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Legal Certainty of Notification of Company Share Acquisition Transactions Related to The Value of Assets and Sales Below A Certain Amount

Frido Ramadhan Wicaksono[1], Heru Sugiyono[2], Muthia Sakti[3]

[1,2,3]Master of Law, Faculty of Law, University Pembangunan Nasional "Veteran" Jakarta

ABSTRACT: Business expansion both nationally and internationally contributes significantly to global economic growth through increased investment and employment. One of the business expansion strategies often used is mergers, consolidations, and acquisitions, which aim to create synergies between companies, increase efficiency, and achieve maximum profits. However, these activities also have the potential to create unfair business competition and monopoly, as regulated in Law Number 5 Year 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition, as well as Government Regulation Number 57 Year 2010. The research method that the author uses is a normative juridical approach, so the research approach used in this research is the Legislation approach (statue approach), Case approach (case approach) and Comparative Approach (Comparative Approach). The purpose of this study is to analyze the juridical implications of Share Acquisition Transactions if the Asset Value and/or Sales Value below a Certain Amount is not notified to KPPU and to examine and analyze the Legal Certainty of Regulating Share Acquisition Transactions if the Asset Value and/or Sales Value below a Certain Amount is not notified to KPPU. The results of the research that the author describes are the juridical implications for companies conducting mergers, consolidations, or acquisitions are required to make written notifications to KPPU if the value of assets or sales exceeds a certain threshold as stipulated in PerKPPU Number 3 of 2019. The calculation of the value of assets and sales is carried out on a consolidated basis, including the parent, subsidiaries, and related business entities. However, for companies whose transaction value is below the threshold, they are not required to make post-acquisition notifications, thus not removing the possibility of violating the provisions of Article 28 of Law Number 5 Year 1999. However, there is some potential for monopolistic practices to occur after the acquisition. Furthermore, legal certainty related to the obligations of companies that make acquisitions with an asset value and/or sales below a certain amount has not been regulated in the laws and regulations, so companies do not have legal certainty to do so. When compared to Singapore, the Competition Act 2004 overseen by the CCCS ensures market efficiency with strict sanctions. Both countries are committed to fair and effective competition regulation. From the research results, the author recommends that the Indonesian government through KPPU make improvements or revisions to a number of articles in PerKPPU Number 3 of 2019 to expand more comprehensive criteria in identifying anti-competitive practices, including companies with significant market dominance even though the value of their assets or sales does not reach the threshold, as well as implementing a more massive supervision system for post-acquisition companies.

KEYWORDS: legal certainty, transactions, company shares, asset value.

I. INTRODUCTION

The expansion of business activities both on a national and international scale expands the opportunities for entrepreneurs to see the rapid progress in various sectors and has a positive impact on the state of the world economy. This has led to an increase in investment, which has spurred the development and growth of the economy, especially the labor sector, both directly and indirectly.[1]

The existence of these conditions cannot be denied that it will trigger competition between business actors with one another. Activities such as mergers, consolidations and acquisitions will make a company stronger, healthier and more synergized.[2] To combine companies to synergize between companies to build cooperation or efficiency of business forms by merging and consolidating. To support the integration of a good and optimal company system, it is necessary to involve investors who have qualified capital by making acquisitions.

[1] Fahmi Lubis, Andi *et al*., 2009, *Hukum Persaingan Usaha: Antara Teks dan Konteks.* Jakarta: Deutsche Gesellschaft für Technische Zusammenarbeit, (9)

[2] Yanuarsi, S. (2020). Akuisisi Bank Asing Terhadap Perbankan Nasional Ditinjau dari Aspek Hukum Persaingan Usaha. *Solusi*, *18*(3), 419-432.

In conducting business activities, the main objectives are to make a profit, create jobs, and develop a business system. To be able to develop a business system, one of them is done by acquiring or taking over some shares or companies.

According to Ida Ayu Gede Dewi, "acquisition is a term that is often used by companies or business actors in expanding their business."[3] In business terms, according to Tri Andy Kurniawan, "an acquisition is defined as the takeover of a company's shares or assets by another company, and in either event the acquiring or the acquired company continues to exist as a separate legal entity."[4] The term acquisition is derived from "acquire" which means to take possession, control, or power.[5] Juridically, takeover or acquisition is found in Article 109 paragraph 1 of Law Number 11 of 2020 concerning Job Creation (hereinafter referred to as the Ciptaker Law) which stipulates, "takeover or acquisition is a legal action carried out by a legal entity or individual to take over the shares of a company which results in the transfer of control over the company."

