

Analysis of Delayed Notification of Acquisition of Shares by Business Players Using the Cost Benefit Analysis and Regulatory Impact Analysis Methods

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ABSTRACT

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Business Competition Law in Indonesia adheres to a post-notification system which is carried out after the effective date in the process of taking over (mergers and acquisitions) of a company. Based on data on the KPPU's website, during the period from 2012 – 2022 there were 45 cases of fines for late notification in the merger and acquisition process with a total fine of Rp. 118,765,000,000. Data on company acquisition case decisions from 11 February 2020 to 11 April 2021, found delays in notifications of mergers and acquisitions with delays ranging from 2 (two) days to more than 8 (eight) years. One of the mitigating reasons in the KPPU's decision was the ignorance of business actors regarding the obligation to submit post-notification of company takeover to KPPU. In order to avoid this problem, in the future, it is expected that KPPU or the Government can amend the provisions concerning post-notification obligations to become pre-notification obligations.

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1. Introduction

Fair business competition is a means of creating an efficient condition in the economic sector which must continue to be pursued in a systematic and planned manner, accompanied by the preparation of business competition policy regulations concerning the prevention and prosecution of business actors suspected of engaging in monopolistic practices and unfair business competition. Strictness in antitrust law policies must also be balanced with concrete actions in practice so that these policies can be implemented as a corridor that regulates the business world in Indonesia to avoid monopolistic practices and unfair business competition (Soeroso, 2011).

Business actors in carrying out their business activities, of course, also want to increase or maximize their business to strengthen their position in the business market. There are many ways that can be done by business actors in optimizing existing resources; such as capital, management technology, and other matters in order to obtain new synergism

in carrying out business activities that refer to efficiency and productivity, one of which is by means of a merger or amalgamation of two or more business entities. Companies that carry out mergers, consolidations or acquisitions of shares actually have similar backgrounds and objectives, namely to increase efficiency, expand markets, and so on.

Acquisition of shares (acquisition), merger (merger), and consolidation (consolidation) carried out by business actors are also included in the objects supervised by KPPU. Business takeover transactions such as acquisitions, mergers and consolidations are common actions carried out in the business world by companies. These business transactions generally have the goal of developing a company's business to become even bigger. In carrying out this there are legal rules that must be obeyed by the company. The legal rules used for business transactions play an important role in regulating business actors so that they do not deviate from what companies should do, for example, there is a tendency for monopolistic practices in the business world (Suhasril & Makarao, 2010).

One way that business actors do to expand their business is by taking over shares. Business actors are prohibited from taking over shares of other companies if such action can result in monopolistic practices and or unfair business competition. There are legal rules that apply regarding the acquisition of shares that must be obeyed by business actors who do this, namely as written in Article 29 Paragraph (1) of Law Number 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition, namely "Merger or consolidation of business entities, or acquisition of shares as referred to in Article 28 which results in the value of assets and/or sales value exceeding a certain amount, must be notified to the Commission, no later than 30 (thirty) days from the date of the merger, consolidation or acquisition."

Other rules are also written in Article 5 Paragraph (1) of Government Regulation Number 57 of 2010 concerning Mergers or Consolidation of Business Entities and Acquisition of Company Shares That May Result in Monopolistic Practices and Unfair Business Competition which reads "Merger of Business Entities, Consolidation of Business Entities, or Acquisition of shares of other companies which results in the value of assets and/or sales value exceeding a certain amount must be notified in writing to the Commission no later than 30 working days from the legally effective date of Merger of Business Entities, Consolidation of Business Entities, or Acquisition of company shares." Arrangements regarding the acquisition of shares, in which business actors are required to report it to the Business Competition Supervisory Commission (known as KPPU) by giving a notification. Notification is "a written notification through a form that must be made by business actors to the Commission regarding the Merger, Consolidation, or Acquisition of company shares and/or assets after the Merger, Consolidation, or Acquisition of shares and/or company assets is legally effective." This is clearly regulated in the applicable laws and regulations related to antitrust and business competition laws in Indonesia.

The fact is that there are still several cases where business actors who take over shares are late in giving notification of the takeover of shares to KPPU. So that the business actors were given sanctions by the KPPU for the delay in notifying the acquisition of shares. For example, it has been hotly discussed in recent years about large companies of the unicorn class, such as PT Application Karya Anak Bangsa, known as GOJEK, in the KPPU Case Decision Number 30/KPPU-M/2020, GOJEK received sanctions for delays in notifying the takeover of shares. Several other KPPU Decisions related to delays in share acquisition notifications also often affect large companies, which in the end have to receive administrative sanctions for delays in share acquisition notifications which should have been avoided before carrying out a merger, consolidation or share acquisition.

KPPU itself has claimed that based on the statement written in the KPPU Case Decision therein, it has taken action in the form of giving a warning letter regarding the obligation to report notifications that must be carried out by business actors who take over shares. There are also many legal regulations governing the obligation to provide notification or notification of share acquisition, from the level of laws, government regulations to Business Competition Commission Regulations (KPPU) which have also provided similar arrangements related to notification of share acquisition. This phenomenon has become the basis for writing a case analysis regarding notification obligations, where in practice there are still many business actors who violate it on the grounds of ignorance regarding the required obligations, even though the KPPU has issued a warning letter and also the legal regulations that exist in Indonesia, have also regulated in detail related to this.

The example in the KPPU's Case Decision regarding the delay in notification of the takeover of shares in a company has aroused the author's interest in the phenomena that have occurred in Indonesia because there are still business actors who delay notifications of takeover of shares even though many business competition laws have regulated this matter. Regulations made by policy makers seem to have not been implemented properly in the field, and it becomes a question in itself, whether business actors are not aware of any regulations related to share takeover notifications, or are they deliberately ignoring existing regulations.

