

GOVERNMENT REGULATION OF THE REPUBLIC OF INDONESIA

NUMBER 57 YEAR 2010

CONCERNING

MERGER OR CONSOLIDATION OF BUSINESS ENTITIES  
AND ACQUISITION OF COMPANY SHARES  
THAT COULD RESULT IN MONOPOLISTIC PRACTICES  
AND/OR UNFAIR BUSINESS COMPETITION

UPON THE GRACE OF GOD THE ALMIGHTY

THE PRESIDENT OF THE REPUBLIC OF INDONESIA,

Considering : that in order to implement the provisions 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 deemed necessary to enact a Government Regulation concerning Merger or Consolidation of Business Entities and Acquisition of Company Shares that Could Result in Monopolistic Practices and/or Unfair Business Competition;

Bearing in mind : 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, Number 33 Year 1999, Supplementary State Gazette of the Republic of Indonesia Number 3817);

DECIDES:

To stipulate: GOVERNMENT REGULATION CONCERNING MERGER OR CONSOLIDATION OF BUSINESS ENTITIES AND ACQUISITION OF COMPANY SHARES THAT COULD RESULT IN MONOPOLISTIC PRACTICES AND/OR UNFAIR BUSINESS COMPETITION.

CHAPTER I  
GENERAL PROVISIONS

Article 1

Referred to in this Government Regulation as:

1. A merger is a legal act performed by one legal entity or more when it merges with one or more existing legal entities with the result that the assets and liabilities of the merging legal entities are transferred by law to the surviving legal entity, and the merging company's status as a legal entity is subsequently extinguished by law
2. Consolidation is a legal act performed by two or more legal entities when they establish a new legal entity which acquires their assets and liabilities. The statuses of the consolidating companies as legal entities are subsequently extinguished by law.
3. Acquisition is a legal act performed by a business actor when the acquiring of shares by it in a legal entity results in the transfer of control in that legal entity.
4. Monopolistic practices shall be the centralization of economic power by one or more business actors, resulting in the control of the production and/or marketing of certain goods and/or services thus resulting in unfair business competition and potentially harmful to the interests of the public.
5. Unfair business competition shall be competition among business actors in conducting activities for the production and/or marketing of goods and or services in an unfair or unlawful or anti-competition manner.

6. Legal Entity shall be company or type of business, either in the form of legal entity or not, which runs a certain type of permanent and continuous business with the purpose of earning profit.
7. Commission shall be the Commission for the Supervision of Business Competition as referred to in Law Number 5 Year 1999 concerning Prohibition of Monopolistic Practice and Unfair Business Competition.
8. Business actors shall be any individual or business entity, either incorporated or not incorporated as legal entity, established and domiciled or conducting activities within the jurisdiction of the Republic of Indonesia, either independently or jointly based on agreement, conducting various business activities in the economic field.
9. Law shall be Law Number 5 Year 1999 concerning Prohibition of Monopolistic Practice and Unfair Business Competition.

## CHAPTER II

### MERGER OR CONSOLIDATION OF BUSINESS ENTITIES AND ACQUISITION OF COMPANY SHARES

#### Article 2

- (1) Business actors shall be prohibited from conducting mergers or consolidations of business entities and acquisition of company shares that could result in monopolistic practices and/or unfair business competition.
- (2) Monopolistic practices and/or unfair business competition as referred to in paragraph (1) will occur if the surviving company, company resulting from consolidation or business actor who acquires the shares of other company are alleged to conduct :
  - a. prohibited agreements ;
  - b. prohibited activities ; and/or
  - c. abuse of dominant position .

### Article 3

- (1) The Commission shall assess the Merger or Consolidation of Business Entities and Acquisition of Company Shares which have been juridically effective and are alleged to have resulted in monopolistic practices and/or unfair business competition .
- (2) The assessment as stated in paragraph (1) shall be done by analyzing :
  - a. concentration of market ;
  - b. barrier to entry;
  - c. potential anti-competition behaviors;
  - d. efficiency; and/or
  - e. bankruptcy.
- (3) In certain cases, the Commission may conduct assessment by analyzing matters other than those stated in paragraph (2).
- (4) Analysis as stated in paragraph (3) shall be regulated with the Regulation of the Commission .
- (5) In conducting the assessment as stated in paragraphs (1) and (3), the Commission may inquire business actors and/or other parties .

### Article 4

- (1) The Commission shall be authorized to impose sanction in the form of administrative action against business actors which violate the provisions as referred to in Article 2 paragraph (1) in accordance with the provisions of the Law .
- (2) The imposition of the sanction as stated in paragraph (1) shall be done after all procedures of case handling by the Commission have been accordance with the provisions of the Law .

