



PRESIDENT OF THE REPUBLIC OF INDONESIA

COPY

GOVERNMENT REGULATION OF THE REPUBLIC OF INDONESIA

NUMBER 44 YEAR 2021

REGARDING

THE IMPLEMENTATION OF PROHIBITION OF MONOPOLISTIC PRACTICES AND
UNFAIR BUSINESS COMPETITION

BY THE GRACE OF THE ALMIGHTY GOD

PRESIDENT OF THE REPUBLIC OF INDONESIA,

Considering: whereas in order to implement the provisions of Article 118 and Article 185 sub-article b of Law Number 11 Year 2020 regarding Job Creation, it is necessary to stipulate a Government Regulation regarding the Implementation of Prohibition of Monopolistic Practices and Unfair Business Competition;

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

 2. Law Number 5 Year 1999 regarding 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);

 3. Law Number 11 Year 2020 regarding Job Creation (State Gazette of the Republic of Indonesia Year 2020 Number 245, Supplement to the State Gazette of the Republic of Indonesia Number 6573);

HAS DECIDED:

To stipulate: GOVERNMENT REGULATION REGARDING THE
IMPLEMENTATION OF PROHIBITION OF MONOPOLISTIC
PRACTICES AND UNFAIR BUSINESS COMPETITION.

CHAPTER I . . .



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CHAPTER I

GENERAL PROVISIONS

Article 1

Referred to herein as:

1. Monopoly shall be a control over production and/or marketing of goods and/or over the use of certain services by a Business Actor or a group of business actors.
2. Business Actor shall be any natural person or business entity, either incorporated or unincorporated, established and domiciled or conducting activities inside the jurisdiction of the state of the Republic of Indonesia, both severally and jointly by virtue of an agreement, administering various business activities in the field of economy.
3. Agreement shall be an action of one or more Business Actors to bind himself/themselves to one or more other businesses in any name whatsoever, either in writing or verbally.
4. Conspiracy shall be a form of cooperation conducted by a business actor and other Business Actors with a purpose of controlling the relevant market for the interest of the conspiring Business Actors.
5. Market shall be an economic institution where buyers and sellers either directly or indirectly may conduct goods and/or services trade transactions.
6. Relevant Market shall be a market relating to certain reach and/or marketing area by a Business Actor upon the same, similar goods and/or services, or the substitution of such goods and/or services.
7. Consumer . . .



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7. Consumer shall any consumer and/or user of goods and/or services either for their own benefit or for the benefit of other parties.
8. Commission for the Supervision of Business Competition (Indonesian Competition Commission) hereinafter referred to Commission shall be a commission established to supervise Business Actors in running their business activities so as not to conduct monopolistic practices and/or unfair business competition.
9. Law shall be Law Number 5 Year 1999 regarding Prohibition of Monopolistic Practices and Unfair Business Competition as amended by Law Number 11 Year 2020 regarding Job Creation.

Article 2

This Government Regulation shall provide for the following:

- a. the authorities of the Commission;
- b. the criteria of sanction, types of sanction, and amount of penalty; and
- c. the examination of objections and cassations against decisions of the Commission.

CHAPTER II

AUTHORITIES OF THE INDONESIA COMPETITION COMMISSION

Article 3

The Commission shall have the authorities as intended in Article 36 of the Law.

Article 4

- (1) A Commission Panel shall be established in the context of exercising the authorities as intended in Article 3, for the purpose of examining cases up to the imposition of sanctions in the form of administrative action on a Business Actor in violation of the provisions of the Law, including the oversight of decisions.

(2) The Commission . . .



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- (2) The Commission Panel shall impose sanctions in the form of administrative action on a reported party proven to have committed a violation:
- a. in the form of prohibited agreements as intended in Articles 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, and/or 16 of the Law;
 - b. in the form of prohibited activities as intended in Articles 17, 18, 19, 20, 21, 22, 23 and/or 24 of the Law; and/or
 - c. of Articles 25, 26, 27, and/or 28 of the Law.

CHAPTER III

CRITERIA OF SANCTION, TYPES OF SACTION, AND AMOUNT OF PENALTY

Part One

Criteria of Sanction

Article 5

- (1) Sanction in the form of administrative action shall be imposed:
- a. in accordance with the level and impacts of the violation committed by a Business Actor;
 - b. with due observance of the continuity of business activities of the Business Actor; and/or
 - c. on the basis of evident considerations and reasons.
- (2) The imposition of sanction as intended in paragraph (1) shall be conducted on the basis of criteria that meet the element of violation of the provisions of the Law.