A policy embodied in statutory regulations must go through a well-prepared process. If not with careful and comprehensive preparation, the legal rules or policies will not create a deterrent effect for lawbreakers. A method is needed in conceptualizing a policy. For a regulatory policy to be enforced, it is mandatory to carry out an analysis of the impact of policies made using methods, one of which is through the Economic Analysis of Law (EAL) method, in particular through the Cost Benefit Analysis (CBA) and Regulatory Impact Assessment (RIA) instruments. Cost Benefit Analysis (CBA) is an analytical method that measures and compares all the benefits that will be obtained, as well as the costs that must be borne by all recipients of the impact of a policy (Sanjaya et al., 2022). Meanwhile, Regulatory Impact Assessment (sometimes also called Regulatory Impact Analysis) or abbreviated as RIA, is a method used in the preparation of a rule which in principle can accommodate the steps that must be carried out in the preparation of a rule. Thus, this paper will analyze related to legal regulations regarding delays in share acquisition notifications and their implementation (Asikin, 2012).

Based on the background of the problems presented earlier, in this writing, the formulation of the problem is formulated as follows: What are the legal arrangements regarding the delay in notification of the takeover of shares to the Business Competition Supervisory Commission (KPPU) Regulations by business actors in the anti-monopoly laws and regulations in Indonesia? How is the implementation of the Regulations of the Business Competition Supervisory Commission (KPPU) in regulating delays in the notification of the takeover of shares by business actors?

2. Materials and Methods

This writing was carried out in a normative juridical manner using the Economic Analysis of Law (EAL) method which is a fusion between two sciences, namely law and economics. EAL is an application of economic theory to evaluate the process, formation, structure and impact of laws and/or policies on society. The purpose of this EAL is to improve welfare in accordance with Article 33 of the 1945 Constitution.

Economic Analysis Of Law (EAL)

According to Alain Marciano, legal problems correlate with economic problems. Law and economics can be understood through basic methodological assumptions, where the rule of law covers every aspect of life. In political economy, "economics is about institutions in general, and law in particular. In his publication, *Economic Analysis of Law*, Richard Posner defines economics as "the science of human choice in a world with limited resources in relation to human wants, exploring and examining the implications of the assumption that humans are rational maximizers of their goals in life, their satisfactions, and their own interests." . The economic system itself consists of the same people in the legal, social and political systems. Their behavior is basically a general reflection of the system they live in (Sugianto & Yahman, 2017).

Posner's EAL also has a moral dimension, in which the goals of law are included, including correcting injustice and advocating a sense of morality. Legal principles have a direct correlation with the economic value of moral principles; such as trust, consideration for others, charity, neighborliness, hard work, avoiding neglect and coercion. Through his theory of justice, Posner also describes the concept of ethics for society, where he states that "the most common meaning of justice is efficiency". If a society does not benefit from economic efficiency, then there has been injustice.

EAL according to Richard Posner is, "Economics as a science of choices made by rational actors who have self-interest in a world where resources are limited; Modern microeconomic analysis is that rational actors will try to maximize their wealth from the limited availability of resources. Based on the assumption that rational individuals will maximize their own satisfaction, this assumption is applied to economics in the field of law. The basis of EAL is the theory of efficiency in the allocation of resources where value is maximized. Economic theory is applied to reconstruct market transactions into the field of law. His efficiency ideology is called the wealth maximization theory of justice. EAL can be the foundation of justice theory, where the most common meaning of justice is efficiency. If a society does not benefit from economic efficiency, then injustice has been perpetrated, EAL has three main concepts as follows: efficiency, rationality, and fairness:

Efficiency

Efficient results refer to individual satisfaction. Satisfaction is measured by willingness to pay. The efficiency formula uses the Pareto Superiority rule of efficiency which occurs when "at least one person is made better off, and no one is made worse off." This formula uses Pareto Optimality where "nothing can be made better without someone else being made worse." If one of the alternative Pareto outcomes occurs, the EAL has determined its efficiency.

Rationality

All individuals and institutions are rational maximizers. Individuals pursue happiness, and institutions pursue productivity and profitability. Individual and institutional preferences will be pursued only if the benefits outweigh the costs. This ideology is found in the economic model of human behavior based on the homo-economic concept.

The concept is formed based on the assumption that individuals are rational utility maximizers. These individuals as those who "have a desire, that they will act to satisfy the desire, that the desire has some regularity, that the order of preferences does not change radically in the short run, and that, all other things being equal, they prefer what what they want rather than less."

Justice

The most common meaning of justice is efficiency. A society with the primary goal of pursuing wealth maximization will develop many other attractive social features. Of the three EAL concepts above, the first concept of efficiency provides the most comprehensive information about EAL in terms of maximizing social welfare. If maximum social wealth occurs; then market, exchange, freedom, and happiness become priceless. The philosophy of maximizing wealth is not only moral, but also pragmatic. It is clear that people living in a free market-oriented economy are not only richer than people in a closed economy, but people in a free market economy also have more dignity, freedom and political rights.

EAL also has the ability to justify legislation through determining economic efficiency. Posner states that, "A comprehensive economic analysis of law is necessary during the legislative process because legislation is based on the fundamental assumption that legislators are rational maximizers of their satisfaction, just like everyone else in society." The point is that the theory of efficiency is in the allocation of resources and applying economic theory to reconstruct market transactions into the field of law. Economic Analysis of Law which is defined as an economic analysis of law or economic analysis of law. Legal issues remain as objects that are constellation (arranged, built, associated) with basic economic concepts, reasons and economic considerations.

The aim is to be able to position the nature of legal issues so that the flexibility of legal analysis (not economic analysis) becomes more elaborated. To realize a country that is heading for reform, an agenda is needed to build good governance as a legitimacy for upholding the principles of good governance, namely transparency, pluralism, community participation in decision-making, representation and accountability. Enforcement of the rule of law is believed to increase economic growth (Supancana, 2017).

Legislators are required to produce policies that are able to meet various legal needs in society. Implications Analysis of CBA and RIA in formulating a policy on laws and regulations can identify various implications and impacts of the new norms contained in the Draft Law. The purpose of conducting an Economic Analysis of Law is to produce policy regulations that are able to meet various legal needs in society, as well as improve the quality of human resources, namely policy makers/designers to carry out CBA and RIA analysis in drafting laws. Although this method is considered helpful in analyzing the impact of a policy, until now, the obligation to use EAL through RIA and CBA has not been equipped with clear guidelines that can be used by Ministries and/or Agencies. In fact, it is very useful to ensure that each policy impact analysis can be carried out correctly. Analysis of these regulations or policies, using the following methods:

Cost-Benefit Analysis (CBA)

Cost-Benefit Analysis (CBA) requires that all costs and benefits can be assessed in terms of money. This is only an alternative in conducting an analysis of various policy options/choices, that is, if the party applying the RIA method uses a neoclassical economic approach that aims to maximize social welfare. CBA is one of the methods/techniques in EAL. This technique is applied in laws and regulations where risk estimates may be disclosed. In addition, legal challenges and arguments can be more easily demonstrated when they are based entirely on quantitative considerations, rather than qualitative considerations, such as equity.

