



**INDONESIA COMPETITION COMMISSION
REPUBLIC OF INDONESIA**

REGULATION OF INDONESIA COMPETITION COMMISSION

NUMBER 2 YEAR 2021

REGARDING

GUIDELINES ON THE IMPOSITION OF SANCTION IN THE FORM OF PENALTY
ON THE VIOLATION OF MONOPOLISTIC PRACTICES AND UNFAIR BUSINESS
COMPETITION

BY THE GRACE OF THE ALMIGHTY GOD

THE CHAIRMAN OF INDONESIA COMPETITION COMMISSION,

- Considering:
- a. whereas in order to support the materilization of certainty and opportunity for doing business through the improvement of investment ecosystem and business activities, it is necessary to have business activity practices that are more conducive and emphasizing fair business competition;
 - b. whereas in order to provide legal certainty with regard to the imposition of administrative action in the form of penalty as provided for in Article 12 of Government Regulation Number 44 Year 2021 regarding the Implementation of Prohibition of Monopolistic Practices and Unfair Business Competition, it is necessary to have guidelines on the imposition of sanction in the form of penalty on the violation of monopolistic practices

and unfair business competition perpetrated by business actors;

- c. whereas based on the considerations as intended to in points a and b, it is necessary to stipulate a Regulation of Indonesia Competition Commission regarding Guidelines on the Imposition of Sanction in the form of Penalty on the Violation of Monopolistic Practices and Unfair Business Competition;

In view of:

1. 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);
2. 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);
3. Government Regulation Number 44 Year 2021 regarding the Implementation of Prohibition of Monopolistic Practices and Unfair Business Competition (State Gazette of the Republic of Indonesia Year 2021 Number 54, Supplement to the State Gazette of the Republic of Indonesia Number 6656);
4. Presidential Decree Number 75 Year 1999 regarding Indonesia Competition Commission as amended by Presidential Regulation Number 80 Year 2008 regarding

Amendment to Presidential Decree Number 75 Year 1999
regarding Indonesia Competition Commission;

HAS DECIDED:

To stipulate: REGULATION OF INDONESIA COMPETITION COMMISSION
REGARDING GUIDELINES ON THE IMPOSITION OF SANCTION
IN THE FORM OF PENALTY ON THE VIOLATION OF
MONOPOLISTIC PRACTICES AND UNFAIR BUSINESS
COMPETITION.

CHAPTER I

GENERAL PROVISIONS

Article 1

Referred to herein as:

1. Indonesia Competition Commission hereinafter referred to as the Commission shall be a commission established to supervise business actors in running their business activities so as not to perpetrate monopolistic practices and/or unfair business competition.
2. Business Actor shall be any individual person or both incorporated and unincorporated business entity established and domiciled or conducting activities in the jurisdiction of the State of the Republic of Indonesia, both jointly and severally, by virtue of an agreement, running various business activities in the field of economy.
3. Reported Party shall be Business Actor and/or other parties alleged to have committed a violation.

4. Commission Panel shall be the panel as intended in the provisions of laws and regulations regarding prohibition of monopolistic practices and unfair business competition.
5. Relevant Market shall be the market relating to the reach or certain marketing regions by Business Actors for the same or similar goods and/or services or substitutions of the said goods and/or services.
6. Penalty shall be an amount of money that must be paid to the state based on a decision that has had a permanent legal force.
7. Day shall be business days.

CHAPTER II

CALCULATION OF THE AMOUNT OF PENALTY

Part One

General

Article 2

- (1) Commission Panel shall impose sanction on administrative actions in the form of a maximum Penalty of IDR1,000,000,000 (one billion rupiah) as a base Penalty.
- (2) Base Penalty shall be obtained from the base Penalty as intended in paragraph (1) plus the calculation based on the following:
 - a. the negative impact posed by the violation;
 - b. the duration of the occurrence of the violation;
 - c. the alleviating factor;

- d. the incriminating factor; and/or
- e. Business Actor's ability to pay.

Article 3

- (1) A negative impact arised as a result of a violation as intended in Article 2 paragraph (2) sub-paragraph a gives rise to the decrease or disappearance of competition.
- (2) Provisions regarding the determination of the impact of violation as intended in paragraph (1) shall be provided for in a Commission Regulation.

Article 4

- (1) The duration of the occurrence of a violation as intended in Article 2 pararaph (2) sub-paragraph b shall be determined on the basis of the number of years of the occurrence of the violation.
- (2) In the event that the duration of the occurrence of a violation as intended in paragraph (1) is less than or up to 6 (six) months, the number of years of the occurrence of the violation is counted as $\frac{1}{2}$ (a half) year.
- (3) In the event that the duration of the occurrence of a violation as intended in paragraph (1) is more than 6 (six) months but not more than 1 (one) year, the number of years of the occurrence of the violation is counted as 1 (one) year.
- (4) Other than the provisions as intended in paragraphs (2) and (3), the Commission Panel may use time coefficient in

determining the duration of the violation per month, within the duration of violation for 1 (one) year.

