Chapter 5  
Kadin and the Indonesian Anti-Monopoly Law of 1999

5.1 Introduction

After the step-down of Soeharto in 1998, one of the first initiatives of parliament was to draw up the law that would be named ‘Law Concerning the Prohibition of Monopolistic Practices and Unfair Business Competition’, here simply referred to as the anti-monopoly law of 1999. There were several reasons to introduce the law immediately. The financial crisis and the bad economic situation had caused much unrest among the people. There was a lot of dissatisfaction about the practices of the conglomerates, controlled mainly by Chinese Indonesians and family members of Soeharto, about the inefficiency of many state-owned enterprises, and about numerous regulations that hindered the fair competition among local enterprises (see Section 5.2). Many wanted not only a transition to a democratic political system, but also a transition towards a liberalized market economy. The IMF insisted on such a transition and demanded a law to regulate fair competition between businesses.

The ambitions to build a liberalized market economy required a profound change in thinking. What had to be recognized was that private enterprises (rather than state-owned enterprises) were to be the major actors in the economy, and that competition was the main mode of interaction between economic actors. A liberalized market economy can only function well if competition is ‘fair’. This is the reason why in most countries specific policies aim at promoting fair competition and preventing unfair competition. The case study in this chapter deals with such policies in Indonesia. It focuses on the attempts to create an authoritative mechanism governing competition in a liberalized market-economy: the anti-monopoly law of 1999 and its implementation.

This chapter is organized as follows. Section 5.2 contains a short overview of the business sector in Indonesia during the Soeharto regime. It summarizes some of its characteristics, like the domination of huge powerful conglomerates, the important role of state-owned enterprises, and the many regulations impeding free competition. It also sheds light on practices of

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‘unfair’ competition, such as monopolistic behavior, cartel practices, collusion, exclusive licensing, and market allocation. The widespread occurrence of these practices highly influenced the contents of the anti-monopoly law. Section 5.2 may also serve as background information for the case studies in Chapter 6 (on procurement of projects) and Chapter 7 (on labor law).

Section 5.3 deals with certain initiatives (during the Soeharto regime) to combat anti-competitive regulations and practices, and to open doors to a free market by legal changes. Chapter 3 has shown that in Soeharto’s Indonesia new policies and laws were seldom discussed critically in parliament; the influence of other stakeholders, like NGOs, did not exist or was very limited. Drafts of laws were more or less directives from the President. Usually, parliament endorsed proposed drafts without making substantial amendments. We will investigate whether Kadin and other stakeholders nevertheless formulated any anti-monopoly recommendations.

Section 5.4 centers on the process of drafting, amending and adopting the anti-monopoly law of 1999 and on its contents. It discusses dominant views in parliament and society concerning the formation of the anti-monopoly law of 1999. After 1998, parliament became the main place to debate new policies and laws. Not only members of parliament and the government but also extra-state actors like NGOs and the elites of society were allowed a role in the process of policymaking. As representative of the business sector in Indonesia, Kadin participated actively in the debates.

The success of the introduction of a new law or policy depends to a large extent on its implementation. Section 5.5 focuses on some experiences concerning the implementation of the anti-monopoly law of 1999. The implementation was assigned to an independent commission, called the Commission Monitoring Business Competition (KPPU: Komisi Pengawasan Persaingan Usaha).

In Section 5.6 several critical observations about the anti-monopoly law are discussed, which have recently been published. Section 5.7 presents a short review of the role of Kadin in the processes of drafting and implementing the law. It addresses the question whether Kadin as the main business institution played an active role in enhancing the business sector’s acceptance of the law and in facilitating its implementation. Section 5.8 concludes with some observations and conclusions.

5.2 Business and Competition during the Soeharto Regime

Business and the Role of the Government
When Soeharto became President in 1967, he gave much room to the bureaucrats, often trained at Berkeley in the USA, to determine policies of

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234 The background information in this section draws much on Schwartz, 1999, Chapters 2-5.
economic development. For many years, Widjojo Nitisastro and Ali Wardhana were the leading economists designing and implementing Indonesia’s economic policy, at the National Development Planning Board Bappenas. Later, Ali Wardhana became Minister of Co-ordinating Economic Affairs. Widjojo Nitisastro and Ali Wardhana had direct access to Soeharto. The ambitions of the bureaucrats, also called Bappenas bureaucrats, were high: they wanted to develop industries that could compete internationally. These targets were very ambitious, since Soeharto had inherited an economy in ruins. The Bappenas bureaucrats believed in a central role of market forces to boost economic development.\footnote{The Bappenas bureaucrats argued that they rejected both the economically paralyzing effect of etatism and the social irresponsibility of liberal free-fight capitalism, preferring what they called ‘Pancasila economy’; see Robison, 1986, p.137; Pancasila: see Chapter 3, Section 3.4. During the early years of the Soeharto regime, the free market ideology opened doors for foreign investors.}

Meanwhile, gradually two other groups of economists and businessmen gained more and more influence. One group, called economic nationalists,\footnote{See Robison, p.147.} consisted of economists and businessmen who believed in a pivotal role of the government in the economy. One important exponent of this group was Habibie, who later as Minister of Research and Technology implemented many of his ideas. He had close links to Soeharto. Habibie’s view was ‘that Indonesia can never hope to catch up with the world’s industrialized nations without a concerted, government-led push to speed up the natural pace at which technology is transferred among nations’.\footnote{Schwartz, 1999, p.53.} Habibie and the Bappenas bureaucrats agreed on the importance of industrialization and the required technical and professional training. However, they had very different opinions about how to develop internationally competitive industries. These differences placed the bureaucrats (associated with Wardhana and other economists) opposite the technocrats (associated with Habibie and his colleagues at the Ministry of Research and Technology). In an interview Wardhana said that ‘The problem is that Habibie wants to jump from where we are to very highly skilled industries. But there are no shortcuts; you can’t simply produce a class of instant engineers. It took us 25 years just to make primary education available to all Indonesians’ (see Schwartz, 1999, p.89). Another difference of opinion concerned the role of the state. Whereas the bureaucrats preferred the private sector as the motor of economic development, Habibie and his colleagues favored a strong interventionist role of the government. According to Habibie, special sectors and industries had to be financially supported and protected against foreign competition by way of governmental subsidies and tariff and non-tariff barriers. South Korea and Taiwan were referred to to defend this strategy. Many prabumi (indigenous) businessmen belonged to the economic

\footnote{Schwartz, 1999, p.53.}
nationalists favoring a strong role of the government. This is not surprising, since a majority of them depended on contracts with the government (especially in the domain of engineering and construction).238

A second group of businessmen had other reasons to prefer an active role of the state: it served their private economic interests. We refer to important businessmen in industry and trade who established a good relationship with Soeharto and high-ranking officials in the government and the army. They managed to get direct access to Soeharto and profited much from patron-client relationships. 'Timber king' Bob Hasan239 was one of them, and so was Liem Sioe Liong, who during the regime of Soeharto became the wealthiest businessman of Indonesia. Both Bob Hasan and Liem Sioe Liong are ethnic Chinese. Later we will discuss how they and other businessmen made their business into a large conglomerate. Some of them became members of Kadin, as discussed in Chapter 4.

**State-Owned Enterprises**

Indonesia enjoyed a prosperous period when in 1973 the Arab countries raised the oil prices. Enormous oil revenues allowed the government to invest a lot of money in economic and social development.240 Between 1974 and 1984, several new industries were set up, including large capital-intensive industries, to produce petrochemicals, steel, fertilizers, aluminum, and machines. In those days, the government set up quite a few state-owned enterprises (SOEs). In the late 1970s and 1980s, the sphere of work of state-owned enterprises was expanded.241 In the late 1980s, SOEs dominated several sectors of economic life: banking, mining, oil, transport, plantations, and several manufacturing industries. According to Hill (2000, p.106), during 1984-1992 the sales by SOEs accounted for about 30 per cent of GDP, and the SOEs employed about 25 per cent of the labor force242 (Dowling, 2005, p.1). Important SOEs were Pertamina (gas and oil production), which expanded its economic activities into various other branches, like hotels, airline and office buildings; PLN (electricity supply); PT Telkom (telecommunications); the national logistics board Bulog; the state tin-mining company PT Timah; the national air company Garuda.

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238 In an interview in 1991 Bambang Sugomo, chairman of the association of Young Indonesian Businessmen (HIPMI), said that about 80 per cent of the more than 6,000 members of HIPMI depended on contracts with government. See Schwartz, 1999, p.119.

239 His Chinese name was The Kian Seng.

240 Although the oil revenues were mainly used to invest in industry, infrastructure, and telecommunication, the Soeharto regime also invested part of the oil revenues in rural development programs, for instance by subsidizing fertilizers and constructing thousands of schools and health centers and mosques; see Schwartz, 1999, p.58 and 80. See also Section 3.3 of Chapter 3.

241 Enterprises that are fully owned by the state or that have the state as the major shareholder.

242 This figure is debatable, since the definition of labor force was not well-defined.
Indonesia; the state road agency Jasa Marga; and many companies controlled by the ministries of e.g. transport and forestry. In a World Bank report of 1995 the SOE sector was estimated to consist of about 180 enterprises in almost every economic sector.

Defenders of a strong SOE sector have often referred to the 1945 constitution; a major issue is the interpretation of Article 33, parts of which read:

Art. 33 (2) Sectors of production, which are important for the country and affect the life of the people, shall be controlled by the state.

Art. 33 (3) Land, water and the natural riches contained therein shall be controlled by the state and shall be exploited to the greatest benefit of the people.

The sting of this article is the phrase 'controlled by the state'. Most economists have argued that it implies regulation only, but political leaders in Indonesia have used the term to justify state ownership. A strong SOE sector was also in the interest of Soeharto, since it allowed him to keep controlling contracts, licenses, profits, etc.

It is beyond the scope of this thesis to discuss the performance of the SOEs in detail. Through the years, the poor performance of the SOE sector has often been criticized. A comprehensive review of the SOE sector was presented in 1988 by the Department of Finance; it revealed that 129 of the 189 state-owned enterprises were either 'not healthy' or 'less healthy'.

