



# Prohibition of Concurrent Position of Commissioner of State-Owned Enterprises Reviewed Under Indonesian Business Competition Law

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## ABSTRACT

One of the assessments of the dominant position of a business actor can be conducted based on the affiliation relationship of the business actor with other business actors, where the affiliation relationship regulated in Law of the Republic of Indonesia Number 5 Year 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition is concurrent positions and cross-shareholdings. Concurrent positions are prohibited when a person holds positions as directors or board of commissioners in two or more companies at the same time, where the companies are in the same relevant market, have close links in the type and/or field of business, or together can control the market share of certain services and/or goods. Legal issues regarding the concurrent position of members of the board of commissioners of BUMN arose during the enactment of Permen-BUMN PER-10/MBU/10/2020, which allows members of the board of commissioners of BUMN to hold concurrent positions under certain conditions. This is normative legal research that examines the prohibition of concurrent positions of BUMN commissioners in terms of business competition law in Indonesia.

## A. INTRODUCTION

Monopolistic State-Owned Enterprises (BUMN) are business entities in which most or all of the capital is owned by the state through direct participation of separated state assets (Rajagukguk 2016). In the implementation of the national economy, BUMN as one of the actors of economic activity in Indonesia has an important role in realizing the welfare of society. BUMN have a strategic role as implementers of public services, as a significant source of state revenue in the form of various types of taxes, dividends and privatization proceeds, balancing large private forces, and assisting the development of small businesses or cooperatives (Rajagukguk 2016). The implementation of the role of BUMN is realized in almost all sectors of the economy, such as the financial sector, industry and trade, post and telecommunications, fisheries, transportation, plantations, construction, agriculture, mining, forestry, manufacturing, and electricity (Rajagukguk 2016).



Law of the Republic of Indonesia Number 5 Year 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition (Anti Monopoly Law) is one of the legal umbrellas regarding business competition in Indonesia which aims to create a climate of healthy business competition and avoid the concentration of economic power in certain individuals or groups (Indonesia 1999). The Anti Monopoly Law provides equal protection to every business actor in doing business and guarantees legal certainty that prevents monopolistic practices and/or unfair business competition, which is expected to create a conducive business climate where every business actor can compete fairly and fairly in Indonesia, including BUMN (Yusro et al. 2021).

BUMN, which are generally limited liability companies (hereinafter referred to as 'companies'), have corporate organs consisting of the General Meeting of Shareholders (GMS), the Board of Directors, and the Board of Commissioners. Article 26 of the Anti-Monopoly Law specifically regulates the prohibition of dual positions, which focuses on the position of a person who holds a position as a director or commissioner and against companies engaged in the same field and competing with each other (Harjono 2022). Law of the Republic of Indonesia Number 19 of 2003 on BUMN expressly regulates the prohibition of concurrent positions as stipulated in Article 25 for members of the board of directors of a Persero, Article 33 for members of the board of commissioners, Article 53 for members of the board of directors of a Perum, and Article 62 for members of the supervisory board (Indonesia 2003).

The results of the Ombudsman RI examination until 2019 showed that there were 397 commissioners who held concurrent positions in BUMN and 167 in BUMN subsidiaries, and indicated concurrent income (Kabar Ombudsman 2022). The findings of the Business Competition Supervisory Commission (KPPU) in 2021 show that there are 31 directors or commissioners of BUMN who hold concurrent positions in the financial sector, 12 directors or commissioners in the mining sector, and 19 directors or commissioners in the construction sector, or an accumulation of 62 people who hold positions as directors or commissioners who hold concurrent positions (CNN Indonesia 2021).

The findings of the Ombudsman RI show that there are conflicting regulations related to the prohibition of concurrent positions, one of which is Permen-BUMN PER10/MBU/10/2020, where the board of commissioners and supervisory board of BUMN can hold concurrent positions in companies other than BUMN by referring to the provisions of sectoral laws and regulations. KPPU has submitted suggestions and considerations to the Ministry of BUMN, suggesting that the Ministry of BUMN revoke the provision that allows concurrent positions of the board of commissioners of BUMN with the board of commissioners of companies other than BUMN because it can potentially violate fair business competition (Sandi 2021).

## **B. METHOD**

The research in this study is normative legal research using the analytical approach method, or statutory, conceptual, and comparative analysis approaches. The analytical

approach is used to analyze legislative norms on business competition and BUMN applicable in Indonesia and literature such as books and national and international publications on business competition and BUMN.