The concept of wealth consists of tangible and intangible factors. Therefore, it cannot be seen only as a monetary measure. To analyze the maximization of public wealth as a legislative goal, an effective method must be implemented in the EAL is through the CBA method. CBA has the capacity to determine intangible and non-monetary measures as assumed quantitative variables (Conboy, 2015). The ultimate goal of CBA is to evaluate the law with reference to external methods: the costs and benefits of law. CBA covers things intensively and comprehensively while looking for variables to show economic efficiency. CBA quantifies legal objectives with the main objective being to maximize benefits and minimize costs.

The ideology underlying CBA is quantification measures. The main focus of CBA is to measure costs and benefits objectively. Laws are analyzed and measured quantitatively to reflect changes to become more modern. The advantage of CBA is that it allows analysts or decision makers to see the situation globally. CBAs provide guidance on the consequences of their actions, and have the ability to evaluate government actions by comparing future projects to status quo projects. CBA becomes a concrete and evaluative tool. Basically, CBA is used to provide evidence about how society will benefit, and how maximizing community welfare can be achieved.

Regulatory Impact Assessment (RIA)

Regulatory Impact Assessment (RIA) is a process of systematic analysis and communication of policies, both new policies and existing policies. RIA is a method for systematically, comprehensively and participatively assessing the positive and negative impacts of a regulation or draft legislation. The RIA method is a method for finding the right formulation of norms/regulations, analyzing the impacts that have arisen, and can be effective in solving problems and anticipating implications.

RIA is a method that systematically and consistently assesses the impact of government actions, communicating information to decision makers. RIA is basically used to assess regulations in terms of: relevance between community needs and policy objectives, need for government intervention, efficiency between inputs and outputs, effectiveness between policy objectives and outcomes, sustainability between community needs and outcomes before implementing or changing a regulation.

3. Results and Discussions

1. Notification (Notification) of Acquisition of Company Shares

Takeover is a legal action carried out by a Business Actor to take over shares of a Business Entity which results in a transfer of control over said Business Entity. The term for such action is regulated in Article 1 Number 3 of Government Regulation Number 57 of 2010 Concerning Mergers or Consolidations of Business Entities and Acquisitions of Company Shares That May Lead to Monopolistic Practices and Unfair Business Competition. There are common terms known by the public for mergers, consolidations and acquisitions of shares of a company, namely the terms acquisition and merger.

Article 1 point 2 of Government Regulation No. 28 of 1999 concerning Mergers, Consolidation and Acquisition of Banks states that a Merger is a merger of 2 (two) Banks or more, by maintaining the existence of one of the Banks and dissolving the other Banks without liquidating them first. The term merger comes from the Indonesian word merge which means to combine.¹ Gunawan Widjaja in his book defines a merger as a merger of two or more companies into one company that already existed before.² Joni Emirzon defines a merger as a transaction where two or more companies combine their businesses based on existing laws and regulations so that only one company remains.³ From these several definitions, basically there are similarities in the elements of the merger, namely:

1. Merger or merger of companies is one way of merging companies, in addition to consolidating companies (consolidation) and taking over companies (acquisitions);
2. Merger involves two parties, namely one company that accepts the merger and one or more companies that merge themselves;
3. The company that accepts the merger will accept the acquisition of all shares, assets, rights, obligations and debts of the merging companies.

The definition of a merger can be found in the provisions of Article 1 paragraph (1) of Government Regulation Number 57 of 2010 concerning Mergers or Consolidations of Business Entities and Acquisition of Company Shares That May Lead to Monopolistic Practices and Unfair Business Competition, which states that a merger is a legal act. carried out by one or more business entities to merge with another existing business entity which results in the assets and liabilities of the merging business entities being transferred by law to the business entity receiving the merger and then the status of the merging business entities ends due to law. Munir Fuady categorizes mergers into several types, namely according to the type of business, mergers can be categorized in several forms, including:⁴ :

a. Merger Horizontal

A horizontal merger is a merger between two or more companies where all of these companies are engaged in the same business line (line of business) or it can be said that a horizontal fusion/merger occurs when two or more companies have the same buying market and selling market. - together melted into one. Meanwhile, for a special horizontal merger if it is carried out in one business group, there are two companies in one group, which are called sister companies. Their shares are held by one holding

¹ Gunawan Widjaya, *Mergers In Monopoly Perspective*, Raja Grafindo Persada, Jakarta, 2002, p. 47

² *Ibid*

³ Ioni Emirzon, *Indonesian Business Law*, Prenhalindo, Jakarta, 2000, p. 113

⁴ Munir Fuady, *Anti-Monopoly Law Towards the Era of Fair Competition*, Citra Aditya Bakti, Bandung, 2001 p. 40.

company. However, after a horizontal merger, the holding company holds shares in the merged subsidiary that has merged. In this horizontal merger process, especially if a non-liquidation merger is chosen, the minimum juridical actions to be taken are as follows:

- (1) All assets and liabilities are transferred from one subsidiary to another (except for assets payable to minority shareholders who do not agree to the merger). Unless the merger with liquidation model is chosen;
- (2) Subsidiary one stopped its activities, then was dissolved without liquidation;
- (3) Minority shareholders who do not agree to the merger can choose between becoming shareholders in the subsidiary or requesting compensation for the price of the shares they are holding without becoming shareholders in the subsidiary resulting from the merger.

b. Vertical Mergers

A vertical merger is a combination of two or more companies in which one acts as a supplier for the other. Or it can be said that this vertical fusion/merger occurs when a company unites with another company, which further works on goods made by the same company. First.

(1) Con-generic merger

A congeneric merger is a merger between 2 (two) or more related companies but not for the same product as in a horizontal merger and not between upstream and downstream companies as in a vertical merger.

