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The Implementation of *Pre Merger Notification* in The Draft Law on The Prohibition of Monopoly Practices and Unhealthy Business Competition in Indonesia

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Abstract: *This paper examines the consequences of the Post Merger regime in Law No. 5/1999 concerning the Prohibition of Monopolistic Practices and Business Competition. This research uses the normative juridical method and comparative approach, comparing the American Antitrust Law which has successfully implemented the pre merger notification with the Indonesian Business Competition Law which implements the post merger notification. The results of this study indicate that the importance of implementing the Pre Merger Notification in the draft Law on the Prohibition of Monopolistic Practices and Unfair Business Competition is viewed in a comparison with the success of the Antitrust Law America and supported by the dynamics of globalization of the Industrial Revolution 4.0 which became a challenge for the Business Association Supervisory Commission. Thus, the regime change from Post Merger Notification to Pre Merger Notification is the right step in implementing a merger in Indonesia because Pre Merger Notification provides legal certainty and also more efficient for business actors and KPPU as a preventive effort with the aim that the implementation of Pre Merger Notification will be carried out optimally in achieving the goal of fair business competition*.

Keywords: *merger; notification; business competition; market*.

I. INTRODUCTION

The act of merging, consolidating, and acquisition, whether consciously or not, can affect competition between business actors in the relevant market and impact consumers and society. Merger, consolidation, or acquisition may result in increased or decreased competition, which has the potential to harm consumers and the community.[1] A negative aspect of fair competition in this market can be found if it is unfairly carried out to control the market.[2]

Merger activities carried out by entrepreneurs as a business strategy can

[1] Mustafa Kamal Rokan, *Hukum Persaingan Usaha (Teori Dan Praktiknya Di Indonesia)* (Jakarta: Rajagrafindo Persada, 2010), 215–216.

[2] Suyud Margono, *Hukum Anti Monopoli* (Sinar Grafika, 2009), p.130.

monopolize and create unhealthy business competitions. With this strategy, the company can make large-scale acquisitions to dominate the market and get a broader segment. This excessive control of the market will create great potential for running unfair business competition.

In 1999, Indonesia enacted the Indonesian Competition Law, Law No. 5 of 1999, concerning The Prohibition of Monopolistic Practices and Unfair Competition Business, which came into effect in 2000. The law has a dual purpose of protecting the public interest and increasing the national economy's efficiency. After implementing this matter, the obstacles began to become apparent in the aspect of the law enforcement because the provisions in some of their substances were difficult to implement and many of the substances were ambiguous.[3]

Before the enactment of the Law on the Prohibition of Monopolistic Practices and Unfair Business Competition in Indonesia, the Indonesian government did not pay much attention to the developments in the competition law. Then in 1990, there was a desire to have a comprehensive anti-monopoly law in Indonesia. Many scholars, political parties, non-governmental organizations, and even certain government agencies discussed and proposed the development of antitrust laws.[4]

The proposal to introduce anti-monopoly laws gained momentum when the government signed a letter of intent with the International Monetary Fund (IMF) on July 29, 1998. Under the IMF program, Indonesia is required to pass several laws and regulations to ensure fair competition and consumer and government protection.[5] Thus, the existence of Law no. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition. Regarding the implementation of the Indonesian Competition Law, KPPU has issued 36 guidelines, such as those related to intellectual property rights, abuse of dominant positions, related directorates, collusive tenders, cartels, and mergers and acquisitions.[6]

Since the enactment of Law no. 5 of 1999, there was a change in the economic system in Indonesia, which initially had many economic activities based on collusion, corruption, and nepotism, so that many economic activities were monopolized by certain groups, turning into an economic system based on the principles of fair competition. Since the implementation of a healthy business competition system in 2000, a lot of progress has been made, so that consumers have benefited a lot, which can be seen in the telecommunications and aviation industries. This is consistent with data from the Directorate General of Civil Aviation, Ministry of Transportation, that in 1999 there were 5 (five) airlines, while in 2008, there were 15 (fifteen) airlines in Indonesia. In 1999 the number of passengers on airplanes was 6,365,481 passengers, while in 2008 the number of passengers was

[3] Ningrum Natasya Sirait, 'The Development and Progress of Competition Law in Indonesia' (2009) 54(1) *Antitrust Bulletin,* p. 15, 23.

[4] Hikmahanto Juwana, 'Washington University Global Studies Law Review An Overview of Indonesia ' s Antimonopoly Law AN OVERVIEW OF INDONESIA ' S' (2002) 1(1), p. 186.

[5] Mari Pangestu et al, 'The Evolution of Competition Policy in Indonesia' (2002) 21(2) *Review of Industrial Organization,* p. 205, 186.

[6] Manaek SM Pasaribu, 'Challenges of Indonesian Competition Law and Some Suggestions for Improvement', (2016), ERIA Discussion Paper Series, p. 36.

34,015,98134,015,981.[7]

In principle, KPPU has the authority to control mergers, consolidations, and acquisitions that affect competitive conditions in the Indonesian domestic market. KPPU has the authority to review and decide on mergers, consolidations, and acquisitions. The legal basis for merger control can be found in Articles 28 and 29 of the Indonesian Competition Law. Article 28 prohibits merger or consolidation of business entities and acquisition of shares in other companies, which may result in monopolistic or unfair business practices. Article 29 stipulates that KPPU must be informed about a merger that will result in combined assets, sales, or both exceeding a certain threshold. Where Government Regulation No. 57/2010 stipulates a notification threshold, namely that the combined asset value exceeds Rp.2,500,000,000,000,000 or Rp.20,000,000,000,000 for banks and the combined asset value exceeds Rp.500,000,000,000. Entrepreneurs are prohibited from merging or consolidating business entities or acquiring shares in companies if these actions can lead to monopolistic practices and/or unfair business competition. The law requires employers to notify mergers, acquisitions, or consolidations that exceed the value of certain assets or sales within 30 working days after the date of consolidation, merger, or acquisition of shares. KPPU will review and issue an opinion on the competitive impact of the merger, consolidation, or acquisition within a maximum of 90 working days. Government Regulation No. 57/2010 provides an opportunity for parties to notify KPPU voluntarily (voluntary merger notification) before ending a merger, acquisition, or consolidation. This provision is intended to prevent the parties involved from suffering losses if KPPU decides to cancel the merger, acquisition, or consolidation.[8]

From the provisions of Article 29 paragraph (1) of Law no. 5 of 1999, it can be seen that Indonesia's business competition law adheres to *Post Merger Notification* or notification of mergers after the merger is carried out. The *Post Merger Notification* provisions are different from the settings for the same in developed countries, such as America. In the United States, according to the Clayton Act, Section 7. states that business actors are required to carry out a *Pre Merger Notification* to the United States competition authorities, the Federal Trade Commission (FTC) and the Antitrust Division, which is part of the Department of Justice of United States of America. [9] Likewise, with the provisions of Article 4 number 1 European Community Merger Regulation No. 13/2004 (ECMR), which regulates *Pre Merger Notification* into two types, namely Mandatory Notification, and Voluntary Notification. *Pre Merger Notification* is mandatory for mergers that will lead to a concentration according to the ECMR, namely merger transactions worth more than 500 million euros worldwide and more than 250 million euros for both parties within the European Union.[10]

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7 Kurnia Toha, 'Urgensi Amandemen Uu Tentang Persaingan Usaha Di Indonesia: Problem Dan Tantangan' (2019) 49(1) *Jurnal Hukum & Pembangunan* p. 75, 76.

