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**ANALYSIS OF NOTIFICATION OBLIGATIONS TO THE BUSINESS COMPETITION  
SUPERVISORY COMMISSION (KPPU) COMPANY MERGER: A PERSPECTIVE ON  
BUSINESS COMPETITION LAW**

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**ABSTRACT**

This study aims to analyze the obligation of notification to the Business Competition Supervisory Commission (KPPU) in the context of company mergers from the perspective of business competition law. With economic growth and merger activity on the rise, it is important to understand the impact as well as the obligations that companies involved in the merger process must comply with. The methodology of this study uses normative and empirical legal approaches. Normative analysis is carried out on the legal framework governing the obligation of merger notification to KPPU, while empirical analysis involves case studies and interviews with relevant stakeholders, such as companies that have undergone mergers and parties involved in the regulatory process. The findings of this study are expected to provide a deeper understanding of the effectiveness of notification obligations to KPPU in supervising and managing the impact of mergers on business competition. The legal and practical implications of this notification obligation will be analyzed to provide recommendations for policy improvements and improvements to improve the efficiency and effectiveness of competition monitoring in Indonesia. This research is expected to be the basis for further discussion to improve regulations and implementation of business competition law at the national level.

**Keywords: Judicial Review; Pancasila; Staatfundamentalnorm.**

**INTRODUCTION**

Business expansion or expansion can be done internally or externally. Internal expansion is company expansion carried out by making initial investments, such as establishing a new company or expanding an existing company. External expansion is the expansion of a company by combining its operational activities with other existing companies, one of which is through company mergers.

Company mergers are a business strategy carried out by business actors to improve operational efficiency, increase market share, or achieve other benefits. However, in the context of business competition (Bahri, 2019), company mergers can also have a significant impact on the market and other business actors. Therefore, according to Black's Law Dictionary, Definition of Old and Modern American and English Jurisprudence Terms and Phrases by Hendry Campbell Black, MA, (1991) there are several types of mergers (Christiawan, 2021) as follows:

- a. Horizontal Merger: Merger between business competitors, such as manufacturers of similar products or distributors who sell competing products in the same market/geographical area.

- b. Vertical Merger: A merger between two business firms that have a buyer-seller relationship, i.e., one produces a product that is then sold to the other.
- c. Conglomerate Merger: A merger between companies operating in separate and different markets.

Furthermore, in the legal framework in Indonesia, regulations governing business competition and the prevention of monopolistic practices are regulated by Law of the Republic of Indonesia Number 5 of 1999 concerning Prohibition of Monopoly Practices and Unfair Business Competition (hereinafter referred to as "UU No. 5/1999"). Law Number 5 of 1999 is important in maintaining healthy competition in the Indonesian business market and preventing monopolistic practices that can harm consumers and other business actors (Rangkuti, 2022).

One of the important aspects in Law No. 5/1999 is the obligation to provide notification to the Business Competition Supervisory Commission ("KPPU") during the company merger process as regulated in Business Competition Supervisory Commission Regulation No. 4 of 2012 concerning Guidelines for Imposing Fines for Delays. Notification of Merger or Merger of Business Entities and Acquisition of Company Shares ("PerKPPU No. 4/2012") and Regulation of the Business Competition Supervisory Commission Number 3 of 2023 concerning Assessment of Mergers, Mergers or Acquisitions of Shares and/or Assets that May Give rise to Monopoly Practices and/ or Unfair Business Competition ("PerKPPU No. 3/2023") (Cardillo, Cotugno, Perdichizzi, & Torluccio, 2024).

obligation aims to provide transparency and control over corporate mergers that can have a significant impact on competition in the market. KPPU is a supervisory institution whose role is to ensure that company mergers are carried out based on the principles of healthy business competition as regulated in Law No.5/1999 (Apriani, 2019).

In this article, the author will dig deeper into the obligation to notify the KPPU regarding company mergers in Indonesia.

## RESEARCH METHODS

The methodology of this study uses normative and empirical legal approaches. Normative analysis is carried out on the legal framework governing the obligation of merger notification to KPPU, while empirical analysis involves case studies and interviews with relevant stakeholders, such as companies that have undergone mergers and parties involved in the regulatory process.

## RESULTS AND DISCUSSION

When a company carries out corporate action in the form of taking over shares and/or assets, it needs to pay attention to the provisions of the laws and regulations in force in Indonesia. One of the provisions that needs to be taken into account is Law Number 5 of 1999 and its derivative regulations, especially provisions related to notice or notification to the KPPU.