(2) Conglomerate Mergers

A conglomerate merger is a merger of 2 (two) or more companies that do not have the same line of business. So that business activities are not related at all between the merging companies and the companies that accept the merger.

Article 1 point 4 of Government Regulation Number 28 of 1999 concerning Mergers, Consolidations and Acquisitions of Banks states that an acquisition is a takeover of ownership of a Bank resulting in a transfer of control over the Bank. Same as the term takeover in Article 1 point 3 of Government Regulation Number 57 of 2010 Concerning Mergers or Consolidations of Business Entities and Acquisition of Company Shares That Can Lead to Monopolistic Practices and Unfair Business Competition that legal actions taken by business actors to take over shares of a business entity result in a change of control over the business entity.

This explanation is in line with the understanding and description of the Acquisition as referred to in the Notification or Notification is a written notification via a form that must be made by business actors to the Commission on a Merger, Consolidation or Acquisition of company shares and/or assets after the Merger, Consolidation or Acquisition of shares and/or corporate assets is legally effective. This explanation is obtained from Article 1 Number 6 Number 3 of 2019 Concerning Assessment of Mergers or Consolidations of Business Entities, or Acquisitions of Company Shares Which May Lead to Monopolistic Practices and/or Unfair Business Competition.

Article 5 Government Regulation Number 57 of 2010 Concerning Merger or Consolidation of Business Entities and Acquisition of Company Shares Which Can Result

in Monopolistic Practices and Unfair Business Competition, emphasizing that notifications must be made in writing to the Commission no later than 30 (thirty) working days from legally effective date of acquisition of company shares. Identification of an action suspected of being a delay in notification is obtained through monitoring reports and or investigation reports.

Article 2 Regulation of the Commission for the Supervision of Business Competition of the Republic of Indonesia Number 3 of 2019 Concerning Evaluation of Mergers or Consolidations of Business Entities, or Acquisition of Company Shares That May Lead to Monopolistic Practices and/or Unfair Business Competition requires that notifications (notifications) only apply if the takeover the company's shares resulted in an asset value exceeding Rp. 2,500,000,000,000.00 (two trillion five hundred billion rupiah); and/or the sales value exceeds 5,000,000,000,000.00 (five trillion rupiah).

If in the event that a business actor does not complete the necessary further information and supporting documents, KPPU may carry out an Assessment based on assumptions, supporting documents and/or data owned or obtained by KPPU as stated in Article 12 of KPPU Regulation Number 3 of 2019 concerning Assessment of Mergers or Consolidation of Business Entities, Or Acquisition of Company Shares Which Can Result in Monopolistic Practices and/or Unfair Business Competition.

2. Legal Regulations Related to Delay in Notification of Acquisition of Shares to Business Competition Supervisory Commission (KPPU) Regulations by Business Actors in Indonesia's Antimonopoly Laws and Regulations

Indonesia has various legal policy rules governing Antimonopoly and Unfair Business Competition, one of which is related to Notification (Notification) of Acquisition of Shares by business actors to KPPU. Starting from Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition. Law of the Republic of Indonesia Number 40 of 2007 concerning Limited Liability Companies. Government Regulation of the Republic of Indonesia Number 44 of 2021 concerning Implementation of Monopolistic Practices and Unfair Business Competition. Government Regulation Number 57 of 2010 concerning Merger or Consolidation of Business Entities and Acquisition of Company Shares which Can Lead to Monopolistic Practices and Unfair Business Competition. Regulation of the Commission for the Supervision of Business Competition Number 1 of 2009 concerning Pre-Notification of Mergers, Consolidations and Acquisitions. Regulation of the Commission for the Supervision of Business Competition Number 1 of 2019 concerning Procedures for Handling Cases of Monopolistic Practices and Unfair Business Competition. Regulation of the Commission for the Supervision of Business Competition Number 3 of 2019 concerning Evaluation of Mergers, Consolidations and Acquisitions of Shares. Regulation of the Commission for the Supervision of Business Competition Number 2 of 2021 concerning Guidelines for Imposing Fines for Violating Monopolistic Practices and Unfair Business Competition.

Business actors who have taken over shares are required to provide notifications or notifications to KPPU based on the authority granted by them. This notification is made in writing through a form that must be made by business actors to KPPU regarding the Merger, Consolidation, or Acquisition of company shares and/or assets after the Merger,

Consolidation, or Acquisition of shares and/or company assets is legally effective. Article 5 Government Regulation Number 57 of 2010 concerning Merger or Consolidation of Business Entities and Acquisition of Company Shares Which Can Result in Monopolistic Practices and Unfair Business Competition / or the sales value exceeding a certain amount must be notified in writing to the Commission no later than 30 (thirty) working days from the legally effective date of the merger of business entities, consolidation of business entities, or acquisition of company shares. The asset value and/or sales value is regulated by the provision of an asset value of two trillion five hundred billion rupiahs and/or a sales value of five trillion rupiahs. The value of assets and/or sales value means that in a merger of business entities, consolidation of business entities, or acquisition of shares that has been carried out, it is calculated based on the sum of the value of assets and/or sales value of the company that acquired the shares of other companies and the company that was acquired. Other provisions in the summing up of asset values also apply to companies that directly or indirectly control or are controlled by the acquiring company, and the acquired company.

Provisions in Government Regulation Number 57 of 2010 concerning Mergers or Consolidations of Business Entities and Acquisition of Company Shares That Can Result in Monopolistic Practices and Unfair Business Competition also regulate the procedures for a company carrying out an acquisition of shares in submitting notifications to KPPU.

Article 8 Government Regulation Number 57 of 2010 concerning Mergers or Consolidations of Business Entities and Acquisition of Company Shares Which Can Result in Monopolistic Practices and Unfair Business Competition stipulates that written notification shall be made by filling out a form determined by the Commission. The form includes the following:

- a. name, address, name of the leadership or management of the Business Entities that carry out the Merger of Business Entities, Consolidation of Business Entities, or Acquisition of shares of other companies;
- b. summary of plans for Merger of Business Entities, Consolidation of Business Entities, or Acquisition of company shares; And
- c. asset value or sales proceeds of the Business Entity.

