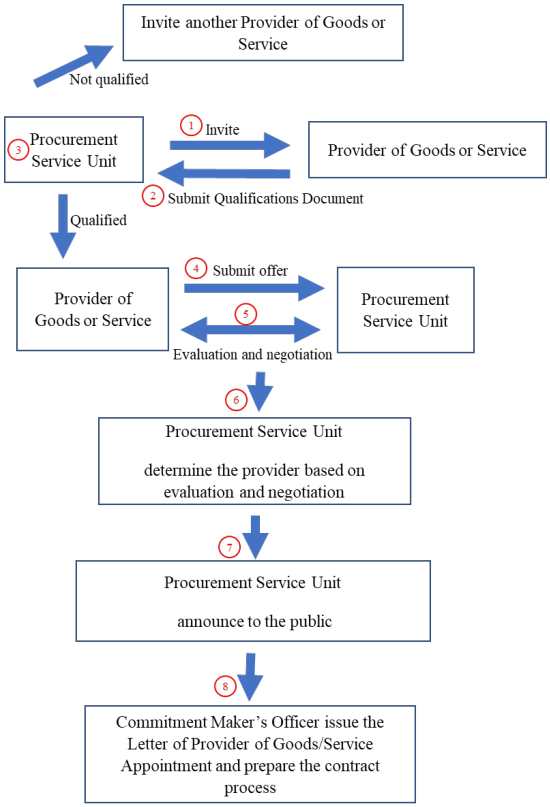
CHAPTER IV

FINDING AND ANALYSIS

A. Regulation on the Direct Appointment to the State-Owned Enterprises in the Procurement of Goods and/or Service

The direct appointment as one method to conduct the procurement of goods and/or service. The direct appointment is regulated in President Regulation No. 54 of 2010 because it is the part of the procurement of goods and/or services. According to that such regulation of goods and/or services using the direct appointment method can be explained through the following chart:

Figure 1. Direct appointment of Goods and/or Service by the Government



Source: President Regulation No. 54 of 2010 and its amendment (arranged by author)

Based on the above figure, we can see that the direct appointment is started by inviting one of the provider of goods and/or services with qualification process to that such provider of goods and/or services. If the qualification document of goods and/or services does not passed the qualification, the procurement has to be done by inviting the other provider of goods and/or services. In terms of direct appointment, it cannot neglect the offer where if there is no deal between the procurement unit service with the provider of goods and/or services, the procurement unit service has to invite the other providers to conduct the offer until the procurement unit service finds deal of price and specification of goods and/or services.

Direct appointment to 1 (one) of provider goods/construction work/other services can be done in terms of:[36]

1. Certain condition; and/or
2. Special goods procurement / special construction work / other special services.

What is meant by certain conditions in the above point is as follows:

1. emergency handling that cannot be planned before and the time of completion of work must be immediate / cannot be postponed for:
    a. national defense;
    b. security and public order;
    c. safety / protection of the community whose work cannot be postponed / should be done immediately, including:

[36] Article 38 of President Regulation No. 54 of 2010

1) caused by natural disasters and/or non-natural disasters and/or social calamities;
2) in order to the disaster prevention; and/
3) due to damage to the facilities / infrastructure that can stop the activities of public services.

2. Work of arranging a sudden conference preparation to follow up the international commitments and in the presence of President / Vice President;
3. activities pertaining to state defense stated by the Minister of Defense and activities related to public order and security determined by the Chief of Police of the Republic of Indonesia;
4. confidential activities for the purpose of intelligence and/or protection of witnesses in accordance with the duties stipulated in the legislation; or
5. Goods / Construction Work / Other Services that are specific and can only be implemented by 1 (one) Provider of goods / other services because 1 (one) manufacturer, 1 (one) patent holder, or party who has obtained permission from the patent holder, or the winning bidder to get permission from the government.

Based on the above explanation, of course the procurement of goods / services with direct appointment cannot be immediately done, because there are conditions that must be met. Procurement of goods or services using direct

appointment method must be based on legal reasons as set forth in Article 38 paragraph (4) of President Regulation No. 54 of 2010.