Acquisitions can not only be made from domestic companies, but can also be made with interstate companies which include the activities of companies in the countries that make acquisitions. Cross-border acquisitions have become a popular option, beginning in 1980 in the European region with the listing of shares on European stock exchanges.[6]

Takeover or acquisition activities by a company are usually carried out only to develop the company's own business. Acquisitions are an opportunity for companies to reduce competition against other companies. Competition does have a positive impact, but not for all entrepreneurs. It is not uncommon for competition to be something that does not have a positive impact or benefit for some entrepreneurs.[7] This means that things need to be done to reduce disadvantages to increase profit opportunities as a way to eliminate competitive opportunities within the market.

To get profit or profit by taking over a company is a financial reason to reap as much profit as possible in the shortest period of time. Referring to the provisions of positive law in Indonesia, there are prohibitions on mergers, consolidations, or takeovers that have implications for monopolistic practices and unfair business competition, which can be seen in Article 28 and Article 29 of Law Number 5 Year 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition (hereinafter referred to as the Law on the Prohibition of Monopolistic Practices and Unfair Business Competition).

If there are merger and acquisition activities with unfavorable objectives such as eliminating business competitors, then this will lead to unfair business competition and monopolistic activities as prohibited in Articles 28 and 29 of Law No. 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition. Both articles are further explained in Government Regulation No. 57 of 2010 on Merger or Consolidation of Business Entities and Acquisition of Company Shares Which May Result in the Occurrence of Monopolistic Practices and Unfair Business Competition.[8] The provisions regarding mergers have been regulated in Article 28 and Article 29 of Law Number 5 Year 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition, which are intended to create equal opportunities for every citizen to participate in the process of production and marketing of goods and or services, in a healthy, effective, and efficient business climate so as to encourage economic growth and the operation of a fair market economy. Then as an implementing regulation of the law, Government Regulation of the Republic of Indonesia No. 57/2010 on Merger or Consolidation of Business Entities and Acquisition of Company Shares That May Result in the Occurrence of Monopolistic Practices and Unfair Business Competition (hereinafter referred to as GR No. 57/2010) was issued, which is based on Article 28 paragraph (3) and Article 29 paragraph (2).

The existence of Government Regulation No. 57/2010, which was originally expected to provide legal certainty and expediency, is apparently not contained therein. This can be seen in Article 5 paragraph (1) of this Government Regulation regarding the notification of mergers to the Business Competition Supervisory Commission of the Republic of Indonesia (hereinafter referred to as KPPU) shall be made no later than 30 (thirty) days from the date of the merger. This provision clearly shows that the system adopted is post merger notification, where it is not a problem if the merger is carried out in a healthy manner that is pro-competition, but if the merger that has been carried out turns out to be anti-competitive and or monopolistic, it will be very difficult both to cancel it and to return the merged company to its original state before the merger. Take the Flexi-Esia merger as an example. Cancellation of a merger is also very detrimental to business actors who have incurred considerable costs for the preparation and implementation of the merger.

Cancellation of mergers can also have an impact on conditions of uncertainty in business so that it can actually hamper mergers that are pro-healthy competition. In addition to Government Regulation No. 57/2010, there is also a regulation that is

[3] Dewi, I. A. G., & Purnawati, N. K. (2016). *Analisis kinerja keuangan perbankan sebelum dan sesudah akuisisi pada bank Sinar Bali* (Doctoral dissertation, Udayana University).

[4] Kurniawan, Tri Andy, 2011, "*Analisis Perbandingan Kinerja Keuangan Bank Sebelum dan Setelah Marger dan Akuisisi*", (*skripsi*), Program Studi Sarjana (S1) Fakultas Ekonomi Universitas Diponegoro, Semarang.

[5] Emirzon, Joni., 2008, *Hukum Bisnis Indonesia,* Jakarta: Literata Lintas Media, (17)

[6] Wulansari, B., & Sulistiyono, A. Analisis Akuisisi Lintas Negara (Cross-Border Acquisition) Dalam Hukum Penanaman Modal Di Indonesia. *Jurnal Hukum dan Pembangunan Ekonomi*, *5*(1).

[7] Fuady, Munir., 2008, *Hukum Perusahaan Dalam Paradigma Hukum Bisnis (Berdasarkan Undang-Undang Nomor 40 Tahun 2007),* Cet III, Bandung: Citra Aditya Bakti, (202)

[8] Kalangi, B.E. (2017). Prosedur Penanganan Monopoli dan Persaingan Curang Serta Sanksi Hukum Terhadap Pelanggaran Undang-Undang Nomor 5 Tahun 1999. Jurnal Lex Crimen, VI(1), 167-174. Retrieved from https://ejournal.unsrat. ac.id/index.php/lexcrimen/article/view/15099

hierarchically under the Government Regulation, namely Regulation of the Business Competition Supervisory Commission Number 1 Year 2009 on Pre-Notification of Mergers, Consolidations, and Acquisitions. Based on Article 8 paragraph (1) of Law of the Republic of Indonesia Number 12 Year 2011 on the Establishment of Legislation, commission regulations are also included as a type of legislation, meaning that the commission regulations are recognized for their existence and have binding legal force. KPPU regulations also regulate merger notification. The background of the KPPU Regulation is also based on Article 28 paragraph (3) and Article 29 paragraph (2) of Law No. 5/1999, to encourage the government to be more serious in realizing government regulations that will serve as the basis for the application of provisions regarding mergers that are anti-competitive or at least reduce competition.

