisition. The cancellation shall be done by law, so the business entity which is subject to the decision shall be returned to its original condition prior to the effectuation of the merger, consolidation or acquisition.

Provisions on the stipulation of the cancellation of mergers or consolidations of business entities and acquisition of shares will be further provided in a separate guidelines.

**Point f. Stipulation of compensation payment**

Compensation shall be paid by the violator against the loss resulted from the anti-competition act committed.

According to the law, compensation can be classified into some categories as follows:

- a. Nominal compensation shall be in the form of payment of a sum of money, despite of the fact that the actual damages cannot be counted, or even no material damages caused at all.
- b. Compensation for punitive damages shall a compensation in the amount exceeding the actual damages, where such compensation is intended as a punishment against the violating party.
- c. Actual damages means the damage actually suffered and easily calculated in nominal

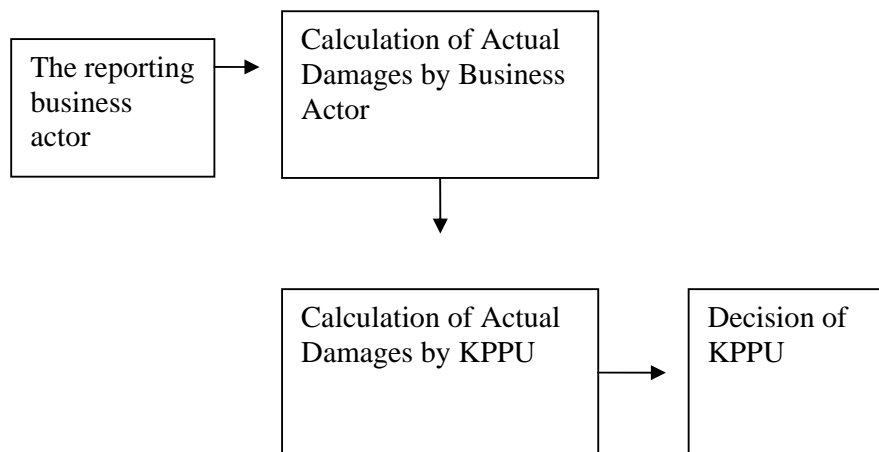
value.

- d. Remedy meddling means a variation of some tactics in which creditors tries to increase its rights if the debtor is in default and decrease its obligations in case the claim is filed by other party in the contract.

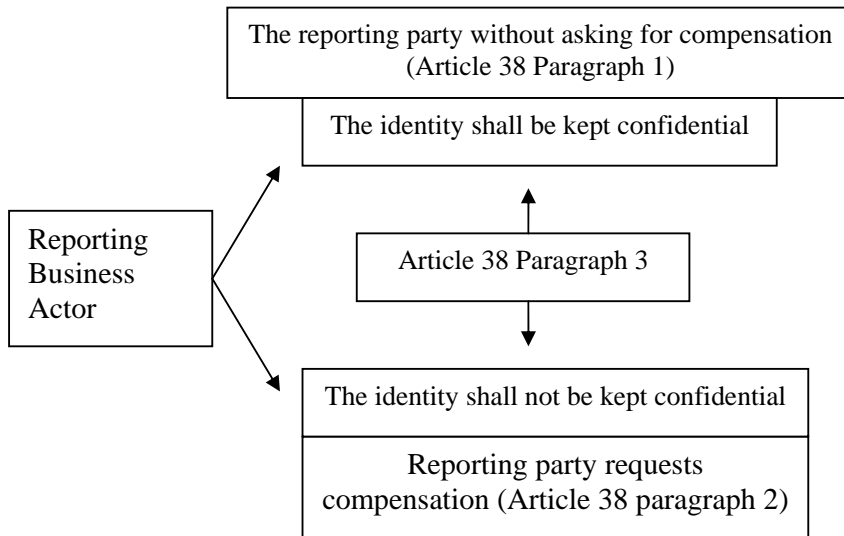
In this context, compensation which is determined by KPPU will be for actual damages. The amount of the compensation to be determined by KPPU will be based on the actual damages suffered .

In this case, KPPU will use the principles of determining the amount of compensation in accordance with the context of civil law, where the evidence shall be supported by the business actor requesting for the compensation.

The process of calculating the compensation will be done on the basis of the party who will receive the compensation. In calculating the amount of compensation, the concerned business actor shall prove the amount of the actual damages he suffers, then KPPU will assess the validity of such calculation on the basis of the principles of relevance, justice and appropriateness.



The total losses caused by the violation may be the accumulated losses suffered by the aggrieved party.



Furthermore, the identity of the aggrieved party who claims for the compensation pursuant to the provisions of article 38 paragraph (1) shall not be kept confidential by the KPPU. On the other hand, the identity of the reporting party who do not claim for compensation "everyone who is aware of " pursuant to article 38 paragraph (2)]. (*vide* article 38 paragraph (1), (2) and (3) of Law Number 5 year 1999).

