Overview of the Indonesia Competition Law  
Law Number 5 of 1999  
Concerning the Prohibition of Monopolistic Practices and Unfair Business Competition

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A. Background on Law Number 5
1. Law Number 5 was passed by the Indonesian House of Representatives, signed into the law in March 5, 1999 and provided 6 months for companies to comply therefore, fully enacted in September 1999.

2. Law Number 5 effective date was March 5, 2000, in order to provide a year for the dissemination and socialization of the law. Businesses were given an additional six-month grace period -- until September 5, 2000 -- to come within compliance of the law.

3. The original impetus for an Indonesian antitrust law dates back to the early 1990s, when draft laws were prepared by the government, political parties, and various private organizations. At one point, as many as seven different draft formulations were in circulation. Law Number 5 itself was written in part to satisfy conditions of a Letter of Intent entered into between the government of Indonesia and the International Monetary Fund in July 1998, and also to address public concerns regarding monopolistic practices and closely related concerns about corruption, collusion, and nepotism which arose during the New Order regime under former Indonesian President Suharto.

4. In a practice that had rarely been invoked by the House of Representatives (DPR) where it exercised its right of initiative to propose the draft law -- rather than relying on the government to propose it. This draft formed the working basis of Law Number 5 and the negotiations between the legislature and the government that lead to Law Number 5's passage.

5. Prior to Law Number 5, legal provisions touching on competition could be found scattered throughout numerous other laws, including Indonesia's criminal and civil codes. Article 52(1) of Law Number 5 leaves in effect all of these laws and regulations concerning monopolistic practices and unfair business competition, as long as they are not contradictory to Law Number 5 and are not superseded by any new laws. Indonesia

6. There is no private right of action under Law Number 5. The KPPU, however, may order law violators to pay compensation for damages to injured parties (Article 47(2)f). Additionally, private actions may still be brought under pre-existing laws that touch upon competition.
B. Purpose of Law Number 5 (Article 3)
1. To safeguard the interests of the public and to improve national economic efficiency as one of the efforts to improve the people's welfare.
2. To ensure the certainty of equal business opportunities for large, medium, and small-scale business enactors.
3. To prevent monopolistic practices and unfair business competition.
4. To create effectiveness and efficiency in business activities.

C. Structure of Law Number 5
1. Law Number 5 contains 11 chapters and 53 articles, with the major substantive law sections consisting of:
   a. Prohibited Agreements
      (1) Oligopoly (Article 4)
      (2) Price fixing, except when part of a joint venture (Article 5)
      (3) Price discrimination (Article 6)
      (4) Predatory pricing by agreement with competitors (Article 7)
      (5) Resale price maintenance (Article 8)
      (6) Market division (Article 9)
      (7) Group boycotts (Article 10)
      (8) Cartels (Article 11)
      (9) Trusts (Article 12)
      (10) Oligopsony (Article 13)
      (11) Vertical integration (Article 14)
      (12) Exclusive dealing concerning re-supply (Article 15 (1))
      (13) Tying (Article 15 (2))
      (14) Reciprocal dealing (Article 15 (3) a)
      (15) Exclusive dealing (Article 15 (3) b)
      (16) Agreements with foreign parties that may result in monopolistic practices or unfair business competition (Article 16)
   b. Prohibited Activities
      (1) Monopoly (Article 17)
      (2) Monopsony (Article 18)
      (3) Market control (Article 19)
      (4) Predatory pricing (unilaterally) (Article 20)
      (5) Fraudulently determining production costs and other costs (Article 21)
      (6) Conspiracies to rig bids (Article 22)
c. Dominant Position
(1) Abuse of dominant position (Article 25)
(2) Interlocking directorates (Article 26)
(3) Cross-share ownership (Article 27)
(4) Mergers and acquisitions that may result in monopolistic practices or unfair business
competition (Article 28)

d. Exemptions (Article 50) -- certain activities are exempt from Law Number 5 including:
(1) Agreements intended to implement applicable laws and regulations (Article 50 a)
(2) Agreement related to intellectual property (Article 50 b)
(3) Agreements related to standard setting (Article 50 c)
(4) Agency agreements that do not include resale price maintenance (Article 50 d)
(5) Agreements for the purpose of research and development (Article 50 e)
(6) International agreements ratified by the government (Article 50 f)
(7) Export agreements (Article 50 g)
(8) Activities of small-scale enterprises (Article 50 h)
(9) Activities of cooperatives aimed at serving their members (Article 50 i)

e. State action exception (Article 51) -- Law Number 5 also includes what effectively is a
state action exception, permitting monopoly if it is the result of a law (passed by the DPR),
and if those activities are carried out by a state-owned enterprise or institution formed or
appointed by the government.

