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Share Acquisition Perspective of Law Number 5 of 1999
(Study of KPPU Decision in Case Number: 03/KPPU-M/2014)

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Abstrak

Merujuk pada Putusan KPPU Perkara Nomor 03/KPPU-M/2014, akuisisi saham PT. Sukses Abadi Karya Inti oleh PT. Dunia Pangan mengakibatkan persaingan usaha tidak sehat. Maka tujuan penulisan artikel ini untuk menganalisis pertimbangan Majelis Komisi dalam memutus perkara terhadap pelanggaran akuisisi saham PT. Sukses Abadi Karya Inti oleh PT. Dunia Pangan melalui Putusan Nomor 03/KPPU-M/2014. Penelitian ini menggunakan metode penelitian yuridis normatif dengan data sekunder berupa bahan hukum primer, sekunder, dan tersier. Hasil penelitian menunjukkan bahwa, nilai aset PT. Dunia Pangan selaku terlapor melebihi jumlah tertentu sebagaimana diatur dalam PP 57 Tahun 2010 dan terlapor diwajibkan menyampaikan pemberitahuan secara tertulis kepada KPPU. Setelah Majelis Komisi menilai, menganalisa, menyimpulkan bahwa terlapor terlambat melakukan pemberitahuan ke KPPU selama 13 hari.

Kata Kunci: *Akuisisi, Saham, Persaingan Usaha*

Abstract

Referring to the KPPU Decision in Case Number 03/KPPU-M/2014, the acquisition of shares in PT. Karya Inti's Eternal Success by PT. The world of food results in unhealthy business competition. So the purpose of writing this article is to analyze the Commission Council's considerations in deciding cases regarding violations of PT share acquisition. Karya Inti's Eternal Success by PT. Food World through Decision Number 03/KPPU-M/2014. This research uses normative juridical research methods with secondary data from primary, secondary, and tertiary legal materials. The research results show that the asset value of PT. Dunia Pangan as the reported party exceeds a certain amount as regulated in PP 57 of 2010 and the Reported Party is required to provide written notification to the KPPU. After the Commission Council assessed, and analyzed, it concluded that the reported party was 13 days late in notifying the KPPU.

Keywords: *Acquisition, Shares, Business Competition*

INTRODUCTION

One of the developments in the legal system in Indonesia is in the field of economic law, namely business competition law. Business competition law aims to prevent prohibited monopolistic practices and/or unfair business competition (Rachmadi Usman, 2013). In business competition, there are business competition actors who can be said to be subjects and objects in business competition (Febrina, 2022). The subjects of competition are sellers or producers who, in this case, produce or distribute goods. Meanwhile, what is meant by an object in business competition is the consumer who, in this case, uses or buys an item (Saleh et al., 2019).

Economic development in the First Long Term Development (PJPP) has produced a lot of progress, including increasing people's welfare. Even though much progress has been achieved during that time, there are still many problems that have not been resolved in line with the trend of economic globalization and the dynamics and development of private business since the early 1990s (Juliana Lisye Makarau et al., 2024). Entrepreneurs close to the power elite receive excessive facilities which impact social inequality and result in economic resilience becoming very fragile and unable to compete.

Business actors, or groupings of business actors, who are affected by the discriminatory policies of the New Order Government, are still enthusiastic about and working toward building a robust developing economy (Rilda Murniati, 2014). As a result, on March 5, 1999, the 1999 State Gazette Number 33 published Law Number 5 of 1999, which outlawed monopoly practices and unfair business competition. Despite the fact that Law Number 5 of 1999 was actually an attempt at coercion. From the IMF which determines

the conditions for granting financial loans by requiring Indonesia to have regulations that can guarantee healthy business competition (Rilda Murniati, 2014).