The calculation of the compensation shall be done on the basis of the part who will receive the compensation. In order to calculate the compensation payable to business actor, he shall prove the amount of actual losses he suffers, then KPPU will assess the validity of such calculation on the basis of the congruence principle.

Finally, if during the process of calculation validity, the KPPU finds that there is a loss suffered by the reporting party, the KPPU will determine the amount of the compensation to be payable to the reporting party.

**Point g. Imposition of a minimum fine of Rp. 1,000,000,000,- (Rupiah one billion) and a maximum fine of Rp. 25,000,000,000,- (Rupiah twenty-five billion)**

In determining the amount of the fine, the KPPU will take two steps. Firstly, KPPU will determine the basic amount of the fine. Secondly, KPPU will make an adjustment by increasing or reducing of such basic amount of the fine.

**1. DETERMINING THE BASIC VALUE**

The basic value will be calculated on the basis of the amount of the sales by using the

following methodology:

### **CALCULATION OF THE SALES**

in determining the basic value of the fine, the KPPU will use the amount of sales/procurement of goods and services of the reported party at the concerned market. In general, the sales will be calculated on the basis of the total sales in the year before the violation was committed. It is aimed at facilitating the estimation of the sales of the business actors involved in a violation when the data on its annual sales are not available. In a tender case, determining the sales is not based on the calculation of the sales of the year prior to the violation was committed, but based on the price of the tender winner.

In the violation committed by a group of reported parties, the sales will be calculated by accumulating the total sales of the members of the group.

In determining the amount of the sales of the reported party, the KPPU will use the estimated value of sales which mostly reflects its actual sales. The amount of the sales will be determined before VAT or other taxes directly related to such sales.

If the data furnished by the reported party is incomplete or unreliable, then the KPPU may determine his sales on the basis of such incomplete data and/or other relevant and factual information.

### **DETERMINING THE BASIC VALUE OF THE FINE**

The basic value of the fine will relate to the proportion of the sales, depending on the degree of the violation, multiplied by the years of violations.

Determining the degree of violation will be specifically done case by case for each type of violation, by considering all situations related to the case.

To determine whether the proportion of the sales considered in the case shall be at the highest or lowest level of the scale, the KPPU will consider some factors as follows:

1. size of the company,
2. type of violation,
3. combined market shares of the reported parties,
4. geographic coverage of the violation, and
5. violation having been committed or not.

Agreement on horizontal price fixing, market segmentation and production limitation which are

entered into in confidential manner as well as tender conspiracy is the most serious violation in the business competition. Therefore, such agreement shall be subject to highest fine. In this regard, the proportion of sales to be calculated shall be the highest proportion in the above stated scale.

In order to consider the period of violations committed by each reported party, the above amount will be multiplied by the years of violations. A period of less than 6 months shall be calculated as a half year period, while the period of more than 6 months but less than a year shall be calculated as one year.

If the sales of the reported parties in the violation are similar but not identical, the KPPU may determine the same basic value of the fine for each reported party, while in determining the basic value, the KPPU will use a rounding method.

## **2. ADJUSTMENT OF THE BASIC VALUE OF THE FINE**

In determining the amount of the fine, the KPPU may consider circumstances which may lead to the increase or deduction of the basic value of the fine as above illustrated, on the basis of the comprehensive assessment, in consideration of all related aspects.

### **AGGRAVATING FACTORS**

The basic value of the fine can be increased if the KPPU finds the aggravating factors as follows:

- If the reported party continues or repeat the same violation when the KPPU finds that the reported party has violated the provisions of Law Number 5 Year 1999, therefore, the basic value can be increased up to 100% for each violation committed.
- If the reported party rejects to be examined, to provide information required in the examination and/or investigation or hinder the examination and/or investigation process.
- To the leader or initiator of the violation, the KPPU will give a special attention to the measures taken by the initiator in playing its roles to pose a pressure or threat other parties.

### **MITIGATING FACTORS**

The basic value of the fine can be reduced if the KPPU finds the mitigating factors as follows:

- The reported party proves that he has stopped the violations immediately after the KPPU conducts an investigation.
- The reported party proves that the violation has been committed unintentionally.
- The reported party proves that his involvement is minimal.
- The reported party acts cooperatively during the examination/investigation process .

- If the actions are to implement the applicable laws and regulations or based on the approval of the competent authorities.
- The reported party makes a statement on his willingness to change his attitudes in relation to the violation.

### **ADDITIONAL FINE FOR DETERRENT EFFECT**

KPPU will give special attention to the requirement to assure that the fine will produce sufficient deterrent effect. Finally, it will improve the amount of the fine to be imposed to the reported party who has a turnover higher than the sales of goods and services in relation to such violations..