However, instead of producing a government regulation that provides legal certainty like the KPPU Regulation, it does not provide certainty and expediency. Hierarchically, the KPPU Regulation has a lower position than the Government Regulation, but the KPPU Regulation is considered to provide more certainty and expediency to merger activities. This can be seen from Article 5 paragraph (1) of the KPPU Regulation, which stipulates that notification of a merger is made after there is a written statement between the parties stating the plan to conduct a merger. This article implies that the merger plan must first be reported to KPPU for an examination of whether the merger has an adverse impact on competition or not. If it has an adverse impact on competition, the merger plan can be immediately prevented early or canceled so that there is no loss incurred to each party, because the merger has not been implemented or is still just in planning.

Both regulations are used to ensure that merger and acquisition activities will not cause monopolistic behavior and unfair business competition. Therefore, it is explained in Article 29 (1) of Law Number 5 Year 1999 that business actors in conducting merger and acquisition activities must pay attention to the main requirement, namely that if the value of assets or sales exceeds a certain amount, it must be notified in writing to the commission within 30 (thirty) days from the date the merger and acquisition begins. The rest explained in Article 29 (1) of Law No. 5 of 1999 has been strengthened in Article 5 of Government Regulation No. 57 of 2010 that the notification procedure carried out by business actors who will carry out merger and acquisition activities is mandatory to be reported within 30 (thirty) days from the date the merger and acquisition activities are carried out If business actors do not exceed this period in notifying KPPU, then based on Article 47 paragraph (2) letter g of Law No. 5 of 1999, KPPU can impose sanctions in the form of payment of a fine of 1 (one) billion Rupiah within one day of late notification. Therefore, in conducting merger and acquisition activities, business actors must be careful and vigilant, such as timely notification to KPPU. Because the General Legal Administration (AHU) of the Directorate General of the Ministry of Law and Human Rights shows that KPPU can cancel merger and acquisition activities that can cause legal uncertainty and have enormous consequences for the business world.[9]

In addition to the Anti-Monopoly Law, there are more detailed regulations and guidelines related to merger control, such as Government Regulation Number 57 of 2010 concerning Merger or Consolidation of Business Entities and Acquisition of Company Shares that May Result in the Occurrence of Monopolistic Practices and Unfair Business Competition. Article 5 of Government Regulation of the Republic of Indonesia Number 57 of 2010 Concerning Merger or Consolidation of Business Entities and Acquisition of Company Shares Which May Result in the Occurrence of Monopolistic Practices and Unfair Business Competition explains:

1) A Merger of Business Entities, Consolidation of Business Entities, or Acquisition of shares of other companies which results in the value of assets and/or the value of sales exceeding a certain amount shall be notified in writing to the Commission by no later than 30 (thirty) business days as of the date on which the Merger of Business Entities, Consolidation of Business Entities, or Acquisition of shares of companies becomes legally effective.
2) The certain amount as referred to in paragraph (1) consists of: a. an asset value of Rp2,500,000,000,000.00 (two trillion five hundred billion rupiah); and/or b. a sales value of Rp5,000,000,000,000.00 (five trillion rupiah).

Article 5 paragraph 1 contains the phrase “shall” for those who have exceeded a certain amount where the specified amount is:

a. an asset value of Rp2,500,000,000,000.00 (two trillion five hundred billion rupiah); and/or;
b. sales value of Rp5,000,000,000,000.00 (five trillion rupiah).
c. For Business Actors in the banking sector, the obligation to submit written notification as referred to in paragraph (1) shall apply if the asset value exceeds Rp.20,000,000,000,000.00 (twenty trillion rupiah).

Therefore, when an acontrario interpretation is carried out, which interprets the law based on denial, meaning that there is an opposite understanding between the matter at hand and the matter regulated in an article in the law, then those whose value is below the specified amount are not obliged to implement and comply with the provisions of Article 5 of Government Regulation

[9] achulia, O. (2018). Impact of Mergers and Acquisitions on Corporate Performance: A Case Study of Silknet Company. Ecoforum, 7(3), 1-6. Retrieved from http:// www.ecoforumjournal.ro/index.php/eco/article/view/832

of the Republic of Indonesia Number 57 of 2010 Concerning Merger or Consolidation of Business Entities and Acquisition of Company Shares Which May Result in the Occurrence of Monopolistic Practices and Unfair Business Competition. Thus, there is still the potential for unfair business competition with this legal vacuum.

