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KPPU Assembly's Ruling on Law Number 5 of 1999 Addresses Monopolistic Practices and Unfair Competition

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Abstract

KPPU Decision Case Number 13/KPPU-M/2022, according to KPPU there was a delay in notification of the takeover of PT shares. Bakti Gemilang Anak Sejahtera by PT. Indonesian House of Love. This research aims to examine the suitability of the KPPU panel decision Number 13/KPPU-M/2022 with the provisions of Law Number 5 of 1999 concerning Prohibition of Monopoly Practices and Unfair Business Competition. Theresearch method in this research is a normative juridical method, where the research focuses on reviewing the decision of the Business Competition Supervisory Commission (KPPU) Number 13/KPPU-M/2022 and several related statutory regulations. on statutory regulations. Through this research it can be concluded that KPPU Decision Number 13/KPPU-M/2022 concerning PT. Rumah Kasih Indonesia which acquired the shares of PT. Bakti Gemilang Anak Sejahtera is required to notify the KPPU of share takeovers. PT. Rumah Kasih Indonesia made an acquisition resulting in excess asset value and sales value. Decision Number 13/KPPU-M/2022 legally violates the provisions of Article29 of Law no. 5 of 1999 so that a sanction of 1 billion rupiah is imposed.

1. Introduction

Economic development in business competition activities moves very dynamically, one of the main triggers and drivers for the emergence of economic integration is globalization. Globalization provides extensive opportunities for developing countries such as Indonesia to increase trade volume by expanding business to domestic markets to international markets. So this gives rise to many challenges faced in the business world. Competition in the business world is normal, if the competition is carried out in a healthy manner and still refers to applicable regulations or laws. In relation to the economic sector, it is mandated in Article 33 paragraph (1) of the 1945 Constitution which confirms that the economy is structured as a joint venture based on the principle of kinship.

The introduction of economic principles in the business world is defined as a guideline for carrying out economic actions that are used to obtain maximum results, or what is known as getting maximum profits with minimum costs. Businesses run by large business actors guided by the above principles can have the potential to dominate the market through anti-competitive behavior such as cartels, monopolies, price fixing, vertical integration, closed agreements, and so on. Realizing the tight and imperfect competition between business actors, in this case it is necessary to have a business competition law that is used to regulate this matter.

Business competition law can be interpreted as a set of legal rules that regulate various aspects related to business competition, which includes things that business actors are allowed to do and what they are prohibited from doing. One of the keys to realizing a fair market economic system is healthy business competition. This can be realized by enforcing competition law and having competition policies that are conducive to the development of the economic sector. This existence then became the trigger for the birth of Law No. 5 of 1999 concerning Prohibition of Monopoly Practices and Unfair Business Competition, which is (hereinafter referred to as Law No. 5 of 1999).

Law No. 5 of 1999 is expected to be able to enforce the rule of law and provide protection for every business actor and the Indonesian economy in an effort to create healthy business competition. The birth of Law no. 5 of 1999 aims to guarantee legal certainty and equal protection for every business actor in doing business, by preventing the emergence of monopolistic practices and unhealthy business competition with the hope that every business actor can compete fairly and healthily. The main principles of business competition law are regulated in Law no. 5 of 1999 which includes prohibited agreements, prohibited activities, dominant positions, the Business Competition Supervisory Commission, and procedures for resolving cases. Based on Law No. 5 of 1999 an institution was formed, namely Komisi Pengawas Persaingan Usaha (KPPU), this Commission was formed based on Presidential Decree Number 75 of 1999 as amended by Presidential Regulation Number 80 of 2008.

KPPU was formed to carry out, supervise and enforce the implementation of Law no. 5 of 1999. KPPU is an institution given the authority by the state to resolve disputes between business actors when one business actor feels disadvantaged by the actions of another business actor. One of the authorities possessed by this Commission is as a judicial institution. Based on the duties and authority of the KPPU as regulated in Law no. 5 of 1999, KPPU actively seeks to increase transparency and efficiency in handling business competition cases, by preparing procedural law to process incoming reports, starting from examining, hearing, even deciding cases, KPPU prepares and publishes Business Competition Supervisory Commission Regulations.

