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Legal Implications of Mergers and Acquisitions on Competition Regulation in Indonesia

Eva Serevina Sinaga[1], T. Riza Zarzani[2].
evasinaga95@gmail.com rizazarzani@dosen.pancabudi.ac.id
Panca Budi Development University

Abstract

This study examines the legal implications of mergers and acquisitions on competition regulation in Indonesia, focusing on the effectiveness of supervision conducted by the Business Competition Supervisory Commission (KPPU) and the challenges in harmonizing regulations with international standards. Although mergers and acquisitions are often seen as important corporate strategies for expansion and efficiency, these activities also have the potential to create monopolistic practices and unfair business competition if not properly supervised. This study finds that although KPPU has an important role in overseeing mergers and acquisitions activities, there are significant challenges such as limited resources, bureaucratic complexity, and potential political intervention that can hinder the effectiveness of supervision. In addition, harmonizing regulations with international standards faces no less significant challenges, including differences in legal systems and resistance from domestic business actors. To ensure that mergers and acquisitions do not harm the climate of business competition, it is necessary to increase transparency in supervision, increase KPPU capacity, and support policies that ensure domestic regulations are in line with international commitments.

Keywords:*Merger, Acquisition, Business Competition, KPPU, Regulation Harmonization*

INTRODUCTION

Mergers and acquisitions are business strategies often used by companies to expand market share, increase efficiency, and create synergies. In Indonesia, the phenomenon of mergers and acquisitions is increasing along with economic growth and the increasing openness of the market. However, behind the economic benefits that can be generated, mergers and acquisitions also give rise to various legal implications, especially related to business competition regulations. This regulation aims to prevent monopolistic practices and unfair business competition that can harm consumers and the market in general.

In the context of competition law in Indonesia, Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition (Law No. 5/1999) is the main basis that regulates the supervision mechanism for merger and acquisition activities. Article 28 paragraph (1) of Law No. 5/1999 states that mergers or amalgamations of business entities that result in monopolistic practices or unfair business competition are prohibited. This article indicates that any merger or acquisition that has the potential to create market dominance or reduce competition must be strictly monitored to protect consumer interests and maintain market balance (Law No. 5/1999).

The background of this research is based on the importance of understanding the legal implications of mergers and acquisitions in the context of competition regulation in Indonesia. One of the main issues that arises is how mergers and acquisitions can affect market structure and competition. Although mergers and acquisitions are often carried out to improve operational efficiency and competitiveness of companies, this process can also lead to market consolidation that reduces the number of competitors, increases the dominance of large companies, and ultimately harms consumers through higher prices, reduced product quality, or reduced innovation. Therefore, effective

supervision by competition authorities, such as the Business Competition Supervisory Commission (KPPU), is essential to ensure that mergers and acquisitions do not harm the public interest.

Article 29 paragraph (1) of Law No. 5/1999 also requires companies conducting mergers, acquisitions, or amalgamations of business entities to notify the KPPU within 30 days of the transaction becoming legally effective. This provision shows the importance of ex post (after it occurs) supervision conducted by the KPPU to evaluate the impact of mergers or acquisitions on business competition. However, the effectiveness of this ex post supervision is often debated, especially in relation to the KPPU's ability to analyze and take appropriate action within a limited time.

Mergers and acquisitions not only affect competition in the domestic market but also have international implications, especially in the context of economic globalization. Multinational companies conducting mergers or acquisitions in Indonesia must comply not only with local regulations but also with relevant international rules, such as provisions in free trade agreements and international investment agreements. This adds to the complexity of the legal regulation of mergers and acquisitions in Indonesia, especially in terms of harmonizing domestic regulations with international standards.

However, despite the existence of a fairly comprehensive legal framework, the main challenge faced in the supervision of mergers and acquisitions in Indonesia is the lack of transparency and accountability in the process of assessing the impact of competition. In some cases, large companies with strong political or economic influence may be able to influence the supervision process, thereby reducing the effectiveness of regulations in preventing monopolistic practices or unfair business competition. Therefore, this study will also discuss how transparency and accountability can be improved in the supervision of mergers and acquisitions to ensure that competition regulations can be applied fairly and effectively.

In addition, in the context of digitalization and technological development, mergers and acquisitions in the technology sector also pose new challenges for competition regulation. Large technology companies that dominate the market through acquisitions of start-ups or smaller competitors can create high barriers to entry for new competitors and reduce innovation. This requires a new approach to competitive impact analysis, which takes into account not only traditional economic aspects but also factors such as control of data and digital ecosystems.