Co-operatives

In the 1945 constitution (see also Chapter 3), an important role was assigned to co-operatives. Co-operatives in Indonesia originated from the 1920s to strengthen the economic position of local people in the colonial days. As a reaction to colonial exploitation and the ideology of competition between colonial powers, the Indonesian founding fathers opted for a different ideology. Harmony would be the guiding principle of economic structure and management, in the 'common benefit, not the individual benefit'. Co-operatives were considered to be the essential mode of production in the

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244 See World Bank, 1995, p.51.
248 See also the ideas of Indonesia's founding fathers about integralism, with its emphasis on collectivism and the rejection of individualism; see Section 3.2 of Chapter 3.
Indonesia economy. The 1945 constitution states that co-operatives, the private sector, and the government were to be equal partners in economic development. In his speeches, Soeharto often expressed his loyalty and support to the co-operatives. At several occasions he even tried to use money from the private sector to invest in co-operatives, without little success. The co-operatives are mainly involved in rural-based agricultural production.

In 1992 a new law on co-operatives was introduced (Law No. 25/1992). According to this law there are several types of co-operatives: saving, consumer-producer, marketing and service co-operatives. In general, the co-operatives aim at promoting the welfare of their members. Co-operatives require at least 20 members; the members are also the owners of the co-operatives. Co-operatives are officially registered, and they can be small or medium-sized. Examples are the co-operatives of traditional local farmers and the co-operative of Indonesian workers at the Indonesian airline Garuda. Unions of co-operatives, like the national co-operative of farmers and fishermen, can be very large. Dekopin is an umbrella, representing the interests of Indonesian co-operatives. The minister for the co-operatives chairs Dekopin.

In spite of the large number of co-operatives (Schwartz estimates about 34,000 active co-operatives in the early 1990s) and the lip service to the co-operatives, the reality is that the co-operatives have not been very successful. Their activities accounted for only 5 per cent of GDP. Co-operatives were largely viewed as inefficient, among other things due to bureaucratic interferences by the government. Criticism came from unexpected parties. In 1990, Abdurrahman Wahid, the then leader of the largest Muslim organisation Nahdlatul Ulama with 30 million members of whom many belonged to co-operatives, stated that ‘We need to develop a new approach to small businesses. Co-operatives are unhealthy for us and a burden on society. They are only killing the real entrepreneurs’.

Conglomerates
The first Indonesian conglomerates were founded in the late 1960s, when the manager of the state-owned enterprise Pertamina, Ibnu Sutowo, together with various army generals and governmental officials used the considerable economic powers of the state to allocate licenses (for trade and manufacture),

250 Schwartz, 1999, p.82.
251 E.g. the meeting on 4 March 1990 at Tapos (West Java), when Soeharto had invited all big (Chinese) business players in Indonesia; see Schwartz, 1999, p.98-101, p.121.
252 National committee for Indonesian co-operatives.
253 Schwartz, 1999, p.100.
254 Ibid, p.100. Duncan and McLeod state that ‘… development of cooperatives – an inferior form of business organization that has never amounted to anything as its special billing in the constitution might suggest’; see Duncan et al., 2007, p.85.
credit and contracts to build large conglomerates, usually with Indonesian Chinese partners. During the oil years and the late 1980s, the influence of the group of businessmen, who could benefit much from their patron-client relationship with Soeharto and high-ranking officials in the government and in the army, increased a lot. Some of these businessmen became very wealthy and most of them expanded their economic activities. They founded conglomerates – large groups of enterprises that are often active in more than one sector.

Hill presents a list of the main conglomerates in Indonesia (Table 5.1). The table shows the extensive range of the conglomerates' economic activities in 1993, as well as the number of companies belonging to the conglomerates. It reveals that the majority of the owners are of ethnic Chinese origin (21 out of 25). Hill compares the sales of the SOE sector in 1992 (68,446 billion rupiah) with the total 1993 turnover of the conglomerates of Table 5.1 (70,600 billion rupiah). It shows that both the ethnic Chinese businessmen owning conglomerates and the SOEs were big players in Indonesia.

Table 5.2 provides comparative evidence regarding the importance of conglomerates in the Indonesian business sector vis-à-vis other countries in the region. As the table shows, family-owned conglomerates are a common phenomenon in Southeast Asian countries such as for example Malaysia, Thailand and Korea. On average, family-owned conglomerates control more than 50 per cent of the largest companies in a sample of nine countries in the region. The table also shows that in Indonesia these conglomerates are the most dominant, controlling over 70 per cent of the largest companies.

The regime of Soeharto took various measures allowing successful businessmen to expand and create huge conglomerates. Most measures were announced in regulations issued by ministries. Examples of such measures are the appointment of a particular private enterprise as the sole importer or producer (e.g. flour producer Bogasari) and the protection of certain companies (e.g. local chemical industry Chandra Asri) by granting them lower import taxes.

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256 Robison 1986, p.140.
257 Multi-sector diversification is characteristic for conglomerates; see Haggard et al., 1997, p.45.
Table 5.1 Major Business Conglomerates in Indonesia in 1993

<table>
<thead>
<tr>
<th>Rank in 1993</th>
<th>Conglomerate</th>
<th>Principal owner</th>
<th>Principal activities</th>
<th>Turnover (in bln Rp)</th>
<th>No. of companies</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Salim</td>
<td>Liem Sioe Liong</td>
<td>Cement, finance, cars, agro-industry</td>
<td>18,000</td>
<td>450</td>
</tr>
<tr>
<td>2</td>
<td>Astra</td>
<td>Prasetya Mulya Group, public</td>
<td>Cars, estates</td>
<td>5,890</td>
<td>205</td>
</tr>
<tr>
<td>3</td>
<td>Lippo</td>
<td>Mochtar Riady</td>
<td>Agro-industry, pulp and paper, finance</td>
<td>4,750</td>
<td>78</td>
</tr>
<tr>
<td>4</td>
<td>Sinar Mas</td>
<td>Eka Tjipta Widjaya</td>
<td>Realtor, real estate, chemicals</td>
<td>4,200</td>
<td>150</td>
</tr>
<tr>
<td>5</td>
<td>Gudang Garam</td>
<td>Rachman Halim</td>
<td>Kretek cigarettes</td>
<td>3,600</td>
<td>6</td>
</tr>
<tr>
<td>6</td>
<td>Bob Hasan</td>
<td>Bob Hasan, Sigit Harjjudanto (P)</td>
<td>Timber, estates</td>
<td>3,400</td>
<td>92</td>
</tr>
<tr>
<td>7</td>
<td>Barito Pacific</td>
<td>Prajogo Pangestu</td>
<td>Timber</td>
<td>3,050</td>
<td>92</td>
</tr>
<tr>
<td>8</td>
<td>Bimantara</td>
<td>Bambang Trihadmodjo (P)</td>
<td>Trade, real estate, chemicals</td>
<td>3,000</td>
<td>134</td>
</tr>
<tr>
<td>9</td>
<td>Argo Manunggal</td>
<td>The Ning King</td>
<td>Textiles</td>
<td>2,940</td>
<td>54</td>
</tr>
<tr>
<td>10</td>
<td>Dharmala</td>
<td>Soedargo Gondokusumo</td>
<td>Agro-industry, real estate</td>
<td>2,530</td>
<td>151</td>
</tr>
<tr>
<td>11</td>
<td>Djarum</td>
<td>Budi and Michael Hartono</td>
<td>Kretek cigarettes</td>
<td>2,360</td>
<td>25</td>
</tr>
<tr>
<td>12</td>
<td>Ongko</td>
<td>Kaharuddin Ongko</td>
<td>Real estate, finance</td>
<td>2,100</td>
<td>59</td>
</tr>
<tr>
<td>13</td>
<td>Panin</td>
<td>Mu’min Ali Gunawan</td>
<td>Finance</td>
<td>2,080</td>
<td>43</td>
</tr>
<tr>
<td>14</td>
<td>Rodamas</td>
<td>Tan Siong Kie Soeradjaya</td>
<td>Chemicals</td>
<td>2,000</td>
<td>41</td>
</tr>
<tr>
<td>15</td>
<td>Surya Raya</td>
<td>Surya Raya</td>
<td>Property, real estate, trade</td>
<td>1,980</td>
<td>242</td>
</tr>
<tr>
<td>16</td>
<td>Jan Darmadi</td>
<td>Jan Darmadi</td>
<td>Real estate</td>
<td>1,940</td>
<td>60</td>
</tr>
<tr>
<td>17</td>
<td>CCM/Berca</td>
<td>Murdaya</td>
<td>Electronics, electricity</td>
<td>1,800</td>
<td>32</td>
</tr>
<tr>
<td>18</td>
<td>Humpus</td>
<td>Hutomo Mandala Putra (P)</td>
<td>Oil, trade, chemicals</td>
<td>1,750</td>
<td>11</td>
</tr>
<tr>
<td>19</td>
<td>Gadjah Tungal</td>
<td>Sjamsul Nursalim</td>
<td>Tyres, finance, real estate</td>
<td>1,650</td>
<td>49</td>
</tr>
<tr>
<td>20</td>
<td>Raja Garuda Mas</td>
<td>Sukanto Tanoto</td>
<td>Pulp and rayon, finance</td>
<td>1,590</td>
<td>66</td>
</tr>
<tr>
<td>21</td>
<td>Gemala</td>
<td>Wanandi</td>
<td>Chemicals, cars</td>
<td>1,550</td>
<td>78</td>
</tr>
<tr>
<td>22</td>
<td>Pembangunan Jaya</td>
<td>Several</td>
<td>Real estate</td>
<td>1,390</td>
<td>57</td>
</tr>
<tr>
<td>23</td>
<td>Metropolitan Soedarso</td>
<td>Soedarso</td>
<td>Real estate</td>
<td>1,200</td>
<td>57</td>
</tr>
<tr>
<td>23</td>
<td>Soedarso</td>
<td>Sastrosaatmoko (P)</td>
<td>Shipping, trade, pharmaceuticals</td>
<td>1,200</td>
<td>35</td>
</tr>
<tr>
<td>23</td>
<td>Tahija</td>
<td>Julius Tahija (P)</td>
<td>Finance</td>
<td>1,200</td>
<td>39</td>
</tr>
</tbody>
</table>