Part . . .



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Part Two

Types of Sanction

Article 6

- (1) The Commission shall have the authority to impose a sanction in the form of administrative action on a Business Actor in violation of the provisions of laws and regulations.
- (2) The administrative action as intended in paragraph (1) shall be in the form of:
 - a. the stipulation of the cancelation of an Agreement;
 - b. an order to a Business Actor to stop vertical integration;
 - c. an order to a Business Actor to stop activities proven to have given rise to Monopolistic practices, causing unfair business competition, and/or harmful to the public;
 - d. an order to a Business Actor to stop abuse of dominant position;
 - e. the stipulation of the cancelation of a merger or consolidation and acquisition;
 - f. the stipulation of the payment of compensations; and/or
 - g. the imposition of penalty of at least IDR1,000,000,000 (one billion rupiah) with due observance of the provisions regarding the amount of penalty as provided for herein.

Article 7 . . .



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Article 7

- (1) The administrative action in the form of the stipulation of the cancelation of an Agreement as intended in Article 6 paragraph (2) sub-paragraph a shall be imposed in the event that a Business Actor violates the provisions of Articles 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, and/or 16 of the Law.
- (2) The administrative action in the form of the stipulation of the cancelation of an Agreement as intended in paragraph (1) may be imposed on:
 - a. a part of the Agreement; or
 - b. the entire Agreement.
- (3) The administrative action in the form of the stipulation of the cancelation of a part of the Agreement as intended in paragraph (2) sub-paragraph a shall be imposed in the event that a part of the provisions in the Agreement is decided by the Commission Panel in violation of the provisions of the Law.
- (4) The administrative action in the form of the stipulation of the cancelation of the entire Agreement as intended in paragraph (2) sub-paragraph b shall be imposed in the event that the entire provisions or almost the entire provisions in the Agreement are decided by the Commission Panel in violation of the provisions of the Law.

Article 8

The administrative action in the form of order to a Business Actor to stop vertical integration as intended in Article 6 paragraph (2) sub-paragraph b shall be imposed in the event that the Business Actor violates the provisions of Article 14 of the Law.

Article 9

- (1) The administrative action in the form of order to a Business Actor to stop activities as intended in Article 6 paragraph (2) sub-paragraph c shall be imposed in the event that the Business Actor violates the provisions of Articles 17, 18, 19, 20, 21, 22, 23, 24, 26, and/or 27 of the Law.

(2) The administrative . . .



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- (2) The administrative action in the form of order to a Business Actor to stop activities as intended in paragraph (1) shall be in the form of:
- a. the stopping of activities that result in the control of production or marketing of goods or services;
 - b. the stopping of activities that result in the control of the receipt of supply or becoming a sole buyer of goods or services;
 - c. the stopping of rejection or action of obstructing certain Business Actors to conduct the same business activities;
 - d. the stopping of activities that obstruct Consumers or customers of a competing Business Actor in establishing business relationship with such competing Business Actor;
 - e. the stopping of activities that confine the circulation or the selling of goods or services in the Relevant Market;
 - f. the stopping of discrimination;
 - g. the stopping of selling at a loss or the setting of a very low selling price;
 - h. the stopping of fraud in setting production cost and other costs that become the component of goods or services;
 - i. the stopping of Conspiracy to arrange or determine the tender winner;
 - j. the stopping of Conspiracy to obtain information on business activities of a competing Business Actor classified as company secrets;
 - k. The Stopping . . .



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- k. the stopping of Conspiracy to obstruct the production and/or marketing of competing Business Actors;
- l. an order to Business Actors to discharge the board of directors or commissioners who hold two positions; and/or
- m. an order to affiliated Business Actors to release cross-shareholding.

Article 10

The administrative action in the form of order to a Business Actor to stop the abuse of dominant position as intended in Article 6 paragraph (2) sub-paragraph d shall be imposed in the event that the Business Actor violates the provisions of Article 25 of the Law.

Article 11

The administrative action in the form of the stipulation of the cancelation of a merger or consolidation and acquisition of shares as intended in Article 6 paragraph (2) sub-paragraph e shall be imposed in the event that the Business Actor violates the provision of Article 28 of the Law.