The notification form for the acquisition of shares must be signed by the head or management of the business entity carrying out the merger of business entities, consolidation of business entities, or acquisition of shares of other companies; and accompanied by supporting documents relating to the acquisition of company shares.

In the case of delays in notifying reports on the acquisition of shares by business actors, it is necessary to pay close attention to the handling process carried out by the Business Competition Supervisory Commission (KPPU). The rules issued by the KPPU regarding the handling of cases are contained in the Regulation of the Commission for the Supervision of Business Competition Number 1 of 2019 concerning Procedures for Handling Cases of Monopolistic Practices and Unfair Business Competition.

Article 3 Regulation of the Commission for the Supervision of Business Competition Number 1 of 2019 Concerning Procedures for Handling Cases of Monopolistic Practices and Unfair Business Competition stipulates that anyone who knows that there has been or should be suspected of having been a violation of the Antimonopoly Law and other related

regulations, can report to KPPU. Everyone referred to will be considered as a Reporter, and the KPPU must keep his identity confidential. The report is then addressed to the Chairman of the KPPU using good and correct grammar and signed by the person concerned. The report is made in written form with provisions that at least contain provisions on the identity of the Rapporteur and the Reported Party, a clear description of the alleged violation and evidence of the alleged violation. Reports that have been prepared can then be submitted by KPPU through:

- a. Commission headquarters;
- b. Commission representative offices in the regions; or
- c. online reporting application.

The work unit that handles reports on receipt of reports on alleged violations of the Antimonopoly Law to the Chairperson of the Commission as a clarification of the report. The clarification of the report is carried out to check the administrative completeness of the report, and also to check the truth of the identity of the reporter and the reported and the required witnesses. This work unit also ensures that in examining the report, it also analyzes the suitability of the alleged violation of the Law with the article that was violated with the evidence submitted by the Reporting Party; and assess the absolute competence of the report.

The authority granted to KPPU is also regulated in Regulation of the Commission for the Supervision of Business Competition Number 1 of 2019 concerning Procedures for Handling Cases of Monopolistic Practices and Unfair Business Competition, that KPPU can conduct examinations of business actors if there is an alleged violation of the Law even without a report. Case handling will be carried out at the KPPU's initiative to conduct research based on data or information on alleged violations of statutory provisions. The data to be used in the report is obtained from the results of studies, findings in the examination process, results of hearings conducted by KPPU. If the reporter does not provide a complete report, KPPU can also take the initiative to continue the investigation based on existing facts or reporting through accountable media. Investigation of initiative cases begins with the approval or direction of the Commission Meeting, and the results of the investigation of initiative cases are reported administratively and briefly to the Chairperson of the Commission.

The work unit that handles research conducts validation and analysis of data or information regarding alleged violations of antimonopoly laws and regulations. Validation and analysis is carried out by identifying business actors and related parties and identifying markets and anti-competitive behavior constructs. The work unit in charge of research reports briefly the results of research on alleged violations of the law at the Coordination Meeting. The research report contains provisions regarding the results of data validation and/or information on alleged violations, as well as conclusions on whether or not it is necessary to proceed to the investigation stage. Investigations are carried out to obtain sufficient evidence, clarity and completeness of alleged violations.

During the investigation process, it is undeniable that there were reported parties and/or witnesses who refused to be examined. In fact, not a few also refused to provide information so that it could hinder the investigation and/or examination process. In this case,

the examination investigator may request assistance from the investigator to present the person concerned for examination.⁵ The reported party and/or witness who still refuses to be examined, refuses to provide information, obstructs the investigation and/or examination process, the examination investigator can make a report to the investigator to be subject to action.

Investigation Reports that are considered appropriate and have been reported, are compiled by the prosecution investigator in the report on alleged violations. Based on the report, the Commission Meeting determines a preliminary examination and the establishment of a Commission Council to handle the case in question. The determination of the preliminary examination and the formation of the Commission Council is then set forth in a Commission Decision. Article 33 Regulation of the Commission for the Supervision of Business Competition Number 1 of 2019 Concerning Procedures for Handling Cases of Monopolistic Practices and Unfair Business Competition stipulates that the Commission Council may provide an opportunity for the reported party to make changes in behavior after the Alleged Violation Report is read out and/or submitted to the reported party. The opportunity to change this behavior is of course taking into account many things, bearing in mind that it is necessary to review the type of violation, when the violation occurred, and the losses resulting from the violation. If the reported agrees to change behavior, then Article 34 of the Business Competition Supervisory Commission Regulation Number 1 of 2019 concerning Procedures for Handling Monopolistic Practices and Unfair Business Competition Cases stipulates that the reported commitment to change behavior is made in the Behavior Change Integrity Pact signed by the reported party. The Behavior Change Integrity Pact contains:

- a. a statement by the reported party admitting and accepting the Alleged Violation Report;
- b. statement of the Reported Party not to engage in anti-competitive behavior as stated in the Alleged Violation Report;
- c. statement of the Reported Party to report the implementation of the Behavior Change Integrity Pact; and the signature of the reported party.

The explanation above is the handling process carried out by the KPPU in the case of delays in the acquisition of shares in Indonesia as regulated in the current laws and regulations.

3. Implementation of the Regulations of the Commission for the Supervision of Business Competition (KPPU) In Regulating Delays in Notification (Notification) of Acquisition of Shares by Business Actors

Law Number 40 of 2007 concerning Limited Liability Companies, Article 1 Number 11 regulates the definition of expropriation, namely:

"Acquisition is a legal action carried out by a Legal Entity or an individual to take over Company shares resulting in a transfer of control over the Company".

The takeover referred to in Article (1) Number 11 of Law Number 40 of 2007

⁵ Article 18 Regulation of the Commission for the Supervision of Business Competition Number 1 of 2019 Concerning Procedures for Handling Cases of Monopolistic Practices and Unfair Business Competition

concerning Limited Liability Companies can be carried out in two ways, namely first through the Company's Directors or through direct shareholders. In this regard, each is regulated in a different legal procedure in Law Number 40 of 2007 concerning Limited Liability Companies. The process of taking over shares that occur in a company, results in changes in control or consequences that do not cause changes in control in the company.

