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Evaluating Indonesia's Merger Control: The Case for Mandatory Pre-Merger Notification

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Abstract: Indonesia's merger, acquisition, and consolidation notification regulations currently follow a *Post-Merger Notification* regime under Law No. 5 of 1999 and Government Regulation No. 57 of 2010. However, this ex-post supervision is ineffective at preventing monopolistic practices and unfair competition, as post-facto transaction cancellations create legal uncertainty, reputational damage, and financial losses for business actors. This study evaluates the effectiveness of the current notification mechanism and analyses the urgency of transitioning to a *Pre-Merger Notification* regime. Using doctrinal legal research with statutory and conceptual approaches, the findings show that the post-notification system focuses heavily on administrative late-reporting penalties. At the same time, voluntary pre-transaction consultations remain inefficient because post-notification remains mandatory. Furthermore, the Business Competition Supervisory Commission (KPPU) faces operational constraints, including a rigid 90-day assessment timeframe and difficulty obtaining relevant market data, particularly for high-value digital startup acquisitions that do not meet the asset/turnover thresholds. Consequently, this study advocates for a regulatory shift toward a mandatory *Pre-Merger Notification* regime to enable early ex-ante prevention of anti-competitive practices, provide legal certainty for business actors, and reinforce KPPU's supervisory function to foster a fair business climate in Indonesia.

Keywords: *Merger Notification*, *Pre-Merger Regime*, *KPPU*, *Business Competition*, *Corporate Compliance.*

1. Introduction

Indonesia, with its cultural and social diversity, brings its own colour to activities, including economic ones. To achieve efficient economic growth, including industrialisation, developing countries such as Indonesia must

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foster a competitive environment. Companies drive this competition, leading to price competition, improved product quality, and better service to attract consumers.[1] To attract customers in a competitive market, businesses must offer lower prices, superior quality, and excellent service through continuous product innovation and technological advancement.[2]

In an increasingly globalised economy, corporate growth through mergers, acquisitions, and consolidations (MAC) is a primary vehicle for business expansion, asset consolidation, and market development.[3] Under Law No. 40 of 2007 on Limited Liability Companies (Law No. 40 of 2007) and Law No. 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition (Law No. 5 of 1999), the Indonesian government recognises MAC transactions as legitimate corporate actions, provided they do not result in monopolistic practices or market distortion.[4]

To navigate intensifying market competition, companies frequently pursue external growth through corporate restructuring. Under Article 28 of Law No. 5 of 1999, mergers, consolidations, and share acquisitions that risk creating monopolistic practices or distorting competition are prohibited. Qualifying transactions that exceed statutory asset or sales thresholds must be notified to the Business Competition Supervisory Commission (KPPU) within 30 days of deal execution. [5]

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[1] Muhammad Gary Gagarin Akbar, Yuniar Rahmatiar, and Rizki Amanda, "Akibat Hukum Atas Keterlambatan Memberikan Notifikasi Akuisisi Dikaitkan Dengan Undang-Undang Nomor 5 Tahun 1999 Tentang Larangan Praktek Monopoli Dan Persaingan Usaha Tidak Sehat (Studi Putusan Komisi Pengawas Persaingan Usaha Nomor 20/KPPU-M/2020)," *Justisi: Jurnal Ilmu Hukum* 7, no. 2 (2022): 31–48.

[2] Rezmia Febrina, "Persaingan Usaha Pada Era Digital Menurut Persepektif Hukum Persaingan Usaha," *Jurnal Karya Ilmiah Multidisiplin (JURKIM)* 2, no. 1 (2022): 121–27.

[3] Ridha Hitalalla Hayuningtyas Soetomo and Nyulistiowati Suryanti, "Notifikasi Pengambilan Saham Oleh Kppu Dalam Upaya Menjalankan Fungsi Pengawasan Berdasarkan Hukum Persaingan Usaha," *Paulus Law Journal* 4, no. 2 (2023): 69–84.

[4] Anggie Fauziah Dwiliandari, "Dilematika Pelonggaran Pengawasan Aksi Merger Sebagai Kebijakan Reformasi Pemulihan Ekonomi," *Jurnal Persaingan Usaha* 1, no. 1 (2021): 39–53.