Source: Hill, 2000, p.113. Note: (P): pribumi – Sigit Harjjudanto is the eldest son, Bambang Trihadmodjo the second son, and Hutomo Mandala Putra the youngest son of Soeharto.
Table 5.2: Corporate Ownership in Southeast Asia

<table>
<thead>
<tr>
<th>Country</th>
<th>Obs.</th>
<th>Widely held</th>
<th>Family-owned</th>
<th>Industrial company</th>
<th>State-owned</th>
<th>Financial company</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hong Kong</td>
<td>330</td>
<td>7.0</td>
<td>66.7</td>
<td>19.8</td>
<td>1.4</td>
<td>5.2</td>
</tr>
<tr>
<td>Indonesia</td>
<td>178</td>
<td>5.1</td>
<td>71.5</td>
<td>13.2</td>
<td>8.2</td>
<td>2.0</td>
</tr>
<tr>
<td>Japan</td>
<td>1,240</td>
<td>79.8</td>
<td>9.7</td>
<td>3.2</td>
<td>0.8</td>
<td>6.5</td>
</tr>
<tr>
<td>Korea</td>
<td>345</td>
<td>43.2</td>
<td>48.4</td>
<td>6.1</td>
<td>1.6</td>
<td>0.7</td>
</tr>
<tr>
<td>Malaysia</td>
<td>238</td>
<td>10.3</td>
<td>67.2</td>
<td>6.7</td>
<td>13.4</td>
<td>2.3</td>
</tr>
<tr>
<td>Philippines</td>
<td>120</td>
<td>19.2</td>
<td>44.6</td>
<td>26.7</td>
<td>2.1</td>
<td>7.5</td>
</tr>
<tr>
<td>Singapore</td>
<td>221</td>
<td>5.4</td>
<td>55.4</td>
<td>11.5</td>
<td>23.5</td>
<td>4.1</td>
</tr>
<tr>
<td>Taiwan</td>
<td>141</td>
<td>26.2</td>
<td>48.2</td>
<td>17.4</td>
<td>2.8</td>
<td>5.3</td>
</tr>
<tr>
<td>Thailand</td>
<td>167</td>
<td>6.6</td>
<td>61.6</td>
<td>15.3</td>
<td>8.0</td>
<td>8.6</td>
</tr>
<tr>
<td>9 countries</td>
<td></td>
<td>22.5</td>
<td>52.6</td>
<td>13.3</td>
<td>6.9</td>
<td>4.7</td>
</tr>
</tbody>
</table>

Source: Claessens et al., 2000, p.103.
Note: all figures are percentages of total shares held by a specified shareholder, except for column 2 which indicates the number of observations.

Soeharto’s Cronies

Schwartz (1999, p.139) uses the term cronies for business people with a continuing, close personal relationship with Soeharto. They formed a rather exclusive club, mainly consisting of the ethnic Chinese businessmen Liem Sioe Liong, Bob Hasan and Projogo Pangestu, and four of Soeharto’s six children: the eldest son Sigit Harjojudanto, the second son Bambang Trihatmodjo, his eldest daughter Siti Hardijanti Rukmana, and his youngest son Hutomo Mandala Putra, better known as Tommy.

Liem Sioe Liong, who changed his name into the Indonesianized Sudono Salim, became the owner of the large Salim Group. He started as a petty businessman involved in trade and some manufacturing activities. In the late 1950s, he supplied an army division on Central Java, when Soeharto was its lieutenant. He got to know Soeharto very well. After Soeharto came into power, Liem Sioe Liong managed to develop his business into Indonesia’s biggest business empire due to his relationship with Soeharto. In the 1990s, Liem Sioe Liong was the biggest single player in private banking, production and distribution of cement, and several key commodities.\(^{260}\) He had major stakes in car manufacturing, processed foods, natural and oil-based chemicals, and real estate. The Salim Group expanded rapidly to wood-based industries, retailing, sugar processing, electronics, and telecommunication. It also expanded overseas: ‘from hotels in Singapore and Hong Kong, to drugstores in the Philippines, to computers in Australia, to banking in the United States, to car

259 Better known as Mbak Tutut: ‘elder sister Tutut’.
260 In the 1980s, Liem Sioe Liong became a member of Kadin; see Chapter 4.
making in The Netherlands, to telephones in Malaysia, to shoe factories in China and to other locales far and wide.  

Bob Hasan’s main economic interests were in forestry. In the 1990s, he controlled about 2 million hectares of concession areas, mainly in Kalimantan. Because of his close links with Soeharto, he became the most influential person in the forestry sector. He became very influential in several business associations, like the Indonesian plywood association, the Indonesian saw millers association, and the Indonesian rattan association, which gave him easy access to the government.

Projogo Pangestu joined the Soeharto cronies only in the 1990s. He also made his fortune in forestry. He had acquired the control over 5.5 million hectares of concession areas, and managed to diversify his economic interests to other sectors and get direct access to Soeharto by establishing joint ventures with Soeharto’s children. For example, together with Siti Hardijanti Rukmana he invested in a giant sugar plantation in Sulawesi and a paper and pulp plant in Sumatra, and he and Bambang Trihatmodjo were partners in a huge petrochemical project.

In 1982 Bambang Trihatmodjo started the Bimantara Group. The group profited much from the monopoly on the import of plastics granted in 1984 to Bambang Trihatmodjo, his brother Sigit Harjojudanto, and Soeharto’s cousin Sudwikatmono. The Bimantara Group diversified in electronics, shipping, milk processing, plywood manufacturing, telecommunications, television broadcasting, aircraft leasing, construction, real estate, sugar and palm-oil plantations, and food retailing. Good relations with the bureaucracy in various governmental departments helped the Bimantara Group to become the largest pribumi-conglomerate in less than ten years.

Because of his business undertakings, Soeharto’s youngest son Tommy became the most notorious of the children. In 1984 he founded the Humpuss Group, which was granted exclusive contracts for the distribution of two important chemical products from Pertamina, and concessions to sell Pertamina’s crude oil overseas and export liquefied natural gas to Taiwan. Humpuss quickly diversified into petrochemicals, wood manufacturing, fertilizer production, toll roads, sugar and palm-oil plantations, and advertising.

**Trapped in Harmony**

We have seen that during the Soeharto regime, conglomerates were mainly controlled by Chinese Indonesians. Apart from family members of Soeharto, only a few pribumi were involved in big businesses. It has often been

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262 Apkindo.  
264 One of the (few) important pribumi businessmen was Aburizal Bakrie, who in 1994 became chairman of Kadin (Schwartz, 1999, p.125); see also Chapter 4.
discussed why this was the case. Several authors mention existing anti-market and anti-competition feelings amongst the Indonesian population as one of the main reasons. Hill refers to ‘remains of a deep-seated mistrust of market forces, economic liberalism and private (especially Chinese) ownership in many influential quarters of Indonesia’.265 The existence of anti-market and anti-competition feelings may have had many reasons, e.g. the fact that in Indonesian culture the concept of co-operation is more appreciated than individual competition.266 For many generations, co-operation has been the basis of the economy in agrarian Indonesia, whereas the notion of individual competition entered the public debate on industrialization only fairly recently. Maarif captures the dilemma quite well when he says that the Indonesians are ‘trapped in harmony’. According to Maarif, harmony is associated with togetherness, mutuality, co-operation and a willingness to share – all concepts that are difficult to combine with competition from which only an individual benefits him/herself. Also the colonial exploitation may have left its traces; see also the above discussion about including co-operatives in the constitution.

Examples of Anti-Competitive Measures and Practices
In the context of a free market, anti-competitive behavior usually refers to cartel practices (collusion amongst business managers) or the abuse of dominance (in the US called ‘monopolization’ or ‘attempted monopolization’) through unfair means.267 Such practices may include price fixing, market allocation, creating entry barriers, exclusive licensing, tying, etc. During the Soeharto regime, the government was responsible for most interventionist measures. The claimed constitutional obligation for the government to contribute to social welfare of the people was often used as a justification of anti-competitive measures.268 Many of these measures dealt with the so-called essential commodities that are mentioned in the 1945 constitution. The production and distribution of these commodities were too important ‘to be left to the market’.269 The state felt responsible for the supply of these commodities. Examples of such essential commodities were foods like wheat flour and sugar, but also cement and fertilizers. The government also used other arguments to justify market intervention, e.g. the protection of infant local industries against foreign companies, and the need to develop added value in local industries.

Anti-competitive behavior was not only due to interventionist policies of the government, but also to cartel practices or abuse of dominance by private businesses, in particular by the conglomerates. Even some business associations

265 Hill, 2000, p.95.
266 See e.g. Juwana, 2002, p.198; Maarif, 2001, p.3.
267 See e.g. Loughlin et al., 1999, p.17.
268 Loughlin et al., 1999, p.34.
269 World Bank, 1995, p.46.
were involved, often sanctioned by the government, for instance the Plywood Association controlled by Bob Hasan.270

There were numerous regulations, both at the national and the local level, to intervene in the market. Some of them were taken to ensure the timely supply of ‘essential’ commodities at affordable prices, to protect industries against foreign industries, to protect local industries or traders in the periphery, or to privilege certain businessmen or conglomerates. The World Bank mentions in particular: cartels (for cement, plywood, paper and fertilizer industries); price controls (cement, sugar and rice); entry and exit controls (plywood, retail traders); and exclusive licensing (clove market, wheat flour milling, and soy meal).271 We will not discuss them in detail, but we will present two well-known cases from the clove industry and the cement sector by way of illustration.