8 Pasaribu, above no 6.

9 John H Shenefield and Irwin M Stelzer, *The Antitrust Laws A Primer* (The AEI Press, Fourth Edi, 2001), p. 57.

10 The Council Of The European Union, COUNCIL REGULATION (EC) No 139/2004 of 20 January 2004 on the Control of Concentrations between Undertakings (the EC Merger Regulation) 2004 1 Number 2 (''COUNCIL REGULATION (EC) No 139/2004 of 20 January 2004 on the Control of Concentrations between Undertakings (the EC Merger Regulation)'').

However, looking at the proposed merger or merger after obtaining approval from the Board of Commissioners and the General Meeting of Shareholders (GMS). In that case, it is necessary to get prior consent from the "related agencies". The subject matter of the substance of Article 123 paragraph (4) of the Company Law must obtain approval from the relevant agency, not to mention KPPU as a related agency.[11] As a result, the Monopoly and Business Competition Law arises out of sync with the Law on Limited Liability Companies.

Indonesia adheres to a *Post Merger Notification* regime (*Post Merger Notification*) for its Mandatory Notifications. This can be seen in Article 29 paragraph (1) of Law no. 5 of 1999 in which business actors are required to report the occurrence of a merger no later than 30 (thirty) days from the date of the merger. Prior to the enactment of Government Regulation no. 57 of 2010 concerning Merger or Consolidation of Business Entities and Acquisition of Company Shares, which May Result in Monopolistic Practices and Unfair Business Competition, KPPU issued KPPU Regulation No. 1 of 2009 concerning *Pre Merger Notification*, Merger, Consolidation, and Acquisition. In this KPPU regulation, there is a voluntary *Pre Merger Notification* made by parties involved in a merger transaction prior to the merger taking place.[12]

With the *Post Merger Notification* System, data shows the number of Reports on Alleged Violations of Competition Law in Indonesia. At the end of 2019, KPPU handled 4 (four) cases of suspected merger violations related to delay in acquisition notifications. Among them is the delay in acquisition notifications of PT Mitra Barito Gemilang by PT Astra Agro Lestari, Tbk. The acquisition process is 634 days late. PT Terminal Bangsa Mandiri by PT FKS Multi Agro, Tbk notification delay 1,006 days, delay in acquisition notifications of PT Kharisma Cipta Dunia Sejati by PT FKS Multi Agro, Tbk notification delay 889 days and PT Pani Bersama Jaya by PT Merdeka Coopers Gold notification delay 15 days.[13]

As the times have developed, the dynamics of globalization of the Industrial Revolution 4.0 have created challenges for KPPU to maintain economic stability and fair business competition to not cause losses in the future. Therefore, it is necessary to amend the provisions regarding this notification merger. This is also supported by Kartte, who said that by sorting the light comments of an expert from the United States, he gave a parable: "It is very difficult to make a whole egg back from an omelet." Because merger supervision should be the law's implementation, which emphasizes more on prevention (preventive) than correction. Termination of potential negative impacts created by the merger should be done at the earliest possible stage, even before the merger becomes effective.[14] So, Indonesia can follow the merger notification system implemented in America, namely *Pre Merger Notification*.

Indonesia's competition law adopts a *Post Merger Notification*. However, business

[11] Republik Indonesia, Undang - Undang Nomor 5 Tahun 1999 Tentang Larangan Praktek Monopoli Dan Persaingan Usaha Tidak Sehat Subsection 4 (‘‘Undang - Undang Nomor 5 Tahun 1999 Tentang Larangan Praktek Monopoli Dan Persaingan Usaha Tidak Sehat’’).

[12] Toha, above n 7.

[13] Fitri Novia Heriani, *KPPU Tangani 4 Perkara Baru Terkait Merger Hingga Desember 2019, KPPU Sudah Menangani 16 Perkara Merger* (2009) hukumonline.com.

[14] James W Brock, ‘Antitrust, the “Relevant Market,” and the Vietnamization of American Merger Policy’ (2001) 46(4) *Antitrust Bulletin*, p. 735, 744.

actors can voluntarily consult with the KPPU before the merger is completed. One of the problems arising from implementing the *Post Merger Notification* is the possibility that the merger cancellation has become effective. Thus, as a preventive measure, to minimize the chance of KPPU to cancel the merger, *Post Merger Notification* must be changed to *Pre Merger Notification*. Based on best practices that can be seen from the *Pre Merger Notification* system in America, *Pre Merger Notification* is better than *Post Merger Notification* because it is more difficult for KPPU to prohibit a merger that is carried out than to prevent it. The *Pre Merger Notification* regime tends to encourage businesses to seek greater cooperation with competition agencies.[15]

Foreign mergers, consolidations, and acquisitions that occur outside the jurisdiction of Indonesia are the KPPU's attention if they affect competition conditions in Indonesia. Foreign entrepreneurs have a legal obligation to notify mergers, consolidations, or acquisitions. For mergers, consolidations, and acquisitions by foreigners, the KPPU will conduct a case-by-case assessment to determine whether the related merger, consolidation, and acquisition will impact the competition in Indonesia's domestic market[16]

However, although foreign mergers outside Indonesia are KPPU's attention, in fact, KPPU has weaknesses. These weaknesses include the subject of the Indonesian Business Competition Law and whether the Indonesian Business Competition Law applies to business actors outside the country but impacts the Indonesian economy. According to Article 1 point 5, a business actor is any individual or business entity, whether in the form of a legal entity or non-legal entity established and domiciled or carrying out activities within the jurisdiction of the Republic of Indonesia, either individually or jointly through an agreement, organizing various business activities in the economic sector. From this formula, the subject of Law no. 5 of 1999 is anyone who carries out business activities in Indonesia. Thus, the Indonesian Business Competition Law provisions cannot apply to business actors abroad and carry out their activities abroad.