The Business Competition Supervisory Commission (KPPU) Regulation Number 2 of 2023, concerning the revocation of KPPU Regulation Number 1 of 2019 on Procedures for Handling Cases of Monopoly Practices and Unfair Business Competition (hereinafter referred to as KPPU Regulation Number 2 of 2023), is the latest procedural regulation at KPPU. As mentioned earlier, one of the reasons for the issuance of KPPU Regulation Number 2 of 2023 is to outline how fines should be imposed on business actors proven to have violated monopolistic practices and unfair business competition. However, KPPU Regulation Number 2 of 2023 does not provide detailed guidance on how fines

should be applied to business actors found guilty of monopolistic practices and unfair business competition. This is evident in the case of PT. Rumah Kasih Indonesia, which carried out the share acquisition of PT. Bakti Gemilang Anak Sejahtera (PT. BGAS) with the goal of developing a network of compassion hospital groups in new areas, namely Subang, West Java.

PT. Rumah Kasih Indonesia is a company operating in the fields of development, trade and industry, in practice PT. Rumah Kasih Indonesia carries out business activities in the management services sector, while its subsidiary operates in the health services sector. Meanwhile PT. BGAS is a company operating in the health sector which includes hospital, clinic and polyclinic services, medical centers and related business activities. Government Regulation Number 57 of 2010 (hereinafter referred to as PP No. 57 of 2010) which is meant by takeover in Article 1 point 3 of PP No. 57 of 2010 is "Legal actions carried out by business actors to take over shares of a business entity which results in the transfer of control over the business entity". So that this share takeover activity does not result in monopolistic practices and unfair business competition, Article 28 paragraph (2) of Law no. 5 of 1999 regulates that business actors are prohibited from taking over shares of other companies if such action could result in monopolistic practices and/or unfair business competition.

The issue of delayed notifications in mergers, acquisitions, and share transfers in Indonesia has attracted significant attention in legal and economic studies, particularly with regard to compliance with the regulations set by the Business Competition Supervisory Commission (KPPU). Several studies have explored similar issues, including the role of KPPU in monitoring monopolistic practices and ensuring fair business competition. Hersusetiyati & Sudrajat (2020) examine the regulatory frameworks surrounding monopoly prevention and unfair business practices in Indonesia. Their research emphasizes the strategic importance of these regulations in fostering a healthy economic environment that promotes business competition and protects consumer welfare. They discuss the establishment of KPPU and its pivotal role in monitoring business activities, specifically regarding mergers, acquisitions, and share transfers that may influence market competition.

The study highlights the challenges faced by KPPU in terms of operational policies and its organizational structure, which impacts its effectiveness in enforcing regulations such as the one concerning the notification of share acquisitionsia (2020) also discusses the government's efforts to prevent monopolistic practices, including the legal requirements for businesses to notify KPPU about share acquisitions. Azalia's research focuses on the necessity of such notifications to maintain competitive balance in Indonesia’s economy, particularly in the context of foreign investments and joint ventures. This aligns with the regulations outlined in Government Regulation No. 20 of 1994 and Presidential Decree No. 32, 33, and 34 of 1992, which mandate that companies must inform KPPU when their transactions surpass certain thresholds. Azalia notes that failure to comply with this requirement, as demonstrated in the case of PT. Rumah Kasih Indonesia, could undermine the regulatory framework designed to prevent monopolistic practices . Fad0) delves into the enforcement of competition laws in Indonesia, particularly focusing on the extraterritorial application of the Monopoly and Unfair Competition Law (Law No. 5 of 1999).

