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Juridical Review of Delayed Share Acquisition Notification Damaging PT. Sinar Mitra Compensated by PT. Orix

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Abstract. *The purpose of this examination is to determine the principle of legal remedies for the decision of the Business Competition Supervisory Commission (KPPU) through a follow-up examination based on the Law on Refusal Procedures. This research case study uses the principle of justice in legal efforts to challenge the KPPU's decision. The data analysis method used in this study is a normative legal analysis method that compares norms. The normative legal method is used to explain the data that defines the legal norms contained in the legislation. The results of the data analysis of this study indicate the neglect of the principle of justice in judicial efforts against the KPPU's decision. In carrying out the burden of proof, if the parties are unable to provide actual evidence, it can cause inconsistency, but if the judge determines that it is not clear, the KPPU will provide evidence through additional examination of the judge's order. added and integrated. As a result, the resistance applicant was unable to strengthen his defense because he could not provide new evidence that could acquit the applicant.*

Keywords: *Challenge; Decision; Effort; KPPU.*

1. INTRODUCTION

Unhealthy business practices have frequently occurred in new companies, resulting in business practitioners striving to develop industry ratios. This has led to a closely growing framework of commercial competition. In the commercial sector, it is normal for a business practitioner to compete with others, as long as the competition is conducted in accordance with anti-monopoly laws. Strategies that can be undertaken by business practitioners to enhance their companies include acquiring shares, also known as share acquisitions. The factors and intentions of companies in choosing the path of acquiring shares of other companies are aimed at strengthening the company to ultimately achieve profits.[1]

[1]Annisa Wahyu Sekarini. (2020). The Delay in Notification of Share Acquisition PT. PRIMA TOP BOGA by PT. NIPPON INDOSARI CORP TBK from the Perspective of Competition Law. *Thesis, Universitas JEMBER*. Regency of Jember. Page xii.

A corporation is a legal entity that conducts business activities in compliance with laws, public regulations and ethical standards established in the Law regulating Limited Liability Companies, namely Act No. 40 of 2007. The management of a legal entity involves several strategic options commonly implemented by various entrepreneurs to advance and enhance the corporation, such as involving elements external to the company through methods like mergers, acquisitions, and consolidations.

Among these options, the most commonly utilized strategy by corporations is acquiring shares. Some reasons companies opt for share acquisition include enhancing utility and productivity in conducting business within the legal entity. Acquiring shares affects the increase in stock prices because stock prices rise as a result of acquiring of other companies. This can potentially the financial condition of a business entity and boost shares in a corporation.[2]

Mergers can lead to monopolistic practices, as evidenced by the Government Regulation (PP) on Mergers Between Companies or Acquisition of Shares of a Company, resulting in market management and unhealthy competition as defined in the essence of Competition according to Government Regulation No. 57 of 2010.[3]

In actuality, the desired principle resulting from corporate competition is the achievement of low production costs or producer efficiency. In order to maintain and conduct business competition smoothly, we will establish a competition policy that can provide tools to guide the realization of good business competition in the business environment. A well-crafted corporate competition policy should promote the effective utilization of economic resources to safeguard the interests of the majority.

The financial difficulties in Asia, which alleviated Indonesia's economic challenges during, led to the enforcement of Consumer Protection Law No. 5.[4] and Law No. 8 of 1999.[5], which prohibit market domination practices and unhealthy business competition. These are related business, organizations, financial management, and affiliate laws.

This situation bears a mission and function of great significance in providing supervision and legal certainty to all Indonesian managers, as stipulated in the Domestic Business Competition Law. In order to compete with large companies domestically and abroad, business units have augmented capital, reduced product prices, achieved tax hikes in certain categories, and enhanced product capacity. One of the most effective primary goals is enhancement. We strive to diminish the profits we receive and inefficient management.

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[2]Moch Dzulyadain Nasrulloh. (2021). The Impact of Delayed Notification of Company Share Acquisition on the Prohibition of Monopoly Practices and Unfair Competition. *Thesis, Universitas Indonesia*. Central Jakarta. p. 146.

[3] Ahmad Sabirin, Azizah Arfah. (2020). "Delay in the Reporting of Company Share Acquisition in the Post-Mer Notification System According to Indonesian Competition Law." *Paper, Universitas Trisakti*. West Jakarta. p. 2.

[4] Law No. 5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition

[5] Law No. 8 of 1999 concerning Consumer Protection.