This is different from the provisions of the Business Competition Law in various countries such as America, where the subject of Business Competition Law is not only domestic business actors but also applies to business actors abroad that impact the domestic economy. Even the American Antitrust Law, as stated by Areeda, that the American Antitrust law can examine a person regardless of the perpetrator's personal jurisdiction. Even some other regulations such as; The National Cooperative Research and Production Act, Webb-Pomerene Act, Export Trading Company Act of 1982, also stipulate that foreign business actors can be prosecuted in America are deemed to have violated antitrust laws or have an impact on the American economy. This condition is, of course, very detrimental to Indonesia because Indonesian companies can be tried in other countries, while companies abroad in principle cannot be tried in Indonesia.[17]

In connection with the problems raised earlier, this scientific article aims to determine the success of the *Pre Merger Notification*, which has been implemented in the United States and to analyze the application of the *Pre Merger Notification* in

[15] Pasaribu, above n 6, 34.
[16] Pasaribu, above n 6.
[17] Toha, above n 7.

the Draft Law so that it can be implemented optimally.

II. LEGAL MATERIALS AND METHODS

The research method is basically a series of stepwise procedures or systematic methods used to find the truth in scientific work, in this case, is journal writing, so that it can produce a quality journal, namely a journal that meets the research requirements.[18] All sources come from written materials (printed) related to research problems and other literature (electronic).[19] The approach in research can be divided into two, namely a qualitative approach and a quantitative approach. In writing this journal, the approach used is qualitative; that is, an approach in processing and analyzing data does not use numbers, symbols and/or mathematical variables but with in-depth analysis.

In the discussion, the researchers used a juridical-normative approach, a type of approach that uses statutory provisions in force in a country, or a doctrinal legal approach method, namely legal theories and opinions of legal scientists, especially those related to the issues discussed.[20] The juridical-normative approach used in this study is the approach through positive law, namely examining positive legal rules to find the application of *Pre Merger Notification* in the Draft Law to be optimally implemented in the Unitary State of the Republic of Indonesia.

The approach to the problem will then be sharpened by a comparative approach, and that is the type of approach taken to compare the laws of a country with the laws of another country. The comparative approach used in this research is the comparison made by the American Antitrust Law which has successfully implemented the *Pre Merger Notification* with the Indonesian Business Competition Law which implements the *Post Merger Notification*. The purpose is to understand the differences between *Pre Merger* and *Post Merger* to determine the success of the *Pre Merger Notification* which has been implemented in the United States and to analyze the application of the *Pre Merger Notification* in the Draft Law hence it can be implemented optimally.

Sources of Research Material

The writing of this journal is based on sources of primary research materials and sources of secondary research materials, namely:[21]

1. Primary legal materials, namely binding legal materials[22] such as the 1945 Constitution; Law Number 1999 concerning the Commission for the Supervision of Business Competition and Antitrust Law in effect in America.
2. Secondary legal materials, which explain primary legal materials, such as academic papers. Draft Law, research results, or opinions of legal experts.
3. Third, tertiary legal materials provide guidance and explanation for primary and secondary legal materials such as dictionaries and encyclopedias.[23]

Other materials that are the research object

[18] Soemitro, *Metodologi Penelitian Hukum* (Rineka Cipta, 1990), p.10.
[19] Sutrisno Hadi, *Metodologi Research 1* (Gajah Mada, 1980), p. 3.
[20] Soemitro, above n 18.
[21] Suharsimi Arikunto, *Pengantar Penelitian Hukum* (Rineka Cipta, 2000), p. 234.
[22] Soerjono Soekanto, *Pengantar Penelitian Hukum* (UI Press, 1995), p.52.
[23] Zainal Ammiruddin and Asikin, *Pengantar Metode Penelitian Hukum* (Rajagrafindo Persada, 2006), p. 31–32.

are Books and Legislation concerning Business Law, Commercial Code, Limited Liability Companies, and Business Competitions Supervisors. In addition, to complete the data and information, it is also necessary for the author to conduct interviews with the parties related to this journal writing theme.

III. RESULTS AND DISSCUSSIONS

Implementation of *Pre Merger Notification* in the United States of America

Mergers, consolidations, and acquisitions have become the most popular topics in recent years. At first, this conversation was limited to the business community, but now the general public is familiar with this business terminology. Mergers, consolidations, and acquisitions are seen as a way to expand a business that requires a lot of cost and capital so that the merger will not be carried out if the business prospect is considered unfavorable. In this case, it is not surprising that mergers, consolidations, and acquisitions are not new because, as a form of business development, mergers, consolidations, and acquisitions have gained recognition and their forms, one of which is in the United States since the end of the nineteenth century.[24] In the United States, there are five periods of merger activity starting in 1897. The five periods are known as merger waves. The existence of this merger waves has prompted the birth of regulations related to mergers, consolidations, and acquisitions such as The Sherman Act, which was enacted in 1890, The Clayton Act, which was enacted in 1914, The Celler-Kefauver Act, which was enacted in 1950, Hart- Scott-Rodino Antitrust Improvements Act enacted in 1976, and other regulations. In turn, these regulations inspire the creation of mergers, consolidation, and acquisition arrangements in various other countries in the world.

Pre Merger Notification in the United States, regulated in the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires the parties to conduct a merger or acquisition to notify the Federal Trade Commission (FTC) and the Department of Justice (DOJ) before making improvements to the proposed acquisition. The parties must then wait a certain period of time while the law enforcement agency reviews the proposed transaction. The *Pre Merger Program Notification* became effective on 5 September 1978. *Pre Merger Notification* was established to avoid some difficulties, costs and prevent violations. Prior to the Hart-Scott-Rodino Antitrust Improvements Act of 1976, law enforcement agencies found that violations often occur, and law enforcement agencies cannot fully restore competition once a merger occurs. So that with the *Pre Merger Notification* Program, the Federal Trade Commission (FTC) and the Department of Justice (DOJ) determine which acquisitions tend to be anti-competitive and avoid unwanted things. In general, this law requires that any proposed acquisition of voting rights, non-corporate interests (NCI), or assets be reported to the FTC and DOJ prior to improvement. The parties must then wait based on the stipulated period, i.e., 30 days (15 days in case of cash tender offer or bankruptcy sale), before they can complete the transaction.