KPPU will also consider the requirement to increase the amount of the fine with an objective to exceed the amount of the profits generated from the violation whose value may be calculated.

### **3. RANGE OF FINE AMOUNT**

- The final amount of the fine in any circumstances shall not exceed Rp25.000.000.000,-
- The final amount of the fine in any circumstance shall not exceed 10% of the total turnover of the current year of the reported party(ies) in relation to a violation.
- **If the total amount of the calculated fine exceeds Rp25.000.000.000,-**  
And 10% of the turnover is bigger than Rp25.000.000.000,-, the final fine will be Rp25.000.000.000,-  
And 10% of the turnover is smaller than or equal to Rp25.000.000.000,-, then the final fine will be 10% of the turnover
- **If the total amount of the calculated fine is less than Rp.1.000.000.000,-**  
Considering the aspect of justice, the fine may be imposed or replaced with other kinds of sanctions.
- If the violation committed by the reported party relates to the activities of its members, the amount of the fine shall not exceed 10% of the total turnover of each member in the market affected by the violation.

### **4. CAPABILITY TO PAY**

KPPU can, on the basis of the request of the reported party, consider the capability to pay of the reported party within certain social and economic context. The deduction will be provided individually on the basis of objective evidence if the imposition of the fine may lead to the company's bankruptcy.

## **CHAPTER III**

### **CLOSING**

These guidelines for administrative measures are prepared as to perform the duties and authorities of KPPU in implementing of Law Number 5 Year 1999.

The imposition of the administrative sanction constitutes the authorities granted by Law Number 5 Year 1999 to KPPU within the framework of law enforcement against the monopolistic practices and unfair business competition.

Further, pursuant to the provisions of Article 35 point f of Law Number 5 Year 1999, KPPU is authorized to prepare the guidelines or publication for explanation to related parties with regard to the considerations taken by KPPU in imposing administrative measures. Other forms of sanctions imposed by KPPU and its development will be further provided in other guidelines and/or publication.

Finally, it is expected that these guidelines for administrative measures can provide legal certainty to business actors and improve the rationality of business actors in avoiding monopolistic practices and unfair business competition.

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the Republic of Indonesia**

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## APPENDIX

### I. CASES REGARDING TENDER CONSPIRACY

In the tender for a toll road construction project, KPPU has successfully proven that a tender conspiracy has occurred involving three bidders, namely A, B, and C. The project value offered by the bidding committee was Rp50 billion. In the conspiracy, it has been agreed by among ten bidders that A will be the tender winner for the project and the other two bidders will be resigned. In the tender, it was agreed that A would submit a quotation with a lowest price, i.e. Rp45 billion, while the other nine bidders would submit the quotations with higher price. As a compensation for the award of the contract to A, the other bidders who resigned will receive the compensation in the amount of Rp500 million each..

When KPPU was investigating the case:

1. It found that the turnover of A was Rp200 billion, B was Rp100 billion, C was Rp10 billion.
2. It declared that the three reported bidders were cooperative during the investigation,
3. It found that A was the initiator of the tender conspiracy, and
4. It found that A ever committed the same violation, while B and C did not.

With regard to the case, KPPU decides that all above stated bidders are proven to have entered into a conspiracy which violates the provision of Article 22 of Law Number 5 Year 1999. Further, KPPU is in the opinion that if the tender is re-offered, it will cause a high economic cost, so KPPU does not order to conduct a re-offer, but impose sanction to the business actors involved in the conspiracy under the calculation as follows:

<b>CALCULATION OF THE FINE FOR TENDER CONSPIRACY OF 3 BIDDERS</b>				
	<b>ARTICLE 22</b>	<b>PT. A</b>	<b>PT.B</b>	<b>PT. C</b>
<b>I. DETERMINING OF THE FINE</b>				
<b>1</b>	<b>Awarded Bid Value</b>	<b>Rp45.000.000.000</b>	<b>Rp45.000.000.000</b>	<b>Rp45.000.000.000</b>
<b>2</b>	Divided by 3 bidders	Rp15.000.000.000	Rp15.000.000.000	Rp15.000.000.000
<b>3</b>	Fine Starting Point (%)	10%	10%	5%
<b>4</b>	Fine Starting Point (3) x (2)	Rp1.500.000.000	Rp1.500.000.000	Rp750.000.000
<b>5</b>	<b>Deterrent Effect 100% x Fine Starting Point (3)</b>	Rp1.500.000.000	Rp1.500.000.000	Rp750.000.000
<b>6</b>	<b>Total (Basic Fine)</b>	<b>Rp3.000.000.000</b>	<b>Rp3.000.000.000</b>	<b>Rp1.500.000.000</b>
<b>II. ADJUSTMENT FOR ADDITION/DEDUCTION OF FINE</b>				
<b>7</b>	Aggravating factors + 50% (initiator)	Rp1.500.000.000		
<b>8</b>	Aggravating factors + 100% (repetition)	Rp3.000.000.000		
<b>9</b>	Mitigating factors - 10% (Cooperative)	-Rp300.000.000	-Rp300.000.000	-Rp150.000.000
<b>10</b>	<b>Total</b>	<b>Rp7.200.000.000</b>	<b>Rp2.700.000.000</b>	<b>Rp1.350.000.000</b>
<b>III. MAXIMUM FINE</b>				
<b>11</b>	<b>Previous Annual Turnover</b>	Rp200.000.000.000	Rp100.000.000.000	Rp10.000.000.000
<b>12</b>	<b>10% OF (11)</b>	Rp20.000.000.000	Rp10.000.000.000	Rp1.000.000.000
<b>13</b>	<b>Maximum Fine Clausal (10% Turnover)</b>	<b>fulfilled</b>	<b>fulfilled</b>	<b>not fulfilled</b>
<b>14</b>	<b>Maximum Fine Clausal, Art. 47 (Rp25 M)</b>	<b>fulfilled</b>	<b>fulfilled</b>	<b>fulfilled</b>
<b>15</b>	<b>Total Fine</b>	<b>Rp7.200.000.000</b>	<b>Rp2.700.000.000</b>	<b>Rp1.000.000.000</b>

## II. CARTEL CASE

In the *carbon black industry*, in the year 2006, KPPU has successfully proven the existence of cartel among X, Y, and Z companies in order to get the monopoly power.

During the cartel period (Year 2004 up to 2006):

1. PT. X got a total sales of Rp20.000.000.000,-
2. PT. Y got Rp10.000.000.000,- and
3. PT. Z got Rp5.000.000.000,-

When KPPU was investigating the case, it:

1. found that in the year 2005, the turnover of PT. X was Rp100 billion, PT. Y was Rp50 billion, and PT. Z was Rp10 billion.
2. found the fact that PT. X was the initiator of the cartel in the carbon black industry within such period.
3. declared that PT. X and PT. Y were not cooperative in the investigation process conducted by the KPPU's examining team, while PT. Z was cooperative during the investigation process.

With regard to the case, KPPU decides that PT. X, PT. Y, and PT. Z are proven to have conducted a cartel which violates the provisions of Article 11 of Law Number 5 Year 1999. KPPU has then calculated the fine as follows:

<b>CALCULATION OF THE FINE FOR CARTEL OF 3 BUSINESS ACTORS</b>				
	<b>ARTICLE 11</b>	<b>PT. X</b>	<b>PT.Y</b>	<b>PT. Z</b>
<b>I. DETERMINING OF THE FINE</b>				
<b>1</b>	<b>Sales</b>	<b>Rp20.000.000.000</b>	<b>Rp10.000.000.000</b>	<b>Rp5.000.000.000</b>
<b>2</b>	Fine Starting Point = 10% x (1)	Rp2.000.000.000	Rp1.000.000.000	Rp500.000.000
<b>3</b>	<b>Deterrent Effect 100% x Fine Starting Point (2)</b>	Rp2.000.000.000	Rp1.000.000.000	Rp500.000.000
<b>4</b>	<b>Total (Basic Fine)</b>	<b>Rp4.000.000.000</b>	<b>Rp2.000.000.000</b>	<b>Rp1.000.000.000</b>
<b>II. ADJUSTMENT FOR ADDITION/DEDUCTION OF FINE</b>				
<b>5</b>	Aggravating factors + 50% (Initiator)	Rp2.000.000.000		
<b>6</b>	Aggravating factors + 10% (Not cooperative)	Rp400.000.000	Rp200.000.000	
<b>7</b>	Mitigating factors -10% (Cooperative)			-Rp100.000.000
<b>8</b>	<b>Total</b>	<b>Rp6.400.000.000</b>	<b>Rp2.200.000.000</b>	<b>Rp900.000.000</b>
<b>III. MAXIMUM FINE</b>				
<b>9</b>	<b>Previous Annual Turnover</b>	Rp100.000.000.000	Rp50.000.000.000	Rp10.000.000.000
<b>10</b>	<b>10% of (9)</b>	Rp10.000.000.000	Rp5.000.000.000	Rp1.000.000.000
<b>11</b>	<b>Maximum Fine Clausal (10% Turnover)</b>	<b>fulfilled</b>	<b>fulfilled</b>	<b>fulfilled</b>
<b>12</b>	<b>Maximum Fine Clausal, Art. 47 (Rp25 M)</b>	<b>fulfilled</b>	<b>fulfilled</b>	<b>fulfilled</b>
<b>13</b>	<b>Total Fine</b>	<b>Rp6.400.000.000</b>	<b>Rp2.200.000.000</b>	<b>Rp900.000.000</b>