Part Three

Amount of Penalty

Article 12

- (1) The administrative action in the form of penalty as intended in Article 6 paragraph (2) sub-paragraph g constitutes a base penalty and the imposition of the administrative action in the form of penalty by the Commission shall be conducted on the basis of the following provisions:
 - a. in a maximum amount of 50% (fifty percent) of the net profits earned by the Business Actor in the Relevant Market for the duration of the occurrence of the violation of the Law; or
 - b. in a . . .



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- b. in a maximum amount of 10% (ten percent) of the total sales in the Relevant Market for the duration of the occurrence of the violation of the Law.
- (2) Reported parties shall be obligated to submit adequate bank guarantees in a maximum amount of 20% (twenty percent) of the value of the penalty by no later than 14 (fourteen) business days following the acceptance of the notification of the decision of the Commission as a warranty for fulfillment of a decision of the Commission containing an administrative action in the form of a penalty.

Article 13

- (1) Administrative action in the form of a penalty as contained in a decision of the Commission that has obtained a permanent and binding legal force shall constitute state receivables and shall be remitted to the state treasury as non-tax state revenues.
- (2) In the event that a reported party does not execute the decision of the Commission as intended in paragraph (1), the Commission shall establish coordination with the competent government agency in the field of state revenues affairs and/or law enforcing apparatus in accordance with the provisions of laws and regulations.

Article 14

The amount of the penalty as intended in Article 12 paragraph (1) shall be determined on the basis of the following:

- a. the negative impacts posed as the result of the violation;
- b. the duration of the occurrence of the violation;
- c. the alleviating factors;
- d. the aggravating factors; and/or
- e. the ability of a Business Actor to pay.

Article 15

The alleviating factors as intended in Article 14 sub-article c shall consist of:

- a. the Business . . .



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- a. the Business Actor conducts its activities that show the existence of compliance effort with the principles of fair business competition encompassing code of ethics, training, extension, dissemination, and the like;
- b. the Business Actor voluntarily stops the anticompetitive behavior as of the arising of the case;
- c. the Business Actor has never committed the same or similar violation relating to prohibition of Monopolistic practices and unfair business competition as provided for in the Law;
- d. the Business Actor does not commit the violation on purpose;
- e. the Business Actor is not the leader/initiator of the violation; and/or
- f. the violation does not have significant impacts on competition.

Article 16

The aggravating factors as intended in Article 14 sub-article d shall consist of:

- a. the Business Actor has once committed the same or similar violation as provided for in the Law within a period of less than 8 years by virtue of a decision that has had a permanent legal force; and/or
- b. the Business Actor plays a role as initiator in the violation.

Article 17

The ability of the Business Actor to pay as intended in Article 14 sub-article e shall be based on the financial condition of the company that may cause the company not to be in operation if a certain penalty rate is imposed.

Article 18 . . .



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Article 18

- (1) The Commission may grant leniency in the making of the payment of the penalty based on a written application of the Business Actor attached with supporting data.
- (2) The leniency as intended in paragraph (1) shall be in the form of payments may be made in stages or within a certain period based on valid, reasonable, and transparent reasons by taking the financial capacity or the continuity of the activities of the Business Actor into account.

CHAPTER IV

EXAMINATION OF OBJECTIONS AND CASSATIONS AGAINST DECISIONS OF THE
INDONESIAN COMPETITION COMMISSION

Article 19

- (1) A Business Actor may lodge an objection to a Commercial Court in accordance with the domicile of the Business Actor by no later than 14 (fourteen) business days following the acceptance of a notice of decision of the Commission.
- (2) The examination of objection at the Commercial Court as intended in paragraph (1) shall be conducted for both formal and material aspects of the facts being the basis of the decision of the Commission.
- (3) The examination as intended in paragraph (2) shall be conducted within 3 (three) months at the earliest and 12 (twelve) months at the latest.
- (4) Unless otherwise determined herein, procedures for the examination of objections at the Commercial Court shall be conducted in accordance with the law of civil procedure.

Article 20

- (1) The Party objecting to a decision of the Commercial Court as intended in Article 19 may file an application for cassation to the Supreme Court of the Republic of Indonesia within 14 (fourteen) business days following the acceptance of the notice of decision of the Commercial Court.