The procurement of goods and/or services of government should be based following principles:[37]

1. Efficient;
2. Effective;
3. Transparent;
4. Opened;
5. Competitive;
6. Fair/not discriminative;
7. Accountable.

Regarding to the procurement of goods and/or services in the environment of State Owned Enterprises, it did not have significant differences with the procurement of goods and/or services in the environment of government. In the procurement of goods and/or services in the environment of State Owned Enterprises, Ministry of State Owned Enterprises has issued Ministry of State Owned Enterprises Regulation No. 5 of 2008 on the Procurement of Goods and/or Services of State Owned Enterprises. There are 4 (four) methods of procurement of goods and/or services in the Ministry of State Owned Enterprises Regulation, they are:[38]

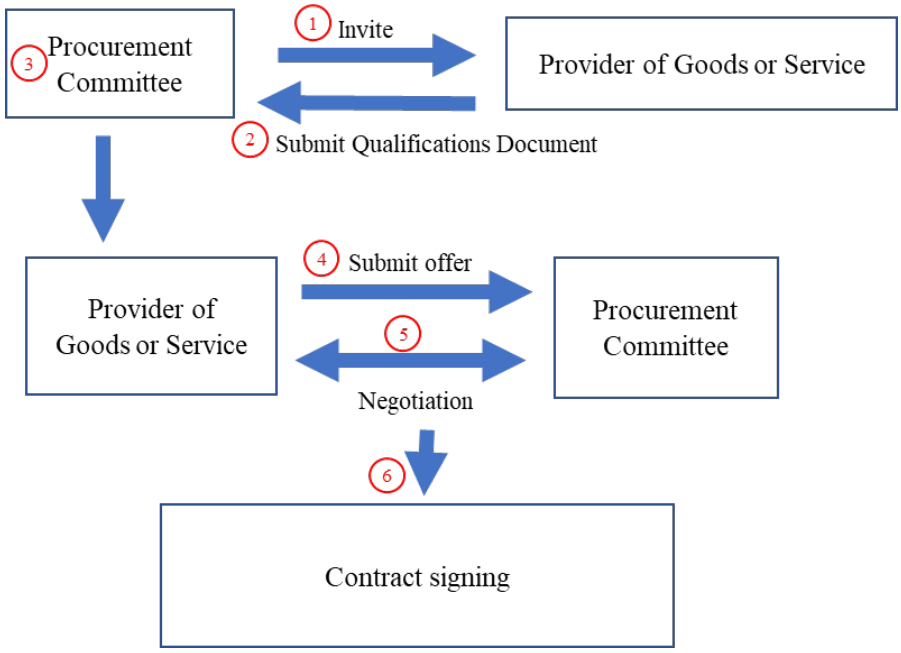
1. Open Auction

[37] Article 5 of President Regulation No. 54 of 2010 on Procurement of Goods and/or Service
[38] Article 5 of Ministry of State Owned Enterprises Regulation No. 5 of 2008 *juncto* State Owned Enterprises Regulation No. 15 of 2012

2. Direct Election
3. Direct Appointment
4. Direct Purchase

According to the Article 5 paragraph (2) of the above regulation, the direct appointment is the procurement of goods and/or services which done by appointing one provider of goods and/or services or through beauty contest. The process of direct appointment based on the above regulation can be explained by the following figure:

Figure 2. Direct Appointment in State Owned Enterprises



Source: State Owned Enterprises Ministry Regulation No. 5 of 2008 *juncto* Ministry of State Owned Enterprises Regulation No. 15 of 2012 on General Guidance of Procurement of Goods and/or Services by State Owned Enterprises

The direct appointment by State Owned Enterprises is only able to be done if fulfilling minimum 1 (one) of the following requirements:[39]

1. The goods and/or services which are needed for the main performance of company and the existence cannot be postponed (business critical asset);
2. The intended goods and/or services provider are the only one (specific goods);
3. knowledge intensive goods and/or services where to use and maintain that product need the continuity of knowledge of Goods and/or Services Providers;
4. If the implementation of Procurement of Goods and/or Services by using the method as referred to in Article 5 paragraph (2) letters a and b has been done twice but the bidder or direct election does not meet the criteria, or no party will participate in the auction or direct election, even if the provisions and the conditions have met fairness;
5. Goods and services owned by intellectual property rights holders (IPR) or those who have warranty from the Original Equipment Manufacture;
6. Emergency handling for security, community safety, and corporate strategic assets;