Overall, the background of this study is to analyze the legal implications of mergers and acquisitions in the context of competition regulation in Indonesia, with a focus on the effectiveness of supervision by the KPPU, challenges in harmonizing regulations with international standards, and new issues that arise in the digitalization era. This study aims to provide a deeper understanding of how competition regulation in Indonesia can be strengthened to address these challenges and ensure that mergers and acquisitions provide maximum benefits to the economy and consumers.

Two main issues that will be discussed in this study are: Effectiveness of KPPU Supervision in Supervising Mergers and Acquisitions: This study will evaluate the extent to which KPPU is able to carry out its supervisory function, including the challenges faced, such as limited resources, the complexity of competitive impact analysis, and the potential for political or economic intervention. Harmonization of Merger and Acquisition Regulations with International Standards: This study will examine how merger and acquisition regulations in Indonesia can be aligned with international standards, especially in the context of international free trade and investment agreements, and their impact on the business competition climate in Indonesia.

METHOD

This study uses a normative legal method, which is the main approach in legal research that focuses on the study of applicable laws and legal principles. This method will be used to analyze legal provisions related to mergers and acquisitions and business competition regulations in Indonesia, especially those regulated in Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition (Law No. 5/1999) and Law Number 40 of 2007 concerning Limited Liability Companies.

In this study, a normative legal approach will be taken by reviewing various laws and regulations, court decisions, and relevant legal doctrines. The analysis will focus on Article 28 and Article 29 of Law No. 5/1999 which regulates the supervision of mergers and acquisitions and the obligation to report to the Business Competition Supervisory Commission (KPPU). In addition, this study will also examine the provisions in Article 102 and Article 103 of Law No. 40/2007 concerning the obligations of companies conducting mergers or acquisitions to maintain compliance with business competition regulations. The data used in this study will come from primary legal materials, such as laws, government regulations, and court decisions, as well as secondary legal materials, including law journals, textbooks, and academic articles that discuss issues related to mergers and acquisitions and business competition. This study will also use a comparative method to compare merger and acquisition regulations in Indonesia with other countries that have more advanced competition law systems, such as the United States and the European Union, with the aim of identifying best practices that can be applied in Indonesia.

The analysis in this study will be conducted descriptively analytically, where the data obtained will be analyzed to identify legal issues that arise in the context of mergers and acquisitions and their impact on business competition in Indonesia. The results of this analysis are expected to provide concrete recommendations for the development of more effective policies and regulations in supervising mergers and acquisitions, so as to maintain a healthy and fair business competition climate in Indonesia.

RESULTS AND DISCUSSION

Effectiveness of KPPU Supervision in Monitoring Mergers and Acquisitions

Mergers and acquisitions are one of the corporate activities that have great potential to change market structures and affect business competition. Therefore, effective supervision by the competition authority, in this case the Business Competition Supervisory Commission (KPPU), is very important to ensure that these activities do not lead to monopolistic practices or unfair business competition. This supervision is specifically regulated in Article 28 and Article 29 of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition (Law No. 5/1999).

Article 28 paragraph (1) of Law No. 5/1999 states that mergers or amalgamations of business entities that result in monopolistic practices or unfair business competition are prohibited. This regulation emphasizes that any merger or acquisition that has the potential to reduce competition must be strictly monitored by the KPPU. Furthermore, Article 29 paragraph (1) of Law No. 5/1999 requires every company that carries out a merger, acquisition, or amalgamation of business entities to notify

the KPPU within 30 days of the transaction becoming legally effective (Law No. 5/1999). This provision reflects the ex post supervision approach taken by the KPPU, where transactions are only evaluated after they occur.

The role of KPPU in supervising mergers and acquisitions is very important to prevent unhealthy market domination by one or more business actors. This supervision aims to ensure that large corporate activities such as mergers and acquisitions do not harm consumers and do not close opportunities for other competitors to operate fairly in the market. KPPU has the authority to assess whether a merger or acquisition will create or strengthen a dominant position that can result in market control that is detrimental to competition.

Although KPPU has clear authority in supervising mergers and acquisitions, there are several challenges that affect the effectiveness of such supervision. One of the main challenges is the limited resources owned by KPPU, both in terms of the number of experts and analytical capacity. Mergers and acquisitions involving large companies are often very complex, requiring in-depth analysis of various aspects, such as market structure, competitor behavior, and long-term economic impacts. These limitations can hinder KPPU's ability to conduct comprehensive and timely evaluations.

In addition, another challenge faced by the KPPU is the potential for political intervention or pressure from large business actors. In some cases, companies with strong economic power or political connections may try to influence the supervisory process to obtain favorable results. This can happen either directly or indirectly, through various means such as lobbying or offering incentives to decision makers. This condition can of course reduce the independence and credibility of the KPPU as a competition supervisory institution.