Much of the information required for the initial antitrust evaluation is included in the notification filed by the related parties for the proposed transaction. During the waiting

[24] Gunawan Widjaja, *Merger dalam Perspektif Monopoli*, Cet.1, (Jakarta: PT. Raja Grafindo Persada, 2002), p. 42.

period, the law enforcement agency evaluates whether the acquisition is compliant and meets the law's requirements. It depends on the value of the acquisition and the parties' size, as measured by their sales and assets. If either agency determines during the waiting period that further inquiry is necessary, it is authorized by Section 7A (e) of the Clayton Act to request additional information or documentary materials from the parties to a reported transaction (a second request). A second request extends the waiting period for a specified period, usually 30 days (ten days in the case of a cash tender offer or bankruptcy sale), after all, parties have complied with the request (or, in the case of a tender offer or a bankruptcy sale, after the acquiring person complies). This additional time provides the *Pre Merger Notification* agency with the opportunity to analyze the submitted information and to take appropriate action before the transaction is consummated. If the *Pre Merger Notification* agency believes that a proposed transaction may violate the antitrust laws, it may seek an injunction in federal district court to prohibit consummation of the transaction.[25] And if the *Pre Merger Notification* agency believes that a proposed transaction is inviolate the antitrust laws, then the transaction is consummated. The *Pre Merger Notification* Program in the USA has been a success. The company that will conduct the merger complies with the law's requirements and has minimized the number of challenges after the merger. In addition, although the FTC and DOJ still have the strength to challenge *Post Merger* mergers, the fact is that many companies are using the *Pre Merger Notification* program as a tool to assist in advising on acquisitions and mergers.[26]

In the implementation of the *Pre Merger Notification* in the United States of America, there is substantial interaction between the parties related to the merger and the related regulatory agencies. Public trading companies with merger approval must finalize any potential deals with multiple government organizations, including theFederal Trade Commission, the Justice Department's Antitrust Division, and the attorney general. The government agencies involved determine whether the merger hurts competition or creates significant obstacles. If this is detrimental or creates obstacles, the Government Agency has the authority to postpone and prevent the agreement. This study aims to determine whether appointments to the board of directors or management team benefit from bidders during the merger process.[27]

Pre Merger Notification in the United States was governed by the Hart-Scott-Rodino Antitrust Improvements Act of 1976. The 1976 Hart-Scott-Rodino Act established the Federal *Pre Merger Notification* program, provided by the FTC and the justice department with information regarding mergers and major acquisitions before that happened. The party conducting the transaction must submit a notification letter to the FTC (Federal Trade Commission) and DOJ (Department Of Justice). *Pre Merger Notifications* include a Hart Scott Rodino form, otherwise known as "notifications and reports for certain mergers and acquisitions,"

[25] Federal Trade Commission, 'Hart-Scott-Rodino What Is the Premerger Notification Program ?' (March), online access on https://www.ftc.gov/sites/default/files/attachments/premerger-introductory-guides/guide1.pdf, access on 28 March 2020, p.25.

[26] Federal Trade Commission, 'What Is the Premerger Notification Program ?', above n 25.

[27] Stephen P Ferris, Reza Houston and David Javakhadze, 'Friends in the Right Places: The Effect of Political Connections on Corporate Merger Activity' (2016) 41 *Journal of Corporate Finance*, p. 81, 83.

with information about each company's business.[28]

In America, *Pre Merger Notification* is supervised and handled by theFederal Trade Commission (FTC). If it is equated with the State of Indonesia, the FTC is the KPPU (Commission for the Supervision of Business Competition). The FTC is a bipartisan federal agency whose aim is to protect consumers by stopping unfair, deceptive, or fraudulent practices in the marketplace. The FTC's job is to carry out investigations, prosecute companies and people who break the law, develop rules to guarantee a vibrant market, and educate consumers and businesses about their rights and responsibilities. The FTC works closely with international institutions and organizations to protect consumers in global markets.[29]

The *Pre Merger Notification* System in the USA is overseen by the Federal Trade Commission (FTC) and the Antitrust Division of the Department of Justice to manage merger activity. Under the Hart-Scott-Rodino Act's Antitrust Improvements Act, which was enacted in 1976, parties wishing to merge are required to provide a *Pre Merger Notification* to the Federal Trade Commission (FTC) and the Antitrust Division of the Department of Justice and the Assistant Attorney General. The decision to prevent the proposed merger is based on criteria such as the joint market share of the joint entity, the availability of substitute products, and competitors' ability to purchase *Post Merger* products. If the supervisory agency determines the agreement does not limit market competition, then a merger can occur, and the company can join.[30] If the Supervisory Agency has concerns about the merger's effects, the company can make a second information request. Based on data from the Federal Trade Commission website from 1997 to 2013, between 2.1% and 4.5% of all transactions reviewed annually by the FTC received a second request.[31] The Department of Justice requested additional information from about 2.0% to 4.1% from mergers annually from 1998 to 2005. This information is needed to address merger concerns and determine whether the merger is postponed or rejected, or accepted.

The provisions of the *Pre Merger Notification* in the United States based on the Hart-Scott-Rodino Antitrust Improvements Act of 1976 are as follows:

1. **Establishing the Report**

   The Act requires related parties to consider proposed business transactions that meet certain size criteria to report their intention to merge to law enforcement agencies (FTC and DOJ) prior to executing a transaction. If a proposed transaction is reported, the acquirer and the person whose business is being acquired must send information about their respective business operations to law enforcement agencies and wait a certain period of time before executing the proposed transaction. During that waiting period, law enforcement agencies reviewed the antitrust implications regarding the proposed transaction, whether these transactions can be reported and determined by the application of laws, regulations, and

[28] Federal Trade Commission, 'Hart-Scott-Rodino What Is the Premerger Notification Program ?', above n 25.

[29] Federal Trade Commission, *What We Do* (2020) Federal Trade Commission, online on: https://www.ftc.gov/about-ftc/what-we-do, accesed on: 28 MArch 2020.

[30] Ferris, Houston and Javakhadze, above n 27.

[31] Federal Trade Commission, "Annual Reports To Congress Pursuant To The Hart-Scott-Rodino Antitrust Improvements Act Of 1976," Federal Trade Commission, 2019, https://www.ftc.gov/policy/reports/policy-reports/annual-competition-reports.

formal and informal interpretations. The Laws and Regulations require that the acquiree and the acquired parties file a notification if they meet the following requirements:

a. As a result of the transaction, the acquirer will have the aggregate amount of the acquiree's securities, NCI and/or assets of more than $ 200 million (adjusted), regardless of the sale or assets of the acquisition and the acquired persons; or
b. As a result of the transaction, the acquirer will have the aggregate amount of the acquiree's securities, NCI and/or assets worth more than $ 50 million (adjusted) but $ 200 million (adjusted) or less; and
c. The person has at least $ 100 million in sales or assets (as adjusted); and
d. The other person has sales or assets of at least $ 10 million (as adjusted).