2. Law Number 5 creates the Commission for the Supervision of Business Competition -- the Komisi
Pengawas Persaingan Usaha or KPPU -- which is responsible for enforcing Law Number 5 (Articles
30-37).

3. Law Number 5 establishes the procedures for reporting possible violations of Law Number 5 to
the KPPU and how the KPPU should conduct investigations of possible violations of the law
(Articles 38-46). This is discussed in detail in Section III below.

4. Law Number 5 sets forth the sanctions for violations of the law (Articles 47-49). This is discussed
in detail in Section II C below.
D. Some Observations on Law Number 5

1. Law Number 5’s primary focus is on the prohibition of business practices that may result in monopolistic practices or unfair business competition.
   a. The concepts of monopolistic practices and unfair business competition are defined in very general terms in Article 1, subparagraphs 2 and 6, respectively.

   (1) Monopolistic Practices -- Monopolistic practices shall be the centralization of economic power by one or more business enactors 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. (Article 1 - 2)

   (2) Unfair Business Competition -- 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 anti-competition manner. (Article 1 - 6)

   b. The law also contains a number of provisions that include presumptions based on the figure of market shares:
   (1) Oligopoly (Article 4) -- presumption that a firm or a group of firms are oligopolists if they collectively control over 75% of a market.
   (2) Oligopsony (Article 13) -- presumption that a firm or a group of firms are oligopsonists if they collectively control over 75% of a market.
   (3) Monopoly (Article 17) -- presumption that a firm or a group of firms are monopolists if they control over 50% of a market.
   (4) Monopsony (Article 18) -- presumption that a firm or a group of firms are monopsonists if they control over 50% of a market.
   (5) Dominant position (Article 25) -- presumption that a firm has a dominant position if it controls over 50% of a market, or a group of firms has a dominant position if they control over 75% of a market.

   c. Additionally, market share defines the violation in the case of cross- share ownership (Article 27), where one firm owns a majority of shares in companies controlling 50% of a market, or a group of firms owns a majority of shares in companies controlling 75% of a market.

2. Law Number 5 appears to incorporate rule of reason and per se illegality concepts in its prohibitions of anticompetitive business practices, based on the presence or absence of provisos at the end of many articles, which contain the following, or similar, language: . . . that may result in
monopolistic practices and/or unfair business competition. (See, for example Article 4 concerning oligopoly.)

a. Conduct that is considered is subject to the rule of reason in Indonesia:
   (1) Market division (Article 9)
   (2) Cartels (Article 11)
   (3) Trusts (Article 12)
   (4) Bid rigging (Article 22)

b. Conduct that may be subject as per se illegal in Indonesia:
   (1) Price discrimination (Article 6)
   (2) Exclusive dealing concerning resupply (Article 15 (1))
   (3) Tying (Article 15 (2))
   (4) Reciprocal dealing (Article 15 (3) a)
   (5) Exclusive dealing (Article 15 (3) b)
   (6) Abuse of dominant position (Article 25)
   (7) Cross-share ownership (Article 27)

4. The guidance regarding merger review and notification is in the process of public review before it is enacted under the form of Government Regulation.
   a. The law prohibits mergers that result in monopolistic practices and unfair business competition. (Article 28)
   b. It requires that the government develop further regulations governing merger review and notification, but such regulations have yet to be issued. (Article 29)
   c. As Law Number 5 currently reads, Indonesian law will not require prior notification of mergers, only notification within thirty days of the merger. (Article 29)

5. Exemptions to Law Number 5 (Article 50)
   a. Some of the conduct exempted under Law Number 5 appears to be fairly standard, depending on how the exemptions actually will be interpreted in practice:
      (1) Agreements intended to implement applicable laws and regulations (Article 50 a)
      (2) Agreements related to standard setting (Article 50 c)
      (3) Agency agreements that do not include resale price maintenance (Article 50 d)
      (4) Agreements for the purpose of research and development (Article 50 e)
      (5) International agreements ratified by the government (Article 50 f)
      (6) Export agreements (Article 50 g)
b. Some of the exemptions to Law Number 5, depending on how they are actually interpreted by the KPPU and the courts, may create significant loopholes in the law, thus permitting much anticompetitive conduct:
(1) Agreements related to intellectual property (Article 50 b)
(2) Activities of small-scale enterprises (Article 50 h)
(3) Activities of cooperatives aimed at serving their members (Article 50 i)

II. The Commission for the Supervision of Business Competition (KPPU)

A. Background on the KPPU
1. The KPPU was established in accordance with Articles 30-37 of Law Number 5 and Presidential Decree Number 75 of 1999.
2. The KPPU is Indonesia's first independent regulatory commission. It is not part of the executive, legislative, or judicial branches of government. However this status raised controversy from the legal society especially from the Judiciary body.
3. The KPPU began operations through the appointment of its Commissioners by the President in June 2000.
4. The KPPU's major functions include:
   a. Law enforcement -- investigating, interpreting, and enforcing Law Number 5's prohibition of monopolistic practices and unfair business competition. (Article 35 a, b, c & d)
   b. Competition advocacy -- providing advice on government policy and laws related to, or affecting, monopolistic practices and unfair business competition. (Article 35 e)
   c. Written guidelines and policy statements -- assisting business and the public to understand and comply with the law. (Article 35 f) Few of the guidelines are in the process of public review.