Bureaucratic complexity is also an obstacle to effective supervision. The notification and assessment process of mergers or acquisitions by KPPU often takes a long time, which can slow down the implementation of business transactions. In addition, the lack of transparency in the supervision process is also often in the spotlight, especially regarding how KPPU decisions are made and published. This lack of transparency can raise doubts about the objectivity and fairness of the supervision process.

In recent years, there have been several cases of mergers and acquisitions in Indonesia that have attracted public attention due to their impact on business competition. One example is the acquisition of PT Indosat Tbk by Qatar Telecom (Qtel) in 2008. Although this acquisition has the potential to improve operational efficiency and competitiveness of PT Indosat, many parties are concerned that this acquisition could strengthen Qtel's dominance in the Indonesian telecommunications market, which could ultimately reduce competition and harm consumers. KPPU conducted an investigation into this transaction to ensure that the acquisition did not violate competition rules, although in the end KPPU stated that no violations had occurred.

Another case that attracted attention was the merger between PT XL Axiata Tbk and PT Axis Telekom Indonesia in 2013. This merger was one of the largest mergers in the telecommunications sector in Indonesia, with the aim of creating synergy and increasing operational efficiency of both companies. However, this merger also raised concerns about the potential for market dominance that could harm competitors and consumers. KPPU assessed this merger and gave approval with several conditions, including the obligation to release some of the frequencies controlled by PT XL Axiata to prevent market dominance.

In evaluating the effectiveness of KPPU's supervision of mergers and acquisitions, it is important to consider how KPPU is able to carry out its supervisory function in the face of the various challenges mentioned. Although KPPU has succeeded in resolving several major cases and issuing decisions that

are considered fair by many parties, the challenges that exist indicate that there is still much room for improvement.

One aspect that needs to be improved is transparency in the supervision process. KPPU needs to ensure that the merger and acquisition assessment process is carried out openly and can be accounted for. Publication of complete and clear evaluation results will help increase public trust in KPPU and ensure that decisions taken are truly based on objective analysis. In addition, increasing the capacity of human resources and technology is also very important to support KPPU in carrying out its duties. Continuous training for experts at KPPU, as well as the use of more sophisticated analytical tools, can help improve the quality of evaluations and accelerate the decision-making process. Finally, it is also important to increase the independence of KPPU in carrying out its functions. Efforts to prevent political intervention or pressure from large business actors must be a priority, including by strengthening regulations that guarantee KPPU's freedom to make decisions without any influence from interested parties.

Harmonization of Merger and Acquisition Regulations with International Standards

Economic globalization has driven an increasing number of cross-border merger and acquisition transactions. Multinational companies often conduct mergers and acquisitions as a strategy for market expansion, acquiring new technology, or improving operational efficiency. In this context, Indonesia as one of the countries with the largest economies in Southeast Asia is not immune from the flow of globalization. However, the challenge faced is how merger and acquisition regulations in Indonesia can be aligned with applicable international standards, including in terms of investor rights protection, transparency, and dispute resolution mechanisms.

In international practice, mergers and acquisitions are governed by a number of principles and standards aimed at ensuring that such transactions are conducted fairly, transparently, and without prejudice to the public interest. One important international standard is the principle of non-discriminatory treatment, which ensures that domestic and foreign companies are treated fairly and equally. In addition, the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) is also the basis for resolving disputes that may arise from cross-border merger and acquisition transactions (New York Convention, 1958).

Indonesia has ratified the 1958 New York Convention through Presidential Decree Number 34 of 1981, which means that Indonesia is bound to recognize and enforce international arbitral awards made under the rules. This is important in the context of international mergers and acquisitions, where foreign investors often rely on international arbitration mechanisms to resolve disputes. However, full harmonization with international standards still requires further efforts, especially in ensuring that domestic regulations do not conflict with agreed international provisions.

One important aspect in harmonizing merger and acquisition regulations is how these regulations are integrated with provisions in free trade agreements and international investment agreements. These agreements often include provisions on business competition that aim to prevent monopolistic practices and ensure that markets remain competitive. In this context, Indonesia has signed several free trade agreements, such as the ASEAN Free Trade Area (AFTA) and bilateral trade agreements with other countries, which include provisions on business competition.

Article 4 paragraph (1) of Law Number 25 of 2007 concerning Investment stipulates that the government is obliged to provide equal treatment to domestic investors and foreign investors conducting business activities in Indonesia (Law No. 25/2007). This provision reflects the internationally recognized principle of non-discriminatory treatment. However, the implementation

of this principle often faces challenges, especially in ensuring that domestic regulations do not hinder the entry of foreign investment that can strengthen business competition in Indonesia.