The process of acquiring shares regulated in Law Number 40 of 2007 concerning Limited Liability Companies must be reported to the Minister of Law and Human Rights.⁶ After that, business actors who have taken over shares are required to provide notifications or notifications to KPPU based on the authority granted by them. This notification is made in writing through a form that must be made by business actors to KPPU regarding the Merger, Consolidation, or Acquisition of company shares and/or assets after the Merger, Consolidation, or Acquisition of shares and/or company assets is legally effective.

Article 5 Government Regulation Number 57 of 2010 concerning Merger or Consolidation of Business Entities and Acquisition of Company Shares Which Can Result in Monopolistic Practices and Unfair Business Competition / or the sales value exceeding a certain amount must be notified in writing to the Commission no later than 30 (thirty) working days from the legally effective date of the merger of business entities, consolidation of business entities, or acquisition of company shares. The asset value and/or sales value is regulated by the provision of an asset value of two trillion five hundred billion rupiahs and/or a sales value of five trillion rupiahs. The value of assets and/or sales value means that in a merger of business entities, consolidation of business entities, or acquisition of shares that has been carried out, it is calculated based on the sum of the value of assets and/or sales value of the company that acquired the shares of other companies and the company that was acquired. Other provisions in the summing up of asset values also apply to companies that directly or indirectly control or are controlled by the acquiring company, and the acquired company.

Article 6 Government Regulation Number 57 of 2010 concerning Mergers or Consolidations of Business Entities and Acquisition of Company Shares That Can Result in Monopolistic Practices and Unfair Business Competition that if the business actor does not submit written notification to KPPU, then the business actor may be subject to sanctions in the form of administrative fines one billion rupiah for each day of delay, provided that the overall administrative fine is a maximum of twenty five billion rupiah. Many factors are considered by KPPU considering that KPPU is given the authority to carry out its duties in accordance with Articles 35 and 36 of Law Number 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition. The duties carried out by KPPU include evaluating agreements that may result in monopolistic practices and or unfair business competition and then evaluating business activities and or actions of business actors that may result in monopolistic practices and or unfair business competition. KPPU is also tasked with providing advice and considerations on Government policies related to monopolistic practices and or unfair business competition, as well as preparing guidelines and or publications related to the Antimonopoly Law, as well as providing periodic reports

⁶ M. Yahya Harahap, S.Hr, but only notification to the Minister. In the book (Harahap, 2011), "Limited Liability Company", Sinar Graphic, Jakarta, p.495

on the results of the Commission's work to the President and House of Representatives. After that, KPPU's task is to evaluate whether or not there is an abuse of dominant position which can result in monopolistic practices and or unfair business competition and to take action in accordance with the authority granted to KPPU.

In each KPPU's decision regarding the case of late notification of share acquisition, it only sticks to the normative rules set forth in Article 29 of Law Number 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition and Article 5 of Government Regulation Number 57 of 2010 concerning Merger or Consolidation of Business Entities and Acquisition of Company Shares That Can Lead to Monopolistic Practices and Unfair Business Competition and failure to consider whether a company is late in reporting the notification of share acquisition notification has a background of many factors that cause it. Article 29 of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition reads:

- (1) Merger or consolidation of business entities, or acquisition of shares as referred to in Article 28 which results in the value of the assets and/or sales value exceeding a certain amount, must be notified to the Commission no later than 30 (thirty) days from the date of the merger, consolidation or acquisition.
- (2) Provisions regarding the determination of the value of assets and/or sales value and procedures for notification as referred to in paragraph (1) are regulated in a Government Regulation.

Meanwhile, Article 5 of Government Regulation Number 57 of 2010 concerning Mergers or Consolidations of Business Entities and Acquisition of Company Shares That Can Lead to Monopolistic Practices and Unfair Business Competition stipulates that:

- (1) Merger of Business Entities, Consolidation of Business Entities, or Acquisition of shares of other companies which results in the value of the assets and/or sales value exceeding a certain amount must be notified in writing to the Commission no later than 30 (thirty) working days from the legally effective date of Merger of Business Entities , Consolidation of Business Entities, or Acquisition of company shares.
- (2) The certain amount referred to in paragraph (1) consists of:
 - a. asset value of IDR 2,500,000,000,000.00 (two trillion five hundred billion rupiah); and/or
 - b. sales value of IDR 5,000,000,000,000.00 (five trillion rupiah).
- (3) For Business Actors in the banking sector, the obligation to submit written notification as referred to in paragraph (1) applies if the asset value exceeds IDR 20,000,000,000,000.00 (twenty trillion rupiah).
- (4) The asset value and/or sales value as referred to in paragraph (2) and paragraph (3) is calculated based on the sum of the asset value and/or sales value of:
 - a. Business Entities resulting from the Merger, or Business Entities resulting from the Consolidation, or Business Entities acquiring shares of other companies and Business Entities acquired; And
 - b. Business Entities that directly or indirectly control or are controlled by Business Entities resulting from a Merger, or Business Entities resulting from

Consolidation, or Business Entities that acquire shares of other companies and Business Entities that are acquired.

Based on the Merger and Acquisition case decision data published in the KPPU, there are 17 merger and acquisition decisions which were uploaded to the KPPU's Decision Directory from 11 February 2020 to 11 April 2021, it was found that there was a delay in the Notification of Mergers and Acquisitions with a delay of between 2 (two) days to with more than 8 (eight) years⁷. During the period 2010 – 2021 there were 907 merger notifications submitted to KPPU 8 (eight) years⁸. The number of merger consultations conducted was 32 cases of 8 (eight) years⁹. Meanwhile, data on the number of merger notification fine decisions available on the KPPU website, during 2012 – 2022 there were 45 cases of fines for delays in merger notifications with total fines reaching IDR 118,765,000,000¹⁰.

This shows that there are still many business actors who, in carrying out their business, also do not pay attention to the regulations governing their fields. The reason used in the case of delay in notifying the takeover of shares, is because the business actor carrying out the acquisition of shares does not know about the existence of a regulation that requires business actors who, with certain asset conditions, take over shares, must be obliged to provide a report on notification of takeover of shares to the KPPU. The fact found in the field, that there are still many business actors who violate the provisions on the obligation to notify share acquisitions, raises questions about the form of the regulation itself, the KPPU's authority in terms of regulating it, or whether business actors are truly lawless.