The obligation to provide information regarding mergers or combinations or takeovers of shares to the KPPU is regulated in Article 29 paragraph (1) of Law no. 5/1999 which states the following:

**Article 29 paragraph (1) Law No.5/1999**

A merger or consolidation of a business entity or takeover of shares as intended in Article 28 which results in the asset value and/or sales value exceeding a certain amount, must be notified to the Commission, no later than the 30th (thirtieth) day. ) days from the date of merger, merger or acquisition.

**Article 2 PerKPPU No.3/2023**

1. Business Actors are required to submit Notification to the Commission for Mergers, Mergers, or Acquisitions of Shares and/or Assets that meet the Mandatory Notification requirements .
2. The notification as referred to in paragraph (1) is submitted no later than 30 (thirty) days from the date of the legally effective Merger, Merger or Acquisition of Shares and/or Assets .

**Article 3 PerKPPU No.3/2023**

1. The mandatory provisions for notification as intended in Article 2 paragraph consist of:
  - a. Meet the Asset value and/or Sales value limits;
  - b. There is a change of control;
  - c. Not a transaction between affiliated Business Actors; And
  - d. Transactions between Business Actors who have assets and/or Sales in Indonesia.
2. In addition to the mandatory Notification provisions as intended in paragraph (1), Business Actors are required to submit Notification to the Commission in the event of an Asset Takeover:
  - a. Increasing the ability to control certain markets by Business Actors carrying out Asset Takeovers; And
  - b. Excludes excluded Asset Acquisition transactions.

Regarding the juridical effective date, Article 4 paragraph (1) PerKPPU No. 3/2023 explains that the legal effective date can be interpreted as follows:

- a. date of approval by the Minister in the legal sector regarding changes to the articles of association in the event of a Merger;
- b. date of ratification by the Minister in the field of law of the deed of establishment of the company in the event of a Merger;
- c. the date of notification received by the Minister in the legal sector regarding changes to the articles of association in the event of a Takeover;
- d. the date of the transaction implementation disclosure letter submitted to the Financial Services Authority or the last date of payment for shares and/or other equity securities in the context of exercising Pre-emptive Rights ("HMETD"), on a Merger, Merger or Takeover carried out by a public company of public companies or private companies against public companies;
- e. Asset sale and purchase date which is the date of completion of the Asset Transfer;

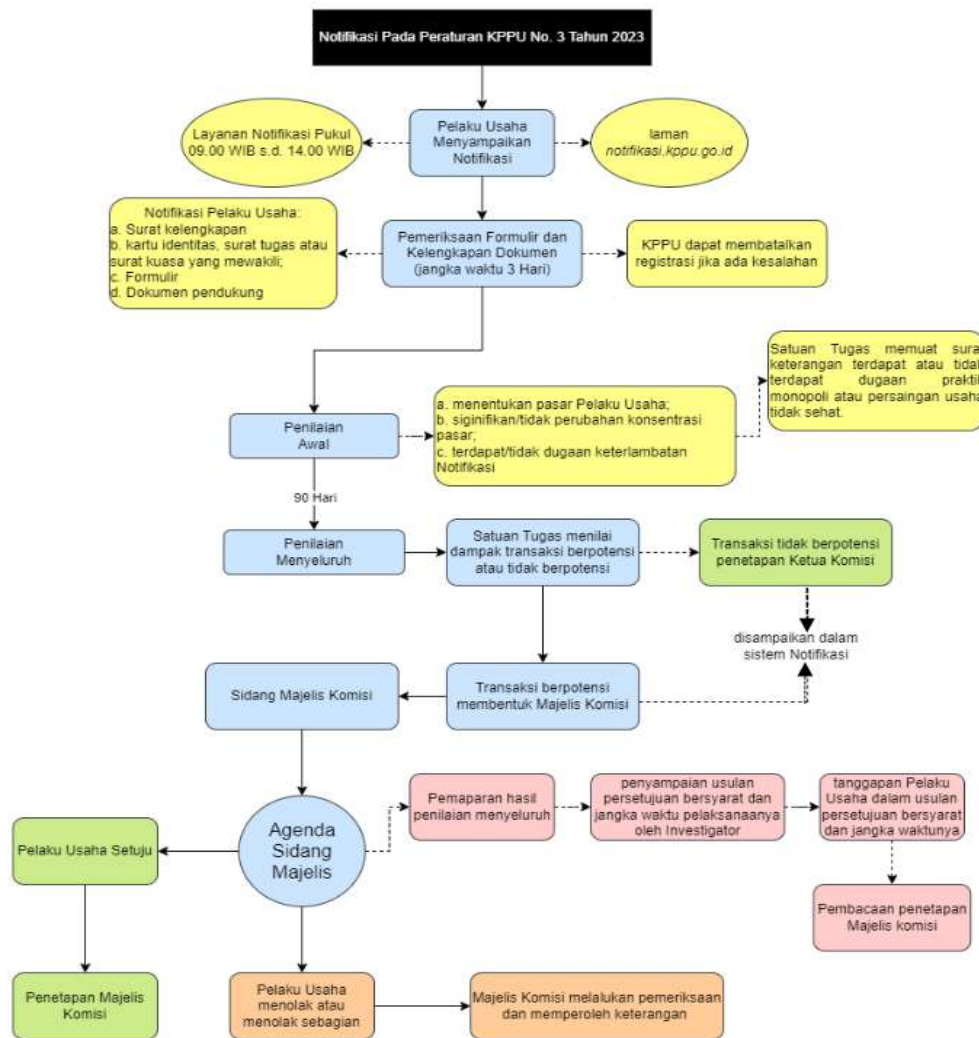
f. the date of completion of the parties' agreement or government approval/ratification outside the territory of the Unitary State of the Republic of Indonesia where the Merger, Amalgamation or Takeover occurred.