[5] Moch Dzulyadain Nasrulloh, "Dampak Keterlambatan Pemberitahuan Pengambilalihan Saham Perusahaan Terhadap Larangan Praktik Monopoli Dan Persaingan Usaha Tidak Sehat," *Jurnal Suara Hukum* 3, no. 1 (2021): 143–73.

Under Article 29 of Law No. 5 of 1999 and Article 5 of Government Regulation (GR) No. 57 of 2010, Indonesia operates an *ex-post* merger control system. This regime obligates business actors to submit a written notification to the Business Competition Supervisory Commission (KPPU) within 30 business days after a transaction becomes legally effective, provided statutory asset or turnover thresholds are met. Although designed to monitor market concentration, this post-notification architecture has structural defects. In practice, the system primarily penalises late filings—imposing administrative fines of up to IDR 25 billion—rather than effectively detecting and preventing anti-competitive market concentration before deal completion.

The post-merger regime creates severe legal uncertainty and economic risk for business actors. When KPPU determines *post-facto* that a completed transaction violates competition law, its primary enforcement remedy is deal cancellation or unwinding. Forcing merged entities to unravel operations after integrating executive governance, assets, and workforces results in substantial economic waste, employee displacement, and reputational damage. Furthermore, existing voluntary pre-closing consultation mechanisms fail to address these inefficiencies because preliminary consultations do not exempt companies from filing the mandatory post-closing notification.

According to Mustafa Kamal Rokan, many countries currently embrace a free market where business actors can meet consumers' needs by providing diverse, efficient products.[6] However, the KPPU Decision, as a legal product of business competition and a form of realisation of legal certainty, faces juridical obstacles in the law that gave birth to it. Challenges to the KPPU's decision can be brought through legal appeals and cassations.[7]

The KPPU's operational limitations exacerbate these systemic vulnerabilities. Under current regulations, KPPU is bound by a strict 90-day assessment timeframe while facing significant hurdles in acquiring relevant market data

[6] Asti Rachma Amalya, "Prinsip Ekstrateritorial Dalam Penegakan Hukum Persaingan Usaha," *Jurnal Ilmiah Mandala Education* 6, no. 1 (2020).

[7] Gloria Damaiyanti Sidauruk, "Kepastian Hukum Putusan Komisi Pengawas Persaingan Usaha Dalam Penegakan Hukum Persaingan Usaha," *Lex Renaissance* 6, no. 1 (2021): 132–51.

from uncooperative business actors. Moreover, traditional asset and turnover thresholds fail to capture modern high-value digital startup acquisitions, where target entities generate minimal turnover but possess substantial market power. Consequently, the post-notification mechanism leaves critical gaps in competition oversight while overburdening compliant firms.[8]

To address these regulatory, procedural, and economic shortcomings, this study evaluates the structural effectiveness of Indonesia's post-merger notification system. It establishes the legal urgency of transitioning to a mandatory pre-merger notification regime. By shifting from ex post enforcement to ex ante prevention, a mandatory pre-merger regime provides legal certainty before transaction execution, prevents anti-competitive structures early, and strengthens KPPU's supervisory authority to foster a fair and competitive business environment in Indonesia.

2. Methods

To address these regulatory shortcomings and assess the need for a pre-merger regime, this study uses a normative (doctrinal) legal research methodology to critically evaluate corporate compliance and the regulatory framework governing merger, acquisition, and consolidation (MAC) notifications in Indonesia. Doctrinal research analyses legal norms, statutory coherence, and the systemic efficacy of competition law enforcement by examining the legal obligations imposed on business actors.

To examine the core legal issues comprehensively, this study uses two primary methodological approaches: the statutory and conceptual approaches. The statutory approach evaluates relevant statutory instruments and implementing regulations, primarily focusing on Law No. 5 of 1999, Law No. 40 of 2007, GR No. 57 of 2010, and KPPU Regulation No. 3 of 2023. The conceptual approach analyses key theoretical frameworks surrounding post-versus pre-merger notification regimes, market concentration, abuse of dominant position, legal certainty, and business compliance behaviour within competition policy.