Not all companies that are late in submitting share acquisition notification reports to KPPU are companies that do it on purpose, or actually know about these provisions but choose not to report them for various reasons. There are still companies that, because they are "new to the business world", really do not know about the provisions regarding the obligation to report and are obliged to provide a share takeover notification report to the KPPU because they are not aware of the provisions stipulated in the laws and regulations. KPPU should be able to distinguish between companies that deliberately delay in submitting share takeover notification reports and companies that, due to their negligence, result in delays in making share takeover notification reports and make this an input for KPPU in carrying out its duties.

Business actors can carry out written consultations with the Commission before carrying out share acquisition actions. This is regulated in Article 20 of KPPU Regulation

⁷ Decision on Merger and Acquisition case uploaded in *website* KPPU on 17 Merger and Acquisition Decisions which were decided and published in the Directory of KPPU Decisions from 11 February 2020 to 11 April 2021, accessed from the work of (Murniati, 2021), "Ignorance of Business Actors as a Reason for Delayed Notification of Mergers and Acquisitions", *Business Competition Journal*, Faculty of Law, University of Lampung, Vol.02 2021, <https://jurnal.kppu.go.id/index.php/official/article/view/27/21> , accessed April 10, 2023

⁸ <https://kppu.go.id/daftar-notifikasi-merger/> , accessed April 10, 2023

⁹ <https://kppu.go.id/konsultasi/> , accessed April 10, 2023

¹⁰ <https://putusan.kppu.go.id/simper/menu/> , accessed April 10, 2023

Number 3 of 2019 concerning Assessment of Mergers or Consolidations of Business Entities, or Acquisitions of Company Shares Which May Lead to Monopolistic Practices and/or Unfair Business Competition. The results of the Consultation Assessment do not constitute approval or rejection of the plan for Merger of Business Entities, Consolidation of Business Entities, or Acquisition of Shares of other companies which will be carried out by Business Actors, and does not remove the Commission's authority to conduct an assessment after Merger of Business Entities, Consolidation of Business Entities, or Acquisition of shares the other company concerned is legally effective. The result of the consultation assessment in the form of a written opinion is whether or not there is an allegation of monopolistic practices and unfair business competition. From the commission regulations above, it can be seen that KPPU actually intends to enforce the provisions for pre-notification, but because Law Number 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition requires a post-notification system, so that consultations are carried out when The plan is non-binding and when the acquisition of shares is carried out, business actors are again asked to make notifications, causing inefficiency and legal uncertainty.

There is a weakness in the notification model after the acquisition of shares or post-notification because it is felt that the examination of the business merger process by KPPU through post-notification of the process of acquiring shares will give rise to a tendency for suspicion of monopoly in the market. The concept of post-notification has the potential to cause monopolistic practices during the KPPU's examination process. Actually, in the concept of pre-notification, this provides more guarantees of legal certainty for business actors. Although the pre-notification system has not been accepted as a legal requirement that must be complied with. In fact, the KPPU has already carried out a pilot in which business actors have been advised to carry out consultations on the feasibility of acquiring shares with the KPPU before the process of acquiring shares takes place. This is in accordance with Article 10 of Government Regulation Number 57 of 2010 concerning Mergers or Consolidations of Business Entities and Acquisitions of Company Shares that Can Lead to Monopolistic Practices and Unfair Business Competition. The post-notification system can also raise concerns that if the company has merged companies with the share acquisition system, then cancellation will occur, even though there has been a letter of approval from the Minister of Law and Human Rights for the acquisition of shares, so it needs to be reviewed in terms of the urgency of the legislation, so that it is permissible to carry out pre-notification so that KPPU can also provide more appropriate advice to business actors before the share acquisition transaction begins. This can minimize the accumulation of similar cases related to delays in notification of share acquisitions that must be managed by the KPPU and can also make it easier for business actors to run their business as long as they comply with anti-monopoly and business competition regulations.

Technological advances and the development of an increasingly modern era in the two businesses, demand changes and implementation that can be implemented immediately, namely for the enactment of provisions regarding written consultations with business actors to KPPU as a pre-notification of share acquisitions. Pre-notification should be implemented and implemented, in order to reduce the number of losses that are quite large if the post-notification provisions carried out by business actors are rejected by KPPU due to business

monopoly tendencies. Pre-notification efforts can also benefit the business actors themselves so that they can be careful in carrying out share acquisitions so as not to give rise to suspicions of business monopoly, as well as make it easier for KPPU to handle cases of share acquisitions in the field by simplifying the post-notification process to pre-notification notification.

4. Cost Benefit Analysis (CBA)

The results of the CBA analysis show that the amount of costs incurred by business actors in relation to post-merger notification late fees from 2012 to 2022 is IDR 149,580,595,634.

Table 1
CBA analysis

REGULASI					
Perubahan kewajiban post-notifikasi menjadi kewajiban pre-notifikasi dalam merger					
TUJUAN					
Menjamin kepastian hukum dalam merger dan tidak ada denda keterlambatan post-notifikasi merger					
ISU					
Banyak pelaku usaha yang tidak mengetahui ketentuan mengenai post-notifikasi merger yang mengakibatkan adanya denda keterlambatan dalam putusan KPPU akibat pelanggaran tersebut.					
Stakeholder: Pelaku Usaha					
Biaya			Manfaat		
Kuantitatif	Kualitatif	Monetisasi	Kuantitatif	Kualitatif	Monetisasi
Terdapat 45 kasus dengan denda keterlambatan (tahun 2010 – 2021)	Tidak ada kepastian hukum	Rp149,580,595,634			
Total Biaya Pelaku Usaha			Total Manfaat Pelaku Usaha		
Stakeholder: Pemerintah					
Biaya			Manfaat		
Kuantitatif	Kualitatif	Monetisasi	Kuantitatif	Kualitatif	Monetisasi
	Tidak ada kepastian hukum				
	Reputasi kurang baik untuk investasi				
Total Biaya Pemerintah			Total Manfaat Pemerintah		
Total Biaya = Rp 141.580.595.634			Total Manfaat = 0		