## C. RESULTS AND DISCUSSION

### Overview of Dual Positions in Competition Law

Concurrent positions raise questions from the anticompetitive principle of what will happen in terms of competition between companies that share a board of directors or a board of commissioners (Petersen 2016). Theories in social science generally describe four main reasons why business actors hold concurrent positions, namely:

- 1) As a strategic tool for companies to obtain and exchange information and/or resources to strengthen the relationship between them and their competitors/other business actors;
- 2) As a monitoring tool, or in other words, a company can appoint individuals to serve on the board of another company to monitor the company/business actor;
- 3) Improve the company's reputation to attract investment; and
- 4) The individual's own ambitions.

There are three main reasons for concurrent positions, the first is collusion, co-optation and surveillance, the second is career advancement, and the last is social cohesion (Az Zahra 2020). Results from studies show that direct or indirect dual positions help the firm to widen and disseminate the firm's business practices, create upper-class cohesion, act as a mechanism for inter-firm collusion and cooperation, provide the possibility of personal career advancement for directors, reduce dependency, control and/or monitor others, present a source of legitimacy and reduce the possibility of opportunistic behavior (Ataay 2016).

### Under the Anti-Monopoly Law

A dominant position is a condition in which there are no meaningful competitors among business actors with a controlled market share or a business actor with the highest position among its competitors in the relevant market based on financial capability, access to sales or supply, and the ability to adjust the demand or supply of certain goods or services (Indonesia 1999). Matters that can make a business actor have a dominant position are that the dominant business actor has a lower production cost structure than other business actors, usually has a superior product in a relevant market, and is formed due to the merger of several companies or business actors. The merger of companies or business actors in one industry often has an incentive to coordinate the activities undertaken with a view to increasing profits (Lubis et al. 2017).

Assessment of the dominant position of a business actor can be conducted based on the affiliation relationship between business actors, where the affiliation relationship regulated in the Anti Monopoly Law is regarding dual positions and cross-shareholding. The provision of

concurrent positions as stipulated in Article 26 of the Anti-Monopoly Law is that a person with a position as a board of directors or commissioner of a company, at the same time is prohibited from concurrently serving as a board of directors or commissioner of another company, if the companies are in the same relevant market, have a relationship in the field and or type of business, or jointly control the market share of certain goods and or services that may result in monopolistic practices and or unfair business competition (Indonesia 1999).

The elements related to Article 26 of the Anti-Monopoly Law are. First, monopolistic practices or concentration of economic power by one or more business actors resulting in control over the production and or marketing of certain goods and or services so as to cause unfair business competition and may harm the public interest (Indonesia 1999). Second, unfair business competition or competition among business actors who have activities of producing and/or marketing goods and or services dishonestly, hampering business competition, or against the law. Third, relevant market or a market with a certain range or marketing area for the same, similar or substitute goods and/or services. Fourth, market share or the percentage of the selling or buying value of certain goods or services controlled by a business actor in a certain relevant market and in a certain calendar year (Indonesia 1999).

The practice of concurrent positions that generally results in monopolistic practices and/or unfair business competition is where concurrent positions by directors and/or commissioners in two or more companies can form a horizontal, vertical and conglomerate relationship that is negative in nature, which can affect the climate of business competition among business actors (Almanda, Anam, and Sitowing 2019). Concurrent positions, in particular, occur between two or more business actors/companies that have strong substitution links in the same relevant market, and can control certain markets either individually or in groups, and have the potential to abuse their dominant position (Almanda, Anam, and Sitowing 2019). Article 26 of the Anti-Monopoly Law does not absolutely prohibit concurrent positions, as it is necessary to first assess the dominant position of business actors where a person holds concurrent positions in two or more different companies (Lubis et al. 2017).

Various forms of special or privileged relationships horizontally between companies that have concurrent positions can negatively affect the business competition climate by triggering control over company policies or decisions to carry out the same strategy as other companies in the same relevant market, and such strategies are in the form of pricing, market allocation and/or division, regulation of production quantities, marketing procedures, and various other strategies that can hinder fair business competition (Indonesia 2011). Special or special vertical relationships between companies that have concurrent positions can facilitate resale price fixing, exclusive agreements, and coordination among the companies involved so as to reduce competition between the same or different types of goods or services (Indonesia 2011).