## CHAPTER III

### NOTIFICATION ON MERGER OR CONSOLIDATION OF BUSINESS ENTITIES AND ACQUISITION OF COMPANY SHARES

#### Part One

#### Asset Value and Sales Value

#### Article 5

- (1) Merger or consolidation of business entities and acquisition of company shares which result in the asset value and/or sales value exceeding certain amount must be notified in writing to the Commission not later than 30 (thirty) working days as of the effective date of the merger or consolidation of business entities and acquisition of company shares aforesaid.
- (2) Certain amount as stated in paragraph (1) shall consist of :
  - a. asset value of Rp. 2,500,000,000,000.00 (two trillion and five hundred billion Rupiah); and/or
  - b. sales value amounting to Rp. 5,000,000,000,000.00 (five trillion Rupiah).
  - c. To business actors in banking sector, the obligation to deliver written notification as stated in paragraph (1) shall be applicable if the asset value exceeding Rp20,000,000,000,000.00 (twenty trillion Rupiah).
- d. Asset value and/or sales value as stated in paragraphs (2) and (3) shall be calculated based on the total amount of the asset value and/or sales value of :
  - a. The surviving business entity, business entity resulting from consolidation or the acquiring and target business entities; and
  - b. Business entity which directly or indirectly controls or is controlled by the surviving business entity, business entity resulting from consolidation or the acquiring and target business entities;

#### Article 6

In the event that business actors fail to deliver written notification as stated in Article 5 paragraphs (1) and (3), the business actors concerned shall be subject to sanction in form of administrative fine in the sum of Rp. 1,000,000.000.00 (one billion Rupiah) for each day of delay, under condition that the maximum total amount of the administrative fine shall be Rp. 25,000,000,000.00 (twenty-five billion Rupiah).

#### Article 7

The obligation to deliver written notification as stated in Article 5 paragraphs (1) and (3) shall not be applicable to business actors who conduct the merger or consolidation of business entities and acquisition of company shares among affiliated companies.

#### Part Two

##### Methods of Delivering Notification

#### Article 8

- (1) Written notification as stated in Article 5 paragraphs (1) and (3) shall be done by filling out the form prepared by the Commission .
- (2) The form as stated in paragraph (1) shall at least contain :
  - a. name, address, name of management of the merging business entity, consolidating business entity and acquiring entity;
  - b. summary plan of merger or consolidation of business entities and acquisition of company shares ; and
  - c. asset value or value of sales of business entities.
- (3) The form as stated in paragraph (1) must :
  - a. be signed by the management of the board of directors of the merging business entity, consolidating business entity and acquiring business entity; and

- b. be attached with supporting documents in relation to the merger or consolidation of business entities and acquisition of company shares.

Part Three  
Commission Assessment

Article 9

- (1) On the basis of the written notification as stated in Article 5 paragraphs (1) and (3), the Commission will assess in order to give opinion on whether or not alleged monopolistic practices and/or unfair business competition as result from the merger or consolidation of business entities and acquisition of company shares exists.
- (2) The assessment as stated paragraph (1) shall be done within a period of maximum 90 (ninety) working days from the date of receipt of the complete written notification documents by the Commission.
- (3) The provisions as stated in Article 3 paragraphs (2), (3), and (5) shall be applicable to the assessment as referred to in paragraph (1).
- (4) In the event that the opinion of the Commission as stated in paragraph (1) states that the alleged monopolistic practices and/or unfair business competition exist, the Commission shall take acts in accordance with its authorities as regulated in the Law .

Part Four  
Consultation

Article 10

- (1) Business actors who will conduct the merger or consolidation of business entities and acquisition of company shares which result in the amount of asset value and/or sales value exceeding certain amount as stated in

Article 5 paragraphs (2) and (3) may conduct a consultation either in writing or orally with the Commission .

- (2) The consultation in writing as stated in paragraph (1) shall be done by filling out the form and deliver the documents as required by the Commission.

#### Article 11

- (1) On the basis of the form and documents received by the Commission as stated in Article 10 paragraph (2), the Commission shall conduct an assessment .
- (2) Based on the assessment as stated in paragraph (1), the Commission shall give suggestions, guidance and/or written opinions concerning the plan of merger or consolidation of business entities and acquisition of company shares to the business actor .
- (3) Suggestions, guidance and/or written opinion as stated in paragraph (2) shall be given within a period of maximum 90 (ninety) working days from the date of receipt of the form and documents completely by the Commission..
- (4) The assessment given by the Commission as stated in paragraph (2) shall not constitute an approval nor rejection on the plan of merger or consolidation of business entities and acquisition of company shares to be done by the business actors, and shall not annul the authorities of the Commission to conduct an assessment when the merger or consolidation of business entities and acquisition of company shares are juridically effective .