[39] Article 9 of State Owned Enterprises Ministry Regulation No. PER- 5/MBU/2008 juncto State Owned Enterprises Ministry Regulation No. PER- 15/MBU/2012 on the General Guidance of Implementation of Goods and/or Services Procurement

7. Goods and services which are repeat orders as long as the offered price is profitable by not sacrificing the quality of goods and/or services;
8. Emergency handling due to natural disasters, both local and national;
9. Advanced goods and/or services that are technically a unit which cannot be separated from work that has been carried out previously;
10. Goods and services providers are State Owned Enterprises, State Owned Enterprises subsidiaries or State-Owned Enterprises affiliated companies, as long as the needed goods and / or services are their own products or services, and throughout quality, price and purpose can be accounted for, and possible in sectoral regulations;
11. Procurement of goods and/or services in a certain amount and value determined by the Board of Directors by first obtaining approval from the Board of Commissioners.

If we look specifically, there is differences between direct appointment by the State-Owned Enterprises and the direct appointment by the government, that is where in the direct appointment by State Owned Enterprises there is no submission of the qualification documents by the providers of goods/ services to the committee of procurement. Of course, if we look from the business competition law perspective, that matter close the other opportunity of other company which run business in the same field to join and compete in the same market.

In addition, in the amendment of the above regulation, State Owned Enterprises Ministry Regulation No. 15 of 2012 has given one requirement which make easier for State Owned Enterprises to conduct the direct appointment. The requirement refers to the requirement of the provider of goods/services is State Owned Enterprises, State Owned Enterprises subsidiary, or State Owned Enterprises affiliated company as long as the goods/services that procured is the product or services of that State Owned Enterprises, State Owned Enterprises subsidiary, State Owned Enterprises affiliated company, and/or small and micro business as long the quality, price and the purpose can be accounted for, and possible in sectoral regulations. Even, the direct appointment can be held when one of the requirements is fulfilled. That provision causes the discrimination against the other business actor which run business in the same field in tender.

Table 1. Differences between Principles of Procurement of Goods and/or Services by Government and by State Owned Enterprises

No.	Principle	Principles of Procurement of Goods and/or Service by Government	Principles of Procurement of Goods and/or Service by State Owned Enterprises
1	Efficiency	✓	✓
2	Effective	✓	✓
3	Competitive	✓	✓
4	Openness	✓	×

5	Transparent	✓	✓
6	Fair and Not Discriminative	✓	✓
7	Accountable	✓	✓

Source: Marisi P. Purba, 2014, *Pengadaan Barang dan Jasa State Owned Enterprises*, Yogyakarta, Graha Ilmu, p. 29 (rearranged)

Regarding the basic principles of procurement of goods by State Owned Enterprisess, there is one difference between the principle of procurement of goods and/or services by State Owned Enterprisess and the principle of procurement of goods and/or services by the government, where there is no open principle in the procurement of goods by State Owned Enterprisess. Open principle means that Procurement of Goods / Services can be followed by all Goods / Services Providers who meet certain requirements / criteria based on clear terms and procedures.[40] The absence of open principle indicates that the procurement of goods by State Owned Enterprises can be done in closed manner which will lead to discrimination.

B. The Legal Status of Direct Appointment by State Owned Enterprises in the Procurement of Goods and/or Service against Business Competition Law

Direct appointment by State Owned Enterprises is regulated in the State-Owned Enterprises Ministry Regulation No. PER-05 / MBU / 2008 concerning General Guidelines for Procurement of Goods and/or Services of

[40] Explanation of Article 5 of President Regulation No. 54 of 2010 on Procurement of Goods and/or Services by Government

State Owned Enterprisess that have been amended by the State-Owned Enterprises Ministry Regulation No. PER-15 / MBU / 2012. Based on these regulations there are two things that need to be observed, namely the material aspects and formal aspects of the formation of these rules from the perspective of business competition.[41] Substantially (material), the State-Owned Enterprises Ministry Regulation No. 5 of 2008 is basically contrary to Article 19 letter (d) and Article 22 of Law No. 5 Year 1999.