### **Forms of Concurrent Position**

The recognized forms of dual positions are horizontal dual positions and vertical dual positions:

1) Horizontal concurrent positions

Horizontal dual positions generally occur in companies that are in the same relevant market, where two or more competing companies carry out joint strategies related to pricing, production determination, and market allocation. For example, between VW and XY there is a dual position of the board of commissioners, where a person in VW holds a position on the board of commissioners or directors of XY, or vice versa. The relationship between VW and XY in this example is a horizontal relationship, both being in the same relevant market (Nurjanah, Gultom, and Afriana 2021).

The prohibition of horizontal dual positions based on Article 26 of the Anti-Monopoly Law letter a is when a person who holds a position in a company at the same time doubles as a director or board of commissioners in another company, both of which are in the same relevant market. The prohibition is a rule of reason, in the sense that a violation occurs if the existence of a person is carried out in two companies that carry out the same business activities and result in monopolistic practices and/or unfair business competition in the relevant market.

Horizontal dual positions increase the likelihood of serious anticompetitive effects, which can be seen from the collusive effect or non-coordinated effect. Collusive effects are usually divided into two categories, namely explicit collusion and oligopolistic coordination. Explicit collusion is often carried out through cartel activities and refers to situations where competitors agree to restrict competition among themselves, for example by fixing prices, reducing output or dividing the market. A more intangible form of collusion, oligopolistic coordination, refers to situations where competitors in an oligopoly charge cartel-like prices without communicating (Petersen 2016).

There are two arguments regarding this non-coordinated effect. First, the acquisition of sensitive business information through interlocks can “soften” the competition between rivals, even if they do not collude. Moreover, information conveyed through interlocks is more reliable than information conveyed by the company itself. Then horizontal concurrent positions can have anticompetitive effects even in the absence of information exchange. This can be explained by the example of X, holding board positions in two companies and X does not need to communicate information between companies A and B to influence the decision of company A or B because it has information about both companies and can manipulate it without ever expressly communicating it (Petersen 2016).

2) Vertical concurrent positions

Vertical dual positions where two or more competing companies can be pro-competitive by increasing efficiency, but can also hinder competition by making reciprocal agreements between suppliers and customers. The prohibition of horizontal dual positions according to Article 26 of the Anti-Monopoly Law is in letter b, namely a person at the same time concurrently serving as a director or

board of commissioners in another company, if the companies are closely related in the field and or type of business, for example, between a raw material supplier company or with a distributor or agent company and a producer company, where there is a person who holds a position as a director or commissioner in the producer company, and the same person becomes a director or commissioner in a raw material supplier company or at a distributor or agent company (Lubis et al. 2017).

Vertical dual positions result in special or privileged relationships through inter-firm agreements to control a series of production processes, and have traditionally been criticized on the grounds that vertical dual positions can lead to preferential treatment at the expense of other suppliers or customers by facilitating reciprocal or exclusive dealing, tying agreements, and vertical integration.

### **Dual Position in the Case of Dual Access Agreement by Garuda Indonesia (Decision of KPPU Case No. 01/KPPU-L/2003)**

The case of the dual access agreement by Garuda Indonesia that led to the practice of dual positions that caused unfair business competition began with the existence of two members of the Board of Directors of Garuda Indonesia, namely Emirsyah Satar and Wiradharma Bagus Oka, who were also Commissioners of PT. Abacus Indonesia. At the synergy meeting between Garuda Indonesia and PT. Abacus Indonesia on December 18, 2000, which was attended by Emirsyah Satar and Wiradharma Bagus Oka, who at that time acted as representatives of Garuda Indonesia, reiterated that the dual access policy was only carried out with the Abacus system. Garuda Indonesia uses the Abacus system to distribute international flight services, and travel agencies are able to view flight schedules, information on availability of space and ticket fares, booking space and issuing tickets for international flights of Garuda Indonesia and other airlines using the Abacus system.

Garuda Indonesia has a domestic market share of 46.84% based on sales value and 40.81% based on passenger numbers and is an airline with a large market share with a relatively more expensive ticket selling price compared to other airlines, and this is the main attraction for every travel agency at the domestic level to be able to become an agent of Garuda Indonesia. It is easier for a travel agency to become an agent of a foreign airline by becoming a domestic agent of Garuda Indonesia, and to become a domestic agent of Garuda Indonesia, a travel agency must be able to fulfill the requirements as determined by Garuda Indonesia.