The Business Competition Law aims to optimally create healthy and effective business competition in a market so that business actors are efficient and able to compete with other business actors. In the explanation of "Law Number 5 of 1999, it is stated that in general the material of Law Number 5 of 1999 contains six regulatory sections", namely (Rilda Murniati, 2014):

1. Prohibited agreements;
2. Prohibited activities;
3. Dominant position;
4. Business Competition Supervisory Commission;
5. Law enforcement; And
6. Other provisions.

Unfair business competition is an act of blocking or preventing competition, namely an action to prevent competition from occurring (Rangga, 2022). Actions like this are used by business actors who want to hold a monopoly position by preventing potential competitors or eliminating competitors unreasonably. This directly requires them to have a dominant position in a market.

Dominant position is one of the central or fundamental keys in business competition law. A company is not prohibited from controlling a market share of 50% (fifty percent) or more. Some companies are also not prohibited from controlling a market share of 75% (seventy-five percent) or more, which means holding a dominant position. What is prohibited is if the dominant position is misused to exploit consumers or other business actors or to try to exclude or prevent other business actors from entering the market (Suyud Margono, 2009). Forms of dominant position activities are regulated in Articles 25 to 29 of Law Number 5 of 1999 concerning Prohibition of Monopoly Practices and Unfair Business Competition.

Law Number 5 of 1999 determines economic activities that can give rise to a dominant position for business actors in the market through mergers, consolidations, or takeovers. One form of dominant position that will be discussed is the acquisition or takeover of shares. Acquisitions are regulated in Part Four concerning Mergers, Consolidations, and Takeovers, Article 28 of Law Number 5 of 1999. Business actors are prohibited from acquiring shares in other companies if such actions could result in monopolistic practices and/or unfair business competition.

The acquisition is the takeover of part or all of the shares of a company without revocation of permits and liquidation to take over the control so that there will be a transfer of management power and legally the control of the company will be with the acquiring party (Rr. Dijan Widijowati, 2012). Acquisitions can be carried out by legal entities or individuals by transferring all or part of the shares that have been or will be issued by a limited liability company which has the effect of transferring control (Wiralodra Jln Ir Juanda Km et al., 2023).

Acquisition can be done internally or externally. Internal acquisitions are acquisitions of companies within one's group, while external acquisitions are acquisitions of companies outside the group or companies from other groups (Nasrulloh, 2021). Acquiring companies are usually large companies that have strong funds, good management, and extensive networks, and are grouped in conglomerates.

To supervise the implementation of Law Number 5 of 1999, the Business Competition Supervisory Commission (KPPU) was established as regulated in Article 30 Paragraph (1) of this Law. Article 30 states that "KPPU is an independent institution that is independent of the influence of government power and other parties and that in carrying out its duties, KPPU is responsible to the President". The KPPU is appointed by the President after obtaining approval from the House of Representatives (Abidin et al., 2024).

One of the handling cases of violations of "Law No. 5 of 1999 arising from reports from business actors, namely in the case contained in the KPPU Decision Case Number 03/KPPU-M/2014 relating to alleged violations of Article 29 of Law Number 5 of 1999 in conjunction with Article 5 of Government Regulation Number 57 of 2010" relating to with the acquisition of shares in PT Sukses Abadi Karya Inti by PT Dunia Pangan, which resulted in unhealthy business competition. Based on the description above, the purpose of writing this article is to analyze the Commission Council's considerations in deciding the case regarding violations of the acquisition of PT Sukses Abadi Karya Inti's shares by PT Dunia Pangan through Decision Number 03/KPPU-M/2014.

RESEARCH METHOD

This research uses normative juridical research methods with secondary data in the form of primary, secondary, and tertiary legal materials. The approaches used are a regulatory approach, a case approach, and a conceptual approach. The analysis of legal materials used in this research is qualitative analysis, which is carried out by interpreting legal materials that have been processed (Muhaimin, 2020). Analysis of legal materials is

carried out by examining and analyzing them according to the legal issues faced and then concluding.