Article 19 letter (d) states that business actors are prohibited from carrying out one or several activities, either alone or together with other business actors, which can result in monopolistic practices and or unfair business competition in the form of discriminatory practices against certain business actors. The scope of prohibition of activities regulated by Article 19 letter d covers the practice of discrimination carried out individually by business actors and activities carried out jointly with other business actors. Discrimination practices are the determination of treatment in different ways regarding the requirements of supply or the requirements for the purchase of goods and or services.[42] So any kinds of different treatment for certain business actors can be included in the scope of Article 19 letter d. Discrimination practices can also be interpreted as activities that inhibit or conflict with the principles of fair business competition. Actions that inhibit or conflict with

[41] Anna Maria Tri Anggraini, "Sinergi BUMN dalam Pengadaan Barang dan/atau Jasa dalam Persepektif Persaingan Usaha", *Mimbar Hukum Vol. 25, No. 3 (October, 2013)*, ISSN 0852-100X, p. 449-451

[42] Guidelines for the implementation of Article 19 letter d (practice of discrimination), p. 13.

unfair business competition under Article 19 letter d can be in the form of price or non-price discrimination.

Furthermore, Article 22 of Law No. 5 Year 1999 states that "Business actors are prohibited from conspiring with other parties to regulate and / or determine the tender winner so that it can lead to unfair business competition." The article considers the existence of tender conspiracy depends on two conditions, namely the parties must participate and agree on collusion activities together. Participants as intended in Article 22 in terms of "third parties" are parties who do not have to be competitors of the first party and do not need to be business actors. This understanding has a broad impact, so it rises the interpretation that the ban on conspiracy is not only horizontal (between bidders) but also vertically (between the committee and the bidders).

Based on the explanation of Article 22 of Law No. 5 Year 1999, the tender is an offer to propose prices to buy a job to procure goods or provide services. The definition of this tender includes an offer to submit prices for:

1. Buying or carrying out a job;
2. Holding procurement of goods and/or services;
3. Buying goods and/or services;
4. Selling goods and/or services.

The below definition covers tender which done through:

1. Open tender;
2. Limited tender;

3. General auction;
4. Limited auction;
5. Direct appointment;
6. Direct election.

Furthermore, there are 3 (three) kinds of tender conspiracy, they are:[43]

1. Tender conspiracy horizontally

   This conspiracy occurs between business actors and fellow business actors by creating false competition among bidders.
2. Tender conspiracy vertically

   This conspiracy occurs between one or several business actors with the tender committee or the owner or employer.
3. Vertical and horizontal tender conspiracy

   It is a conspiracy between the tender committee or the owner of the work with the business actor involving two or three parties related to the tender process. This form of conspiracy is a fictitious tender, whereby both the bidding committee of the employer, and the business actor conducts the tender process only administratively and is closed.

Thus, the direct appointment above is categorized as a form of vertical conspiracy, meaning a conspiracy facilitated by the committee / tender

[43] Article 22 concerning Prohibition of Collusion in the Tender of Law No. 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition.

implementer to win one of the tender participants without going through standard procedures that must be carried out based on the principle of fair business competition.

Article 19 letter d is closely related to Article 22 which prohibits conspiracy, especially direct appointment. Both of these articles have the same impact, namely the entry barrier, but the prohibited aspect is different. Article 22 prohibits conspiracy activities, while Article 19 letter d prohibits discrimination resulting from the conspiracy. Article 19 letter d is needed to trap discriminatory practices that are not caused by conspiracy.

Procurement of goods and/or services is a market that should be competed to obtain competitive and efficient goods or services. The direct appointment in the procurement by State Owned Enterprises is violating the provision of Article 19 letter d and Article 22 of Law No. 5 of 1999 which cause negative impact because it can bring the adverse consequences, among others:[44]

1. Create barrier to entry for other bidders who are more likely to win because both the goods / services offered are far better than the winning bidder determined from the conspiracy;
2. Cause losses to the State because government procurement of goods / services uses government budgets;

[44]Apectriyas Zihaningrum & Munawar Kholil, "Penegakan Hukum Persekongkolan Tender Berdasarkan Undang-Undang Nomor 5 Tahun 1999 Tentang Larangan Praktik Monopoli Dan Persaingan Usaha Tidak Sehat", *Privat Law,* Vol. IV, (January, 2016), ISSN 2337-4640, p. 111.