2. Size of Transaction Test

The first step is to determine what sound securities, NCI, assets, or a combination thereof are being transferred in the proposed transaction. Then the value of the securities, NCI, and/or assets, as well as the percentage of ballot papers and NCI that will be held, must be determined as a result of the acquisition. Calculating what will be held as a result of the acquisition is also known as the transaction size. It is complex and requires the application of several rules, including the 801.10, 801.12, 801.13, 801.14, and 801.15 Rules.[32]

The amount of the transaction test is related to the value of what is being obtained. Since the purpose of the *Pre Merger Notification* Program is to analyze the effects of a separate business combination, the general rule requires that the assets, ballot papers, or NCIs of the persons already acquired must be combined with those to be acquired in the proposed transaction. When what has been purchased and what will be purchased in the current acquisition meet the transaction criteria' size, the transaction will be considered by law enforcement agencies (FTC and DOJ).[33] Generally, securities and/or NCI held as a result of a transaction are similar to securities and/or NCI from the acquiree or in the acquiree, which is already owned by the acquirer. Assets held as a result of the acquisition include those to be acquired in a proposed transaction as well as certain assets of the acquirer that the acquirer buys within the time limit described in rule 801.13. If the value of the ballot, NCI, assets, or a combination thereof exceeds $ 200 million and no exemptions apply, the parties must file a notice and await a law enforcement agency decision before closing the transaction. If the value of the ballot paper, NCI, assets, or a combination thereof exceeds $ 50 million, but $ 200 million (adjusted) or less, the parties should look to each party's test size of the transaction.[34]

[32] Federal Trade Commission, 'Hart-Scott-Rodino What Is the Premerger Notification Program ?', above n 25.

[33] Federal Trade Commission, 'Hart-Scott-Rodino When You Must File a Premerger Notification Report Form', onlice on: https://www.ftc.gov/sites/default/files/attachments/premerger-introductory-guides/guide2.pdf, p. 4, accessed on 28 March 2020.

[34] Federal Trade Commission, 'Hart-Scott-Rodino What Is the Premerger Notification Program ?', above n 25.

3. Actuires the Acquiree/Acquired Entity

The first step in determining the size of the person is to identify "acquirers" and "acquiree". "Person" defined in rule 801.1 (a) (1) is both a buyer and a seller. Thus, in an asset acquisition, the person who acquires (acquirer) is the buyer, and the person acquired (acquiree) is the seller. An acquired entity is an entity whose assets are acquired. In a voting acquisition, the acquirer is the buyer. The acquirer is the seller of the entity whose assets were purchased. The acquired entity is an expense for the securities purchased. In an NCI acquisition, the acquirer is the buyer, the acquirer is the entity that NCI purchased, and the acquired entity is the entity that NCI is acquired.

4. Size Of Person Test

After the acquirer and acquiree are determined, you must determine whether the size of each person meets the statutory minimum size criteria. This "person measure" test generally measures a company based on a recent annual statement prepared periodically by a person with income and expenses and a recent balance sheet prepared regularly. If the value of the ballot, NCI, assets, or a combination thereof exceeds $ 50 million, but $ 200 million (adjusted) or less, the person test measure is met, and no exemptions apply, the parties must file notification and await the judgment of the law enforcement agency before closing the transaction.

5. Free Transactions

In some cases, a transaction may not be reported even though the size of the person and transaction have been met. The laws and regulations provide for several exceptions. For example, the acquisition of certain assets in the ordinary course of a person's business is excluded, including new goods and current inventory. For example, an airline buys a new jet from a manufacturer, or a supermarket buys its inventory from a wholesale distributor. The acquisition of certain types of real estate also requires no notification. In addition, the acquisition of foreign assets will be exempted where the sale inside or outside the US caused by the assets is $ 50 million or less. Once it has determined that a particular transaction is reportable, each party must notify the FTC and the DOJ. Also, any acquirer must pay a filing fee to the FTC for every reported transaction.

6. Reported Information

In general, party filing is needed to identify the people involved and structure the transactions. Reporters must also provide certain documents such as balance sheets and other financial data and copies of certain documents filed by the Securities and Exchange Commission. The parties must also submit specific planning and evaluation documents relating to the proposed transaction. It then requires the parties to disclose whether the acquirer and the acquired entity currently derive income from its business and inform them of the geographic areas they operate in. The acquirer must also describe the previous acquisitions in the last five years of the company or assets involved in the business. The acquirer must complete Forms for all of their operations.

7. Certification and Written Statements

Rule 803.5 specifies a written statement that must accompany certain Forms. A written statement must be submitted in a transaction where the acquirer buys voting securities from the shareholders. The acquirer must state in a written statement that it has good faith intentions to complete the proposed transaction and provide the acquiree with notice of potential reporting obligations. In all other transactions, each acquiree and acquirer must submit a statement with their Form, attesting to the fact that the contract, principle agreement, or letter of intent has been executed and that each person has good intentions to complete the proposed transaction. Rule 803.6 states that the Form must be certified and the rules specify who must certify. One of the main objectives of certification is to preserve the proven value of the records and to place the responsibility on a person to ensure that the information reported is accurate and complete. Both certification and written statements must be made to be legally valid.

8. **Filing Procedure**

Parties must complete and return original documents and a copy of the Form, together with a set of documentary attachments, to the *Pre Merger Notification* Office, Competition Bureau, Federal Trade Commission. Together with a set of documentary attachments, three copies of the Form must be sent to the Department of Justice, Antitrust Division.

9. **Form Submission Fees**

The filing fee is based on a three-tier system that binds the amount paid to the total value of securities, NCI, or assets held as a result of the acquisition.

Value of Securities, NCI, or Assets Held	**Total Cost**
More than $50 million but less than $100 million	$45.000
$100 million or more but less than $500 million	$125.000
$ 500 million or more	$280.00

For transactions in which more than one person is considered the acquirer, each acquirer must pay an appropriate fee. In addition, the acquirer will have to pay some filing fees if a series of acquisitions are reported separately. The filing fee must be paid upon filing to the "Federal Trade Commission" by electronic, wire transfer, bank cashier check, or certified check.