Article 5

Alleviating factor as intended in Article 2 paragraph (2) subparagraph c shall consist of:

- a. A Business Actor conducts activities showing the existence of effort to comply with the fair business competition principles including code of ethics, training, extension/counselling, dissemination, and the like;
- b. A Business Actor voluntarily ends its anti-competitive behavior as of the arising of the case;
- c. A Business Actor has yet to perpetrate the same or similar violation with regard to prohibition of Monopolistic practices and unfair business competition as provided for in the Law;
- d. A Business Actor does not perpetrate a violation purposely;
- e. A Business Actor does not serve as a leader/initiator of the violation; and/or
- f. The impact of the violation is not significant on competition.

Article 6

Incriminating factor as intended in Article 2 paragraph (2) subparagraph d shall consist of:

- a. A Business Actor has once perpetrated the same or similar violation as provided for in the Law within a period of less than

8 (eight) years based on a decision that has had a permanent legal force; and/or

- b. A Business Actor plays a role as an initiator in the violation.

Article 7

Business Actor's ability to pay as intended in Article 2 paragraph (2) sub-paragraph e shall be based on the financial condition of the company that may cause the company not to operate.

Article 8

- (1) The final amount of the calculation of Penalty as intended in Article 2 shall be determined on the basis of the following limits:

- a. a maximum amount of 50% (fifty percent) of the net profits earned by a Business Actor in the Relevant Market for the duration of the occurrence of the violation of the Law; or

- b. 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) In determining the limits as intended in paragraph (1), the Commission Panel shall take the availability of data and the financial capacity of the Business Actor into account.

Part Two

Calculation of the Limits of the Penalty based on Net Profits

Article 9

- (1) Net profits shall be the gross profits after being subtracted by:
 - a. the fixed cost charged;
 - b. the taxes; and
 - c. other state levies,in the Relevant Market for the duration of the occurrence of the violation.
- (2) The net profits as intended in paragraph (1) shall be based on the supporting data in the form of valid and convincing financial statement and equipped with:
 - a. the recapitulation and proof of purchase;
 - b. the recapitulation, details, and proof of fixed costs charged;
 - c. the recapitulation and proof of payment for taxes; and
 - d. the recapitulation and proof of payment for other state levies aside from taxes,in the Relevant Market for the duration of the occurrence of the violation.
- (3) The Relevant Market as intended in paragraphs (1) and (2) shall be determined on the basis of the guidelines as provided for in a Commission Regulation.
- (4) The financial statement as intended in paragraph (2) shall be in the form of document of:
 - a. audited financial statement; or

- b. financial statement supported by an expert statement in the field of accounting.

Part Three

Calculation of the Limits of Penalty on the basis of Sales

Article 10

- (1) Sales shall be determined on the basis of the sales value before the imposition of tax or state levy directly relating to the sales of goods or services in the Relevant Market for the duration of the occurrence of the violation.
- (2) Sales as intended in paragraph (1) shall be counted on the basis of the following:
 - a. valid and convincing financial statement;
 - b. statement of accounts;
 - c. sales volume;
 - d. market price;
 - e. price list;
 - f. asking price;
 - g. recapitulation and proof of purchase and/or receipt;
and/or
 - h. other related data recognized by the Commission Panel.
- (3) The Relevant Market as intended in paragraph (1) shall be determined on the basis of the guidelines as provided for in a Commission Regulation.

- (4) Valid and convincing financial statement as intended in paragraph (2) sub-paragraph a shall be in the form of document of:
- a. audited financial statement; or
 - b. financial statement supported by an expert statement in the field of accounting.

CHAPTER III

BANK GUARANTEE

Article 11

- (1) In the event that a Reported Party lodges an objection or cassation against a Commission decision, the Reported Party shall be obligated to convey bank guarantee as a performance bond for the Commission decision within a period of 14 (fourteen) Days as from the acceptance of the decision.
- (2) Bank guarantee as intended in paragraph (1) shall be 20% (twenty percent) of the amount of the Penalty at the most as included in the order of the decision of the Commission.
- (3) Bank guarantee as intended in paragraph (1) shall be handed over to the chairman of the Commission.

Article 12

- (1) Bank guarantee as intended in Article 11 paragraph (1) shall be in the shape of bank statement to guarantee a Reported Party.
- (2) Bank as intended in paragraph (1) shall be commercial banks operating in the territory of Indonesia.