2. RESEARCH METHODS

The type of research used is normative juridical research, which falls qualitative research. The legal research method employed is normative juridical research, often referred to as doctrinal legal research. From a highly doctrinal or normative perspective, normative legal research in Indonesia is akin to Anglo-Saxon legal research. In short, legal research in the Anglo-Saxon legal system is directed towards the practical aspect: addressing general specific legal issues. This is carried out by legal officers. Whether in the form of litigation or simply seeking to address a legal issue regulated by law, it is conducted using the method of legal expert investigation and taking into account related litigation cases. Relevant laws will also be resolved.[6]

3. RESULTS AND DISCUSSION

Appeal or litigation is any legal process filed against an individual or group as point of contact for parties opposing a judge's decision and as a point contact for parties disagreeing with a judge's verdict. Someone can make mistakes, make wrong decisions, or simply remain.[7]

The Appeal Court or Cassation Court based on "Sudikno Mertokusumo" is a hearing or cassation court within a judgment. Adjudication is the legal opposition against an individual or group in a matter inconsistent with the judge's decision, rejecting the judge's verdict as a legal recourse for parties proven unable to uphold justice. The judgment is flawed, which could lead to incorrect judgement or bias towards one party.

There are two types of cassation and appeal courts according to Civil Procedure Law. are:

1. Ordinary appeal constitutes an act of norms made into a verdict which does not have final legal force and consists of: In accordance with Opposition, Article 129. SM Complaints in accordance with Article 21 of Law No. 4 of 2004 concerning Justice, c. Cassation Courts, in accordance with Article 30 of Act No. 14 of 1985 concerning the Supreme Court, ranking
2. Extraordinary appeal is an appeal against a res judicata decision (inracht van gewijsde) which in principle does not delay execution. Special remedies can be divided into two. Namely: a. Rejection to third parties (denden verzet) regarding administrative seizure (Supreme Court Decision No. 306 K/Sip/1962; b. See Civil Law of October 21, 1962), Article 66, 67, Article 71, Article 72 of Supreme Court Law No. 14 of 1985 concerning Supreme Court Order No. 1 of 1982.[8]

3.1. Appeal or Legal Remedy

The examination of competition issues is regulated by the appeal that can be filed by practitioners. In accordance with Article 44 (2) of Law No. 5 of 1999, which states that "economic operators can lodge an appeal to the judicial institution within fourteen (14)

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[6] Lestari, Putri Diana. "A Juridical Study of Traditional Javanese Naming Custom in Determining Wali Adhal." *Undergraduate Thesis, UPN VETERAN JAWA TIMUR*. City of Surabaya. p. 37.

[7] Dian Bahtiar. "Objections in the Process Resolving Business Competition Disputes," *Thesis, State Islamic University Syarif Hidayatullah*. Jakarta. p. 17.

[8] Sitorus, S. (2020), Legal Remedies in Civil CasesObjection, Appeal, Cassation, Reconsideration, and Derden Objection). *Hikmah* Issue 15. p. 63.

days of becoming aware of the decision." . As well as in paragraph (3), "Economists who disagree with clause (2) are deemed known by the KPPU."[9]

The legal challenge that can be undertaken by business practitioners who have not yet a commission verdict is referred to as a "legal objection" which is then submitted to the judicial institution at the level of business law from the business executor who has not more than 14 (fourteen) days from the date of verdict. The Judicial Institution is obligated to examine the objection from the objection request. The Judicial Institution is obliged to deliver the verdict no later than thirty (30) days from the start the appeal verification process.

If anyone perceives injustice in the judicial verdict, they may appeal to Supreme Court (SC) to challenge the cassation law. The Cassation Court can lodge an appeal within a maximum of fourteen (14) days from the day the court is established.[10]

3.2. Cassation Court

Both the KPPU and practitioners who challenge judicial decisions against the chamber's decision may file an appeal. You may appeal to the Supreme Court within fourteen (14) days after receiving appeal decision. However, the Cassation Court is slightly different from the Cassation Court, which is conducted according to the regular Civil Code. Under the regular Civil Procedure Law, you must go through the initial objection phase to the High Court. The Supreme Court must decide on the Cassation Court within 30 days of receiving it. the Cassation Court, the Supreme Court may revoke a decision from the relevant legal jurisdiction or a court decision for the following reasons:

a. Lack of authority beyond the scope of the judiciary.
b. Enforcement of the law that violates current legislation. Negligence in with mandatory legal provisions. Consequently, neglecting relevant assessments.