**Clove Industry**272

Cloves are one of Indonesia’s most important commodities. It is the key ingredient of the kretek cigarettes, which are very popular in Indonesia and smoked by many. The decision by the Indonesian government (early 1990s) to grant a monopoly of sale and distribution to a single organisation (Clove Support and Marketing Board) set up and controlled by Soeharto’s youngest son Tommy, had terrible consequences. At various levels, there was much resistance against this decision, e.g. by the World Bank, the Central Bank of Indonesia, and the business association Gappri (Association of Indonesian Cigarette Companies). The new monopolistic organization, which replaced a SOE, had the ambition to attain a floor price for the farmers, which would be higher than in the past, and to help the village co-operatives. The organisation dictated prices and buying schemes from the farmers, in which the village co-operatives were involved as well. The consequences were disastrous: lower rather than higher prices for the clove farmers, less supply of cloves, reduced supply of kretek cigarettes, and higher prices for the cigarettes. The low farm gate prices discouraged farmers to take care of the clove trees, resulting in lower tree productivity and a reduction in planting: ‘it is likely that a third of standing clove trees are now dead, a third are severely debilitated and a third are in moderate or good condition’.273

**The Cement Sector**274

Because of the strategic importance of cement and the government’s intention to ensure enough and affordable supply to cover the needs of the consumers in

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270 Schwartz, 1999, p.140.
273 Loughlin et al., 1999, p.28.
all provinces, the cement sector was highly regulated. The market was full of ‘anti-competitive’ regulations, particularly market allocation by the government (quota) and price fixing. One of the major problems in the cement sector is the distribution of cement. Some islands do not have a cement factory, so the cement has to be transported from elsewhere. The cement distribution was regulated at a governmental level. At joint meetings of amongst others officials of the Ministry of Trade, the Ministry of Industry and the business association ASI275 (the Indonesian Cement Association), monthly distribution quota were set for each cement producer. The quota depended on the location of the factory, its production capacity, demand and market in the region, etc. The system also aimed at creating more or less stable prices. To this end, the government fixed maximum retail prices, later replaced by ‘local directive prices’.276 These prices were also fixed at the abovementioned joint meetings. The ASI has been accused of cartel practices to influence the local directive prices.277 ASI defended itself by stating that exchange of information concerning prices and costs between producers was necessary because of the complexity of determining fair retail prices due to e.g. the complex distribution system. The government could do no more than adopt the ‘ASI prices’. Needless to say that the strong regulation of market shares for each producer, made it very difficult for newcomers to enter the market: the system worked as an entry barrier.

**Transparency**

There are many other examples to illustrate anti-competitive practices, for instance in the field of fertilizer distribution, production and marketing of pulp and paper, wheat flour distribution, marketing of plywood and sandalwood, etc. It is not always easy to show the extent to which these practices were harmful and led to an unacceptable loss of efficiency, and possibly to higher prices or lower quality levels. This is even more difficult because quite a few regulations, measures and practices were not made public. The processes of patron-client relationships, practices of collusion and most gentlemen’s agreements were not at all transparent, which makes an analysis of the effects of the practices very difficult.

### 5.3 Kadin’s Anti-Monopoly Recommendations Before 1998

The anti-competitive regulations and practices described in Section 5.2 led to feelings of dissatisfaction and frustration, particularly amongst pribumi businessmen. These feelings (and external pressure) obliged the government to

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275 ASI: Asosiasi Semen Indonesia.
276 HPS: Harga Pedoman Setempat.
take some action occasionally. After the oil boom in the early 1980s, the Indonesian government adopted a deregulation and structural adjustment program aimed at "imposing incentives for the private sector to raise efficiency and competition." The decreasing revenues from oil had to be compensated by an expansion of the business sector. Copying the strategies of East Asian countries, the Indonesian government created possibilities for big businesses and conglomerates to expand their activities. The Chinese businessmen did much better than the pribumi businessmen, and some became big players. In Section 5.2 it was shown that the development of big businesses and conglomerates was highly due to favoritism and went hand in hand with unfair competition. As a reaction, throughout the years some articles, scattered over several laws, were adopted to combat unfair competition. Although some of the reforms did lead to improved import and export conditions, numerous practices as described in Section 5.2 continued to exist. In spite of the growing criticism on such practices, the regime was reluctant to adopt the rules of a free market, since the government itself benefited a lot from these practices. The first calls to establish a comprehensive anti-monopoly law were raised in the early 1990s by scholars, political parties, NGOs, and even by some governmental institutions. In 1991, the Indonesian Democratic Party (then a minority party) submitted the draft of an anti-monopoly law, which aimed at a better protection of small and medium businesses in particular. The ruling Golkar party refused to consider the draft.

**Initiatives by Kadin Before 1998**

During the Soeharto regime, Kadin also took some initiatives to influence policymaking concerning business-related issues, for example to stop prioritization of capital-intensive high-tech industry, to promote SMEs, and to harmonize relations between native Indonesian businessmen and Chinese ethnic

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279 Several factors may have contributed to the success of Chinese businessmen in Indonesia. First, their long-term business experience since the colonial days, when they were intermediaries between the colonists and the natives. Second, after the independence of Indonesia the Chinese had no choice but to work in business, since a career in the public sector was almost impossible. Working in business, the Chinese established efficient and exclusive national and international networks, where the Chinese culture and language dominated. During the New Order regime, good relationships of Chinese businessmen with the regime were perhaps the most important cause of success.
280 For instance, some articles in the Basic Law of Industry of 1984 were meant to promote competition, an article in the Criminal Code provided some protection against unfair competition, whereas an article in the Civil Code allowed compensation for damages from unfair competition; see Juwana, 2002, p.186.
283 See Chapter 4.
businessmen. The review below only deals with Kadin’s policy recommendations on anti-monopoly measures. Needless to say the President and the political elite, who profited a lot from monopolistic practices, did not always welcome such recommendations.

As was shown in Chapter 4, within Kadin there were different views on issues related to the conflicting interests of big businesses and SMEs, like the anti-monopoly measures. These differences of opinion on the need and contents of anti-monopoly measures made it difficult for Kadin to formulate unambiguous recommendations. The opinion of the Kadin chairman was of great importance. In an interview in 1987, chairman Sukamdani called on the government to introduce an anti-monopoly law; he also asked the government to issue a list of ‘essential commodities’ for the supply of which the government felt responsible on the basis of Article 33 of the constitution (see Section 5.2). Sukamdani wanted to identify these ‘essential commodities’, claiming that for the production of other goods anti-monopoly measures could be introduced. In an interview from 1989, Sotion Ardjanggi, the then chairman of Kadin, also called on the government to introduce an anti-monopoly law, as one of several economic policies to build a better economic environment. He repeated his call in 1991 at a meeting of Kadin’s national assembly. This was risky as it could endanger the relation between Kadin and the Soeharto regime, since the regime itself was very much involved in monopolistic practices. In the public media doubts were raised about whether Kadin would be strong enough to stand up to the President’s power.

In 1994, the new chairman of Kadin, Aburizal Bakrie, called for measures to reduce monopoly, oligopoly and cartel practices. Although he supported market-friendly policies, he was very much against ‘free-fight competition’. He argued that markets should be reformed through preferential treatment of pribumi business people and of SMEs. At the time

286 See Pelita, 11 December 1989; see also Imam Taufik, 1995.
287 See Bakrie, 22 November 1994; Bakrie, 23 December 1996.
288 See Bakrie, 28 December 1996.
289 Bakrie at a hearing session with parliament (Komisi VIII DPR-RI in Senayan), see Aburizal Bakrie, 6 November 1997.
290 The preferential treatment of native businessmen has a long history. During the Soekarno period, the Banteng Program granted import licenses to native businessmen (Thee Kan Wie, 2007, p.7). In 1959 Chinese businessmen were prohibited to operate as retailers in villages (Ivan Wibowo, 2004). During the Soeharto era, credit facilities were created for native businessmen (credits for ten years, with subsidized interest rates); banks were ordered to allocate 20 per cent of the credits to small businesses. In presidential decree 41-A/1980, the procurement of office projects of various governmental offices had to be granted to native ‘poor-economic-players’. Kadin organized seminars to create publicity and to discuss this decree.
of the Asian crisis, Chairman Aburizal Bakrie proposed that the government ‘redistribute the assets’ from business people with Chinese origin to the pribumi business people. However, after many big business people with Chinese roots left Indonesia, he asked them to come back to build up the economy.

At various other occasions, Aburizal Bakrie had opposed specific anti-competitive regulations and practices such as vertical market control, i.e. control of production processes from raw material to final product, by big conglomerates, which he considered to be an example of bad monopolist behavior. For his criticism on the practices of conglomerates, especially of those owned by Chinese businessmen, Bakrie sought support from the common public and the media. At a meeting in 1996 of Kadin’s National Board of Management, Kadin called for transparency of government interventions in the economy, and it urged once more the prioritization of SMEs. Kadin also made a plea for market reforms aimed at contesting collusive business practices by the Chinese conglomerates, but its view was halfhearted, since Kadin was reluctant to criticize the practices of the Presidential family.

The Nature of Kadin’s Recommendations Before 1998
In contrast to the general public perception, Kadin often demanded for an anti-monopoly legislation. It justified its interventions by referring to the contents of Law No. 1/1987 on Kadin, which deals with Kadin’s representativeness of the business sector. In Chapter 4, Art. 7, it is stated that Kadin is to contribute ‘… to avoid unhealthy competition amongst Indonesian businesspeople …’ Kadin used several formal and informal meetings to express its views on the importance of Indonesia having an anti-monopoly legislation. It seems, however, that the ‘recommendations’ were brought forward on an ad hoc basis. Well-argued and elaborated recommendations or proposals on this subject were

291 See Bakrie, 10 November 1993; Bakrie, 20 May 1996; Bakrie, 20 December 1996 for his address to the Rapim and Rapimnas Kadin.
292 See Bakrie, 10 February 1998.
293 See Bakrie, 3 July 1998.
294 See Bakrie, 15 July 1995.
295 Bakrie attended for instance informal Muslim meetings in order to discuss such practices, e.g. at baka puasa bersama, the ritual when Muslims break their fast at the end of the day. In several big cities in Indonesia these happenings have become public gatherings, where people from different religions can join in and where matters of public interest are discussed.
296 Rapat Pleno, Rakernas dan Rapimnas.
297 See Bakrie, 7 March 1996.
299 Bakrie, 30 June 1997.
300 Law No. 1/1987 was established to strengthen the formal position of Kadin. The act was introduced after years of continuing efforts especially by Sukamdani (see Chapter 4). Kadin highly valued the law, which strengthened its position.
301 Kamar Dagang dan Industri Indonesia, 2004; p.xi.
seldom published and formally submitted to government organs.\footnote{On other issues, like the reduction of investments in capital-intensive technological industries and the prioritization of SMEs, Kadin published elaborate discussion papers.} Reasons of this omission may have been differences of opinion within Kadin about the need of these measures. Most ‘recommendations’ presented at Kadin meetings and in interviews were responses to the regime’s nepotism and the preferential treatment of conglomerates. There are several reasons for the halfhearted nature of Kadin’s interventions: primarily, the presence of a strong and authoritarian regime that permitted and even encouraged monopoly practices, and the influence of large businesses in Kadin. Kadin’s recommendations were not very successful, since they failed to introduce an anti-monopoly law in Indonesia before 1998.