With the agreement on dual access by Garuda Indonesia and PT. Abacus Indonesia, Garuda Indonesia made an additional requirement that travel agencies must first have an Abacus connection, which requires travel agencies to provide an Abacus terminal with an Abacus system in order to include the ARGAs system to become Garuda Indonesia agents. The inclusion of the ARGAs system only in the Abacus terminal hinders the marketing of other CRSs, as the selection of a CRS by the majority of travel agencies is based on the presence or absence of the ARGAs system, rather than on competitive rental rates, good service, and incentives. Upon further investigation and examination, this then indicates unfair business competition.

## Prohibition of Concurrent Positions of BUMN Commissioners in Indonesia

The BUMN commissioner is a Persero organ responsible for supervising and advising the board of directors regarding the ongoing management activities of the Persero. Members of the BUMN board of commissioners are appointed based on several things, such as dedication, integrity, adequate knowledge in the business field of the Persero, understanding company management issues related to one of the management functions, and providing sufficient time to carry out their duties (Indonesia 2003).

Article 33 of the BUMN Law stipulates that commissioners are prohibited from holding concurrent positions as members of the board of directors of BUMN, regionally-owned enterprises, privately-owned enterprises, and other positions that may cause conflicts of interest; and/or other positions (Indonesia 2003).

The prohibition of concurrent positions for members of BUMN commissioners is intended to ensure that members of BUMN commissioners really give all their energy and thoughts and/or full attention to the duties, obligations and achievement of the company's objectives, and avoid conflicts of interest (Indonesia 2003).

Regarding conflict of interest itself, there are several interpretations as specified in several laws and regulations applicable in Indonesia. OJK Regulation No. 42/POJK.04/2020 in the capital market sector determines conflict of interest as the difference between the economic interests of a public company and the personal economic interests of members of the board of directors, members of the board of commissioners, major shareholders, or controllers that may harm the public company. Regulation of the Minister of BUMN No. PER-01/MBU/01/2015 on Guidelines for Handling Conflict of Interest within the Ministry of State-Owned Enterprises determines conflict of interest as a situation where an employee of the State Civil Apparatus (ASN) of the Ministry of BUMN has or should be suspected of having a personal interest in any use of authority in his position or position, so that it can affect the quality of his decisions and/or actions. There are three elements in conflict of interest, namely (Destria 2021):

- 1) The presence of personal interests, which can be financial, family or other;
- 2) The responsibility of authority is defined as the duties that are carried out because the position is given by the applicable provisions; and
- 3) The professional responsibility, namely objective professional judgment.

### Based on Permen-BUMN PER-02/MBU/02/2015

The appointment and dismissal of members of the board of commissioners and supervisory board of BUMN is based on the principles of professionalism and good corporate governance. The prohibition of concurrent positions of members of the board of commissioners of BUMN is determined in Chapter V on the End of Office, as stipulated below:

- 1) Members of the Board of Commissioners and/or Supervisory Board are prohibited from holding concurrent positions as Members of the Board of Commissioners and/or Supervisory Board of BUMN/Companies, unless they sign a statement

letter willing to resign/be dismissed from one of the positions if elected. This provision does not apply if the appointment of members of the Board of Commissioners/Supervisory Board is carried out in the context of supervising BUMN/companies in the restructuring program based on special assignments and the Minister.