10. **Waiting Period**

After filing, the parties concerned must wait. The waiting period is 15 days for acquisitions reported by the cash tender offer vehicle, as well as for acquisitions subject to certain federal bankruptcy and 30 days for all types of reportable transactions. The waiting period may be extended by the issuance of requests for additional information and documentary material. The waiting period that will end on a Saturday, Sunday or an official holiday will end on a normal working day on the following day.

11. **Review of Forms (Filing)**

After the Forms have been submitted, law enforcement agencies initiate document reviews from relevant parties. The FTC is responsible for the administration of the Program *Pre Merger Notification*. The *Pre Merger Notification* Office (PNO) determines whether a Form complies with the Laws and Regulations. This Form is given to PNO staff members to assess whether the transaction is compliant and has been filled in completely and clearly. If filing seems lacking, staff members will notify relevant parties to correct the error. When the PNO determines that the Form complies with all filing requirements, a letter is sent to the parties identifying the start and end of the waiting period, as well as the transaction number assigned to the filing.

12. Antitrust Review of Transactions

FTC and DOJ conduct preliminary substantive reviews of the proposed transactions. The two agencies analyze the submission of forms to determine whether the acquiring and acquiring companies are complying with regulations and influencing competition. Staff members depend not only on the information included in the Forms but also on publicly available information. The individuals who analyze Forms often have experience with markets or companies that are involved in certain transactions. As a result, they have the industry expertise to assist in evaluating the likelihood of a merger as dangerous or not.[35]

Application of *Pre Merger Notification* in the Draft Law so that it can be implemented optimally

Het Recht Hink Achter De Feiten Aan, where the term definition of the Dutch legal motto is law or legislation behind the events that appear in society. The law is constantly struggling to catch up with the events/facts it is supposed to regulate.[36] This reinforces that the existence of opinions from the public and experts will provide better changes in the Business Competition Law material so that it can be implemented optimally.

At this time, technological developments are growing rapidly, from interconnection, data analysis, and sensor technology which gave rise to ideas to make technology develop and become the next Industrial Revolution, namely, the Industrial Revolution 4.0. This phenomenon is believed to be able to provide many benefits, including improving the speed of production flexibility, improving service to customers, and increasing collective income.[37] Seeing this reality, the existence of the Industrial Revolution 4.0 is an important matter that the state as a policyholder must be aware of, because it is feared that it could become a threat to the stability of the country's economy. The impact of the industrial revolution will cause problems, especially in the form of business competition, in which entrepreneurs will certainly take advantage of this phenomenon to be able to dominate the trade market. This certainly can lead to unfair competition.[38]

Referring to Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition in Articles 28 and 29, it states that the existence of a merger of a company has the potential for unfair business competition practices,

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[35] Ibid.

[36] Hassanain Haykal, 'Pembangunan Hukum Siber Guna Pemanfaatan Ekonomi Berbasis Teknologi Informasi Dalam Rangka Mewujudkan Ketahanan Nasional' (2017) 9(1) *Dialogia Iuridica: Jurnal Hukum Bisnis dan Investasi,* p. 58, 38.

[37] Heiner Lasi et al, 'Industry 4.0' (2014) 6(4) *Business and Information Systems Engineering,* p. 239, 239.

[38] Farid Ibrahim Suhandi, 'Kebijakan Pre-Merger Notification Badan Usaha Sebagai Penegakan Hukum Di Era Revolusi Industri 4.0' (2019) 3(2) *Lex Scientia Law Review,* p. 129, 130.

therefore if it is linked to the Industrial Revolution 4.0 Therefore, the high desire of companies to conduct mergers is predicted to be higher so that in this case it becomes a challenge for the Business Competition Supervision Commission (KPPU) to be able to protect market conditions as dynamically as possible and how to resolve any problems that arise. With the Industrial Revolution 4.0, it is necessary to optimize the authority of KPPU in order to adjust to market dynamics. The merger of a company is a situation that has the potential to create a form of unfair business competition. This is of course the KPPU's authority to be able to provide supervision and evaluation on this matter, however, with the *Post Merger* provisions still in effect, there is a possibility that a merger cancellation will result in losses suffered by the company. Therefore, it is necessary to change the provisions to become *Pre Merger Notification* as a preventive measure to minimize unwanted losses because it is better to do prevention than correction.

Thus, it is hoped that KPPU will be able to become the main protector of creating a fair and conducive market condition so that Indonesia is still able to maintain economic stability so that there is no unfair business competition or monopolistic practices.[39] That is, a merger can have a positive impact when it manages to allocate efficiently and effectively the use of existing resources to create new products or new technologies that are useful to society. An example is a merger between a new company that has high technology but minimal funds with a large company that has a large excess of funds through the merger, the company resulting from the merger will have the ability to create new products using technology resources owned by the new company and use the source of funds owned by these large companies. [40] In her study, Maria Vaglia Sindi concluded that the effective implementation of competition law is a difficult task, requiring a high level of knowledge and expertise. The initial structural conditions that occur in the transition economy from protection to liberalization, especially in developing countries like Indonesia, make the implementation of competition law a more challenging task than the implementation of competition law in developed countries. Entry barriers arising from high market concentration, government control and ownership, and administrative barriers are all high in transition economies.[41] .

In the United States, the position of competition law (Antitrust Law) is likened to the Magna Carta for freedom of business. Where economic liberty and freedom of effort systems are as important as the Bill of Rights which protects human rights in the United States. In the American Antitrust Law, as stated by Areeda, that the American Antitrust law can examine a person regardless of the personal jurisdiction of the perpetrator. This means that the subject of Business Competition Law is not only domestic business actors, but also applies to overseas business actors who have an impact on the domestic economy. That every business actor in the country as well as business actors abroad can be tried in America if they are deemed to have violated antitrust laws or have an impact on the

39 Ibrahim Suhandi, above n 38.

40 Perdana A Saputro, *Hukum Meger Indonesia Dalam Konteks Hukum Persaingan Usaha* (CR Publising, 2012), p. 11.

41 Maria Vagliasindi, ‘Competition Across Transition Economies: An Enterprise-Level Analysis of The Main Policy and Structural Determinants’ (68, 2001), p. 6.