#### Article 12

Further provisions concerning consultation as stated in Articles 10 and 11 shall be regulated with the Commission Regulation.

CHAPTER IV  
CLOSING PROVISIONS

Article 13

This Government Regulation shall come into force on the date of its enactment .

For the public to be informed, this Government Regulation shall be promulgated by publishing it in the State Gazette of the Republic of Indonesia.

Enacted in Jakarta

On July 20<sup>th</sup>, 2010

PRESIDENT OF THE REPUBLIC OF INDONESIA,

signed

DR. H. SUSILO BAMBANG YUDHOYONO

Enacted in Jakarta

On July 20<sup>th</sup>, 2010

MINISTER OF LAW AND HUMAN RIGHTS OF

THE REPUBLIC OF INDONESIA,

signed

PATRIALIS AKBAR

**Copied according to its original**

STATE SECRETARIAT OF THE REPUBLIC OF INDONESIA

Head of Legislations Bureau  
on Economy and Industry ,

Setio Sapto Nugroho

ELUCIDATION  
TO  
GOVERNMENT REGULATION OF THE REPUBLIC OF INDONESIA  
NUMBER 57 YEAR 2010  
CONCERNING  
MERGER OR CONSOLIDATION OF BUSINESS ENTITIES  
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I. GENERAL

Development of business world which is greatly influenced by business actors, either directly or indirectly, has changed the condition and situation of the country's economy. In consideration of the condition and situation aforesaid, it is necessary to pay attention to and rearrange the activities of business actors in order that the business world can grow and develop fairly without any monopolistic practices and/or unfair business competition.

In business, this Government Regulation is very essential to provide a legal certainty to business actors, particularly in facing the globalization era and liberalization of economy which become more complex. Therefore, it is necessary to create fair and efficient business climate in order to open widest opportunity for all business actors to grow and develop well and fairly in accordance with the mandate of Article 33 of the 1945 Constitution of the Republic of Indonesia .

Based on the above rationale, the efforts to create fair and efficient business climate must not lead to the control of economic resources and concentration of economic power to a certain group or race. Therefore, merger or consolidation and acquisition which may control and lead to the presence of monopolistic practices and/or unfair business competition shall be prevented as earlier as possible. In other words, merger or consolidation and acquisition must consider the interest of consumers and other business actors.

Even though Law Number 5 Year 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition has regulated the principles relate to monopoly, monopsony, market control and conspiracy, however, the procedure of merger or consolidation and

acquisition which might result in monopolistic practices and/or unfair business competition must be further regulated in a government regulation as required.

The materials to be regulated in this Government Regulation will include merger or consolidation and acquisition of shares which may result in monopolistic practices and unfair business competition, procedure of notification delivery, Commission's assessment and consultation .

## II. ARTICLE BY ARTICLE

### Article 1

Self-explanatory.

### Article 2

#### paragraph (1)

What is contemplated as "company" shall be any business entity in the form of limited liability legal entity .

#### Paragraph (2)

##### Point a

What is contemplated as "prohibited agreements" in this provision shall be for example: monopoly, price fixing, division of territory, boycott, carte, trust, oligopsony, vertical integration, closed agreements, agreements with foreign parties, as regulated in Article 4 to Article 16 of the Law.

##### Point b

What is contemplated as "prohibited activities" in this provision shall be for example: monopoly, monopsony, market control, conspiracy, as regulated in Article 17 to Article 24 of the Law.

##### Point c

What is contemplated as "dominant position" shall be a situation in which a business actor has no substantial competitor in the relevant market in relation to the market segment controlled, or a business actor

has the strongest position among its competitors in the relevant market in relation to financial capacity, access capacity to supply or sales, and the capability to adjust supply or demand of certain goods or services.

What is contemplated as “abuse of dominant position” in this condition shall be for example: multiple position, share ownership, as regulated in Article 25 to Article 27 of the Law.

### Article 3

#### Paragraph (1)

Self-explanatory.

#### Paragraph (2)

##### Point a

Concentration of market shall be an initial indicator to assess whether merger or consolidation of business entities or acquisition of company shares may result in monopolistic practices and/or unfair business competition. Merger or consolidation of business entities or acquisition of company shares which create low concentration of market does not potentially result in monopolistic practice and/or unfair business competition. On the other hand, merger or consolidation of business entities or acquisition of company shares which create high concentration of market potentially result in monopolistic practices and/or unfair business competition, depending on other analysis at the relevant market .