[8] Carolina Yevi Cahyani et al., "Problematika Penegakan Hukum Persaingan Usaha Di Indonesia," *KARIMAH TAUHID* 2, no. 4 (2023): 1093–1106.

Data collection relies on comprehensive library research involving primary and secondary legal sources. Primary legal materials include binding statutory provisions and executive regulations, including Law No. 5 of 1999, PP No. 57 of 2010, and administrative rules issued by the KPPU. Secondary Legal Materials include non-binding legal literature, peer-reviewed academic journals, official KPPU assessment guidelines, and authoritative scholarship on corporate restructuring and competition compliance. Tertiary Legal Materials include legal dictionaries, legislative encyclopedias, and official glossaries supporting terminology standardisation. Collected legal materials are processed through qualitative legal analysis incorporating hermeneutic, normative, and deductive reasoning techniques. The analysis assesses the legal certainty and economic safeguards of the post-notification mechanism against international compliance standards and formulates normative recommend-dations for transitioning toward a pre-merger notification regime.

3. Results and Discussion

3.1 Merger, Consolidation, and Acquisition Notification from a business competition perspective

Based on the normative and statutory analysis above, the findings show significant structural friction in Indonesia's current merger oversight framework, organised around three core dimensions: compliance mandates, market concentration risks, and procedural enforcement gaps. Compliance with merger, consolidation, and acquisition notification rules is a vital obligation for business actors under Law No. 5 of 1999. Adhering to these filing provisions directly advances the statute's core mandates: safeguarding public welfare, enhancing national economic efficiency, fostering fair market access across enterprises of all sizes, and preventing anti-competitive practices. Indonesia's economic landscape has shifted from a historical con-centration of market power driven by corruption, collusion, and nepotism (KKN) to a regulatory structure grounded in fair competition principles.[9]

[9] Kurnia Toha, "Urgensi Amandemen Uu Tentang Persaingan Usaha Di Indonesia: Problem Dan Tantangan," *Jurnal Hukum & Pembangunan* 49, no. 1 (2019): 73–90.

Under Article 29 of Law No. 5 of 1999 and Article 5 of GR No. 57 of 2010, Indonesia enforces an ex-post merger control regime. Qualifying mergers, consolidations, and acquisitions (including foreign transactions affecting the domestic market) require mandatory post-closing notification to the KPPU, along with optional pre-closing consultations.[10] Not only is the act of acquisition, but also the term merger, an activity with broad impact and significant influence on Indonesia's economic climate. Hence, government supervision plays an important role in ensuring mergers' sustainability. KPPU's role as an institution that deals directly with companies needs improvement to achieve its goal of preventing monopolistic practices.[11]

Merger control is an essential pillar of competition policy, as corporate restructurings directly expand market power within a relevant market. Although mergers and acquisitions are legitimate corporate tools designed to enhance firm value, they can be leveraged to eliminate competitors or bypass statutory prohibitions under Law No. 5 of 1999, rendering inherently lawful transactions illegal when they produce anti-competitive effects. This is why merger provisions cannot be separated from competition law in any country that has implemented competition law.[12]

However, on closer examination, Indonesia's Merger Notification provisions still follow a Post-Merger Notification Regime, which emphasises late-reporting penalties. This is a problem because, if a merger is suspected of causing unfair competition, Indonesia has no legal instrument to prevent or unwind it. Thus, the merger notification regime needs to shift from Post-Merger Notification to Pre-Merger Notification.[13]

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[10] Adwitiya Priyotama, "Urgensi Pemberitahuan Merger Dan Akuisisi Perusahaan Asing Dalam Peraturan Persaingan Usaha Di Indonesia," *Riau Law Journal* 4, no. 2 (n.d.): 127–46.

[11] Amadea Muljanto and Kholis Roisah, "Efektifitas Penerapan 'Notifikasi Pra Merger' Berdasarkan Sudut Hukum Persaingan Usaha," *Notarius* 16, no. 2 (n.d.): 978–88.