5. The KPPU is subject to oversight by:
   a. The President -- through annual reporting (Article 35 g) and the appointment, and possible dismissal for cause, of the Commissioners. (Article 31(2))
   b. The House of Representatives (DPR) -- through annual reporting (Article 35 g), approval of the President's appointments of the Commissioners (Article 31(2)), and the budget process.
   c. The Judiciary -- through appellate review and the possible enforcement of the KPPU decisions. (Article 45)
   d. The public -- through decisions of the KPPU, which are read in public session and through the mass media exposure.

B. The Organization of the KPPU
1. The Commissioners (Article 32)
a. The KPPU has eleven Commissioners, who are appointed by the President, with confirmation from the DPR – during its 1st term, one Commissioner resigned because of appointed as a Minister and never been replaced with another Commissioner.
b. Commissioners must be experienced in business or have expertise in law or economics, and must not have ties to any business entity – Out of 11 Commissioner, 9 are economist and 2 are with legal background.
c. Commissioners serve five-year terms and may be reappointed for one additional term.
d. Each Commissioner has equal authority, and the Commission acts through majority vote.
e. The Chairman and Deputy Chairman are selected by the Commissioners and serve one-year terms.

2. The Secretariat
a. The KPPU’s Secretariat consists of four directorates:
   (1) Executive Director -- responsible for the remain of other directors to the Commissioners
   (2) Directorate for Investigation and Law Enforcement -- responsible for investigating alleged violations of Law Number 5 and litigating cases before the courts.
   (3) Directorate for Communication -- responsible for disseminating information to business, the public, and the press.
   (4) Directorate for Research and Training -- responsible for training the professional staff and providing research in support of cases under investigation and the competition advocacy program.
   (5) Directorate for Human Resources -- responsible for the KPPU’s administration, finance, and personnel.
b. The KPPU’s professional staff consists primarily of lawyers and economists.

C. Remedial Powers of the KPPU
1. Civil Remedies (Article 47):
a. Declare unlawful agreements null and void.
b. Require restructuring of firms found guilty of illegal vertical integration, including possibly transferring a part of the company to another business enactor or changing the form of the production series.
c. Issue cease and desist orders to stop monopolistic practices, unfair business competition, or the abuse of dominant position.
d. Cancel mergers or consolidations in violation of the law.
e. Order compensation for damages by violators to injured parties.
f. Impose civil fines up to Rupiah 25 billion (approximately $2.5 million) for violations of the law.
2. The KPPU may seek criminal penalties, for certain violations enumerated in Article 48, through submission of the case to police investigators, who in turn may refer the matter to the public prosecutor and, ultimately, the courts. A court may order:
   a. Criminal fines up to Rupiah 100 billion (approximately $10 million).
   b. Prison sentences of up to six months.

III. The KPPU’s Procedures for Case Initiation and Handling

A. Investigations of alleged violations of Law Number 5 may be commenced by the KPPU based on a report from a complaining party about a possible violation of the law or upon the initiative of the KPPU.

B. Submission of the Report (the Complaint)
1. Determining whether the report is complete or incomplete.
   a. To be considered complete, a report must:
      (1) Be in writing, in Indonesian, and signed by the reporting party (the complainant), including a name and address.
      (2) Provide details on the violation allegedly committed by the reported party (the target).
      (3) Include any supporting documentation or evidence.
   b. If a report is found incomplete:
      (1) The reporting party is notified of any deficiencies and is given ten days to correct the report. If not corrected, the report will be deemed incomplete.
      (2) If no notice of deficiency is given to the reporting party within ten days of receipt, the report is considered complete.
2. Complete reports are summarized by the Secretariat, recorded in the KPPU’s case register, and then are submitted to the Commissioners.
3. Notification is given to the reporting party of the commencement of the preliminary examination.
4. The identity of the reporting party and any business secrets learned during an investigation are kept confidential.