RESULT AND DISCUSSION

Acquisition is a legal act carried out by a legal entity or individual to take over company shares, which results in the transfer of control over the company (Wulandari, 2021). Acquisitions are carried out by taking over shares that have been issued and/or will be issued by the company through the company's directors or directly from shareholders. Juridically, the method taken to take over a company is by purchasing shares, either in part or in full, in the company (Abdul R. Saliman, 2005). The acquisition will of course have its legal consequences both on the status of the PT company (Limited Liability Company) and the status of the workers of the PT Company concerned.

If the company buys shares that are placed by Directors or Commissioners, the placement can be evaluated to see if it will lead to unhealthy competition among businesses in the relevant market. If not, the evaluation will be reevaluated based on the size of the shares owned and the market share that the business actor acquiring the shares controls (horizontally). This indicates that both those being taken over and the business actors assuming control are operating in the same pertinent market (Andi Fahmi Lubis, 2009).

Based on the KPPU Decision in Case Number 03/KPPU-M/2014, the KPPU has decided on the alleged violation of Article 29 of Law No. 5 of 1999 in conjunction with Article 5 of Government Regulation No. 57 of 2010 related to the takeover of shares in PT Sukses Abadi Karya Inti by PT Dunia Pangan. Initially, PT Dunia Pangan (hereinafter referred to as the Reported Party) was reported to the KPPU regarding the acquisition of shares in PT Sukses Abadi Karya Inti (hereinafter referred to as the Investigator). However, in the reporting, there was a delay in notification of the share acquisition. Based on the Delay Report made by the Commission, the Chairman of the Commission determined a preliminary examination by issuing Commission Determination Number 04/KPPU/Pen/II/2014 dated 13 February 2014 concerning this case. After determining the preliminary examination, the chairman of the Commission determines the formation of the Commission Council. In this case, the alleged violations committed by the Reported Party include Article 29 of Law Number 5 of 1999 (Putusan KPPU Perkara Nomor 03/KPPU-M/2014, 2014).

Based on the provisions of Article 29 of Law Number 5 of 1999, some elements can be concluded, namely merger or consolidation of business entities, or takeover of shares; the asset value and/or sales value exceeds a certain amount; and must be notified to the Commission no later than 30 (thirty) days from the date of the merger, consolidation or

takeover. The connection regarding the provisions for fulfilling the Article above is between the elements of Article 29 paragraph (1) of Law no. 5 of 1999 with this case is as follows:

- a. The element of "merger or consolidation of business entities, or takeover of shares"
 - (1) That in this element there is the conjunction "or", which according to the Big Indonesian Dictionary (KBBI) has the meaning of a conjunction to mark a choice between several things.
 - (2) In this way, if only one of the "mergers" or "consolidation of business entities" or "takeover of shares" is fulfilled, then this element has been fulfilled.
 - (3) On March 22, 2013, KPPU received notification from PT Dunia Pangan which carried out a share takeover (acquisition of PT Sukses Abadi Karya Inti).
 - (4) In this way, the elements of share takeover have been fulfilled.
- b. The element "asset value and/or sales value exceeds a certain amount"
 - (1) Based on the provisions of Article 29 Paragraph (2) of Law no. 5 of 1999, it is stipulated that provisions regarding the determination of asset value and/or sales value as well as notification procedures are regulated in Government Regulations.
 - (2) As an implementing regulation of the provisions of Article 29 of Law No. 5 of 1999, the Government has issued PP no. 57 of 2010 which contains the value of fund assets or sales value that exceeds a certain amount.
 - (3) That the asset value and/or sales value exceeds a certain amount in Article 5 paragraph (2) PP No. 57 of 2010, namely the asset value of IDR 2,500,000,000,000 (two trillion five hundred billion rupiah) and the sales value of IDR 5,000,000,000,000 (five trillion rupiah). In order to determine whether the asset value and/or sales value exceeds a certain amount and whether business actors are required to report to the KPPU, these two values are calculated based on the sum of the asset value and/or sales value of the business entity resulting from the merger, the business entity resulting from the consolidation, the business entity that acquired the shares of another company, and the business entity that was taken over.
 - (4) Whereas based on the calculation of the asset value and/or sales value, it is a fact that the asset value and/or combined sales proceeds from the share takeover are calculated with details of the asset value amounting to IDR 4,371,896,793,172 (four trillion, three hundred and seventy-one billion, eight hundred and ninety-six million seven hundred and ninety-three thousand one hundred and seventy-two rupiah) and a sales value of IDR 1,917,618,445,275 (one trillion nine hundred and seventeen billion six hundred and eighteen million four hundred and forty-five thousand two