[12] Rilda Murniati, "Ketidaktahuan Pelaku Usaha Sebagai Alasan Keterlambatan Notifikasi Merger Dan Akuisisi (Implementasi Peran KPPU Dalam Penanganan Merger Dan Akuisisi Di Masa Pandemi Covid-19)," *Jurnal Persaingan Usaha* 1, no. 2 (2021): 43–54.

[13] Muhammad Surya Mustariyakuma, "Tinjauan Yuridis Notifikasi Merger Dalam Hukum Persaingan Usaha: Studi Kasus Pt Fks Multi Agro Tbk," *" Dharmasisya" Jurnal Program Magister Hukum FHUI* 2, no. 1 (2022): 13.

The obstacle KPPU faces is that many business actors do not understand the notification regime and are therefore unwilling to provide information. Another obstacle is that KPPU also struggles to obtain relevant market data. This certainly affects the time available to conduct an assessment, given that the ICC is only given 90 (ninety) days for both the initial and comprehensive assessments.[14]

The primary flaw in Indonesia's share acquisition framework is its reliance on a post-notification system, which exposes completed transactions to retroactive cancellation by the Business Competition Supervisory Commission (KPPU). Such post-facto deal unwinding inflicts severe economic and reputational damage on business actors, including sunk acquisition costs, employee severance liabilities, and diminished market trust. Furthermore, KPPU's voluntary pre-closing consultation process remains inefficient because participating businesses must still submit mandatory post-closing filings. Consequently, KPPU faces significant institutional challenges in balancing regulatory enforcement with the need to foster a healthy, predictable business climate.

3.2 Merger in the Perspective of Business Competition

The notion that mergers can lead to monopolistic practices implies that mergers are not inherently prohibited; as explained above, such actions can also support company development. However, regulators must avoid creating market concentration that could raise product prices, threaten small-scale business actors, or lead to monopolistic practices and/or unfair competition. Because a merger will harm some parties, regulators must protect them.[15] The merger control process begins with submitting a merger notification. A business actor undertaking corporate actions such as acquisitions or mergers submits a merger notification, allowing KPPU to assess whether the corporate action exceeds the value limit set out in Indonesia's business competition laws and regulations. After receiving the

[14] Florianus Yudhi Priyo Amboro and Hermanto Hermanto, "Tinjauan Yuridis Penerapan Notifikasi Akuisisi Sebagai Upaya Pencegahan Persaingan Usaha Tidak Sehat," *Journal of Judicial Review* 20, no. 1 (2018): 49–59.

[15] Sudjana Sudjana, "Merger Dalam Perspektif Praktik Monopoli Dan Persaingan Usaha Tidak Sehat Berdasarkan UU Nomor 5 Tahun 1999," *Jurnal Hukum Positum* 1, no. 1 (2016): 104–23.

merger notification, KPPU will assess whether the merger negatively affects business competition in a particular market.[16]

While mergers and acquisitions (M&A) are fundamental mechanisms for corporate growth and restructuring, they have a dual nature in competition policy. As KPPU Commissioner Dinni Melannie noted, M&A transactions generate both pro-competitive efficiencies and potential market distortions. On one hand, corporate consolidations can enhance operational synergies, prevent insolvency, accelerate technological innovation, and bolster national industrial competitiveness while supporting labour and micro, small, and medium enterprises (MSMEs). Conversely, unchecked concentration risks erecting entry barriers and facilitating anti-competitive dominance. To mitigate these structural hazards, business actors must report qualifying transactions to the KPPU under KPPU Regulation No. 3 of 2023 on the Assessment of Mergers, Consolidations, or Acquisitions.[17]

3.3 Consolidation in the Perspective of Business Competition

Corporate consolidation refers to combining two or more business entities into a new legal entity. Designed to boost profitability and market share, consolidations let enterprises pool technological assets, industry expertise, and human capital. Unlike standard acquisitions, a statutory consolidation dissolves the combining entities to establish a single successor corporation, effectively integrating separate or competing firms into a unified commercial structure.[18] Mandatory notification of corporate consolidation plays a vital role in fostering a fair and healthy business environment. Strict adherence to these filing regulations ensures compliance with Law No. 5 of 1999 and enforces its statutory prohibitions against anti-competitive agreements, unlawful business practices, and abuse of dominant market positions.