The Law No. 5 of 1999 states that the only recourse to practitioners who disagree with the Council's decision is to appeal the Council's decision. There are two issues with the objection. The first Law No.5 in 199 does not specify in detail the ongoing procedure for lodging the objection. Secondly, the term "appeal" is not the only legal issue recognized by Indonesian procedural law. The procedural system in Indonesia is based on two types of appeals: regular appeals and special appeals.[11]

Supreme Court Order No. 3 of 2005. If necessary the Company Auditing Board may be instructed to conduct further investigation without delay. Such order must be accompanied by sound reasons as to why additional scrutiny must be undertaken with a strict timeframe in mind. Additional examination will only be carried out if new

[9] Destivano Wibowo, and Harjon Sinaga. "Proural Law of Business Competition." *Jakarta: Rajawali Pers*, 2004, p. 60.
[10] Pales Agista Santosa. "Legal Challenge Against the Decision of the Competition Supervisory Commission Through Additional Examination Based on Supreme Court Regulation Number 3 of 2005." *Journal of Universitas Islam Indonesia Yogyakarta*. City of Yogyakarta. p. 24.
[11] Brigitte Dewinta. "A Juridical Review of the Challenges in Law Enforcement of Business Competition in Creating Legal Certainty." Article published in the *Journal of Lex Administratum*, Volume IX No. 3, April 2021.

evidence the decision of the Competitive Supervisory Board is presented in the case file.[12]

3.3. Acquiring Company Shares

The act of acquiring a company is the takeover of company shares by acquiring majority shares and appointing the parties as majority shareholders. As is known, the acquisition of a company is regulated by law, namely Act No. 40 of 2007 concerning Limited Liability Companies, as amended by Act No. 27 of 1998 concerning Company Mergers, Consolidations, and Acquisitions In connection with such acquisition, the acquiring company will become the majority shareholder, while the acquired company will remain a separate legal entity.

Business practitioners are subject to limitations when it comes to engaging in mergers, consolidations, or acquiring shares of another company if such actions lead to monopolistic practices and business practices detrimental to the business environment. This is stipulated in Articles 28 and 29 of Law No. 5 of 1999, which elaborate on the prohibition of market dominance practices and business competition that harm the business environment.

Merging and acquiring companies also impact the dominance in the market and unhealthy business competition as regulated in Law No. 5 of 1999 concerning the prohibition of monopolistic behavior and unhealthy business competition. Another provision related to the regulations stated in Resolution number fifty-seven (57) of 2010 regarding mergers or acquisitions of companies that could escalate acts of monopolistic practices and unethical business conduct.

Concerning the manner of the Commission for the Supervision of Business Competition (KPPU) Order No. 4 of 2012 on Mergers and Notification of Delay in the Acquisition of Shares, the Significance of Imposing Fines for the Delay in Notifying Mergers or Consolidation and Merger of Companies.

When evaluating mergers or acquisitions, it is stipulated in order number 3 of 2019 which regulates the assessment of mergers, mergers, and business consolidations that result in dominant and unhealthy business practices... Mergers and Acquisitions Mergers and acquisitions by actors with assets exceeding Rp 2.5 trillion, or mergers and acquisitions with revenues exceeding Rp 5 trillion, must be notified in writing to the Directorate within 30 working days. The acquisition of a company is considered valid.[13]

Corporate competition actors in the banking business conducting mergers and acquisitions are required to submit a written complaint to the Supervisory Board if the total assets from the previous merger or acquisition exceed Rp 20 trillion. Therefore, the current economic improvement has given rise to various types of entities. The companies in question are legal and economic organizational units or entities consisting

[12] Andi Fahmi Lubis, S.E., M.E. (2009), "Business Competition Law Between Text & Context" published by *Creative Media*. Jakarta, p. 340.
[13] https://kppu.go.id/faq-merger-dan-akuisisi/ accessed on 09 June 2022

of operational production parts aimed at seeking profits. These entities are based on a legal entity or a non-legal entity-based body.[14]

The acquisition of shares (Acquisition) is known in terms of acquisition or takeover, which is translated as the action of a company taking over or controlling the capital (shares) of that company (one company taking over another interest). It is a legal act carried out by a company or an individual conducting an acquisition, either through a majority of shares in a business entity that could trigger a change in ownership of the said PT."[15]

Regarding the legal jurisdiction of acquisitions, the concept of acquisitions is defined in No. 7 of 1992, replaced by Law No. 10 of 1998 concerning Banking. Law No. 1995 1 was amended to Law No. 40 of 2007 which governs limited liability companies. Specifically in the banking sector, mergers, consolidations, and acquisitions of banks are subject to Article 7 of the 1992 Banking Regulations and its Implementing Regulations, namely Act No. 28 of 1999 concerning Mergers, Consolidations, and Acquisitions of Banks.[16]

The complexity of terminology often poses a challenge in legal studies. In this regard, different or similar terms are used in laws, and they also coexist in positive legal techniques. However, they may also represent the same term, yet with different interpretations. This highlights the forms of our laws that sometimes overlook the importance of seeking references and coordinating the use of consistent terminology.

