

CHAPTER V

CLOSING

A. CONCLUSION

1. There are several differences in the provisions of the government procurement regulations of goods and/or services and the provision of goods and/or services by State Owned Enterprises regarding direct appointment. The difference is clearly seen in the direct appointment process by State Owned Enterprises because there is no qualification process for the invited service providers and there is no openness principle which requires the procurement of goods and/or service to be followed by all goods and/or service providers which pass the qualification.
2. Based on the explanation above, it can be concluded that direct appointment by State Owned Enterprises based on State Owned Enterprises Ministerial Regulation No. 5/MBU/2008 in conjunction with State Owned Enterprises Regulation No. 15/MBU/2012 contradicts Article 19 letter d and Article 22 of Law No. 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition. Direct appointment is included in the form of vertical conspiracy, it means a conspiracy facilitated by the tender committee to make win one of the tender participants without going through standard procedures that must be carried out based on the principle of fair business competition. Both of these articles have the same effect, namely the barrier to entry, but the prohibited aspects are different where Article 22 prohibits conspiracy activities and Article 19 letter d prohibits

discrimination caused by the conspiracy. Moreover, the regulations that become the basis of direct appointment cannot override the application of the Business Competition Law, this is due to the State Owned Enterprises Minister Regulation No. 5 /MBU/2008 in conjunction with State Owned Enterprises Regulation No. 15/MBU/2012 and Ministerial Circular No. SE-03/MBU.S/2009 which became the basis for direct appointment as the implementation of the synergy of State Owned Enterprises is not a regulation established to implement the provisions of the law. Thus, the exclusion requirement for the application of the Business Competition Law is not fulfilled.

B. RECOMMENDATION

1. State Owned Enterprises ministers should give a more detailed explanation regarding the mechanism and conditions for the procurement of goods and/or services, especially in direct appointment so that they can provide legal certainty so that procurement does not violate business competition provisions or other legal provisions.
2. State Owned Enterprises ministers should review more deeply in making regulations regarding procurement of goods and/or services in detail and comprehensively by taking into account the principles of business competition considering that there are many cases of discrimination and conspiracy entered the Business Competition Supervisory Commission in the procurement of goods and/or services.

3. The government should revoke and redesign the procurement regulations for goods and/or services in the State-Owned Enterprises environment related to direct appointment in accordance with the principles of fair business competition and coordinate with other State ministries and institutions (including Business Competition Supervisory Commission) in drafting regulations related to procurement methods and services by State Owned Enterprises so that fair business competition is realized.