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[16] Muhammad Fadhali Yusuf, "Reformulasi Sistem Post Merger Notification Untuk Menghindari Rechtvacuum Pembatalan Merger Oleh KPPU," *Jurnal Persaingan Usaha* 2, no. 2 (2022): 111–17.

[17] "Mengenal Tata Cara Notifikasi Merger Dan Akuisisi Di KPPU," accessed October 25, 2023, https://www.hukumonline.com/berita/a/mengenal-tata-cara-notifikasi-merger-dan-akuisisi-di-kppu-lt6489db6c6989c/.

[18] "Pengertian Konsolidasi Adalah Tindak Penyatuan Korporasi, Simak Contohnya - Page 6 - Hot Liputan6.Com," accessed October 25, 2023, https://www.liputan6.com/hot/read/5282220/pengertian-konsolidasi-adalah-tindak-penyatuan-korporasi-simak-contohnya?page=6.

3.4 Acquisition in the Perspective of Business Competition

Mergers and Acquisitions (M&A) are a strategic tool many companies use to grow, expand into new markets, and gain a competitive advantage. However, this process involves several complex legal aspects that need to be carefully considered. A common legal aspect of M&A concerns competition regulation. Every country has laws designed to prevent monopolistic practices, oligopoly and unfair competition. Therefore, companies pursuing M&A need to pay attention to applicable competition regulations.[19]

One COVID-19 provision for business actors of all sizes (large, medium, small, and even micro) is the relaxation, namely, providing opportunities for business actors carrying out merger and acquisition transactions, including the transfer of productive assets, to submit notifications to KPPU. KPPU can also extend the notification deadline for the merger and acquisition process, taking into account the situation during the COVID-19 pandemic. In carrying out supervisory efforts, KPPU is authorised to assess the company's analysis report when conducting acquisition consultations. The assessment helps the ICC prevent or identify the potential for monopolistic practices and unfair business competition.

Thus, in the process of submitting an acquisition with prior consultation, it is part of being able to describe the final result of the consultation assessment is not the determinant of whether the acquisition will be approved or rejected, because to determine this, the KPPU will use the authority of the assessment conducted after the acquisition transaction is implemented.[20] Acquisition provisions prioritise outcomes that satisfy business actors, not those that indicate unfair business competition.

[19] "Yuk Pahami Esensi Aspek Hukum Dan Sinergi Tim Dalam Proses Merger Dan Akuisisi," accessed October 25, 2023, https://www.hukumonline.com/berita/a/yuk-pahami-esensi-aspek-hukum-dan-sinergi-tim-dalam-proses-merger-dan-akuisisi-lt647d3e36ce9b9/.

[20] Salsabilla Hassani and Suherman Suherman, "Analisis Keterlambatan Pemberitahuan Pengambilalihan Saham Ditinjau Dari Hukum Persaingan Usaha Tidak Sehat (Studi Kasus Putusan Nomor 17/KPPU-M/2020)," *Jurnal Selat* 10, no. 1 (2022): 60–80.

3.5 Importance of Merger, Acquisition and Consolidation Notification Compliance

Although merger notification is a vital instrument for preventing market distortion, Indonesia's current **ex-post** (**post-closing**) **notification regime** is inherently ineffective as a preventative measure. Requiring companies to notify the Commission only after completing corporate restructuring creates severe operational complications if a transaction is subsequently deemed anti-competitive and ordered to be unwound. Consequently, this study advocates adopting a mandatory pre-closing notification framework to enable the early identification and prevention of monopolistic practices before deal completion.[21]

The notification system helps prevent and anticipate monopolistic practices and unfair business competition, and it supervises business competition in Indonesia, including protecting the rights of minority shareholders, workers, and the community. Both notification functions for Business Actors promote healthy and more profitable business competition.