The horizontal merger of two or more similar business units can create synergies in many aspects. For instance, product expansion, technology transfer, and so forth. Company mergers increase the likelihood of consolidating strengths among companies. Companies that are too young to crucial business roles, such as research and development, may operate more efficiently when combined with another entity that already plays such a role. Merging businesses between similar companies can also lead to concentration of control over the companies and reduce competitors. Another advantage of merging and acquiring companies is to shield them from bankruptcy. For companies facing liquidity challenges and pressure from creditors, the decision to merge and acquire stronger companies can rescue them from bankruptcy.

In addition to the benefits mentioned above, the decision to engage in M&A is closely related to various issues, including the high costs of implementing M&A. This is to embark on a profitable business in a highly competitive market.[17]

As per Article 126 (1) of the Company Law, the acquisition must consider the interests of employees. In the case of an acquisition, the responsibility for the work of employees shifts to the new employer. However, in many cases, both old and new

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[14] Ahmad Yani and Gunawan Widjaja, Series on the Law of Liability Companies, published by *PT. Raja Grafindo Persada*, Jakarta, 2006, p. 3.

[15] Hendrick Daud Sinaga. "Legal Analysis on Delay in Notification of Share Acquisition *Acquisition of PT. CITRA ASRI PROPERTY by PT. PLAZA INDONESIA REALTY, TBK". Journal of Universitas Indonesia*. Central Jakarta. 2019. p. 193.

[16] The Law No. 28 of 1999 regarding Bank Mergers, Consolidations, and Acquisitions

[17] Indah Rahmawati. "The Influence of Mers and Acquisitions on Financial Performance of Publicly Listed Manufacturing Companies in Indonesia". *Sebelas Maret University*. Surakarta. 2007. p. 145.

shareholders agree to terminate all employees after the acquisition agreement is signed.

Article 8 (2) (b) asserts that the proposed acquisition plan the Board of Directors and approved by officials of any limited company conducting the acquisition must indeed be stipulated in the acquisition plan, including addressing requirements such as the status of of the company. The limited company will carry out the acquisition. The discussion of the acquisition plan will be conducted during General Meeting of Shareholders. Former directors or shareholders have the opportunity advocate for their employees' fate to ensure they continue to receive legal protection.[18]

The acquisition of a company or acquisition of shares is a legal that will inevitably be followed legal consequences by itself both through the status of company and the position of employees within company with related status. The reason for the corporate acquisition procedure is carried out by purchasing some or all shares of the relevant business entity, and the legal consequence for the capacity of the business being acquired is the transfer of control of the company within the scope of the shares acquired by the shareholder.

The replacement of shareholders with the relevant business entity, the position of labor the related business entity according to Act No. 13 and Article 61 paragraphs 2 and 3 which explain about employment, signifies that the employment agreement between the company and the employee not automatically terminate just because the rights over the company have changed ownership. However, if there is a foreign in the corporate transition agreement. Based on the aforementioned law, specifically relating to work and the relationship between employees and the company owners, it shall end if the employee has decided not to work for the new company owner then the company owner is not interested in retaining the old employee.[19]

4. CONCLUSION

The merger or acquisition of a company is a legal act aimed at enhancing the presence and capabilities of the company through the purchase or sale of shares of a related entity to individuals or other entities. As a result of this, a scrutiny is placed on the company itself regarding its corporate and employee status. Therefore, the control of the company depends on the amount of shares traded. The status of employees of the company that purchases these shares is governed by the provisions of Article 61, Paragraphs 2 and 3 of Act No. 13 of 2003 and they will not be terminated spontaneously due to the change of the company's rights. However, the transfer contract. According to the provisions of Article 63 of Act No. 13 of 2003 concerning Employment, the employment relationship between employees and business owners will end if the employee is not interested in working with the new employer, and vice versa.[20]

[18] Jihan Tafwan. (2020). "Legal Consequences of the Acquisition of Limited Liability Company Shares Without Newspaper Announcement According to Law No. 40 of 2007 on Limited Liability Companies". *Journal of the Law Faculty, University of Riau*. Pekanbaru. p.11.
[19] H. Zaeni Asyhadie and Budi Sutrisno. (2012). Corporate Law and Bankruptcy. Published by *Erlangga*, Jakarta. p. 40.
[20] Article 63 paragraphs 1 and 2 of Law No.13 of 200 concerning Manpower

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Ahmad Yani and Gunawan Widjaja. (2006). "A Series on Limited Liability Company Business Law". PT. Raja Grafindo Persada. Jakarta.

Regulations:

Act No. 8 of 1999 concerning Consumer Protection

Number 5 of 1999 Prohibition of Monopoly Practices and Unfair Business Competition.

Government Regulation Number 28 of 1999 regarding Bank Mergers, Consolidations, and Acquisitions.

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