If a transaction has more than 1 (one) juridical effective date as mentioned above, then as regulated in Article 4 paragraph (2) PerKPPU No. 3/2023, the calculation of 30 (thirty) working days uses the last legal effective date. .

**Article 4 paragraph (2) PerKPPU No.3/2023**

If a transaction has more than 1 (one) legal effective date as intended in paragraph (1), then the date used for the Notification Assessment refers to the latest date.

To clarify the notification flow as regulated in PerKPPU Number 3 of 2023, it can be seen in the following graph:



In addition to notification, KPPU recommends that business actors consult with KPPU before carrying out a Merger, Merger or Takeover. This consultation is voluntary and aims to minimize the risks that Business Actors may experience in carrying out a Merger, Merger or Takeover.

Consultations can be carried out by business actors to find out whether the Merger, Merger or Takeover that is being carried out has the potential to give rise to monopolistic practices and/or unfair business competition, considering that there are administrative sanctions for business entities that are late in implementing. Notification/Notice as regulated in Article 12 of PerKPPU No.4/2012.

#### **Article 12 PerKPPU No.4/2012**

1. The Commission has the authority to impose sanctions in the form of administrative fines on business entities that are late in submitting Notifications of Mergers or Mergers of Business Entities, and Takeovers of Company Shares as regulated in Article 6 of the Government Regulation.
2. The administrative fine as intended in paragraph (1) is IDR 1,000,000,000.00 (one billion rupiah) for each day of delay, with the provision that the total administrative fine is a maximum of IDR 25,000,000,000.00 (twenty five billion rupiah) .

#### **CONCLUSION**

To increase operational efficiency, increase market share, or gain profits, company mergers are one of the business strategies that can be carried out by business actors if they want to expand/expand their business. A merger of companies can have a significant impact on the market and other business actors.

Therefore, to regulate business competition and prevent monopolistic practices, Article 29 paragraph (1) of Law no. 5/1999 regulates the obligation to provide notification to the KPPU during the company merger process, where criteria for the obligation to provide notification have been determined. in Article 3 of PerKPPU No.3/2023 as follows:

- a. Meet the Asset value and/or Sales value limits;
- b. There is a change of control;
- c. Not a transaction between affiliated Business Actors; And
- d. Transactions between Business Actors who have assets and/or Sales in Indonesia.

The notification above must be submitted no later than 30 (thirty) days from the date of merger in order for it to be juridically valid as regulated in Article 4 paragraph (1) of PerKPPU Number 3/2023. If a business actor is late in providing notification to the KPPU, the business actor may be subject to administrative sanctions in the form of a fine.

Therefore, to minimize the risks that business actors may experience in merging companies, it is recommended that business actors consult with the KPPU before carrying out a company merger. Consultations can be carried out by business actors to understand whether the merger of companies has the potential to give rise to monopolistic practices and/or unfair

business competition or not, bearing in mind that there are administrative fines for business entities that are late in making Notifications/Notices as regulated in Article 12 of PerKPPU No.4 of 2012 .

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