American economy.[42] In one competition law case, a court in the United States convicted a Canadian-based oil company, Imperial Oil, to divest its stake in Standard Oil because the monopoly carried out by Standard Oil through its construction trust was deemed to endanger the US economy. In its development, the United States government issued The Foreign Trade Antitrust Improvements Act in 1976 in essence that the firm legitimacy for the United States' competition law to be applied to actions that took place outside the United States but directly and substantially affected trade in the United States.[43]

Unlike in the State of Indonesia, the legal subject of competition law in Indonesia is domestic business actors as described in Article 1 point 5 of Law no. 5 of 1999 "business actor is any individual or business entity, whether in the form of a legal entity or non-legal entity established and domiciled or carrying out activities within the jurisdiction of the Republic of Indonesia, either individually or collectively through an agreement, to carry out various business activities in economics". From this formula, the subject of Law no. 5 of 1999 is anyone who carries out business activities in Indonesia. This is undoubtedly detrimental to Indonesia, because Indonesian companies can be tried in other countries, but foreign companies that violate them cannot be prosecuted in Indonesia. In the United States according to the Clayton Act, Section 7, it states that business actors are required to carry out a *Pre Merger Notification* to the United States competition authorities, the Federal Trade Commission (FTC) and the Antitrust Division which is part of the Department of Justice of The United States, of course, aims to prevent unfair business competition or monopolistic practices.

There are examples of cases in Case No. 09/KPPU-L/2009, PT Carrefour Indonesia acquired 75% (seventy-five percent) of the shares of PT Alfa Retailindo, Tbk. (Alfa) in January 2008. In this case, KPPU assessed that the acquisition made by PT Carrefour Indonesia against PT Alfa Retailindo, Tbk, was suspected of violating Law no. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition. Article 17 violations committed by Carrefour include, among others, Article 17 prohibiting control over production tools and control of goods which can trigger monopolistic practices, Article 20 concerning the prohibition of predatory pricing or selling at a loss, Article 25 paragraph (1) contains the dominant position in determining conditions. trade to prevent consumers from obtaining competitive goods and or services, both in terms of price and quality, and Article 28 concerning the prohibition of merging or consolidating business entities which may result in monopolistic practices and or unfair business competition.[44]

After Carrefour acquired PT Alfa Retailindo, Carrefour allegedly controlled the retail market 48.38%, an increase from 37.98% previously. Carrefour is also suspected of controlling 66.73% of the supplier market from 44.72% previously. The soaring market share made Carrefour company freely charge its suppliers high costs.[45] On November 11, 2009, the Business Competition Supervision Commission

[42] Toha, above n 7.

[43] Takaaki Kojima, 'International Conflicts over The Extraterritorial Application of Competition Law in Borderless Company' [2002] (57) *New York* 2001, p. 3.

[44] detikFinance, *Kasus Akuisisi Alfa, Nasib Carrefour Ditentukan Besok* (2009) detikFinance.

[45] Tempo.co, *Akuisisi Alfa - Carrefour Terancam Bubar* (2009) Tempo.co.

(KPPU) decided that PT Carrefour Indonesia was guilty of monopolistic practices by acquiring PT. Alfa Retailindo was proven legally violating Article 17 paragraph (1) and Article 25 paragraph (1) Law no. 5 of 1999. Therefore, KPPU ordered to release all of its 75 percent ownership shares in PT Alfa Retailindo, Tbk, to parties that are not affiliated with PT. Carrefour Indonesia no later than one year after the verdict is final. The KPPU also punished PT Carrefour Indonesia to pay a fine of Rp. 25 billion that had to be deposited in the State treasury as payment for income from violations in the field of trade business competition.[46] Then, several years ago, Carrefour was also involved in problems with KPPU. In August 2005, KPPU found Carrefour guilty of violating Article 19 (1) of Law no. 5 of 1999. Carrefour was fined Rp. 1.5 billion. Besides, Carrefour was asked to stop the minus margin policy in trading terms for suppliers of goods.[47]

Unlike the case with countries that have implemented *Pre Merger Notification*, the failure rate of mergers is very few and the success of mergers and acquisitions is dominant. Here are some companies that have successfully merged, including:

1. Pfizer and Allergan
   The merger of these two companies is quite successful and has fantastic value, with a value of US $ 191 billion. Pfizer is a giant pharmaceutical company from America, while Allergan is an Irish company. They had previously announced to conduct a merger in November 2015. The merger of these two companies became a merger agreement of extraordinary value and even the second largest after the acquisition of the Mannesman company by the Vodafone company in 1999.[48]
2. Disney and Pixar
   In 2006, Walt Disney acquired Pixar for $ 7.4 billion. Since mergers and acquisitions, films such as Finding Dory, Toy Story 3, and WALL-E have generated billions of successes. Three years after the Pixar acquisition, Disney CEO Bob Igner acquired Marvel for $ 4 billion. Thus, 11 Marvel films have successfully generated over $ 3.5 billion in revenue since the acquisition.
3. Google and Android
   In 2005, Google acquired Android for $ 50 million. At that time, Android was an unknown cell phone company. So this move allows Google to compete in Microsoft's market with Windows Mobile and Apple's iPhone. Mergers and acquisitions between Google and Android are a successful example, and 54.5 percent of smartphone customers in the United States used Google Android devices in May 2018.
4. H.J. Heinz and Kraft Foods Merger
   In 2015, the two companies agreed to a $ 100 billion merger. The newly formed Kraft Heinz Company became the third-largest food and beverage company in the United States and the fifth-largest worldwide. Many household food brands such as Philadelphia, Capri Sun, and Heinz tomatoes are now under one company. The two companies have successfully merged.
5. Dow Chemical and DuPont

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46 "KPPU : Carrefour Terbukti Melakukan Monopoli", kompas.com, last modified 2009, accessed 31 Mei, 2020 pukul 22.47 WIB, https://ekonomi.kompas.com/read/2009/11/03/17533698/kppu.carrefour.terbukti.melakukan.monopoli

47 detikFinance, above n 44.

48 Novriyanto, *5 Perusahaan Hasil Merjer Yang Sukses* (2015) koinworks.com.

In 2015 Dow Chemical and DuPont merged for $ 130 billion, and the merger took place in 2017. The merger between Dow Chemical and DuPont is seen as an example of a successful merger aimed at creating a highly focused business in materials science, agriculture, and other specialty products. This joint venture is known as DowDuPont inc and is listed on the New York stock exchange. Dow chemical shareholders receive a fixed exchange rate of 1.00 DowDuPont shares for each Dow chemical market share they own. And to the other hand, DuPont shareholders receive a fixed exchange rate of 1.282 DowDuPont shares for every existing DuPont share[49]