Her study highlights legal challenges related to cross-border mergers and acquisitions, as well as the extraterritorial jurisdiction of KPPU in regulating these transactions. Fadhilah's work underscores the complexities faced by KPPU in its enforcement practices, especially when companies delay or fail to notify KPPU about share acquisitions, as in the case of PT. Rumah Kasih Indonesia. The case of PT. Rumah Kasih Indonesia's late notification of its share acquisition from PT. BGAS (477 working days late) introduces a unique perspective on the operational challenges and gaps within the KPPU's enforcement of its notification regulations. Unlike previous research that primarily discusses the importance of compliance and regulatory frameworks in general terms, this study specifically addresses the practical issues faced by businesses in adhering to these legal obligations. The delayed notification period of over a year provides a concrete example of the consequences of regulatory non-compliance, thus offering valuable insights into how such delays impact the effectiveness of KPPU's oversight.

One of the key novelties of this research lies in the exploration of the lack of detailed regulations regarding sanctions for delayed notifications under the new KPPU Regulation Number 2 of 2023, which replaced Perkom No. 1 of 2019. This gap in regulation could lead to inconsistent enforcement and weak deterrence against delays in notification. The case study of PT. Rumah Kasih Indonesia's experience also highlights the need for better communication and awareness among business entities about their legal obligations, a dimension that is often overlooked in previous studies. Furthermore, the study raises concerns about the regulatory framework's ability to effectively handle delays and the need for clearer guidelines to ensure businesses comply with KPPU's notification requirements. Thus, while prior research provides valuable insights into the regulatory landscape and the importance of notification procedures, this study offers a more focused examination of the challenges of compliance in real-world scenarios, contributing to the development of clearer enforcement policies by KPPU.

2. Research Methods

This discussion will be explained using a descriptive qualitative method with a normative legal research type where the research focuses on reviewing the decision of the Business Competition Supervisory Commission (KPPU) Number 13/KPPU-M/2022) concerning the Late Notification of the Takeover of PT Bakti Gemilang Anak Sejahtera Shares by PT Rumah Kasih Indonesia, as well as laws that are related to the topic taken, also by utilizing secondary data originating from books, journals, scientific articles and other relevant written sources

3. Research and Discussion

Article 29 paragraph (1) Law no. 5 of 1999 states that "A merger or consolidation of business entities which results in the asset value or sales value exceeding a certain amount, must be notified to the Commission no later than 30 (thirty days) from the date of the merger, consolidation or takeover".[1] To find out whether KPPU Decision Number 13/KPPU-M/2022 is in accordance with the provisions of Law no. 5 of 1999, it is necessary to prove first whether it is true that PT. Rumah Kasih Indonesia fulfills the

[1] See Article 29 sub (1) UU No. 5 Year 1999.

elements of the article that is allegedly violated, namely Article 29 of Law no. 5 of 1999 Juncto Article 5 PP No. 57 of 2010. The elements contained in Article 29 paragraph (1) of Law no. 5 of 1999, namely:

1. Elements of merger or consolidation of business entities or acquisition of shares

PT. Rumah Kasih Indonesia is an acquiring business entity established under thelaws of the State of Indonesia through Deed Number 3 dated 7 May 2008 and hasbeen ratified by the Ministry of Law and Human Rights based on Decree NumberAHU-25615.AH.01.01 of 2008 dated 14 May 2008. PT. Bakti Gemilang AnakSejahtera is an acquired business entity established based on Deed Number 01dated 7 October 2011.[2] Based on these facts PT. Rumah Kasih Indonesia fulfillsthe elements of a Business Entity/Business Actor based on the provisions of Article1 paragraph (5) of Law no. 5 of 1999. After taking over the shares, PT. RumahKasih Indonesia is the controlling business actor because it owns shares of morethan 50% (fifty percent) of PT BGAS shares, namely 94.99% (ninety four pointninety nine percent), so that it can influence the management policies of PT.BGAS. So the acquisition in this case is the acquisition intended in Article 29paragraph (1) of Law no. 5 of 1999. Viewed on January 28 2019, PT. Rumah KasihIndonesia has taken over the shares of PT. BAGS totaling 13,286 (thirteenthousand two hundred eighty six) shares or the equivalent of 94.99% (ninety fourpoint ninety nine percent), with a purchase transaction value of Rp. 29,449,200,000.00 (twenty nine billion four hundred forty nine million twohundred thousand rupiah)[3] Based on these facts PT. Rumah Kasih Indonesia fulfills the elements of a Business Entity/Business Actor based on the provisions of Article 1 paragraph (5) of Law no. 5 of 1999. After taking over the shares, PT. Rumah Kasih Indonesia is the controlling business actor because it owns shares of more than 50% (fifty percent) of PT BGAS shares, namely 94.99% (ninety four point ninety nine percent), so that it can influence the management policies of PT. BGAS. So the acquisition in this case is the acquisition intended in Article 29 paragraph (1) of Law no. 5 of 1999. Viewed on January 28 2019, PT. Rumah Kasih Indonesia has taken over the shares of PT. BGAS totaling 13,286 (thirteen thousand two hundred eighty six) shares or the equivalent of 94.99% (ninety four point ninety nine percent), with a purchase transaction value of Rp. 29,449,200,000.00 (twenty nine billion four hundred forty nine million two hundred thousand rupiah).[4] Based on these facts, PT. Rumah Kasih Indonesia fulfills the elements of acquiring PT. BGAS.

2. Elements of asset value and/or certain sales value

The value of assets or sales does not only include the value of assets or sales value of the company that acquired shares, but also the value of assets or sales of companies that are directly related to the company concerned vertically, namely the parent business entity up to the Supreme Parent Business Entity. and subsidiaries down to the lowest subsidiary companies. The asset value or sales value of the Highest Parent Company calculated is the asset value or sales of all subsidiaries. Because economically, the asset value of a subsidiary company is the asset value of the parent company.

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[2] Decision KPPU No. 13/KPPU-M/2022, p. 5.

[3] *Ibid,* h. 8.

[4] *Ibid*, 3.

Limits on asset value or sales are regulated in Article 5 paragraph (1) PP No. 57 of 2010, namely:[5]

1. Asset value of Rp. 2,500,000,000.00 (two trillion five hundred billion rupiah), and or
2. Sales value of Rp. 5,000,000,000.00 (five trillion rupiah).

Year	Asset Value	Sales Value
2016	236.289.346.934	201.462.847.632
2017	461.669.837.113	299.842.702.732
2018	479.263.419.424	369.999.472.090

Table 8. Asset Value and Sales of the Last 3 (Three) Years of PT. Rumah Kasih Indonesia

Year	Asset Value	Sales Value
2016	3.911.471.397	9.627.611.100
2017	5.390.545.762	12.085.470.080
2018	3.354.576.380	12.341.266.600

Table 9. Asset value and sales for the last 3 (three) years of PT. Bakti Gemilang Anak Sejahtera

The combined value of assets and/or sales is calculated based on the sum of assets and/or sales for the last year that has been audited by each company. Therefore, it can be concluded that the combined value of assets and/or sales from share acquisitions is calculated based on the sum of the asset values and/or sales from PT. Mitra Keluarga Karyasehat, Tbk. with PT. BGAS.

Year	PT. Mitra Keluarga Karyasehat Tbk	PT. Bakti Gemilang Anak Sejahtera	Combined Asset Value
2016	4.176.188.101.672	3.911.471.397	4.180.099.573.069
2017	4.712.039.481.525	5.390.545.762	4.717.430.027.287
2018	5.089.416.875.753	3.545.576.380	5.092.771.452.133

Table 10. Combined asset value of PT. Karyasehat Mitra Keluarga Karyasehat, Tbk with PT. BGAS

[5] Article 5 sub (1) PP No. 57 Tahun 2010.