3. Cause immaterial losses, namely reduced market confidence, especially the public who know about the existence of the tender to the credibility of the government or government officials as the tender organizer (tender committee)

In Article 50 letter a of the Business Competition Law there are exceptions to the stipulation of the provisions of the Business Competition Law, namely actions and or agreements that aim to implement the prevailing laws and regulations. If we look at the State Owned Enterprises Ministry Regulation No. 5 of 2008 from the formal aspect, the regulation was formed by the Ministry of State Owned Enterprises based on:

1. Law No. 40 of 2007 on Limited Liability Company;
2. Law No. 19 of 2003 on State Owned Enterprises;
3. Government Regulation No. 41 of 2003 on Delegation of Position, Duties and Authority of the Minister of Finance in Corporate Companies (*Persero*) Public Companies (*Perum*), and Company Services (*Perjan*) to the State Minister of State-Owned Enterprisess
4. President Regulation No. 45 of 2005 on Establishment, Supervision and Dissolution Management, State-Owned Enterprisess
5. President Regulation No. 9 of 2005 on Position, Task, Function, Organizational Structure and Work Procedure of the State Ministry of the Republic of Indonesia

6. Presidential Decree of the Republic of Indonesia No. 1871M of 2004 as amended several times, the latest by Presidential Decree No. 31/P of 2007;

Furthermore, Ministerial Regulation No. 15 of 2012 which was formed based on higher regulations such as Government Regulation No. 41 of 2003 and Government Regulation No. 45 of 2005 etc. which became the reference for the Regulation of the Minister of State Owned Enterprisess No. 15 of 2012 did not explicitly mention the granting of authority that was not based on principle fair business competition. Considering there is a conflict or contradictory regulation between the State Owned Enterprises Ministerial Regulation No. PER-15 / MBU / 2012 with Law No. 5 of 1999 it can apply the legal principle of *lex superior derogat legi inferiori*, which means that if there is a conflict or contradiction between high and low legislation then the high one must take precedence.[45] So that even though the Minister of State Owned Enterprises is authorized to form regulations but if the content of these regulations is contrary to the above regulations, then the higher rules must take precedence..

In connection with the procurement system of goods / services within the State Owned Enterprises, the system of procurement of goods / services in the State Owned Enterprises environment is not categorized as excluded by Article 51 of Law No. 5 Year 1999.[46] This is due to the fact that the procurement

[45] Ferry Irawan Febriansyah, "Konsep Pembentukan Peraturan Perundang-Undangan di Indonesia", *PERSPEKTIF*, Vol. XXI No. 3 (September, 2016), E-ISSN 2406-7385, http://jurnal-perspektif.org/index.php/perspektif/article/view/586 accessed on 20 April 2018 at 17.05
[46] Anna Maria Tri Anggraini, *op cit*, p. 458

of goods / services does not include strategic industrial fields that require the Act as a basis for regulation, for example in the fields of mining, water resources, electricity, public transportation, plantations, ports, telecommunications, and so on. However, the basis of State Owned Enterprises in making direct appointments, namely State Owned Enterprisess Regulation No. 5 of 2008 which was amended by State Owned Enterprisess Regulation No. 15 of 2012 concerning guidelines for procurement of goods and/or services, is in essence contrary to the provisions of the Business Competition Law. We can see that the establishment of the regulation of the Minister of State Owned Enterprises concerning the Guidelines for Procurement of goods and/or services does not take into account the principles contained in the Business Competition Law.

Regarding with the existence of a direct appointment or discriminatory action in the tender conducted by the committee against the winner of the tender, several times the Business Competition Supervisory Commission sentenced the procurement committee based on the prohibition on Article 19 letter (d) and Article 22 of Law No. 5 Year 1999. Article 19 states that business actors are prohibited from carrying out one or several activities, either alone or with other business actors, which may result in monopolistic practices and or unfair business competition in the form of discriminating against certain business actors. Then Article 22 states that business actors are prohibited from conspiring with other parties to regulate and or determine the winner of the tender so that it can lead to unfair business competition. These decisions

include, among others, several state-owned enterprises that conducted direct appointments in the field of procurement of goods/services, such as PT PERTAMINA direct appointed Landor to make new logo for PERTAMINA, PT PLN (Central) and Disjaya direct appointed PT Netway Utama in the field of procurement of CIS RISI, and selling of two VLCC tanker ship of PT PERTAMINA.