An example of a case is in the acquisition made by Telkom of PT SIGMA TATA SEDAYA whose value is only Rp. 2,100,000,000,000,000, - which is below the provisions in Article 5 of PP Number 57 of 2010. PT Telkom Indonesia (Persero) Tbk conducted an affiliated transaction by taking over the shares or acquisition of PT Sigma Tata Sedaya (STS), a company engaged in data processing, computer consulting, and other computer facility management. The acquisition of STS shares worth Rp 2.1 trillion was carried out by Telkom through its subsidiary, PT Sigma Cipta Caraka. This acquisition was carried out by depositing cash and depositing capital in other forms (inbreng) worth Rp 2.1 trillion. The cash value is IDR 1.25 trillion and in the form of land and buildings for hyperscale data center (HDC) equipment worth IDR 856.46 billion.[10] STS was previously a 100 percent owned subsidiary of Sigma, while Sigma is a subsidiary owned by Telkom through PT Multimedia Nusantara, which is a subsidiary with a total share ownership of 99.99 percent. Telkom's management stated that the transaction has gone through procedures for affiliated transactions and conflict of interest transactions. Telkom Strategic Portfolio Director Budi Setyawan Wijaya said that this corporate action is one of the important steps in the company's transformation efforts. With this step, Budi hopes that TelkomGroup can focus more on increasing the capabilities and value of the data center business that is more optimal in the future.

Article 1 Point 1 of Law No. 5/1999 on Unfair Business Competition (UUPU), in essence, explains that monopoly is the control over the production, coercion of goods, or the use of certain services by business actors. Monopoly itself is a prohibited practice because it can produce market distortions. The practice of mergers is also regulated in UUPU, more precisely in Article 28 paragraph (1) which prohibits mergers of companies that have the effect of unfair business competition or monopoly. Although monopolistic practices have been strictly prohibited in company merger activities, in reality, the aspects of assessment in the legislation still do not significantly explain what things can be a benchmark for a company conducting merger activities that have or will lead to monopolistic potential. For this reason, it is necessary to supervise the mergers of digital companies to determine whether or not there are indications of monopolistic practices in the business merger.[11] The Government's attention to the implementation of the prohibition of monopolistic practices and unfair business competition is very great, but in the current laws and regulations in Indonesia, no one has regulated in detail related to sanctions for corporate actions as contained in Article 29 of the Law on the Prohibition of Monopolistic Practices and Unfair Business Competition. However, the existence of a legal vacuum in Article 5 of Government Regulation of the Republic of Indonesia Number 57 of 2010 Concerning Merger or Consolidation of Business Entities and Acquisition of Company Shares Which May Result in the Occurrence of Monopolistic Practices and Unfair Business Competition regarding the limit on the value of assets and sales has actually resulted in more free monopoly and unfair business competition.

Based on the description above, the researcher is interested in examining the problem in the formulation of the problem, namely What underlies the determination of the threshold value of assets and/or sales in the notification obligation to the Business Competition Supervisory Commission in accordance with Government Regulation Number 57 of 2010? The purpose of this study is to analyze the juridical implications of Share Acquisition Transactions if the Asset Value and/or Sales Value below a Certain Amount is not notified to KPPU.

II. RESEARCH METHODS

The construction of a study is related to the analysis and research method chosen. This research uses normative research methods, namely examining norms, principles, theories and concepts related to the problem and supported by interview data. This normative research method is used because there is a vacuum of legal norms on the issue. In this type of legal research, what is written in laws and regulations (law in books) is conceptualized or law is conceptualized as rules or norms that are benchmarks for human behavior that are considered appropriate. The norm vacuum studied can be seen from the absence of regulations that actually regulate the Legal Certainty of Notification of Transactions of Acquisition of Company Shares if the Asset Value and/or sales value is below a certain amount determined by Article 5 paragraph (1) and paragraph (2) of Government Regulation Number 57 of 2010 concerning Merger or Consolidation of Business Entities and Acquisition of Shares that May Result in the Occurrence of Monopolistic Practices and Unfair Business Competition.

To support normative legal research, it needs to be supported by several statutory approaches. This statutory approach will help the author to study legal norms, principles, theories and concepts and examine the hierarchy of laws and regulations related to the identification of normative legal issues. Peter Mahmud Marzuki argues that “the statutory approach is carried out by

[10]Anonim. Telkom Akuisisi STS Senilai Rp 2,1 Triliun. https://www.republika.id/posts/23639/telkom-akuisisi-sts-senilai-rp-21-triliun. Diakses pada tanggal 20 Juni 2024 pukul 12.00 WIB

[11] Santo, P.A.F.D. (2011). Merger, Akuisisi dan Konsolidasi dalam Perspektif Hukum Persaingan Usaha. Jurnal Binus Business Review, 2(1), 423-433. Retrieved from https://journal.binus.ac.id/index.php/BBR/article/view/1149

examining all laws and regulations that are related to the legal issues to be studied."[12] The rules used in relation to this legal issue are primarily the Law on the Prohibition of Monopolistic Practices and Unfair Business Competition.