The examination . . .



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- (2) The examination of cassation at the Supreme Court of the Republic of Indonesia as intended in paragraph (1) shall be conducted in accordance with the provisions of laws and regulations.

CHAPTER V

REGULATIONS OF THE INDONESIAN COMPETITION COMMISSION

Article 21

- (1) The Commission shall stipulate Regulations of the Commission in supporting the performance of its duties.
- (2) Regulations of the Commission as intended in paragraph (1) shall be made in accordance with the law regarding legal drafting.

CHAPTER VI

CLOSING PROVISIONS

Article 22

At the time this Government Regulation takes effect, the handling of cases by the Commission that have entered the Commission Panel hearing but not yet decided shall still be proceeded in accordance with the provisions hereof.

Article 23

At the time this Government Regulation takes effect, all the implementing regulations providing for the prohibition of Monopolistic practices and unfair business competition that have existed prior to this Government Regulation shall be declared to remain in effect insofar as they do not contradict the provisions herein.

Article 24

The Commission shall make an adjustment to laws and regulations stipulated by the Commission in accordance with this Government Regulation by no later than 4 (four) months as of the coming into effect of this Government Regulation.

Article 25

This Government Regulation shall come into effect as of its promulgation date.

For . . .



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For public cognizance, hereby ordering the promulgation of this Government Regulation by publishing it in the State Gazette of the Republic of Indonesia.

Stipulated in Jakarta
On February 2, 2021

PRESIDENT OF THE REPUBLIC OF INDONESIA,

Sgd.

JOKO WIDODO

Promulgated in Jakarta
On February 2, 2021

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

Sgd.

YASONNA H. LAOLY

STATE GAZETTE OF THE REPUBLIC OF INDONESIA YEAR 2021 NUMBER 54

Issued as a true copy

MINISTRY OF STATE SECRETARIAT OF THE
REPUBLIC OF INDONESIA

Deputy of Legislation and Law Administration,

[Signed and stamped; stamp reads: MINISTRY OF
STATE SECRETARIAT OF THE REPUBLIC OF
INDONESIA]

Lydia Silvanna Djaman



PRESIDENT OF THE REPUBLIC OF INDONESIA

ELUCIDATION
ON
GOVERNMENT REGULATION OF THE REPUBLIC OF INDONESIA
NUMBER 44 YEAR 2021
REGARDING
THE IMPLEMENTATION OF PROHIBITION OF MONOPOLISTIC PRACTICES AND
UNFAIR BUSINESS COMPETITION

I. GENERAL

Whereas based on Law Number 11 Year 2020 regarding Job Creation, several provisions in Law Number 5 Year 1999 regarding Prohibition of Monopolistic Practices and Unfair Business Competition especially with regard to sanctions in the form of administrative action that may be imposed by the Commission, the examination of objections to decisions of the Commission and the rationalization of the provisions of criminal sanctions, have been amended and adjustment to the implementing regulation of Law Number 5 Year 1999 regarding Prohibition of Monopolistic Practices and Unfair Business Competition has been made.

Based on such amendment, it is expected that the implementation of Law Number 5 Year 1999 regarding Prohibition of Monopolistic Practices and Unfair Business Competition may furthermore take place in line with the spirit as contained in Law Number 11 Year 2020 regarding Job Creation so as to create and broaden job opportunities through the improvement of investment ecosystem and business activities so that the practices of business activities that are more conducive and give top priority to fair business competition in the framework of supervision by a professional and accountable Commission are created.

For implementation purposes, it is necessary that a Government Regulation providing for the following be stipulated:

- a. the authorities of the Commission;
- b. the criteria of sanction, types of sanction, and amount of penalty; and
- c. the examination of objections and cassations against decisions of the Commission.

Considering . . .



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Considering that the regulating of prohibition of Monopolistic practices and unfair business competition constitutes a very dynamic matter, consequently, this Government Regulation has been prepared with a purpose that the Commission may perform its duties and functions in a more professional, measurable, and accountable manner as well as may continually develop and apply the required best practices.

Based on the said consideration, it is necessary that a Government Regulation regarding the Implementation of Prohibition of Monopolistic Practices and Unfair Business Competition be stipulated.

II. ARTICLE BY ARTICLE

Article 1

Self-explanatory.