The purpose of notifying the Commission is to prevent abuse of a dominant position in business competition. Such abuse often occurs when companies take over shares, causing the two companies' market shares to merge and automatically form a combined market share larger than before.[22]

The concept of fault in unlawful acts in business competition is broad and includes intent and negligence. Thus, a negligence-based violation of competition law can still be considered a tort.[23] In contemporary M&A practice, innovative startups often demonstrate substantial economic potential despite generating minimal turnover, making them highly attractive acquisition targets. To effectively capture and evaluate such transactions, competition authorities must expand merger notification frameworks beyond traditional

[21] Hottua Manalu, "Notifikasi Aksi Korporasi Sebagai Instrumen Hukum Pencegah Praktik Monopoli Dan Persaingan Usaha Tidak Sehat," *Undang: Jurnal Hukum* 2, no. 1 (2019): 33–67.

[22] Soetomo and Suryanti, "Notifikasi Pengambilan Saham Oleh Kppu Dalam Upaya Menjalankan Fungsi Pengawasan Berdasarkan Hukum Persaingan Usaha."

[23] Muchamad Arifin, "Pertanggungjawaban Hukum Atas Keterlambatan Pemberitahuan Akuisisi Asing Kepada Komisi Pengawas Persaingan Usaha," *Lex Renaissance* 2, no. 2 (2017): 4.

asset and turnover thresholds by incorporating transaction-value (deal-size) criteria.[24] In practice, fraudulent business practices can be divided into two parts: first, practices concerning business actors' behaviour; and Second, practices concerning structural aspects.

Unhealthy or fraudulent business agreements arising from business actors' behaviour include, among others, horizontal price-fixing agreements (price cartels) and vertical agreements such as Resale Price Maintenance and Price Discrimination agreements. Price fixing is worth discussing because Law No. 5 of 1999 aims to create a conducive business climate for fair competition. Competition will be stronger if business actors pay attention to business ethics.[25]

Competition law differs from criminal law. Competition law is heavily influenced by the economic analysis of law approach, making it difficult to enforce by relying solely on direct evidence. Similarly, competition law requires a rule-of-reason approach that uses economic analysis to determine whether a prohibited agreement, prohibited activity, or other anti-competitive act has occurred and to assess the economic consequences of such acts.

Since anti-competitive practices are inherently covert, robust enforcement under Law No. 5 of 1999 necessitates investigative authority beyond direct documentary or testimonial evidence. To ensure statutory compliance, Article 36 empowers the Business Competition Supervisory Commission (KPPU) to process complaints, conduct inquiries, subpoena witnesses and evidence with law enforcement support, evaluate market losses, and issue binding rulings. In exercising this mandate, the KPPU is authorised to impose administrative remedies against non-compliant entities, including annulling anti-competitive agreements, ordering the cessation of vertical integration and dominant position abuses, terminating market-distorting activities, and decreeing the unwinding or cancellation of anti-competitive mergers, consolidations, and acquisitions.

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[24] Febrina, "Persaingan Usaha Pada Era Digital Menurut Persepektif Hukum Persaingan Usaha."

[25] Hirmawati Fanny Tainpubolon, "Etika Bisnis Pelaku Usaha Yang Merugikan Konsumen Dalam Hukum Persaingan Usaha," *" Dharmasisya" Jurnal Program Magister Hukum FHUI* 1, no. 1 (2021): 36.

Under GR No. 57 of 2010, Article 6, business actors executing a merger, consolidation, or share acquisition must notify the KPPU in writing within 30 business days of the transaction becoming legally effective if statutory threshold values are met. The general notification thresholds are set at combined assets exceeding IDR 2.5 trillion and/or combined sales exceeding IDR 5.0 trillion (elevated to IDR 20.0 trillion in assets for the banking sector). These thresholds are calculated on a consolidated group basis, aggregating the financial figures of all transacting entities alongside their direct and indirect parent and subsidiary companies. If they fail to do so, the business actors will be sanctioned with an administrative fine of IDR 1 billion for each day of delay, and the total cumulative administrative fine is capped at IDR 25 billion.