In this thesis also uses a case approach (Case Approach), namely an approach that is carried out analyzing, examining used as a guide for legal problems to resolve legal cases. As in the case of PT SIGMA TATA SEDAYA whose value is only Rp. 2,100,000,000,000,000, - which is below the provisions in Article 5 of PP Number 57 of 2010. PT Telkom Indonesia (Persero) Tbk conducted an affiliated transaction by taking over the shares or acquisition of PT Sigma Tata Sedaya (STS), a company engaged in data processing, computer consulting, and other computer facility management. The acquisition of STS shares worth Rp 2.1 trillion was carried out by Telkom through its subsidiary, PT Sigma Cipta Caraka. This acquisition was carried out by depositing cash and depositing capital in other forms (inbreng) worth Rp 2.1 trillion. The cash value is IDR 1.25 trillion and in the form of land and buildings for hyperscale data center (HDC) equipment worth IDR 856.46 billion.[13] STS was previously a 100 percent owned subsidiary of Sigma, while Sigma is a subsidiary owned by Telkom through PT Multimedia Nusantara, which is a subsidiary with a total share ownership of 99.99 percent. Telkom's management stated that the transaction has gone through procedures for affiliated transactions and conflict of interest transactions. Telkom Strategic Portfolio Director Budi Setyawan Wijaya said that this corporate action is one of the important steps in the company's transformation efforts. With this step, Budi hopes that TelkomGroup can focus more on increasing the capabilities and value of the data center business that is more optimal in the future.

III.RESEARCH RESULTS AND DISCUSSION

A. Basis for Determining the Threshold of Asset Value and/or Sales in the Obligation of Notification to KPPU in accordance with Government Regulation Number 57 Year 2010

Merger, which comes from the verb 'to merge', is generally understood as the process of merging two or more companies into one company. Furthermore, according to Meiners, a merger is "a contractual process through which one corporation acquires the assets and liabilities of another corporation. The acquiring or surviving, corporation retains its original identity." In simple terms, a merger can be described as a situation where two companies merge, but one of them retains its identity (Company A + Company B = Company A or Company B).[14]

According to Article 1 point 9 of the Limited Liability Company Law in conjunction with Article 109 point 1 of the Job Creation Law defines Merger or Merger as a legal action taken by one or more companies to merge with another existing company which results in assets and liabilities transferring by operation of law to the company that receives the merger and subsequently the legal entity status of the merged company ends by operation of law.

Acquisition comes from the Latin word "acquisitio" and the English word "acquisition". Literally, acquisition means buying or acquiring something to add to something already owned. Acquisition in a business context refers to the acquisition of ownership or control of the shares or assets of a company by another company. In this process, both the acquiring and acquired companies may maintain their existence as separate legal entities, or the acquiring company may continue to exist while the acquired company is merged into one legal entity. Acquisitions can be divided into two types, namely private and public, depending on the type of company that is the target of the acquisition. The takeover process will differ between public and private companies, especially in the number of shareholders, the manner of execution, and the level of transparency of the transaction to public investors.[15] In Government Regulation No. 57/2010 Article 1 paragraph (1) concerning Mergers and Acquisitions, namely "takeover/acquisition is a legal action carried out by a business actor to acquire shares of a Business Entity which results in the transfer of control over the Business Entity.

The definition of a merger may vary depending on the length or brevity of the narrative. However, basically, all of these definitions lead to the same notion, which is the merger (or consolidation) of two or more companies, where the surviving company retains its identity, while the other company is dissolved. This is also explained by Brian Coyle in his definition of merger, namely[16] "Merger dapat didefinisikan secara luas maupun sempit. Dalam definisi yang paling luas, merger dapat merujuk pada pengambilalihan sebuah perusahaan oleh perusahaan lain, ketika bisnis masing-masing perusahaan disatukan menjadi satu. Definisi yang lebih sempit adalah penggabungan dua perusahaan dengan ukuran yang kurang lebih sama, menyatukan sumber daya mereka ke dalam satu bisnis."

Black's Law Dictionary, which is the main reference for many academics, students, legal writers, and legal practitioners, provides a definition of merger that the author finds very comprehensive, which is quoted as follows: "Merger or transfer of one

[12] Peter Mahmud Marzuki, 2010, *Penelitian Hukum*, Jakarta: Kencana Prenada, (93).

[13] Anonim. Telkom Akuisisi STS Senilai Rp 2,1 Triliun. https://www.republika.id/posts/23639/telkom-akuisisi-sts-senilai-rp-21-triliun. Diakses pada tanggal 20 Juni 2024 pukul 12.00 WIB

[14] *Ibid*., hal. 33.