5.4 Towards the Anti-Monopoly Law of 1999

Discussions of the introduction of the anti-monopoly law of 1999 took place during the presidency of Habibie, the successor of Soeharto. After the financial and economic crisis of 1997/1998, the IMF obliged the Indonesian government to take measures to transform the Indonesian ‘high-cost’ economy to a more open, competitive and efficient one.\footnote{See Thee Kian Wie, 2002, p.332.} This was part of a deal on financial assistance. The Indonesian government and the IMF signed various agreements, aiming at further liberalization, deregulation, privatization of state-owned enterprises, and other issues. The introduction of the anti-monopoly law of 1999 was one of the conditions set by the IMF.

As mentioned before, Soeharto’s step-down from power in May 1998 was a result of the great dissatisfaction expressed in the media and through large rallies. The conglomerates were blamed most. The members of parliament could no longer ignore the demands of the people, even though most of them had been members of parliament since the previous election. Despite its natural obedience to the executive as the legacy of the Soeharto ruling, the members of parliament gradually started to make use of their right of initiative and interpellation.\footnote{According to the Indonesian constitution, the introduction of new laws can also be initiated by the legislative power, i.e. parliament. So in principle, before 1998 Golkar-dominated parliament could have proposed drafts of laws. During the New Order, such an initiative was an anomaly though. All important initiatives were taken by the president or by ministries under strict control of the president.}
Parliament and the Ministry of Trade and Industry

After the reformasi, the anti-monopoly law of 1999 was the second law launched by the parliament. During the Habibie era, policymaking in parliament was the result of interventions by both parliament and the government and of the competition between political parties in parliament. Moreover, public opinion as expressed in the media and at rallies also played a part. Kadin had to face these new realities, which had a great impact on its strategies. In the early stages of the preparations of the anti-monopoly law of 1999, the competition between parliament and the government – represented by the Ministry of Trade and Industry – dominated. Parliament was supported by public opinion, mass organizations and other NGOs, which wanted to introduce an anti-monopoly law as soon as possible to break the monopoly of the large conglomerates. Frustration and opposition against the conglomerates had grown. They were accused of being responsible for the economic crisis. During the financial crisis of 1997, it appeared that the conglomerates, which had made a lot of profit during New Order, had huge foreign debts. People felt that they had to pay the price in terms of high prices and a radical drop in the standard of living. The anti-monopoly and anti-conglomerate sentiments were also fed by the increasing criticism on examples of monopolistic practices (see e.g. Section 5.2).

While parliament was very determined to introduce an anti-monopoly law, the executive power was still hesitant to introduce such radical changes. This is not surprising, since in the past the Ministry of Trade and Industry had been very much involved in making rules that allowed the President and his cronies to make enormous amounts of money thanks to the monopolist practices of the conglomerates.

The process of drawing up the Indonesian anti-monopoly law of 1999 began with an instruction to the Ministry of Trade and Industry. The government of Habibie ordered the Ministry of Trade and Industry to take the initiative to design such a law. The then Minister of Trade and Industry, Rahadi Ramelan, formed a team to make a policy draft. Progress was very slow, which made the government and parliament impatient. It was thought that the

305 The first proposal to draft a law dated from 7 July 1998, when parliament proposed the draft of the Law against Torture and Violence. The drafting of the anti-monopoly law was proposed at the plenary session of the parliament on 2 October 1998.

306 During the financial crisis of 1997/98, many banks and companies owned by conglomerates faced severe financial problems due to the decreased value of the rupiah to 20 per cent (see also Chapter 3). Instigated by the IMF, in 1999 Habibie’s government installed the International Bank Recovery Agency IBRA (BPPN/Badan Penyehatan Perbankan Nasional), which had to reorganize all banks and conglomerates that had problems by restructuring, merging, bailing out or closing them. As a result, from 1999 onwards many conglomerates had to go public, selling shares of their companies to new national or international owners.

307 See Republika, 6 June 1998.
ministry was incapable or unwilling to respond properly to the strong demand for this law. Massive support inside and outside the political arena resulted in the parliament’s initiative to draft the law itself.

Parliament’s Initiative
As we have seen, according to the constitution parliament can indeed take the initiative to draft a law. The parliament’s internal regulations require that a minimum of ten members from more than one faction endorse such an initiative. 34 members from four factions supported the proposal for an anti-monopoly law. Even members of the Golkar faction and the faction ABRI of the military, which for years had sustained the monopolistic behavior of SOEs and conglomerates, supported the proposal. The fact that the proposal got so much support was not only due to the frustration concerning the role of the conglomerates and the practices described in Section 5.2; there was also hope that the new law would contribute to an improved economic situation for the poor in Indonesia. The influence of the Muslim leaders emphasizing the importance of the 'people’s economy' may have been considerable. The proposal was formally justified by referring to the damage of monopolistic practices to the people and consumers of Indonesia. The proposal was adopted on 2 October 1998.

As soon as parliament had adopted the proposal, a committee (the so-called Pansus) was installed, which appointed a working group to write the draft. The draft was thoroughly discussed during (a series of) sessions of parliament. Spokesmen of the Pansus for the anti-monopoly law underlined the importance of the new law. They emphasized that the absence of such a law was one of the reasons why so many businessmen in Indonesia were involved in anti-competitive practices as described in Section 5.2 and in KKN.

The first anti-monopoly draft was discussed in parliament on 14 October 1998. The Minister of Trade and Industry attended the session. A controversial matter was the name of the anti-monopoly law, which had to reflect that the law was not only dealing with monopolistic practices but also with other unfair business practices, like collusion, price fixing, etc. Several parliamentary hearings took place in which drafts and amendments were discussed. Many parties were directly and indirectly involved in the discussions: parliament, the Ministry of Trade and Industry, the President, Kadin, representatives of big companies, representatives of co-operatives, representatives of SMEs, NGOs, leading Indonesian advisors, leading foreign advisors, and the media, and society that deployed numerous mass rallies. Some organizations had taken the

308 Golkar, PPP, the military ABRI, and PDI-P.
310 Panja: Panitia Kerja.
311 Kompas, 16 October 1998.
initiative to write a draft law themselves. Kadin was not involved as the single representative of the business sector, but was one of the interested parties. The anti-monopoly law was ratified on 5 March 1999 and activated one year later.

Contents of the Anti-Monopoly Law
Basically, the anti-monopoly law was to set up rules for fair competition and mechanisms to control it. The objectives of the law are formulated in article 3 and read:

a) To preserve the public interest and to improve national economic efficiency as a means to improve people’s welfare;
b) To create a desirable business climate and to ensure healthy business competition in order to secure equal business opportunities for large, medium and small firms;
c) To prevent monopolistic practices and/or unhealthy business competition practices on the part of businesses;
d) To encourage effectiveness and efficiency in business activities.

Here, we present the objectives of the law without further comment. Some critical observations will be discussed in later sections.

The anti-monopoly law contains articles that prohibit almost all anti-competitive practices as illustrated in Section 5.2, such as monopoly, oligopoly, price fixing, market allocation, abuse of dominance, and collusion. We will not discuss all articles: we will limit ourselves to the main discussion points during the process of drafting the law. For reason of illustration, however, articles 5, 6, 7 and 8 on price-fixing are presented here.

- Art. 5: ‘Entrepreneurs are prohibited from making any contract with other business competitors in order to fix prices of certain goods and/or services to be borne by the consumers or clients in the same relevant market.’

E.g. the NGO Pirac (Public Interest Research and Advocacy Centre) and the small business association Pupuk (Organization for the Promotion of Small Businesses); see Kompas, 3 October 1998. They organized a series of seminars in various provinces to discuss their draft law. However, parliament did not pay much attention to their efforts; see Pangestu et al., 2002, p.215. The then director of Pirac was very disappointed by the sudden termination of the discussion with parliament on 15 October 1998; see Kompas, 16 October 1998.

311 The English translation quoted by Thee Kian Wie (2002, p.335) and by Juwana (2002, p.197) is slightly different.

• Art. 6: ‘Entrepreneurs are prohibited from making contracts which cause buyers to pay a different price from the price that must be paid by other buyers for the same type of goods and/or services.’
• Art. 7: ‘Entrepreneurs are prohibited from making any contract with other business competitors in order to fix the price below the market price, which can cause unfair business competition.’
• Art. 8: ‘Entrepreneurs are prohibited from making any contract with other entrepreneurs which sets the condition that the receivers of the goods and/or services are not to resell or re-supply the goods and/or services they receive, under a price lower than the price agreed upon, thus causing unfair business competition.’

The most controversial issue was market domination. The law forbids a company or a business group to hold a dominant position. According to the final law, a single company or business group is not allowed to have a share of more than 50 per cent of the market of a certain product or service. Two or three companies may have only a maximum share of 75 per cent of a certain product or service market. Corresponding articles read as follows:

• Art. 17(2): ‘Any entrepreneur can be suspected or considered as jointly controlling production and/or the marketing of goods and services … if one entrepreneur or group of entrepreneurs controls more than 50% (fifty percent) of the market share of one type of certain goods or services’.
• Art. 4(2): ‘Any entrepreneur can be suspected or considered as jointly controlling production and/or the marketing of goods and services … if two or three entrepreneurs or groups of entrepreneurs own more than 75% (seventy-five percent) of the market share of one type of certain goods or services.’