Under Article 8 of GR No. 57 of 2010, written notifications must be submitted using the prescribed KPPU form, signed by authorised corporate management, and accompanied by relevant supporting documentation. The submission must detail the profiles of the transacting entities (names, addresses, and executive leadership), a summary of the restructuring plan, and the corresponding asset or sales values. As the GR outlines, commercial expansion driven by corporate entities significantly shapes national economic conditions. Consequently, systematically monitoring and regulating business conduct is essential to foster sustainable market growth while mitigating the risks of monopolistic practices and unfair competition.

Precise legal frameworks are indispensable to provide legal certainty for commercial entities, especially as globalisation and economic liberalisation increase market complexity. Cultivating a healthy, efficient business climate ensures that market participants enjoy equitable growth opportunities, directly upholding the economic principles enshrined in Article 33 of the 1945 Constitution of the Republic of Indonesia. Accordingly, efforts to cultivate a healthy, efficient business climate must prevent undue concentration of economic power or control of resources within limited interest groups. Consequently, corporate mergers, consolidations, and acquisitions that risk fostering monopolistic practices or unfair competition

must be mitigated early, ensuring that corporate restructurings consistently safeguard the interests of consumers and market competitors.

Compliance programs governing merger, acquisition, and consolidation notifications are intrinsically linked to market concentration dynamics within competitive economies. As established in Article 3 of GR No. 57 of 2010, market concentration is the primary screening indicator for assessing whether a corporate restructuring poses anti-competitive risks. Transactions that result in low market concentration are generally presumed to carry negligible anti-competitive potential, while transactions that create high market concentration trigger rigorous competitive scrutiny and require a comprehensive relevant market analysis to assess potential monopolistic effects.

Mandatory notifications for mergers, acquisitions, and consolidations serve as crucial regulatory safeguards against anti-competitive agreements, market distortions, and abuses of dominant position that harm consumer welfare. Reflecting evolving competition law enforcement needs, the Business Competition Supervisory Commission issued KPPU Regulation No. 5 of 2023, which formally revoked KPPU Regulation No. 4 of 2012 on late-filing fine guidelines. This regulatory update aligns administrative enforcement with current statutory developments and practical law enforcement priorities, strengthening compliance mechanisms to foster a stable, transparent, and competitive business climate. However, while modernising penalty structures improves procedural clarity, administrative adjustments to fine calculations cannot remedy the underlying structural flaw of an ex-post system that evaluates transactions only after deal completion.

4. Conclusion

Ultimately, this study demonstrates that despite incremental administrative updates, Indonesia's ex-post merger control regime under Law No. 5 of 1999 and GR No. 57 of 2010 remains fundamentally ill-equipped to prevent anti-competitive market concentration. By design, the post-merger notification mechanism functions primarily as a retroactive enforcement

tool, penalising late filings with severe administrative fines rather than safeguarding against monopolistic structures before deal execution. Requiring businesses to report transactions within 30 business days after closing creates significant legal and economic vulnerabilities; when the KPPU subsequently cancels or unwinds completed transactions, companies suffer substantial financial losses, workforce disruptions, and reputational damage. Furthermore, existing voluntary pre-closing consultations offer little efficiency, as participating entities remain legally obligated to complete mandatory post-closing filings.

The KPPU's institutional limitations further underscore the need for structural reform. The Commission operates under a rigid 90-day assessment window while contending with severe information asymmetry and hurdles in collecting market data. Additionally, traditional asset and turnover notification thresholds fail to capture modern economic realities, particularly high-value acquisitions of digital startups that generate minimal turnover yet possess significant market power. Consequently, the current regulatory architecture places heavy compliance burdens on businesses while leaving critical market concentration risks unmonitored.

To foster a fair, transparent, and competitive economic climate aligned with Article 33 of the 1945 Constitution, Indonesia must urgently transition from a post-merger notification system to a mandatory, suspensory pre-merger notification regime. Shifting to an *ex-ante* regime will enable the KPPU to identify and mitigate market distortions before deal completion, guarantee legal certainty for business actors, and align Indonesian competition law with international best practices.

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