[15] Suwito Johan, *Merger, Akuisisi dan Restrukturisasi,* Cetakan Pertama, IPB Pres Printing, Bogor, 2019, hal. 7.

[16] Cornelius Simanjuntak, Natalie Mulia, *Merger Perusahaan Publik (Suatu Kajian Hukum Korporasi),* PT. Citra Aditya Bakti, Bandung, 2006, hal. 4.

thing or right to another thing; usually talking about cases where one subject is less valuable or important than the other. Here the less important no longer has an independent existence." "Company, Merger is the legal merger of two companies in which one company survives and the other disappears. A company merges with another, the first loses its legal identity and the second retains its name and identity and acquires assets." the obligations, franchisees and powers of the former and combined entities and cease to exist as separate entities."

Looking at the type of business of the companies involved, mergers can be divided into the following four categories:

1. Horizontal Merger;

Horizontal mergers occur when two or more companies in the same industry merge. An example is the merger between Gulf Oil and Chevron Corporation in 1984. In some cases, the companies involved are part of the same business group, with shares owned by the parent company. After the merger, the parent company will own shares in the combined company. In a horizontal merger without liquidation, some minimal legal actions need to be taken, namely:[17]

a. All assets and liabilities are transferred from one subsidiary to another, except those paid to minority shareholders who consent to the merger, unless the merger is by liquidation.
b. Branches that cease operations are liquidated without liquidation.
c. Minority shareholders who reject the merger may choose to remain shareholders of the subsidiary or sell their shares without becoming part of the merged company.

2. Merger Vertical;

A vertical merger is a merger of two or more companies, where one company becomes a supplier to the other, with an upstream to downstream business relationship. An example of a vertical merger is the merger of Du Pont and Conoco, where Du Pont needs oil for its chemical processes.

3. Merger Con-Generics;

Congeneric mergers involve companies that are similar in type of production, but do not produce the same product (horizontal) or have a producer-supplier relationship (vertical). Examples are mergers between leasing companies and banks, such as the merger of Backe & Company with insurance company Prudential.

4. Merger Conglomerate;

A conglomerate merger occurs when two or more companies that have no business relationship merge. An example of a conglomerate merger is the merger of Mobil Oil (an oil and gas company) with Montgomery Ward.

Some common objectives of companies conducting mergers and acquisitions are as follows:[18]

1. Increases market concentration;
   If large companies merge with similar or vertically integrated companies, the market tends to be more concentrated, so antitrust regulations must be observed. However, if the merger involves smaller companies, the result is a larger company that is able to compete with other large companies, which can reduce market concentration in one or more large companies.
2. Improve efficiency;
   Merging two or more companies can improve production and marketing efficiency, and reduce overhead costs. Many costs and labor can be cut to produce the same product. However, if the merger causes the company to grow while competitors weaken, this can lead to inefficiencies.
3. Develop new innovations;
   Through mergers, companies can become larger, allow for more advanced research and development, and encourage product innovation. However, if the company is too large and there is a lack of competition, it can discourage companies from innovating and simply maintain existing products.
4. Investment tool;
   In the case of a merger that involves expenditures from multiple parties, the merger can be a means of investment. If it involves a foreign company or a foreign joint venture, this investment can be considered as foreign investment. If the investment is resold, the merger is expected to generate significant capital gains.
5. Technology transfer tool;
   Mergers allow one company to gain experience and technology from another company, thus providing a means for technology transfer.
6. Gain international access;

[17] Munir Fuady, *Hukum tentang Merger (berdasarkan Undang-Undang Nomor 40 Tahun 2007)*, PT. Citra Aditya Bakti, Bandung, 2008, hal. 79-80.
[18] *Ibid.*, hal. 53.

Breaking into international markets is usually difficult for corporations. One way to do so is to join forces with foreign companies to access their markets.

7. Increase competitiveness;
   Mergers can improve efficiency, encourage innovation, and add value to strengthen competitiveness, both in exports and imports.[19]
8. Maximizing resources;
   In a merger, the resources of two or more companies can be optimally utilized, while duplication and unused assets can be reduced to maximize production.
9. Guarantee the supply of raw materials;
   In vertical mergers, which involve combining upstream and downstream companies, this ensures raw material availability by having in-house raw material suppliers.

In the case of a company acquisition or in a merger, consolidation, or takeover activity that results in the value of assets and/or the value of sales exceeding a certain amount, it is mandatory to notify in writing by filling out the form as in the attachment to PerKPPU Number 3 of 2019.