In addition, in the context of the free trade agreement, Indonesia is also bound by the provisions of the ASEAN Economic Community (AEC) which aims to create a single market in the ASEAN region. This includes the harmonization of competition regulations, where ASEAN member countries are committed to adjusting their domestic regulations to regional standards. In this regard, Indonesia needs to ensure that merger and acquisition regulations are not only in accordance with national standards but also in line with regional provisions applicable in ASEAN.

Although Indonesia has taken significant steps in adopting international and regional standards in merger and acquisition regulation, there are a number of challenges that must be overcome. One of the main challenges is the differences in legal systems and legal cultures between Indonesia and other countries. Indonesia's civil law-based legal system often has a different approach from common law countries, especially in terms of interpretation and application of the law. This can create difficulties in harmonizing regulations, especially when Indonesia must align domestic regulations with international provisions based on common law.

In addition, the complexity of bureaucracy in Indonesia is also an obstacle in efforts to harmonize regulations. The long and often convoluted legislative process can slow down the adoption of international standards in merger and acquisition regulations. This is exacerbated by the lack of coordination between various government agencies involved in the merger and acquisition supervision process, such as the KPPU, the Investment Coordinating Board (BKPM), and the Ministry of Law and Human Rights.

Another challenge that is no less important is the resistance of domestic business actors to the adoption of international standards. Several large companies in Indonesia may feel threatened by tighter competition from foreign companies if merger and acquisition regulations are adjusted to international standards. This resistance is often manifested through political lobbying or efforts to influence the legislative process to be more beneficial to domestic interests. Therefore, the government needs to ensure that regulatory harmonization efforts are carried out by considering national interests, but remain in line with international commitments.

Harmonization of merger and acquisition regulations with international standards has significant implications for the investment climate in Indonesia. On the one hand, the adoption of international standards can increase foreign investor confidence in legal certainty and transparency in Indonesia, which in turn can encourage increased foreign investment. The existence of regulations that are harmonious and in line with international standards will provide a positive signal to investors that Indonesia is an investment-friendly country and is committed to protecting investor rights.

On the other hand, harmonization efforts that are not carried out carefully can pose risks to domestic businesses. Companies that are not ready to compete with international standards may face difficulties in adapting, which can result in their declining competitiveness in the market. Therefore, it is important for the government to ensure that the harmonization process is carried out gradually and accompanied by adequate support for domestic businesses, such as training, incentives, and technical assistance.

In addition, regulatory harmonization must also consider aspects of consumer protection and public interest. Overly loose merger and acquisition regulations may increase market dominance by large companies, which ultimately harms consumers through higher prices and reduced product choices. Therefore, KPPU and other supervisory institutions must ensure that the regulations adopted

continue to protect consumer interests and prevent monopolistic practices or unfair business competition.

The telecommunications sector is one of the sectors most affected by globalization and cross-border mergers and acquisitions. In Indonesia, the merger between PT XL Axiata Tbk and PT Axis Telekom Indonesia in 2013 is an example of how regulatory harmonization with international standards plays an important role in merger supervision. KPPU, in this case, must ensure that the merger is in accordance with domestic and international provisions governing business competition.

KPPU gave its approval for the merger with several conditions, including the release of some frequencies owned by PT XL Axiata to prevent market dominance. This decision reflects KPPU's efforts to balance national interests and international commitments in overseeing mergers. However, this case also shows that even though domestic regulations have been aligned with international standards, the implementation of the decision still faces various challenges, including resistance from the companies involved and the complexity of law enforcement.

CONCLUSION

This study has explored the legal implications of mergers and acquisitions in the context of competition regulation in Indonesia, focusing on the effectiveness of supervision conducted by the Business Competition Supervisory Commission (KPPU) and the challenges in harmonizing regulations with international standards. It is found that although KPPU has a vital role in supervising mergers and acquisitions to prevent monopolistic practices and unfair business competition, challenges such as limited resources, bureaucratic complexity, and potential political intervention can hinder the effectiveness of supervision.

In addition, harmonization of merger and acquisition regulations with international standards in Indonesia still faces various challenges, including differences in legal systems, resistance from domestic business actors, and the complexity of adjusting domestic regulations to international provisions. Nevertheless, this harmonization is important to increase foreign investor confidence and ensure that the Indonesian market remains competitive and fair.

To overcome these challenges, continued efforts are needed to improve transparency and accountability in the supervision of mergers and acquisitions, strengthen the capacity of the KPPU, and ensure that the regulatory harmonization process is carried out by considering national interests and consumer protection. Thus, merger and acquisition regulations in Indonesia can function effectively in creating a healthy and fair business climate, and supporting sustainable economic growth.

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