- 2) Members of the Board of Commissioners and/or Supervisory Board are prohibited from holding concurrent positions as members of the Board of Directors at BUMN, BUMD, Private-Owned Enterprises, or holding positions that based on laws and regulations are prohibited from being concurrent with the position of a member of the Board of Commissioners/Supervisory Board, or positions that may cause a conflict of interest with the BUMN concerned, unless they sign a statement that they are willing to resign from the position if elected as a member of the Board of Commissioners/Supervisory Board of BUMN.
- 3) Members of the Board of Commissioners or Supervisory Board who hold concurrent positions as referred to in numbers 1 and 2, their term of office as members of the Board of Commissioners/Supervisory Board ends by operation of law from the time when other members of the Board of Commissioners/Supervisory Board or Members of the Board of Directors or the GMS/Minister learn of the concurrent position as referred to.
- 4) Within a period of no later than 7 (seven) days as of the notification of the concurrent position as referred to in point (1) and (2), the member of the Board of Commissioners/other Supervisory Board, or the member of the Board of Directors, must submit a notification to the GMS/Minister regarding the concurrent position, for further process of dismissal determination.
- 5) Legal actions performed for and on behalf of BUMN by members of the Board of Commissioners/Supervisory Board after the expiration of the law as referred to in point (3), are invalid and become the personal responsibility of the members of the Board of Commissioners/Supervisory Board concerned.
- 6) The provisions referred to in paragraph (5) shall not reduce the responsibility of the member of the Board of Commissioners/Supervisory Board concerned for the loss of BUMN caused by the error or negligence of the member of the Board of Commissioners/Supervisory Board concerned in carrying out his/her duties, if the member of the Board of Commissioners/Supervisory Board consists of two or more members of the Board of Commissioners/Supervisory Board, the responsibility referred to in this paragraph shall apply jointly and severally to each member of the Board of Commissioners/Supervisory Board.

In the event that a member of the board of commissioners of an BUMN holds concurrent positions and violates the provisions as mentioned above, the position of the member of the board of commissioners of the BUMN shall end on the grounds that he/she no longer meets the requirements as a member of the board of commissioners of the BUMN based on the provisions of the articles of association and applicable laws and regulations.

## **Based on Permen-BUMN PER-10/MBU/10/2020**

Permen-BUMN PER-10/MBU/10/2020 amends several provisions as stipulated in Permen-BUMN PER-02/MBU/02/2015, one of which is regarding the prohibition of concurrent positions. Permen-BUMN PER-10/MBU/10/2020 adds the provisions of dual positions in Chapter V regarding Dual Position and Prohibition of Dual Position as follows:

### 1) Concurrent Position

The Board of Commissioners and Supervisory Board may concurrently serve as the Board of Commissioners of companies other than BUMN, subject to the provisions of sectoral laws and regulations.

For the Board of Commissioners and Supervisory Board who concurrently serve as the Board of Commissioners in companies other than BUMN as referred to in point (1), must meet the percentage of attendance at the meeting of the Board of Commissioners/Supervisory Board of BUMN for one year at least 75% (seventy-five percent) attendance, as a requirement to obtain *tantiem*/performance incentives for those concerned.

### 2) Prohibition of Concurrent Position

Permen-BUMN PER-10/MBU/10/2020 does not change the provisions on the prohibition of dual positions as stipulated in Permen-BUMN PER02/MBU/02/2015.

Permen-BUMN PER-10/MBU/10/2020 stipulates that members of the board of commissioners of BUMN can hold concurrent positions in companies other than BUMN and have an obligation to fulfill the percentage of attendance of BUMN board of commissioners meetings of at least 75% attendance for one year. In the event that a member of the board of commissioners of an BUMN violates the provisions on the prohibition of concurrent positions as mentioned above, the position of the member of the board of commissioners of the BUMN will end on the grounds that he/she no longer meets the requirements as a member of the board of commissioners of the BUMN based on the provisions of the articles of association and applicable laws and regulations.

## **Potential for Monopolistic Practices and/or Unfair Business Competition in the Concurrent Position of Commissioner of BUMN**

The enactment of Permen-BUMN PER-10/MBU/10/2020 which allows members of the board of commissioners of BUMN to hold concurrent positions under certain conditions has the potential to create monopolistic practices and/or unfair business competition. The concurrent positions that can be held by members of the board of commissioners of BUMN can potentially violate fair business competition in the market in the form of, for example, the involvement of companies whose positions are concurrently held by members of the board of commissioners of BUMN in market arrangements related to prices, supply, regional division, production quantities, and

others. Horizontal relationships between companies in which members of the board of commissioners of BUMN hold concurrent positions are easier to achieve and maintain if they are between companies in the same market. The concurrent positions of members of the board of commissioners of BUMN also have the potential to be abused in vertical relationships through the practice of exclusivity, tying and bundling or other corporate actions in which the members of the board of commissioners of BUMN hold concurrent positions. In addition, the concurrent positions that can be held by members of the board of commissioners of these BUMN have the potential for market control between companies whose business activities are interrelated where there are concurrent positions by members of the board of commissioners of these BUMN (KPPU 2021).