- hundred and seventy-five rupiah) as follows takeover of shares by PT Dunia Pangan for asset values that exceed a certain amount as regulated in the provisions above.
- (5) That in this way the element "the value of the asset and/or its sales value exceeds a certain amount" has been fulfilled.
- c. The element "must be notified to the Commission no later than 30 (thirty) days from the date of the merger, consolidation or takeover"
- (1) That notification of merger of business entities, consolidation of business entities, or takeover of company shares which results in the value of assets and/or sales value exceeding a certain amount must be notified in writing to the KPPU no later than 30 (thirty) days after the legal effectiveness of Merger of Business Entities, Consolidation Business Entity, or Takeover of company shares.
- (2) PT Dunia Pangan notified it in writing on March 22, 2013. Meanwhile, based on the provisions of the Ministry of Law and Human Rights, the date it has become legally effective is calculated from the issuance of a letter of receipt of notification of changes to company data from the Ministry of Law and Human Rights on January 21, 2013. Therefore, PT Dunia Pangan should have reported it to KPPU will take over PT Sukses Abadi Karya Inti no later than March 4, 2013.

At the Commission I Council hearing, the Reported Party submitted a response to the Late Notification Report which contained the following:

- a. The Reported Party misunderstood the provisions of Article 5 paragraph (2) PP No. 57 of 2010, where the understanding of acquisitions that must be notified to the KPPU is acquisitions that result in asset values or sales values that were originally below a certain amount to become above a certain amount.
- b. As soon as KPPU gave the warning and correct understanding, PT Dunia Pangan immediately reported PT Dunia Pangan's acquisition of PT Sukses Abadi Karya Inti in the hope of showing good faith in complying with KPPU provisions.
- c. PT Dunia Pangan is not aware of the imposition of late fines based on Commission Regulation No. 4 of 2012 dated 27 August 2012 because he was last notified that sanctions had not been implemented.

PT Dunia Pangan explained that it did not know the KPPU regulations regarding the acquisition of company shares which could result in monopolistic practices and unfair business competition and misunderstood the KPPU provisions. Regarding the response stating that the Reported Party did not know about the application of late fines, the Investigator responded that in legal science there is a theory of legal fiction that states that when a statutory regulation has been promulgated, at that time everyone is considered to

know (presumption iures). de iure). These provisions are binding so that a person's ignorance of the law cannot free or excuse him from legal action (ignorantia jurist non excusat) (Gede Ari Rama et al., 2023). Thus, this legal fiction theory assumes that everyone knows the law. Based on the facts obtained during the examination, and analysis of the fulfillment of the elements of the article above, the Investigator concluded that the Reported Party was legally and convincingly proven to have violated the provisions of Article 29 of Law no. 5 of 1999 in conjunction with Article 5 PP No. 57 of 2010.

PT Dunia Pangan believes that it has misunderstood the provisions of Article 5 paragraph (2) PP No. 57 of 2010 and did not know about the application of late fines based on Commission Regulation No. 4 of 2012. PT Dunia Pangan requested that the Commission Council consider granting leniency on the following grounds (Putusan KPPU Perkara Nomor 03/KPPU-M/2014, 2014):