The criteria for mandatory notification include a threshold. The value limitation of the mandatory notification of a merger, consolidation, or acquisition transaction to KPPU, in the event that:

a. The value of assets of the Business Entity resulting from the Merger, Consolidation or Acquisition exceeds Rp. 2,500,000,000,000.00 (two trillion five hundred billion rupiah);
b. The sales value of the Business Entity resulting from a Merger, Consolidation or Acquisition exceeds Rp. 5,000,000,0000,000.00 (five trillion rupiah);
c. The value of assets of the Business Entity resulting from a Merger, Consolidation, or Acquisition, all of whose business actors are engaged in the banking sector, exceeds Rp. 20,000,000,000,000.00 (twenty trillion rupiah); or
d. The value of assets of the Business Entity resulting from a Merger, Consolidation, or Acquisition, one of which is engaged in banking and the other is not engaged in banking, exceeds Rp. 2,500,000,000,000,000.00 (two trillion five hundred billion rupiah).

Business entities with asset or sales values exceeding the stipulated limits are obliged to notify KPPU upon the occurrence of a merger, consolidation, or acquisition. However, if the value of assets or sales resulting from a merger, consolidation, or acquisition does not exceed the limit, the business entity does not need to make a notification. Nevertheless, not making a notification because the value does not exceed the limit does not mean that it is free from the provisions of Article 28 of Law Number 5 Year 1999.

The calculation of the value of assets resulting from a merger, consolidation, or acquisition involves the sum of the last year's audited asset value of each party involved, plus the asset value of all business entities that directly or indirectly control or are controlled by the business entity. This asset value includes the assets of the business entities involved, parent companies, and subsidiaries, including those at the highest (BUIT) and lowest levels. The BUIT is the ultimate controlling entity that cannot be controlled by other business entities. The calculated asset value is the asset value stated in the BUIT's consolidated financial statements. In the event that there is no consolidated financial statement of BUIT, the asset value calculated is the asset value of BUIT plus the asset value of all subsidiaries. The value of subsidiaries' assets is part of the parent company's asset value.

The calculation of combined assets can be illustrated with an example of Business Entity X which is part of a business group with BUIT Business Entity Y. Business Entity X conducts a Share Acquisition transaction against Business Entity A. Business Entity A owns a subsidiary of Business Entity B. Thus, the calculation of the value of its combined assets is:

a. The asset value recorded in the consolidated financial statements of Business Entity Y which includes the asset value of all subsidiaries of Business Entity Y; and
b. The asset value of Business Entity A plus the asset value of Business Entity B.

In the event that the value of the combined assets has met the Value Limitation, then the transaction must be notified.

The procedure for calculating the asset value in an asset transfer transaction shall pay attention to the following matters:

a. The value calculated is the largest value based on the latest financial statements or the value at the time of the sale and purchase transaction or other legal event that causes the transfer of the asset.
b. Acquisition of assets may be horizontal or vertical. Vertical takeovers involve assets related to the supply chain, both upstream (such as manufacturing or production of raw materials) and downstream (such as distribution, retailers, or after-sales services).

[19] *Ibid.*, hal. 54.

c. Accounting for the value of assets in an asset transfer includes the value of the assets of the acquiring and acquired companies, as well as the assets of companies that control or are controlled by the acquiring company. For example, if Company X purchases assets from Company Y that are recorded at Rp2,000,000,000 in Y's financial statements, but the transaction value is recorded at Rp3,000,000,000, the combined asset value is calculated by adding the consolidated asset value of Company X and the largest transaction value, which is Rp3,000,000,000.
d. If the asset transfer transaction is carried out by an individual business actor, the asset value is calculated based on the personal tax report.
e. In an asset transfer transaction resulting from an auction, the value limitation is calculated by adding up the asset value of the acquiring business entity, the asset value of all business entities that control or are controlled by it, and the value of the assets acquired.
f. If one of the parties in a merger, consolidation, or acquisition experiences a change in asset value of 30% or more between the last year and the previous year, then the asset value is calculated based on the average asset value over the last 3 years.
g. The difference in question occurs if the asset value of the latest year is lower than that of the previous year.
h. If the period is less than three years, then the value calculated is the average asset value between the last year and the previous year.

Regarding the calculation of sales value, the combined sales value resulting from a merger, consolidation, or acquisition is calculated by adding up the sales value of the last audited year of each party involved, plus the sales value of all business entities that control or are controlled by the business entity conducting the merger, consolidation, or acquisition. The sales value includes not only the sales value of the business actors conducting the merger, consolidation, or acquisition, but also of the directly or indirectly related business entities, including the parent company, BUIT, and all subsidiaries up to the lowest level. The calculation of sales value is based on BUIT's consolidated financial statements.

If there are no consolidated financial statements of BUIT, the sales value is calculated as the sales value of BUIT plus the sales value of all subsidiaries. The sales value of subsidiaries is part of the sales value of the parent company. The calculation of sales value in Indonesia includes sales of domestic goods and services and imports, but excludes exports. For example, Business Entity X, which is a member of BUIT group Business Entity Y, acquires shares of Business Entity A, which has a subsidiary, Business Entity B.