Article 2

Self-explanatory.

Article 3

Self-explanatory.

Article 4

Self-explanatory.

Article 5

Paragraph (1)

Law Number 5 Year 1999 regarding Prohibition of Monopolistic Practices and Unfair Business Competition as amended by Law Number 11 Year 2020 regarding Job Creation shall be based on a balance between Business Actors and the public interest aimed, among other things, at creating effectiveness and efficiency in business activities.

Therefore, based on the violations that are subject to sanction in the form of administrative action:

1. The administrative sanction imposed shall be in accordance with the level of violations and shall take the impacts posed by the violations committed by the Business Actor into account.

2. The administrative . . .



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2. The administrative sanction imposed shall not bring about the cessation of business activities but shall be effective to prevent the occurrence of similar or other violations that will be committed by the Business Actor. With the existence of business continuity, economic activities will remain in operation that give economic benefits to the communities through employments, the availability of goods or services, and increased economic growth.
3. The administrative sanction imposed must be accompanied by clear reasons namely considerations that are detailed, concrete, and based on valid and measurable data.

Paragraph (2)

Self-explanatory.

Article 6

Self-explanatory.

Article 7

Self-explanatory.

Article 8

Self-explanatory.

Article 9

Self-explanatory.

Article 10

Self-explanatory.

Article 11

Self-explanatory.

Article 12

Paragraph (1)

Based on Law Number 5 Year 1999 regarding Prohibition of Monopolistic Practices and Unfair Business Competition as amended by Law Number 11 Year 2020 regarding Job Creation, it is stipulated that an administrative action in the form of sanction taking the form of penalty that may be imposed by the Commission shall be in the amount of at least IDR1,000,000,000 (one billion rupiah).

For the . . .



PRESIDENT OF THE REPUBLIC OF INDONESIA

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For the sake of legal certainty in the implementation thereof, this Government Regulation shall set the maximum limits for the amount of sanction taking the form of penalty that may be imposed by the Commission with regard to the violations committed against the Law.

With due observance of the provisions hereof, the Commission shall be given options for setting the maximum amount of sanction taking the form of penalty based on the value of profits or based on the value of sales earned from the proceeds of the violation against the Law in the Relevant Market for the duration of the occurrence of the violation.

Basically, the options available are alternative in nature and the application thereof to case by case shall be handed to the Commission.

In the event that the Commission uses the calculation basis in the form of the value of net profits earned from the proceeds of the violation of the Law, the Commission needs to take the facts about the activities of the Business Actor, the condition of the Relevant Market, and the duration of the occurrence of the said violation into account.

The value of net profits shall be the profits earned by the Business Actor minus the state tax and levy as well as fixed cost directly relating to the said business activities based on laws and regulations.

On the other hand, in the event that the Commission uses the calculation basis in the form of the value of the sales relating to the violation of the Law, the Commission shall be obligated to take the facts about the activities of the Business Actor, the condition of the Relevant Market, and the duration of the occurrence of the said violation into account.

The value of the sales shall be determined on the basis of the value before the imposition of the state tax or levy directly relating to the sales of goods/services in the Relevant Market.

Considering that the element of the period of the violation constitutes an important factor in determining the amount of the sanction taking the form of penalty that will be imposed, the period of the violation shall be determined on the basis of the sum of years of the occurrence of the violation.

If . . .



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

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

The Commission may furthermore use a certain coefficient in determining the period of the violation per month, within the said 1 (one)-year period of the violation.

Paragraph (2)

The obligation to give such bank guarantee shall not be needed if the Business Actor accepts and executes the decision of the Commission and does not lodge an objection to a Commercial Court or the Supreme Court of the Republic of Indonesia.

Article 13

Self-explanatory.

Article 14

Self-explanatory.

Article 15

Self-explanatory.

Article 16

Self-explanatory.

Article 17

Self-explanatory.

Article 18

Paragraph (1)

Referred to as “supporting data” shall be a financial statement describing the capability of a company in making the payment for the penalty.

Paragraph (2)

Self-explanatory.

Article 19

Self-explanatory.

Article 20 . . .



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Article 20

Self-explanatory.

Article 21

Self-explanatory.

Article 22

Self-explanatory.

Article 23

Self-explanatory.

Article 24

Self-explanatory.

Article 25

Self-explanatory.

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