In the case of direct appointment PT. Netway Utama (NETWAY) to conduct Project of Outsourcing Roll Out Customer Information System *Rencana Induk Sistem Informasi* (CIS RISI) in PT. PLN (Persero) Distribusi Jakarata Raya and Tangerang (DISJAYA), Business Competition Supervisory Commission conducts a Preliminary Examination which in the Preliminary Examination found strong indications of violations of Article 19 letters a and d, and Article 22 of Law No. 5/1999, with consideration as follows:

1. That PT. PLN DISJAYA only evaluates the direct appointment to NETWAY;
2. the result of the direct appointment caused a closed opportunity for other business actors to work on the project of Outsourcing Roll Out CIS RISI di PT. PLN DISJAYA;
3. NETWAY does not meet the criteria for direct appointment as stipulated in the Directors' Decree No. 036.K/ DIR/1998.

In its decision, the Business Competition Supervisory Commission Assembly decided that NETWAY was proven violated Article 19 letter (a) of

Law No.5 / 1999 and was obliged to pay a fine of Rp. 1,000,000,000 (one billion rupiah), while DISJAYA and PT. PLN Head Office violates Article 19 letter (d) of Law No.5 / 1999.[47]

Then, the case of direct appointment of Landor as the implementer of the PT Pertamina logo changes occurred because PT Pertamina allegedly privileged Landor. The change in PT Pertamina's logo was carried out in order to improve the image and adjust the company's vision and mission. The logo change is planned to be launched on December 10th, 2004, namely at the anniversary of PT Pertamina. The procurement of PT Pertamina's manufacturing services is categorized as a type of procurement of "communication consultants". Since the beginning of planning the change of the Pertamina logo, the Board of Directors of PT Pertamina wants Landor to change the logo with consideration that Landor's reputation and experience have been tested for competence which has 30 (thirty) years experience in the business of designing world company logos, especially world oil companies. Based on that, Pertamina's Board of Directors invited Landor to make a presentation on the change in the PT Pertamina logo.

In the end, the Director of Pertamina made a direct appointment to Landor to make changes to the PT Pertamina logo with the offer submitted by Landor with a contract value of USD 255,000 with the scope of the Brand Audit

[47] Case Decision No. 03/KPPU-L/2006 on Direct Appointment in the Project of CIS-RISI PLN, dated September 27th, 2006

& Strategy Development work, Identity Development, Look and Feel System Development, and Brand Guidelines. Development.

In the Business Competition Supervisory Commission Decision No. 02 / KPPU-L / 2006 Business Competition Supervisory Commission decides that PT PERTAMINA (Persero) legally and convincingly violates Article 19 letter d of Law No. 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition because of directly appointing LANDOR to manufacture PT PERTAMINA logo (Persero) without valid reason and punish PT PERTAMINA (Persero) to pay a fine of Rp. 1,000,000,000 (one billion rupiah).[48]

In the case of the sale of the VLCC tanker owned by PT Pertamina, PT Pertamina has made a final appointment to Goldman Sachs, Ltd. The appointment was based on urgent circumstances because PT Pertamina was in bad financial condition. Therefore, PT Pertamina needs a consulting services company to conduct financial evaluations and advice on ownership of VLCC. Initially, PT Pertamina had held a tender and determined Japan Marine to be the winner of the tender as a VLCC tanker ownership consultant. However, because Japan Marine takes a long time to provide evaluation results and when the results are submitted to PT Pertamina, PT Pertamina considers the evaluation results to be invalid because Japan Marine does not understand the financial condition of PT Pertamina.

[48] Casee Decision of Business Competition Supervisory Commission No. 02 / KPPU-L / 2006 concerning Direct Appointment in Pertamina's New Logo Project, September 13th, 2006.