There are potential violations of the provisions of the Anti-Monopoly Law in terms of horizontal abuse of concurrent positions of members of the board of commissioners of BUMN, namely provisions regarding oligopoly (Article 4), price fixing (Article 5), below-market price fixing (Article 7), market division (Article 9), boycott (Article 10), cartel (Article 11), and/or monopoly (Article 17). Potential violations in terms of vertical business arrangements (upstream-downstream) may also occur, especially violations of the provisions of the Anti-Monopoly Law regarding resale price fixing (Article 8), vertical integration (Article 14), restrictive covenants (Article 15), market control (Article 19), dominant position (Article 25), and/or share ownership (Article 27).

The provisions of Permen-BUMN PER-10/MBU/10/2020 which determine that members of the board of commissioners of BUMN can hold concurrent positions also contradict Article 33 of the BUMN Law and Article 26 of the Anti-Monopoly Law which strictly prohibit members of the board of commissioners of BUMN from holding concurrent positions. Allowing members of the board of commissioners of BUMN to hold concurrent positions is potentially not in line with the objectives of the Anti-Monopoly Law because it has the potential to make the climate for business competition unhealthy and contrary to the ideals of social justice, as well as the potential for concentration of economic power in certain groups in the form of monopolistic practices and unfair business competition to the detriment of the public.

KPPU has submitted suggestions and considerations for the Ministry of BUMN to revoke the provision that allows concurrent positions of members of the board of commissioners of BUMN with the board of commissioners of companies other than the BUMN to reduce the potential for violations of Article 26 and other related articles in the Anti-Monopoly Law (KPPU 2021). In terms of administration, the Ombudsman RI has issued suggestions for improvement regarding the case of concurrent positions of BUMN commissioners. Regarding concurrent positions, it is necessary to specify in the Presidential Regulation that regulates and clarifies the limits and criteria for the placement of active structural or functional officials in BUMN commissioners based on competency considerations and free of conflicts of interest. BUMN ministerial regulations should clarify the criteria for candidates for members of the board of commissioners, sources of candidates, accountability for commissioner performance, mechanisms for rights and obligations, and procedures for assessment and determination. In addition, it is necessary to evaluate and terminate members of the board of commissioners of BUMN who have

concurrent positions that are not in accordance with the appointment procedures, develop standard technical guidelines and procedures for the appointment of members of the board of commissioners of BUMN, establish an information system related to accurate administrative management of appointment, determination, dismissal, and performance evaluation of members of the board of commissioners of BUMN, and evaluate the work system of the assessment team and/or the ranks of the ministry of BUMN that carry out the screening process to the appointment of members of the board of commissioners of BUMN that are not in accordance with the procedures as applicable provisions (Kabar Ombudsman 2022).

#### **D. CONCLUSION**

The concurrent position of a member of the board of commissioners of an BUMN under the Anti-Monopoly Law is prohibited if it can be proven by rule of reason that a person simultaneously holds the position of a member of the board of commissioners of an BUMN and another company other than the BUMN where the BUMN and the other company are in the same relevant market, there is a relationship in the field and/or type of business, or together can control the market share of certain goods and/or services, which may result in monopolistic practices and or unfair business competition. Concurrent positions of members of the board of commissioners of BUMN have the potential to violate the provisions of the Anti-Monopoly Law, such as regarding oligopoly (Article 4), price fixing (Article 5), pricing below market price (Article 7), market division (Article 9), boycott (Article 10), cartel (Article 11), and/or monopoly (Article 17). Potential violations in terms of vertical business arrangements (upstream-downstream) may also occur, especially violations of the provisions of the Anti-Monopoly Law regarding resale price fixing (Article 8), vertical integration (Article 14), restrictive covenants (Article 15), market control (Article 19), dominant position (Article 25), and/or share ownership (Article 27).

Permen-BUMN PER-10/MBU/10/2020 stipulates that members of the board of commissioners of BUMN can hold concurrent positions in companies other than BUMN and have an obligation to meet the percentage of attendance of BUMN board of commissioners meetings of at least 75% attendance for one year. The allowance of concurrent positions for members of the board of commissioners of BUMN based on Permen-BUMN PER-10/MBU/10/2020 violates the provisions of the BUMN Law, which essentially stipulates that members of the board of commissioners of BUMN are prohibited from holding concurrent positions as members of the board of directors in BUMN, regionally-owned enterprises, privately-owned enterprises, and other positions that may cause conflicts of interest.

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