- a. PT Dunia Pangan is part of PT Tiga Pilar Sejahtera Food Tbk., a public company whose shares are more than 45% owned by the public, where the imposition of a large fine could result in the loss of public shareholder trust in PT Tiga Pilar Sejahtera Food Tbk.
- b. The Reported Acquisition of PT Sukses Abadi Karya Inti was not proven to have the potential to give rise to monopolistic practices and/or unfair business competition based on KPPU Opinion No. 31/Business Competition Supervisory Commission/PDPT/XI/2013 dated 26 November 2013.
- c. Since PT Sukses Abadi Karya Inti is still in the development stage and requires significant costs, the reported acquisition of the company has not increased income and has only slightly increased assets. Rather, it has increased income requirements.
- d. Apart from understanding the principle that regulation is considered to be known to the public, the Reported Party would like to state that the Reported Party did not receive sufficient socialization regarding the imposition of fines.
- e. The Reported Acquisition of PT Sukses Abadi Karya Inti will help the local and national economy because PT Sukes Abadi Karya Inti will recruit local workers, especially around the factory, and will use supporting raw materials purchased from local suppliers including SMEs. For this reason, the Reported Party hopes that PT Dunia Pangan can be given a suspended sentence so that the fine will be imposed in full if PT Dunia Pangan repeats the delay in reporting again.

After carrying out the Commission Council Deliberation, the Commission Council considered that it had sufficient evidence and assessment to make a decision based on the facts in the trial. The Commission Council assesses, analyzes, concludes, and decides cases

based on sufficient evidence regarding whether or not a violation of Law no. 5 of 1999 which was allegedly committed by the Reported Party in Case Number 03/KPPU-M/2014.

The Business Competition Supervisory Commission (KPPU) Council has read the Decision on Case Number 03/KPPU-M/2014 concerning Alleged Violations of Article 29 of Law Number 5 of 1999 in conjunction with Article 5 of Government Regulation Number 57 of 2010 Regarding the Takeover of PT Sukses Abadi Karya Shares Inti by PT Dunia Pangan in Jakarta. The object of this case is the delay in notification of the takeover of PT Sukses Abadi Karya Inti shares carried out by the Reported Party, PT Dunia Pangan.

According to the facts of the trial, the value of the combined assets resulting from the Share Acquisition calculated up to the Reported Supreme Parent Company (BUI) was IDR 4,371,896,796,172 (Four Trillion Three Hundred Seventy-One Billion Eight Hundred Ninety-Six Million Seven Hundred Ninety-Six Thousand One Hundred Seventy-Two Rupiah), with an acquisition transaction value of Rp. 249,900,000,- (Two Hundred and Forty-Nine Million Nine Hundred Thousand Rupiah). The Commission concluded that the value of the Reported Party's assets exceeded a certain amount as regulated in PP 57 of 2010 and the Reported Party was required to provide written notification to the KPPU. After the Commission Council assessed, and analyzed, it concluded that the Reported Party was late in notifying the KPPU for 13 days. Next, the Case Commission Council 03/KPPU-M/2014 states that the Reported Party's violation of Article 29 of Law Number 5 of 1999 has been shown beyond a reasonable doubt.

CONCLUSION

The research results show that the asset value of PT. Dunia Pangan as the reported party exceeds a certain amount as regulated in PP 57 of 2010 and the Reported Party is required to provide written notification to the KPPU. The asset value and/or sales value exceeds a certain amount in Article 5 paragraph (2) PP No. 57 of 2010, namely the asset value of Rp. 2,500,000,000,000 (two trillion five hundred billion rupiah) and a sales value of Rp. 5,000,000,000,000 (five trillion rupiah). After the Commission Council assessed, and analyzed, it concluded that the reported party was 13 days late in notifying the KPPU. PT Dunia Pangan notified it in writing on March 22, 2013. Meanwhile, based on the provisions of the Ministry of Law and Human Rights, the date it has become legally effective is calculated from the issuance of a letter of receipt of notification of changes to company data from the Ministry of Law and Human Rights on January 21, 2013. Therefore, PT Dunia Pangan should have reported it to the KPPU takeover of PT Sukses Abadi Karya Inti no later than March 4, 2013.

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