Discount Rate	6.71%
PV Manfaat	Rp0
PV Biaya	Rp149,580,595,634
Akumulasi NPV Cost	Rp149,580,595,634
Rasio Manfaat Biaya	0%

total benefit - total cost
total manfaat/total biaya

BCR < 1 = inefisien

BCR > 1 = efisien

Table 2
Calculation - CBA EX POST

r = 6,71%	2012 (n = 10)	2014 (n = 8)	2016 (n = 6)	2018 (n = 4)	2019 (n = 3)	2020 (n = 2)	2021 (n = 1)	2022 (n = 0)	FV 2022
Biaya	4,600,000,000	7,249,000,000	10,000,000,000	13,400,000,000	53,053,000,000	6,713,000,000	8,750,000,000	15,000,000,000	-
FV Biaya	8,806,615,407	12,187,624,327	14,764,907,123	17,375,018,592	64,465,195,906	7,644,109,278	9,337,125,000	15,000,000,000	- 149,580,595,634
Manfaat	-	-	-	-	-	-	-	-	-
FV Manfaat	-	-	-	-	-	-	-	-	-
								NFV	- 149,580,595,634

5. Regulatory Impact Assessment (RIA)

Proposal: Changing post-notification obligations to pre-notification obligations in mergers to ensure legal certainty in mergers and there are no late merger post-notification penalties where there are still many business actors who do not know the provisions regarding merger post-notifications which result in late payment penalties. KPPU's decision as a result of the violation.

The RIA analysis results show that if a change is made from the post-notification obligation to the pre-notification obligation, it will provide a benefit of IDR 703,827,967,221.

Table 3
RIA analysis

	Ekonomi		Administrasi Publik		Lingkungan		Sosial		Net Benefit
	Benefit	Cost	Benefit	Cost	Benefit	Cost	Benefit	Cost	
Opsi A: Status Quo	Tidak ada	Masyarakat membayar denda bila terjadi keterlambatan notifikasi	Tidak ada	Harus mengenakan denda	Tidak ada	Tidak ada	Tidak ada	- Reputasi buruk terhadap iklim investasi dan bisnis - Tidak ada kepastian hukum	Masyarakat mengeluarkan biaya
Opsi B: Perubahan kewajiban post-notifikasi menjadi kewajiban pra-notifikasi	Masyarakat tidak perlu membayar denda	Tidak ada	Meningkatkan reputasi baik terhadap iklim investasi dan bisnis	Tidak ada	Tidak ada	Tidak ada	Ada kepastian hukum	Tidak ada	Masyarakat tidak mengeluarkan biaya

Table 4
Calculation - RIA EX ANTE

r = 6,71%	2022 (n = 0)	2023 (n = 1)	2024 (n = 2)	PV 2022
Biaya	-	-	-	-
PV Biaya	-	-	-	-
Manfaat	250,000,000,000	250,000,000,000	250,000,000,000	-
PV Manfaat	250,000,000,000	234,279,823,822	219,548,143,399	703,827,967,221
			NFV	703,827,967,221

Asumsi:

Rata-rata notifikasi adalah 140/tahun (menggunakan kurang lebih rata-rata notifikasi tahun 2019 s.d. 2021)

10 kasus dengan putusan denda maksimal Rp 25 miliar

The discount rate used in CBA and RIA calculations uses the average ORI yield from 2012-2022 according to the following table:

Table 5
The average yield of ORI from 2012 to.d. 2022

Year	Draw	Coupon (%)
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2	201	OR 009	6,25
3	201	OR 010	8,5
4	201	OR 011	8,5
5	201	OR 012	9
6	201	OR 013	6,6
7	201	OR 014	5,85
8	201	OR 015	8,25
9	201	OR 016	6,8
0	202	OR 017	6,4
0	202	OR 018	5,7
1	202	OR 019	5,57
1	202	OR 020	4,95
2	202	OR 021	4,9
		Total	87,2
		Rate-rate	7 6,71

Source:

- <https://www.google.com/amp/s/www.bareksa.com/berita/sbn/2020-10-07/begini-tren-bi-rate-dan-kupon-ori-sejak-diluncurkan-2006-hingga-2020/amp>
- www.baresa.com

4. Conclusion

The results of the exposure and analysis in the above research can be concluded that:

1. Legal arrangements related to delays in notification of acquisition of shares to the Business Competition Supervisory Commission (KPPU) Regulations by business actors in anti-monopoly laws and regulations in Indonesia are realized through Law Number 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition, Regulation Government Number 57 of 2010 concerning Mergers or Consolidations of Business Entities and Acquisition of Company Shares Which Can Result in Monopolistic Practices and Unfair Business Competition, KPPU

Regulation Number 3 of 2019 concerning Assessment of Mergers, Consolidations and Acquisitions of Shares and KPPU Regulation Number 2 of 2021 concerning Guidelines for Imposing Fines for Violating Monopolistic Practices and Unfair Business Competition. The form of regulation is still deemed inadequate and achieved, when analyzed using the theory of legal certainty, namely that the legal rules that have been formed can be implemented as they should and aim to create certainty in social life, then regulations or legal arrangements related to delays in notification (notification) of the acquisition of shares, has not been socialized properly because there are still many business actors who have been subject to administrative sanctions for paying fines by the KPPU due to ignorance of the regulations that govern them.

2. Implementation of the Regulations of the Business Competition Supervisory Commission (KPPU) in regulating delays in notification of the acquisition of shares by business actors has not gone well. Due to the facts on the ground it was found that, the reason why business actors were late in submitting share takeover notifications, they were not aware of any regulations requiring the submission of share takeover notification reports, and the reason that there were still many cases of late share takeover notifications, was that discrepancies arose. understand the juridical validity date after the acquisition of shares is approved by the Minister of Law and Human Rights. From the existing cases, it can be concluded that the implementation of the Business Competition Supervisory Commission (KPPU) Regulations in regulating delays in notification of share acquisition by business actors has not been well socialized to business actors, resulting in delays in fines in KPPU decisions due to violations. against post-notification provisions.
3. It is necessary to change the post-notification obligation to become a pre-notification obligation in the acquisition of shares, which previously was not obligatory to become an obligation that must be fulfilled by business actors before carrying out the merger, consolidation and acquisition of shares.

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