Monopoly and Market Share
Most discussions on the draft of the anti-monopoly law, in the public media and in parliamentary hearings, focused on the concept of monopoly and on methods to combat monopoly. In the draft of the anti-monopoly law, the Pansus had proposed to limit the market share of a certain products to a maximum of 30 per cent, at a national level. Market shares beyond that level were considered as evidence of monopolistic behavior and would be forbidden. The most important discussion point was this percentage of 30 per cent. After the publication of the draft, many discussions took place between the Pansus and

316 The Pansus made an exception for a few products because of their vital importance (‘essential commodities’) or evident reasons of efficiency.
the Ministry of Trade and Industry and in the media about monopoly as a market share and the percentage of 30.

Many businessmen, in particular managers of large companies, contested the proposals, and Kadin supported their view. Some were against any limitation of market shares, other ones against the percentage of 30. The main opposition against the limitation of market shares was based on the following reasoning. Market domination could be the result of bad practices but also of natural advantages and good practices. Examples of bad practices raised by business managers were for instance preferential treatment by the government of selected businesses;\(^{317}\) practices of price-fixing and collusive tendering;\(^{318}\) and the creation of barriers for newcomers to enter the market.\(^{319}\) Examples of natural advantages were specificity of location or product;\(^{320}\) and closeness of factories to production sources.\(^{321}\) Examples of good practices were applied technology\(^{322}\) and ways of making use of natural advantages.

Another argument against the introduction of maximum market shares was the problem of measuring them. These problems were heavily debated parliamentary hearings.\(^{323}\)

The Pansus was subject to much external pressure to fight the monopolistic behavior of especially the conglomerates, and in limiting maximum market shares they found an instrument to prevent such practices. They were convinced that maximum market shares would be necessary and would lead to more fair competition between business actors. The Pansus had to find a compromise because they were facing pressure by the IMF to introduce economic reforms, public pressure to break the monopolistic practices of the conglomerates, and the strong opposition of representatives of large business companies, business associations and Kadin against limiting market shares. The compromise consisted of adopting the idea of limited market share, with a

\(^{317}\) According to the chairman of the Indonesian shoe association, Anton Supit, the practice of unfair competition was to be combated by ending the preferential treatment of certain business people, not by limiting fair competition; see Kompas, 4 December 1998.

\(^{318}\) The director of Indofood Sukses Makmur Bogasari Flour Mills, Franciscus Welirang, raised these points; see Kompas, 4 December 1998.

\(^{319}\) Kadin chairman Bakrie emphasized this; see Bisnis Indonesia, 9 December 1998.


\(^{321}\) The director of the Indonesian association of food and drinks industries, Gapmmi (Gabungan Perusahaan Makanan dan Minuman Indonesia) emphasized this; see Business Indonesia, 16 January 1999. He referred to Indomie, instant noodle products, which dominates the market in Jakarta but has only a tiny share of the market in Irian Jaya.

\(^{322}\) Argued by Soy Parded, head of Kadin’s trade department; see Media Indonesia, 27 August 1999.

\(^{323}\) We do not discuss the problems associated with estimating market shares. The estimation is often used to determine the well-known and commonly used indicator of market concentration, the so-called four-firm concentration ratio (CR\(_4\)) measuring the market share of the four largest firms, see e.g. Pangestu et al., 2002, pp.207-210; Bird, 1999, pp.43- 73. See also World Bank, 1995, p.49.
maximum share of 50 per cent\textsuperscript{324} for every province rather than the originally proposed 30 per cent at a national level.\textsuperscript{325} Kadin insisted that a limitation of market domination, even to a maximum of 50 per cent, would be counter-productive for the business sector. It seems that the views of Kadin, which pleaded strongly for higher maximum market shares, had been taken into account.\textsuperscript{326}

\textbf{KPPU}

The anti-monopoly law deals not only with rules that have to be followed and practices that are forbidden, but also with mechanisms to detect violation of the rules and ways to impose sanctions. The KPPU,\textsuperscript{327} the Commission to Monitor Business Competition, would be installed to monitor the implementation of the anti-monopoly law. Its role was considered to be vital to enforce the law. The mandate of KPPU and related issues were thoroughly discussed at meetings of Pansus and the Ministry of Trade and Industry, during parliamentary hearings, public meetings, and in the media.

In essence, the tasks and authority of KPPU imply monitoring and taking action against monopoly and unfair business practices in Indonesia.\textsuperscript{328} The required procedures\textsuperscript{329} include: reporting\textsuperscript{330} of a violation of the act; initial investigation; further investigation; hearing of witnesses; completion of the investigation; and public announcement of the decisions taken.

Two types of sanctions can be imposed by the KPPU.\textsuperscript{331} The first one refers to administrative sanctions, the second one to KPPU’s authority to bring cases to court. Administrative sanctions cannot be enforced legally but are nevertheless important, since they anticipate a possible next step of bringing the case to court. Administrative sanctions refer\textsuperscript{332} e.g. to the announcing of publicly malpractices, compensation of damage, canceling of agreements, and even imposing fines. Judicial sanctions include the orders to stop malpractices, the withdrawal of licenses, the payment of fines and imprisonment.

\textsuperscript{324} A 50 per cent maximum market share was also adopted in the anti-monopoly law of Germany. In the process of formulating the Indonesian anti-monopoly law, the German consultant Wolfgang Kattre has contributed much. He was invited by president Habibie because of his expertise in anti-monopoly law.


\textsuperscript{326} Interview with Wirman, staff member at the co-operative department of Kadin.

\textsuperscript{327} Komisi Pengawasan Persaingan Usaha.

\textsuperscript{328} See Bisnis Indonesia, 10 July 1999; and Business News, 28 May 1999.

\textsuperscript{329} See articles 38-46 of the anti-monopoly law; see also Business News, 28 May 1999.

\textsuperscript{330} The anonymity of the reporter is guaranteed by article 38 (3).

\textsuperscript{331} See Business News, 11 June 1999. See also Bisnis Indonesia, 23 February 1999.

\textsuperscript{332} See anti-monopoly law, Ch.8, Art.47, where malpractices are listed that can be sanctioned by the KPPU, such as vertical integration, abuse of dominance, collusion, etc. The height of fines imposed by the KPPU is also mentioned.
Remarkably enough, small businesses and co-operatives are excluded from the anti-monopoly law.

KPPU consists of nine people, who have to meet three criteria: credibility, competence, and independence. In the procedures of selecting members for KPPU several parties are involved, governmental offices (like the Ministry of Trade and Industry and the Secretariat of the Cabinet), the President, and parliament. The governmental offices make a list of about 20 candidates from various backgrounds; the President chooses 18 of them, and finally parliament chooses nine as President, vice-President, and members. Two important officials of Kadin, Soy Pardede and Pande Raja Silalahi, were chosen as members of KPPU. The co-operatives were represented as well. Below, the role of Kadin in KPPU will be discussed in more detail.

Members of the KPPU must be independent and have no personal interests in private businesses or in SEOs. Since the state owns SEOs, it must not be represented in the KPPU, neither should it intervene. In the draft law was written that the members of the KPPU were elected but could be removed from office by the President. So the executive could intervene, and therefore the KPPU was not really independent. In the final text of the law, it was stated that the KPPU is independent; still, it has to report directly to the President according to article 30(3). This may create the impression that the committee is controlled by the President. Sri Mulyani Indrawati made a point by arguing that even if the KPPU would be formally independent, in later judicial processes, the KPPU would still be in a vulnerable position when cases were brought into the courtrooms, and the KPPU might even be sued because of its decisions on violation of the law. In the next section it will be shown that this did become a reality.

The potential role of the KPPU was publicly discussed in parliament and the media. Kadin participated in a number of these discussions. Final texts on the mandate of the KPPU are included in Ch.VI of the anti-monopoly law. All parties involved in the discussions agreed on the necessity of an institution like the KPPU to enforce the anti-monopoly law. Although at the time of ratification, all conditions for the proper functioning of the KPPU were not yet delineated (see e.g. criticism on the text of the final law discussed above), and

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333 See anti-monopoly law, Ch.9, Art.50, pt. h and i.
336 Representative of the NGO Pupuk (organization for the promotion of small businesses) Mukti Zainal Asikin proposed that an amendment should be made to ensure the independence of the KPPU.
337 Director of the Research Institute on Economic and Monetary Affairs of the University of Indonesia, Lembaga Penelitian Ekonomi dan Moneter, LPEM.
some barriers were not yet known, it was generally felt that the KPPU should be operational as soon as possible.338

5.5 The Implementation of the Anti-Monopoly Law of 1999: Some Experiences

Soon after the ratification of the anti-monopoly law of 1999, the KPPU started its work. The KPPU received public complaints, the majority of which were reported by small businesses and co-operatives;339 it initiated as well its own investigations on private and state-owned companies, in particular regarding the abuse of dominant positions. For two well-known cases, Caltex and Indomaret, the KPPU finished all procedures and came up with a final decision. They will be discussed briefly.

Caltex

The Caltex (Caltex Pacific Indonesia, CPI340) case was handled by the KPPU because of complaints by producers of pipes that had participated in a tender by CPI for the supply of pipes for a large Caltex project. The complaints concerned among other things certain tender requirements (regarding low and high quality graded pipes) and supposed practices of collusion.341 The KPPU carried out preliminary investigations, decided on further investigations and finally concluded that collusion had taken place between bidders, violating Art. 22 of the anti-monopoly law. Although CPI was not found guilty of violating the anti-monopoly law, the KPPU held CPI responsible 'for failing to exercise adequate prudence in ensuring fair business competition because in setting up the tender process it should have expected from the beginning that collusion would occur. As a consequence of the violation, the KPPU declared the contract held by Caltex to be void and that the entire tender process had to be redone. Caltex accepted the KPPU’s verdict and has not appealed to the district court'.342 This example shows that the new anti-monopoly law allows toning down even big companies.