##### Point b

Without any market-entry barrier, business actors after merger or consolidation of business entities or acquisition of company shares with a larger market control will find a difficulty to conduct anti-competition behaviors as they will always encounter competition pressures from new players at the market.

Reversely, with presence of high market-entry barrier, the surviving company, company resulting from consolidation or acquiring business actor with intermediate market control will have a possibility to abuse their position to impede competition or exploit consumers as new player will find a difficulty to enter the market and impose market pressure over the existing business actors at the market.

#### Point c

Merger or consolidation of business entities and acquisition of company shares which create a business actor who is relatively dominant against other business actors at the market, will enable such business actor to abuse his dominant position so as to earn optimum profit for his company and may inflict loss to consumers.

On the other hand, if the merger or consolidation of business entities and acquisition of company shares do not create a business actor dominant at the market, yet there are still some significant competitors, then such merger or consolidation of business entities and acquisition of company shares will facilitate anti-competition acts conducted in coordination with its competitors, either directly or indirectly .

Merger or consolidation of business entities and acquisition of company shares which are conducted vertically may create a barrier to competitors to enter the upstream and/or downstream market, thereby eliminating the competition level at the market.

#### Point d

In the event that planned merger or consolidation of business entities and acquisition of company shares are aimed to improving the efficiency, it is necessary to compare between the efficiency obtained and the anti-competition impact caused. If the value of the anti-competition impacts exceed the value of efficiency expected to be achieved from the merger or consolidation of business entities and acquisition of company shares, then fair competition shall be more prioritized than promoting the efficiency for the business actor. Fair

competition will directly or indirectly create business actors more efficient at the market.

Point e

If the reason of the business actor to conduct merger or consolidation of business entities or acquisition of company shares is to avoid the cease of operation of his business entity at the market/industry, an assessment is therefore needed. If the loss to consumers is bigger if the business actor exits from the market/industry than if it remains to operate at the market/industry, then there will be no worries of the less of competition level at the market in the form of monopolistic practices and/or unfair business competition resulted from the merger or consolidation of business entities or acquisition of company shares aforesaid .

Paragraph (3)

What is contemplated as “in certain cases” shall be for example in the event of any advancement in the assessment method on the impacts of monopolistic practices and/or unfair business competition other than those of concentration of market, potential anti-competition behaviors, efficiency and/or bankruptcy.

Paragraph (4)

Self-explanatory.

Paragraph (5)

What is contemplated as “other parties ” in this provision shall be consumers, competitors, related government agencies or experts.

Article 4

Self-explanatory.

Article 5

Paragraph (1)

Self-explanatory.

Paragraph (2)

Point a

If one of the parties who conduct the merger or consolidation of business entities and acquisition of company shares has a difference between the last year asset value and the asset value of the previous year of 30% or more, then its asset value shall be calculated based on the average asset value within last (3) three years.

Point b

Method of calculation of sales value is the same as that of asset value.

Paragraph (3)

Self-explanatory.

Paragraph (4)

Point a

Self-explanatory.

Point b

What is contemplated as "is controlled " shall be :

- a. share ownership or votes control of more than 50% (fifty percent) in the business entity ; or
- b. share ownership or votes control of less than or equal to 50% (fifty percent) but it can influence and determine the management policy of the business entity and/influence and determine the management of the business entity .

Article 6

Self-explanatory.

Article 7

What is contemplated as "affiliated" shall be:

- a. relation between companies, either directly or indirectly, control or is controlled by the stated company ;
- b. relation between 2 (two ) companies which are controlled, either directly or indirectly by the same party ; or
- c. relation between company and main shareholders .

#### Article 8

##### Paragraph (1)

Self-explanatory.

##### Paragraph (2)

Self-explanatory.

##### Paragraph (3)

###### Point a

Self-explanatory.

###### Point b

What is contemplated as “supporting documents” in this provision shall be for example: company’s articles of association, company profile, last (3) three years financial report, plan of merger or consolidation of business entity or acquisition of company shares .

#### Article 9

Self-explanatory.

#### Article 10

Self-explanatory.

#### Article 11

Self-explanatory.

#### Article 12

Self-explanatory.

Article 13

Self-explanatory.

SUPPLEMENTARY STATE GAZETTE OF THE REPUBLIC OF INDONESIA NUMBER 5144