C. Preliminary Examination
1. The purpose of the preliminary examination is to determine whether further investigation is warranted.
2. It must be completed within 30 business days.
3. The investigation is conducted on a voluntary basis, with requests for cooperation from the reporting party, the reported party, and other third-party witnesses. Compulsory process may be used if necessary.
4. The reporting party and the reported party may be called before the Commission for questioning.
5. The Commission as a whole decides whether further investigation is warranted.

**D. Follow-Up Examination**
1. The purpose of the follow-up examination is to determine whether the law has been violated.
2. It must be completed within 60 business days, except where extended for up to 30 days by the KPPU.
3. A Council of Commissioners, which is established by the Commission to conduct follow-up investigations and must consist of at least three Commissioners, determines how to structure the investigation, whether to close it, and what, if any, sanctions to impose.
4. The investigation is conducted on a voluntary basis, with requests for cooperation from the reporting party, the reported party, and other third-party witnesses. Compulsory process may, however, be used if necessary.
5. Follow-up examinations may include the involvement of police investigators if necessary; for example, if a party refuses to comply with a request for documents or fails to appear before the KPPU.

**E. The Commission s Decision**
1. The Commission Council determines whether the law has been violated. Its decision is issued in writing, and it must include the Council s reasoning.
2. The decision must be issued within 30 business days of close of the follow-up examination.
3. The decision is made public by a reading it in open session.

**F. Implementation of the Commission s Decision**
1. The reported party is notified of the decision.
2. The reported party must abide by the Commission s decision within 30 days of issuance, unless it makes objections within 14 days of notification.
3. The reported party may appeal (keberatan) the KPPU s decision to the District Court. The District Court must hear the appeal within 14 days after filing, and it must render a decision within 30 days after initiating the case. (Article 45) - The term keberatan raised questions from the legal practitioners and the courts since it is a new term in Indonesian civil procedure law and later the Supreme Court decided through the Supreme Court Regulation that it will be treated as an appeal in a litigation process.
4. Appeals from the District Court are taken directly to Supreme Court, bypassing the High Court (the court of appeals). The Supreme Court must hear an appeal within 14 days after filing, and it must render a decision within 30 days after initiating the case. (Article 45)
5. If the reported party fails to comply with the Commission's decision the matter may be submitted either:

a. To the courts for an enforcement order, where civil penalties are sought.
b. To the police investigator, who then may refer it to the prosecutor and, ultimately the courts, for further action where criminal allegations are involve.

G. The Working Group

1. The KPPU may be assisted in its investigations on an ad-hoc basis by a working group, in accordance with Law Number 5 (Article 34), Presidential Decree Number 75 of 1999 (Article 13), and the KPPU's internal operating guidelines (Decision Number 7 of 2000).
2. A working group consists of individuals from outside the KPPU who are experienced or are expert in fields deemed necessary by the KPPU to assist it in investigating a case.

Indonesia experiences with its Competition Law.

a. The people and the business now are aware that there is law which regulates business behavior towards more competitive market economy and ensuring that everybody will have the same opportunity to enter the market – inhibiting protection to the closed crony to the executives.
b. The adoption of market economy in the system required the Indonesian economy to be more competitive and efficient and this can be achieved and well guarded through the competition law and policy.
c. Government takes longer effort to adapt to the new approach in running the economy with more competitive approach which can be reflected to the performance of most of the state owned companies – significant monopoly telecommunication, electricity or transportation.
d. Many raised question regarding the Commission status within the State’s structure as it is not either part of the judiciary, legislative or executive body.
e. Over the 5 years the Commissions did constructed significant decisions which believe to influence Indonesian business behavior to be more competitive and not seeking only protection.
f. The Commission in few decided cases have been reflecting that it is still prefer to adopt pro small business to efficiency as reflected in some cases (Indomaret – protection for traditional market and Belawan Port case – protection for small, inefficient harbor service provider)
g. Some business actors who have been sanctioned by the Commissions have the tendency to challenge the Commissions decision and submit their appeal to the Court – in most cases, the Commission decisions were overturned by the Court.
h. Unclear procedure law at the Court of Appeal for competition cases made it difficult for the Commission to defend its decisions simply due to the lack of understanding from the Judges on competition and economic matters.

The challenges ahead:

a. Need more socialization to educate the business, the public and the manufacturers/producers.

b. Need guidelines for public use especially for business – few are still under public review process.

c. Need support from mass media for fair information about the law and the Commissions tasks

d. Many achievements for a new self regulatory body in its 1st 5 years term which can be seen in the development of the Commissions capacity building and decisions taken in their cases

e. The question of what good its presents if the Commission developed as strong institution and spend much resources to investigate cases, educate business behavior but the decision is always overturn by the Court

f. In the long run, amendment of the law – although not suggested imminently since many articles have not been exercised or applied in all of the cases decided by the Commission