PT Pertamina decided to sell the two tankers, then conduct direct appointment to Goldman Sach to conduct a review and provide a second opinion on the policy. In the sale of the tanker PT Pertamina directly appoint Goldman Sach as a financial advisor in order to obtain maximum sales results. Sales are carried out through tenders held in Singapore by the Divestment Team and Goldman Sach. In the opening of the offer, PT Essar had the highest bid value at the opening of the first and second bids opened before a notary in Singapore. Frontline, Ltd. gave a third bid to Goldman Sach through PT Equinox Shipping Company as a broker, which later changed the position of PT Essar under Frontline, Ltd. Based on this, PT Pertamina gave the decision to sell the VLCC tanker to Frontline, Ltd.

In this case the Business Competition Supervisory Commission Assembly decided that:[49]

1. Stating that PT Pertamina (Persero) was legally and convincingly proven to violate Article 19 letter d of Law No. 5 of 1999 in the case of direct appointment of Goldman Sachs (Singapore), Pte. as financial advisor and arranger;
2. Stating that PT Pertamina (Persero) and Goldman Sachs (Singapore), Pte. legally and convincingly proven to violate Article 19 letter d of Law No. 5 of 1999 in the case of a third (bid) offer from the Reported Party III: Frontline, Ltd.;

[49] Case Decision of Business Competition Supervisory Commission No. 07 / KPPU-L / 2004 KPPU concerning Tender for the Sales of Two Pertamina Tanker Units.

3. Stating that PT Pertamina, Goldman Sachs (Singapore), Pte., Frontline, Ltd. and PT Equinox Shipping Company was legally and convincingly proven to violate Article 22 of Law No. 5 of 1999;
4. Punish the Reported Party II: Goldman Sachs (Singapore) Pte. to pay a fine of Rp. 19,710,000,000 (nineteen billion seven hundred and ten million Rupiah) which must be deposited to the State Treasury as a deposit of non-tax state revenue, Ministry of Finance, Directorate General of Treasury, Office of State Treasury Services (KPPN) Jakarta I;
5. Punish Reported Party III: Frontline, Ltd. pay a fine of Rp. 25,000,000,000 (twenty-five billion Rupiah) which must be deposited to the State Treasury as a deposit of non-tax state revenue, Ministry of Finance, Directorate General of Treasury, Jakarta State Treasury Service Office (KPPN) I;
6. Punish the Reported Party V: PT Equinox Shipping Company pays a fine of Rp. 16,560,000,000 (sixteen billion five hundred sixty million Rupiah) which must be deposited to the State Treasury as a deposit of non-tax state revenue Ministry of Finance Directorate General of Treasury Office of State Treasury Services (KPPN) Jakarta I;
7. Punish each Reported Party to pay compensation
    a. Reported Party II: Goldman Sachs (Singapore), Pte. Rp. 60,000,000,000.00 (sixty billion Rupiah);

b. Reported Party III: Frontline, Ltd. Rp. 120,000,000,000.00 (one hundred twenty billion Rupiah);

to the Republic of Indonesia which must be deposited to the State Treasury as a deposit of non-tax state revenue, Ministry of Finance, Directorate General of Treasury, Jakarta State Treasury Service Office (KPPN) I

In these cases, Business Competition Supervisory Commission uses the rule of reason approach which in the decision dropped by Business Competition Supervisory Commission is always Article 19 letter d and Article 22. The use of the rule of reason approach to decide those cases are correct based on two reasons. Firstly, that is the use of written sentences that "which can result in monopolistic practices and/or unfair business competition" refers to the rule of reason approach. Secondly, the impact caused by direct appointment of certain companies based on the provisions of State Owned Enterprises 5 2008 Regulation prohibits other business actors who provide the same goods/services to enter the market (barrier to entry) and competitive prices of the highest quality will not be realized.

Based on the explanation above, direct appointment in practice is contrary to the Business Competition Law. From the aspect of material, direct appointment is violating the Article 19 letter d and Article 22 of Law No. 5 of 1999. The direct appointment that held by State Owned Enterprises is form of unfair business competition practice that are discrimination and conspiracy. The

direct appointment by State Owned Enterprises cause the barriers to entry which become the main reason that it is included in unfair business competition. So based on the rule of reason approach, the direct appointment by State Owned Enterprises is proved that it cause the barriers to entry. So this is one of forms of unfair business competition practice.