Indomaret

P.T. Indomaret is a large retail chain of small supermarkets. Because of its scale, it could provide lower prices, more variety and more facilities to

338 The KPPU was installed by presidential decree (Keppres.) No. 75/1999 by president Habibie on 8 July 1999.
340 Caltex (California-Texas Oil Company Ltd, founded in 1936) holds 18 per cent of the market of all oil industries in 55 countries. It established various regional branches, of which Caltex Pacific Indonesia is one.
customers. According to small-scale retailers, this caused the reduction of the sales of traditional small retail sellers in Jakarta and its surroundings. Indomaret was accused by some small-scale retailers of abuse of its dominant position. The KPPU conducted hearings with market players, government officials and other stakeholders. Although Indomaret was not accused of specific practices violating the anti-monopoly law of 1999 such as lowering prices to drive out competitors, or practices of vertical integration causing an unfair advantage to Indomaret compared with traditional sellers, the KPPU still decided that Indomaret had not kept a proper balance between the interests of business players and the public interests. Therefore, it proposed that Indomaret 'cease expansion within traditional markets, in which Indomaret competes directly with small-scale retailers, in the context of ensuring a competitive balance between large-, medium-, and small-scale enterprises'. Due to the vague concept of traditional markets, in practice there appeared to be many loopholes to escape KPPU’s recommendations.

The KPPU also recommended that the government provides assistance to the traditional sellers to increase their capacity and capability to compete with the bigger retail chains.

The KPPU has been very active investigating practices by both private companies and state-owned enterprises that are suspected of anti-competitive practices. The list of companies that have been selected by KPPU to be investigated concerning possible misuse of a dominant position is long and covers many sectors, e.g. cooking oil, instant noodles, wheat flour, mineral water, detergents, lubrication oil, sea transportation, transportation over land, and telecommunications.

**First Appraisal**

In June 2003, interviews with the chairman of the KPPU, Syamsul Maarif, were published in which he said that auction conspiracy, misuse of dominant position, and covert cartel agreements were the most frequent violations of the anti-monopoly law. Most important of these is the auction conspiracy, in which both public companies and government offices were involved and collaborated. It is sometimes difficult to bring cases to court because of difficulties to provide judicial evidence. Maarif also referred to some positive achievements, such as the new law on the exploitation of oil and gas, which ended the production monopoly of Pertamina. Nevertheless, he referred to many barriers for the implementation of the anti-monopoly law, in particular

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343 Pangestu et al., 2002, p.220.
345 See Pangestu et al., 2002, p.221, for a list of companies selected by KPPU and suspected of abuse of dominance.
346 See Suara Pembaruan, 13 June 2003; Media Indonesia, 13 June 2003.
anti-competitive government policies: for instance, the policies for sugar trade import taxes; the implementation of national standards on trading of flour and textiles; \(^{348}\) the National Public Electricity Company (PLN)\(^{349}\) allowing particular lamp producers to sell their products to PLN co-operatives, while other companies were prohibited to do so; and the policy of the Ministry of Trade and Industry on fertilizer distribution (a typical example of market allocation: the Ministry dictates which and how much fertilizer in which region a producer\(^{350}\) may sell to public companies).

KPPU chairman Maarif mentioned that in 2002-2003 the KPPU received about 40 complaints (on auctions and tenders, government policy, cartel agreements, misuse of domination and closed agreements). He acknowledged that there had not been significant progress in the implementation of the anti-monopoly law.

**KPPU’s Efforts to Legally Enforce Sanctions**
The KPPU brought several cases to court, since KPPU itself could not legally enforce sanctions. The first case was the conspiracy case of Indomobil.\(^{351}\) This company is the largest importer, assembler, distributor and seller of Japanese and European cars in Indonesia. Until 1998 it belonged to the Salim Group, the biggest Indonesian conglomerate at the time (see Section 5.2). After the financial crisis, Indomobil had to go public and sell stocks and bonds to bidders. This process was seen as an auction. There were three bidding companies. Two of them\(^{352}\) were accused of conspiracy, which had led to one of these companies, CSDP, becoming the winner. The KPPU wanted to oblige CSDP to pay the claimed loss of 228 billion rupiah. In this case and in several others the court concluded that KPPU’s accusations were invalid.\(^{353}\) One of the main reasons was the divergence between KPPU and the court\(^{354}\) about the interpretation of Article 22 of the anti-monopoly law of 1999\(^{355}\) about auctions. This difference in interpretation was the main cause of KPPU’s failure to have sanctions approved by the court.

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\(^{348}\) *Suara Pembaruan*, 13 June 2003, ‘Pelaksanaan UU Antimonopoli Belum Memuaskan’.

\(^{349}\) Perusahaan Listrik Negara (PLN): the National Electricity Company.

\(^{350}\) PT Pupuk Iskandar Muda was allowed to distribute fertilizer in Nangroe Aceh Darussalam and North Sumatera; PT Pupuk Sriwijaya in the province of West Sumatra, Jambi, Riau, Bengkulu, South Sumatra, Bangka Belitung, Lampung, Banten, DKI Jakarta, Middle Java, DI Yogyakarta and West Kalimantan; PT Pupuk Kujang in West Java; PT Petrokimia Gresik in East Java; PT Pupuk Kalimantan Timur in Bali, Nusa Tenggara Barat, Nusa Tenggara Timur, Middle Kalimantan, East Kalimantan, North Sulawesi, Gorontalo, Middle Sulawesi, South Sulawesi, Maluku, North Maluku and Irian Jaya.

\(^{351}\) PT Indomobil Sulkses Internasional.

\(^{352}\) PT Alfa Sekuritas and PT Cipta Sarana Duta Perkasa (CSDP).

\(^{353}\) *Tempo*, 11 August 2002.

\(^{354}\) Pengadilan Negri: the District Court, a lower judicial court.

\(^{355}\) Faisal Basri in *Tempo*, 11 August 2002.
Concerning KPPU’s losses of several court cases, Maarif commented that there was a need to build common ground between the judges and the KPPU. He recommended that the President of the Indonesian High Court would issue a decree (Perma) on the relation between the judiciary and KPPU.

In an interview, Pande Raja Silalahi, member of KPPU, informed me about views within the KPPU about these issues. The KPPU felt that substantial constraints hampered an effective functioning of KPPU. The KPPU is not a judicial organ, but in practice it can take enough measures to bring companies to trial. In the judicial process, however, there are too many differences between the KPPU and the court in comprehension and interpretation of terms. An example is the term pelelangan, or auction. The processes, he argues, become disputes on the interpretation of terms rather than thorough evaluations of monopoly practices. He also complained about the judicial bureaucracy, at all levels, which is not very interested in supporting anti-monopoly policies. Moreover, lawyers are more inclined to win dubious cases than to help establish market-friendly practices in Indonesia.

The divergences between KPPU and the Indonesian judiciary, as emphasized by Maarif and Pande Raja Silalahi, were to a certain extent solved by the issuing of Decree (Perma) No. 1/2003. This decree confirmed once more the authority of the KPPU and the sanctions that KPPU could impose if accused parties did not agree with KPPU’s verdict. According to Udin Silalahi, the new decree enhanced KPPU’s effectiveness very much. One case that has been dealt successfully by KPPU after the issuing of this decree is the case against national airline Garuda. In some situations, a company voluntarily prefers to satisfy the KPPU sanctions rather than to go to court, see e.g. the Caltex case discussed above.

The Challenging Role of KPPU

The effectiveness of the anti-monopoly law and of KPPU’s performance is still questioned. The implementation of the law is often frustrated by companies that hire influential lawyers to challenge the KPPU and its accusations. Also some government policies frustrate the implementation of the anti-monopoly law. Nevertheless, due to among other the changing relations between the judiciary and KPPU and the provision of new instruments for KPPU to make their

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356 The scholar Pande Raja Silalahi is a member of the Centre for Strategic and International Studies CSIS, and a member of LP3ES Kadin.
357 Discussion with Udin Silalahi of the Centre for Strategic and International Studies (CSIS), 7 October 2003. He wrote a thesis on the issue of monopoly in Indonesia.
358 Because of the anti-monopoly act of 1999, Garuda could not maintain its monopoly on bringing Muslims to Mecca, which is an annual practice. As a result, the Saudi Airlines got 50 per cent of the flights from Jakarta and 100 per cent from Surabaya, while the other connections (from Medan, Ujung Pandang, Balikpapan, Solo and Banda Aceh) are still managed by Garuda.
sanctions more effective, progress is made fighting unfair competition practices and KPPU’s reputation has been improved. The KPPU has also contributed much to the introduction of laws on electricity, telecommunication, and oil and gas supply.\footnote{Pangestu et al., 2002, p.224.} These sectors have been deregulated a lot and were opened to competition from private investors. There were high hopes for the KPPU; during the first years, the spotless reputation of its chairman and members was well-known. Still, the public was very much aware of the strong resistance of big business that had profited so much in the past.

\section*{5.6 Recent Observations on the Anti-Monopoly Law of 1999}

Before we move on to some final observations about the role of Kadin, we will discuss some critical comments on the anti-monopoly law of 1999, as discussed in recent publications. Most critical comments concern issues that were also debated during the process of drafting the law. We limit ourselves to the main issues. A detailed review would be interesting, but is beyond the scope of this study.

The formulation of the objectives in Art.3 of the anti-monopoly law of 1999 (see section 5.4 above) – and especially the wording ‘to secure equal opportunities for large, medium and small firms’ in Art. 3b – has raised quite some critical comments.\footnote{E.g. Juwana, 2002, p.197; Tineo et al., 2000, p.21; Thee Kian Wie, 2002, p.335-336; Dowling, 2006, p.4.} The wording is unclear and allows all sorts of interpretations. If it were to imply a right on a claim of a certain market share, it would certainly violate the principle of free competition. The formulation of Art. 3a also creates leads to confusion. It seems as if two objectives have to be reached, ‘to preserve public interest’ and ‘to improve economic efficiency’, whereas – as Thee Kian Wie rightly states – there is only one objective: ‘to maintain and promote market competition as a means to achieve economic efficiency and thus improve the welfare of the general public.’\footnote{Thee Kian Wie, 2002, p.335.}

Also the fixation of a maximum market share (Section 5.4) is criticized: ‘If a firm controls the production and/or distribution of a good or service and commands over 50\% of the market share because of its superior efficiency or its ability to produce a high quality good or service popular with consumers or buyers, it should if anything be commended’. Although this argument sounds reasonable, we must not forget that the anti-monopoly law of 1999 was primarily set up to fight the existing anti-competition practices. Last but not least, the law and the decisions of the KPPU create the impression that the protection of small businesses and co-operatives is one of the intentions of the law. It is undeniably true that it is useful to protect small businesses against the unfair practices of
e.g. large companies; the anti-monopoly law provides a means for such protection. But the law is not intended to protect small businesses as such; its only purpose is to protect the competitive process.