In connection with the Industrial Revolution 4.0 era's progress and seeing the many problems of mergers in Indonesia by comparing the fairly high success rate with countries implementing *Pre Merger Notification*, KPPU should change the policy direction from *Post Merger Notification* to *Pre Merger Notification* because KPPU can take preventive action through earlier supervision before the company carries out the merger, because if it continues to implement the *Post Merger Notification* form, it will indirectly hinder the development of the economic process in the era of the Industrial Revolution 4.0 because of the problems that arise after the merger, namely the potential for new reports that indicate unfair competition practices, and will resulting in the dissolution of the joint company for the merger that has been carried out, then the role of KPPU in supervising the merger practice of a business entity is currently considered less than optimal, because the supervisory mechanism There are companies only stipulating that the merger is reported no later than 30 (thirty) days from the date the merger takes effect and in practice the current role of KPPU regarding the merger or merger of a company is only to act as an advisor and provide notification which is not an obligation for the company. As a logical consequence of the *Post Merger Notification* implementation, it may create the possibility of a situation where the KPPU can cancel the merger of business actors who have conducted the merger because they are considered contrary to the spirit of fair business competition. With this possibility, it is, of course, very detrimental to business actors and the state. Therefore, the regulation regarding merger notification in Indonesia should be abandoned and updated because, in fact, almost all business competition law jurisdictions in other countries apply *Pre Merger Notification*.

This is in line with the development of business competition law jurisdictions in other countries, which have implemented many *Pre Merger Notifications*, because they are considered to be more beneficial for both parties, namely the state and business actors.[50] Even so, Government Regulation Number 57 of 2010 concerning Merger or Consolidation of Business Entities and Acquisition of Company Shares Which May Result in Monopolistic Practices and Unfair Business Competition has regulated business actors to conduct pre-notification reporting in the form of consultation. However, this does not eliminate the obligation of business actors to report after the merger, acquisition or consolidation actions are completed legally effective. Of the 85 reports submitted by business actors up to December 2017,

[49] Lewis Marsha, *Examples of Most Successful Company Mergers and Acquisitions of All Time* (2020) dealroom.net.

[50] Ibrahim Suhandi, above n 38.

KPPU only received one report in consultations in the manufacturing industry. [51] This occurs, because business actors prefer to use *Post Merger Notification* rather than *Pre Merger Notification.* Based on this, it is appropriate to change the regime from *Post Merger Notification* to *Pre Merger Notification* with the aim that business actors have the obligation to report pre-notification not only in the form of consultation.

This is supported by the Commissioner Member and KPPU Spokesperson statement, Guntur Saragih, assessing that the *Pre Merger Notification* scheme provides more legal certainty for business actors regarding these business actions. Because with the *Post Merger Notification* sceme, there is a risk of cancellation if the merger, consolidation and acquisition action violates business competition.[52] The *Pre Merger Notification* scheme was implemented more efficiently by KPPU to ensure that previously mergers, acquisitions, and consolidations did not conflict with Law No. 5 of 1999 because every business actor is required to notify the KPPU regarding matters of merger implementation and whether the merger has met the values in accordance with the applicable regulations. Based on the application of various countries, the *Pre Merger Notification* regime is more appropriate because it can promote increased business competition and balance market concentration. Thus, the State of Indonesia is expected to be able to implement *Pre Merger Notification* in the draft law so that it can be optimally implemented as the United States has successfully implemented the *Pre Merger Notification* policy.

Merger Implementation in Limited Liability Company Law.

Merger or merger in the limited liability company law states: "Merger is a legal action taken by one or more companies to merge with another existing company, resulting in the assets and liabilities of the merging Company being transferred due to the law to the company accepting the merger. and subsequently the status of the merging Company legal entity ends because of the law ".[53] The status as a legal entity will expire from the date the merger comes into effect.[54]

The Limited Liability Company Law also states that the legal action of a merger or merger must take into account the interests of certain parties, which consist of:[55]

a. The interests of the Company, minority shareholders, company employees;
b. The interests of creditors and other business partners of the Company, and;
c. Public interest and healthy competition in doing business.

After obtaining approval from the Board of Commissioners and the General Meeting of Shareholders (GMS), the proposed merger or merger is required to obtain prior approval from the “related agencies”. However, the Limited Liability Company law only states that the related institution is Bank Indonesia if it is related to banking companies and institutions related to the capital market for public companies. The law does not mention that KPPU is related to

[51] KPPU, *Laporan Kinerja Komisi Pengawas Persaingan Usaha 2017* (KPPU, 2017), p. 8.

[52] Mochamad Januar Rizki, *Wacana Pre-Merger Notification Menguat Dalam Revisi UU Persaingan Usaha KPPU Dapat Membatalkan Aksi Merger, Konsolidasi Dan Akuisisi Yang Telah RampunG* (2019) hukumonline.com.

[53] Republik Indonesia, Undang-Undang No 40 Tentang Perseroan Tebatas 2007 1 Subsection 9 (‘‘Undang-Undang No 40 Tentang Perseroan Tebatas’’).

[54] Muhammad Yahya Harahap, *Hukum Perseroan Terbatas* (Sinar Grafika, 2019), p. 485.

[55] Harahap, sec. 486.

Business Competition.[56]

This means that the concept of the Monopoly and Business Competition Law is *Pre Merger* as the Limited Liability Company Law. Although the Monopoly and Business Competition Law is a lex specialist and the Company Law, in this case, it must be synchronous because the Limited Liability Company Law states that mergers or mergers must meet the requirements of taking into account the interests of certain parties, one of which is the interests of the community and fair competition in doing business.

IV. CONCLUSION

The implementation of the *Post Merger Notification* regime in the Monopoly and Business Competition Law has caused many problems of business competition which gives the public a loss for monopolistic practices and business competition so that *Post Merger Notification* obligations are not effective enough to prevent unfair business competition in Indonesia. The application of the *Post Merger* regime in the Law on Monopoly and Business Competition is apparently out of sync with the Limited Liability Company Law, which states that the merger or merger process must obtain approval from the relevant agencies, namely in the interests of the community or business competition. Although the Company Law does not mention KKPU as a related agency.

Merger, consolidation, and takeover activities are carried out to maximize company value to business actors and void monopolistic practices and unfair business competition. Therefore, the activities of mergers, consolidations, and share acquisitions require approval from the Business Competition Supervisory Commission. Thus, the idea of a regime changes from *Post Merger Notification* to *Pre Merger Notification* should be done as a change in the Business Competition Supervisory Commission (KPPU) to create a better balance market dynamics in maintaining economic stability in the business competition so that there will be no monopolistic practice or unfair competition.

Indonesia should emulate countries such as the United States that have successfully implemented *Pre Merger Notification*. Because the *Pre Merger Notification* policy certainly has a positive impact on business actors, KPPU, and the State and KPPU are more efficient in carrying out supervision and prevention earlier than canceling the merger after the merger is implemented.

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