Article 13

In the event that a Reported Party does not hand over bank guarantee within the period as intended in Article 11 paragraph (1), the Reported Party shall be deemed not lodging an objection.

Article 14

- (1) The Commission may disburse the bank guarantee as intended in Article 11 paragraph (3) in the event that the decision of the Commission is corroborated by a court decision that has had a permanent legal force.
- (2) The Commission shall give back the bank guarantee to the Reported Party in the event that the decision of the Commission is annulled by a court decision that has had a permanent legal force.

CHAPTER IV

PAYMENT FOR PENALTY AND RELAXATION OF PAYMENT

FOR PENALTY

Part One

Payment for Penalty

Article 15

- (1) The amount of Penalty indicated in a decision that has had a permanent legal force shall constitute state receivables.
- (2) Penalty as intended in paragraph (1) must be remitted to the state treasure as non-tax state revenues by no later than 30 (thirty) Days as from the acceptance of the notice of decision of the Commission by the Business Actor.

- (3) A Business Actor not making payment for penalty within the period as intended in paragraph (2) shall be subject to an administrative sanction in the form of penalty for delay in accordance with the provisions of laws and regulations in the field of non-tax state revenues.
- (4) The Commission may make penalty collection efforts as intended in paragraph (1) and penalty for delay as intended in paragraph (3) in accordance with the provisions of laws and regulations.
- (5) In the event that a Reported Party does not execute a Commission decision as intended in paragraph (2), the Commission shall establish coordination with competent government agencies in the field of state revenue affairs and/or law enforcing apparatuses to conduct execution proceedings in accordance with the provisions of laws and regulations.

Part Two

Relaxation of Payment for Penalty

Article 16

- (1) A Reported Party may file an application for relaxation of payment for Penalty in stages or within a certain period to the chairman of the Commission along with the supporting data in the shape of financial statement.
- (2) Application for relaxation of payment for Penalty as intended in paragraph (1) shall be filed by no later than 14 (fourteen)

Days as from the having had of permanent legal force of the decision.

- (3) In the event that the application for relaxation exceeds the 14 (fourteen)-Day period as intended in paragraph (2), the application shall be rejected.
- (4) In the event that the application is rejected as intended in paragraph (3), the provisions in Article 15 shall apply.

Article 17

- (1) Financial statement as intended in Article 16 paragraph (1) must contain the data of:
 - a. cash flow of the company in the period of the application along with written description concerning company cash flow analysis will be disrupted in the event of payment for Penalty in accordance with the obligation as intended in Article 15 paragraph (2);
 - b. cas flow plan including therein proposed payment for Penalty in stages or within a certain period in accordance with the application for relaxation of payment for Penalty; and
 - c. written description concerning analysis of proposed payment for Penalty in stages or within a certain period that may be made by the company most ideally in accordance with the financial capacity or business activities of the company.

- (2) The Commission shall assess the supporting data as intended in paragraph (1) on the basis of a valid, reasonable, and transparent analysis by taking the financial capacity or the continuity of business activities of the Reported Party into account.
- (3) The Commission shall assess the supporting data as intended in paragraph (1) by no later than 10 (ten) Days as from the acceptance of the application.

Article 18

- (1) The period of relaxation of payment for Penalty as intended in Article 16 paragraph (1) may be granted:
 - a. for a maximum period of 12 (twelve) months; or
 - b. for a period of more than 12 (twelve) through 36 (thirty-six) months.
- (2) The granting of relaxation of payment for Penalty as intended in paragraph (1) shall be conducted with the approval of the Commission.
- (3) In the event that the Commission grants relaxation as intended in paragraph (1) sub-paragraph b, the Reported Party shall be obligated to hand over adequate guarantees.
- (4) Adequate guarantees as intended in paragraph (3) shall be in the shape of:
 - a. insurance;
 - b. bank guarantee;
 - c. surety bond;

- d. collateral; or
 - e. other guarantees,
- as approved by the Commission.

CHAPTER V
CLOSING PROVISIONS

Article 19

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

For public cognizance, hereby ordering the promulgation of this Commission Regulation by placing it in the Official Gazette of the Republic of Indonesia.

Stipulated in Jakarta

On May 31, 2021

CHAIRMAN OF INDONESIA COMPETITION
COMMISSION,

Sgd.

KODRAT WIBOWO

Promulgated in Jakarta

On May 31, 2021

DIRECTOR GENERAL OF
LAWS AND REGULATIONS OF
THE MINISTRY OF LAW AND HUMAN RIGHTS OF
THE REPUBLIC OF INDONESIA,

Sgd.

WIDODO EKATJAHJANA

OFFICIAL GAZETTE OF THE REPUBLIC OF INDONESIA YEAR 2021 NUMBER 589