Kadin’s views on the formulation of the law, in particular on the issue of monopoly as a maximum market share, were rather ambiguous. Within Kadin, there were conflicting views on the position of Kadin in the process of the making of the anti-monopoly law, as was confirmed in my interviews with officials of Kadin. Some of them confirmed that fragmentation within Kadin was the most important reason for these conflicting views. The interests of big business dominated in Kadin, due to the views and interests of the elite. The importance of the background and position of the Kadin chairman was also emphasized. Kadin had to be chaired by a person from the private sector. He had to have at his disposal substantial financial sources, which could be used for financing the development and the daily activities of Kadin. Financial means could come from his/her own resources or from a network of businessmen. It was estimated that the Kadin chairman and his affiliates financed more than 70 per cent of the budget (see Chapter 4), so the chairman would certainly have to be a big businessman. One can understand that in such an ambiance the ideas of large companies prevailed. This also explains the resistance against anti-monopoly measures and Kadin’s ‘halfhearted’ responses on the draft of the anti-monopoly law. My interviewees emphasized that Kadin finally welcomed the anti-monopoly law; it concurred with the intention of the institution to preserve harmonious relationships between business actors and with the state. According to Kadin, the performance of the KPPU is crucial. Kadin has high hopes for the role of KPPU of securing the implementation of the law.

Kadin’s role regarding the anti-monopoly law was prominent at the implementation level. At this level, a noticeable initiative was Kadin’s policy of ‘socializing’ the new law, explaining and discussing the new law to various branches and stakeholders of the business sector. This process of ‘socialization’ was implemented through seminars, panel discussions, workshops, and other meetings.

362 The content of this section is based on discussions with Kadin officials, so they reflect an internal view.
363 However, my research of archived clippings of Kadin showed many policy recommendations of Kadin to promote SMEs, see Chapter 4.
5.8 Summary and Conclusions

In this chapter a description was presented of the process of initiating, drafting and implementation of the anti-monopoly law of 1999 and of the role of Kadin in this process. Here some final observations are made about this process and some conclusions are drawn about the role of Kadin. We present first a short summary of this chapter.

The chapter starts with a short description of the business climate before 1998. It recapitulated some characteristic features, like the dominant position of powerful conglomerates, the main control of them by Chinese Indonesian businessmen and by family members of Soeharto, the important role of the state-owned enterprises, the role of co-operatives, and the numerous regulations and practices, which were impeding a healthy competition between companies. After the step-down of Soeharto, feelings of frustration and discontent about the power of the conglomerates, the backward position of SMEs and collusive and monopolistic practices were the mainspring for the launching of the anti-monopoly law of 1999.

In the Soeharto era, it was the President, who had the authority to institute laws and it was the government, which took the initiative for launching and drafting new laws. After the reformasi, it was parliament which took such initiatives. Soon after the step-down of Soeharto in May 1998, parliament decided to set up an anti-monopoly law. Several parliamentary hearings took place in which drafts and amendments were discussed. Directly and indirectly, many parties were involved in the discussions. Different stakeholders took different positions about the anti-monopoly criteria, in particular about the maximum market share to be allowed (30 per cent at a national level as was proposed in the first draft of the law or 50 per cent at provincial level as was included in the final text of the law: a company which had a higher market share would violate the anti-monopoly law). This issue became the nucleus of the debates on the anti-monopoly law. Many leading officials from business associations and others took part in the passionate public debates on this issue. Business people, especially representing the conglomerates and large businesses, protested fiercely against a maximum market share of 30 per cent, or against any limitation of the market share for that matter. Finally, in parliament the 50 per cent limit was adopted as a compromise.

The anti-monopoly law deals not only with practices that will be forbidden, but also with mechanisms to detect violations of the rules and ways to impose sanctions. The commission KPPU was installed to monitor the implementation of the anti-monopoly law. Its role was considered to be vital as a mechanism to enforce the law. The mandate and independence of KPPU was thoroughly discussed at parliamentary meetings.

Kadin was an important participant in the process of forming and implementing the anti-monopoly law of 1999. Its views and recommendations
were discussed both internally and externally. There were different views within Kadin, which is not surprising since Kadin represents businesses of different scales, both large scale companies and SMEs. With regard to the debate on the maximum market share: Kadin was not in favor of any limitation and certainly did not approve of the 30 per cent limit. Kadin’s interventions seem to have contributed much to the compromise of 50 per cent market share. Kadin supported the articles in the law dealing with collusive and anti-competitive practices, like price-fixing, market allocation, etc.

Realizing the new reality and because some of its recommendations had been partially adopted in the policy, Kadin decided to actively support the implementation of the new policy as soon as the new law was ratified by parliament. Two of Kadin’s senior members joined the monitoring body KPPU, and Kadin started to conduct many seminars to introduce the new policy in the business sector.

The case study of this chapter first of all shows how complex processes of policymaking in Indonesia can be, especially after the reformasi. Before we embark on the policymaking and the role of Kadin after 1998, we will briefly discuss these issues during the Soeharto period. At that time, when policymaking was much centralized, policymaking processes were less complex. In the case of making new laws, the government took the initiative and drafted the laws, parliament was supposed to applaud, and other stakeholders were hardly involved. The efforts by Kadin to try and influence such processes were complicated by various factors.

First, the legitimacy of Kadin and its interventions were not at all evident. It took years before Kadin was formally acknowledged as the Chamber of Commerce representing the Indonesian business sector. The legal recognition of Kadin by Law No.1/1987 did not imply that Kadin could exercise a lot of influence. One factor in particular affected the role of Kadin: the existing patron-client relationships between the President and high-ranking officials in the government and the army on one hand, and an exclusive elite of large businessmen owning conglomerates on the other hand (Section 5.2). These relationships not only allowed businessmen to enrich themselves and build business empires, they also became important channels to influence the regime’s policies. There were numerous Presidential and ministerial decrees that resulted from these patron-client relationships, granted exclusive licenses, allowed the use of public funds, allocated markets, created input and output barriers, etc. In such a powerful web of political patrons and business clients, Kadin could only be a modest player.

Although Law No.1/1987 on Kadin postulated that Kadin was to be an important discussion partner of the government, communication between Kadin and the government was never formalized during the Soeharto regime. This meant that there were no proper procedures allowing Kadin to submit advice and recommendations to the government, and obliging the government to
respond. As this case study has shown, before 1998 this was one of the reasons of the halfhearted ‘recommendations’ by Kadin: although at several occasions Kadin had recommended anti-monopoly legislation, the recommendations were never formally submitted to the government.364

After 1998, the scene changed completely. Decision-making on the anti-monopoly law took place in parliament, and many public discussions in and outside the parliament were devoted to the anti-monopoly legislation. Many stakeholders presented their views at parliamentary hearings – Kadin was one of them. There were no formal procedures of communication between parliament and Kadin. Kadin was one of the discussion partners, who could elucidate their views. We have seen that in the stage of drafting the anti-monopoly law the position of Kadin was again unenthusiastic, but in the stage of implementing the law, Kadin became forthright, active and supportive. Kadin’s initial ambiguous position towards the anti-monopoly law had obvious reasons: Kadin was fragmented. It claimed to represent the entire business sector: both large, medium and small enterprises, both state-owned and private. The interests of these enterprises and their views on the anti-monopoly legislation were often very different. For instance, some large companies vehemently defended a free competitive market and did not want to limit market shares. Some SMEs, however, saw the law as an instrument that would protect them against conglomerates and large companies; they were very much in favor of limiting market shares.

The difference between the interests of pribumi and Chinese Indonesian businessmen has also been a reason of fragmentation. Many of the discussions on the differences of interests between conglomerates and SMEs were covered discussions about differences of interest between pribumi and Chinese Indonesian businessmen. In those days, the general public saw Kadin as a pribumi stronghold. However, Kadin saw itself as representing the entire business sector, including large companies and business groups. It was not surprising that finally Kadin agreed on (and supported) a compromised version of the anti-monopoly law.

Kadin is represented in KPPU. It is worthwhile to note that KPPU is an important formal institution. Its activities have a sound legal basis in the anti-monopoly law of 1999, and KPPU is accountable to parliament, the government, and the public. Because of Kadin’s participation in KPPU Kadin has a formal outlet for its recommendations. This strengthens the institutional position of Kadin in the fight against monopoly. Experiences in KPPU find their way to Kadin and can be brought into the programs of ‘socialization’. This also strengthens the position of Kadin, which will gain much experience in the field of fair competition.

364 Many interviewed people suggested that the halfhearted nature of Kadin was due to the big influence of big businesses in the institute.
After the reformasi many actors were involved in the processes of legislation. This has influenced the role of Kadin. In the days of the Soeharto regime it became the formal representative of the business sector, although in processes of law making they were seldom heard. Recommendations by Kadin in those days were on ad hoc, vague, and never formalized. After the reformasi, Kadin’s voice was only one of many, but now the voice was heard and taken into account. In the beginning of the introduction of the anti-monopoly law of 1999, the role of Kadin was halfheartedly. This was to a large extent the result of internal divergences and conflicting interests within Kadin, in particular between conglomerates and SMEs. Kadin did not support parliament’s proposals on market shares. However, when the anti-monopoly law of 1999 had been approved by parliament, Kadin decided to actively support the implementation of the new law. Kadin became very active in the official committee, KPPU, which was established to implement the new law, and organized seminars to introduce the new legislation and its consequences to the business sector. By doing so, Kadin increased its credibility and strengthened its position. Moreover, in the field of business competition and anti-monopoly measures Kadin has found a formal outlet for its views and recommendations.