In an asset transfer transaction, the sales value is calculated by adding up the last year's audited sales value of the Assets Acquiring Business Entity, plus the sales value of all Business Entities directly or indirectly controlled by the Acquiring Business Entity. If there is a difference of 30% or more between the sales value of the last year and the previous year, then the sales value is calculated based on the average sales value for the last 3 years. If the difference occurs in a period of less than 3 years, then the calculation is made by averaging the sales value of the last year and the previous year.

If business actors do not submit written notification to KPPU, they will be subject to an administrative fine of IDR 1,000,000,000 per day of delay, with a maximum limit of IDR 25,000,000,000. This sanction is in accordance with Article 47 of Law Number 5 Year 1999, which stipulates a minimum fine of IDR 1 billion and a maximum of IDR 25 billion.

Based on the provisions, companies/business entities with share and/or asset values below the provisions are not required to notify KPPU. However, with this provision, there will be several companies with such qualifications, which will be indicated as committing post-acquisition monopolistic practices.

The determination of the threshold value of assets and/or sales to be reported to the Competition Supervisory Commission in accordance with Government Regulation No. 57/2010 is based on the objective to monitor and prevent monopolistic practices or unfair business competition in the Indonesian market. This threshold sets certain limits on the size of transactions that need to be reported to KPPU, so that KPPU can evaluate whether the transaction has the potential to create market dominance that is detrimental to competition.

Some of the reasons for setting the threshold are as follows:

1. Economic size of the company; This threshold is generally based on the size or economic capacity of a company, both in terms of assets and annual sales. The objective is to focus attention on transactions involving large companies that have the potential to significantly affect market competition. This is important so that KPPU can monitor larger transactions that have the potential to have a substantial impact on the market.
2. The need to monitor transactions that have a significant impact; Not all transactions need to be reported. Only transactions involving asset values or sales above a specified threshold have the potential to create market dominance or restriction of competition. Smaller transactions may not affect the market significantly and therefore do not require the same scrutiny.

3. Importance of preventing monopolistic practices: This threshold aims to identify transactions that may lead to the formation of monopolies or conglomerates that are detrimental to competition. In this case, transactions involving companies with large assets or sales have the potential to reduce competition and create unbalanced influence in the market.
4. Reference to international practice: The setting of these thresholds also takes into consideration international practices in terms of merger and acquisition supervision. Many countries also use thresholds to determine transactions that need to be supervised by the competition watchdog, so Indonesia follows the global trend in this regard.

Based on Article 6 of Government Regulation No. 57 Year 2010, a company conducting a business merger, business takeover, or control of another company must report the transaction to KPPU if it meets certain threshold criteria, which are based on the annual sales value and asset value owned by the companies involved in the transaction.

Ambang batas tersebut dimaksudkan agar KPPU dapat melakukan analisis lebih lanjut terhadap dampak persaingan dari the transaction in question, to ensure that the transaction will not harm consumers or reduce the level of fair competition in the market. The threshold set in GR 57/2010 is that the assets of the acquired or merged company exceed 1 trillion, or the annual sales of the companies involved in the merger or acquisition transaction exceed Rp. 2.5 trillion.

CONCLUSIONS

Based on the research results, the juridical implications for companies conducting mergers, consolidations, or acquisitions are required to make written notifications to KPPU if the value of assets or sales exceeds a certain threshold as stipulated in KPPU Regulation Number 3 of 2019. The calculation of the value of assets and sales is carried out on a consolidated basis, including the parent, subsidiaries, and related business entities. However, for companies whose transaction value is below the threshold, they are not required to make post-acquisition notifications, thus not removing the possibility of violating the provisions of Article 28 of Law Number 5 Year 1999. In this case, the company may be subject to administrative sanctions in the form of fines of up to IDR 25 billion that can be imposed on negligent business actors. However, the existence of this regulation still leaves the potential for monopolistic practices by companies with asset values or sales below the established threshold due to the lack of supervision and the absence of legal certainty that these companies will not commit monopolistic practices. These asset and sales value thresholds are determined to facilitate supervision of transactions that have the potential to significantly affect business competition in the market, while focusing attention on large companies that have considerable market power.

The author suggests that KPPU pay attention to the potential for monopolistic practices that can still occur even though the transaction value of the company is below the established threshold. Therefore, it is necessary to revise or adjust PerKPPU Number 3 of 2019 to expand more comprehensive criteria in identifying anti-competitive practices, including companies with significant market dominance even though the value of their assets or sales does not reach the threshold. In addition, KPPU needs to increase supervision and counseling of business actors regarding notification obligations, to ensure better compliance with the provisions of competition law.

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