Year	PT. Mitra Keluarga Karyasehat Tbk	PT. Bakti Gemilang Anak Sejahtera	Combined Sales Value
2016	2.435.465.884.784	9.627.611.100	2.445.093.495.884
2017	2.495.711.813.100	12.085.470.080	2.507.797.283.180
2018	2.713.087.099.834	12.341.266.600	2.725.428.366.434

Table 11. Combined sales value of PT. Karyasehat Family Partners with PT. BGAS

With the conjunction "and or" in the value limit as regulated in Article 5 paragraph (2) PP No. 57 of 2010 has the meaning of being cumulative or facultative in nature. In fact PT. Rumah Kasih Indonesia as a subsidiary of PT. BAGS as the Supreme Parent Business Entity is proven to fulfill the elements because the combined asset value has exceeded a certain amount. Asset value or combined sales in the last year of PT. Rumah Kasih Indonesia with PT. BGAS exceed Rp. 2,500,000,000.00 (two trillion five hundred billion rupiah) namely Rp. 5,092,771,452,133 (five trillion ninety-two billion seven hundred seventy 1 million four hundred and fifty-two rupiah).

3. Elements of merger, consolidation or takeover between unaffiliated companies

Composition of shareholders of PT. Rumah Kasih Indonesia is a form of direct ownership of the parent company, namely PT. Mitra Keluarga Karyasehat, Tbk. PT. Rumah Kasih Indonesia owns 94.99% (ninety four point ninety nine percent) of the shares of PT. BAGS, with share purchase transactions totaling 13,386 (thirteen thousand three hundred and eighty six) shares with a value of Rp. 29,449,200,000.00 (twenty nine billion four hundred forty nine million two hundred thousand rupiah). The following is the composition of PT. Bakti Gemilang Anak Sejahtera before and after acquisition:[6]

BEFORE TRANSACTION		AFTER TRANSACTION	
Shareholders	**Number of shares**	**Shareholders**	**Number of shares**
Herni Yudhi Brata	2.500 (50%)	PT. Rumah Kasih Indonesia	13.386 (94,99%)
dr. Sugiantoro	2.500 (50%)	Herni Yudhi Brata	352 (2,50%)
		dr. Sugiantoro	353 (2,51%)

Table 12. Composition of shareholders of PT. BGAS before being acquired and after being acquired

[6] Decision KPPU No. 13/KPPU-M/2022, p. 24.

Based on the share ownership composition of each party, no affiliation was found between PT. Rumah Kasih Indonesia with PT. BGAS. This proves that the elements of acquiring shares in an unaffiliated company are fulfilled.

4. Elements of notification obligations to the Business Competition Supervisory Commission.

PT. Rumah Kasih Indonesia has fulfilled the above elements, so that PT. Rumah Kasih Indonesia has the obligation to notify or report share acquisitions to the KPPU as regulated in Article 29 paragraph (1) of Law no. 5 of 1999. As is evident from the Share Acquisition Notification Form and Notification Receipt, PT. Rumah Kasih Indonesia has carried out its notification obligations on March 22 2021 (Register No. A14021). So that the elements of being notified to the Commission have been fulfilled. KPPU, in its supervisory function, has issued an appeal through a Letter Regarding the Obligation to Notify Share Takeovers to KPPU, No. 06/MIKA-III/2021, March 12 2021.
Case of late notification of PT. Rumah Kasih Indonesia by PT. BGAS, due to lack of socialization regarding the implementation of Law no. 5 of 1999 and PP no. 57 of 2010. In addition, PT. Rumah Kasih Indonesia did not consult with the KPPU first. This is proven by PT. Rumah Kasih Indonesia does not have a legal notification obligation. The statement "no later than 30 (thirty) days from the merger, consolidation or takeover" in Article 29 paragraph (1) of Law no. 5 of 1999.
KPPU Regulation no. 3 of 2019 has stated that the legally effective acquisition date is the date on which notification is received by the Minister in the event of changes to the articles of association as stated in Article 21 paragraph (3) of Law no. 40 of 2007 or without changes to the articles of association.[7] Business competition law applies a Rule of Reason or Per Se Illegal approach. The Rule of Reason approach uses the words "reasonable to suspect" or "which could result" with these words, so it is necessary to carry out an in-depth analysis regarding whether or not the business activities carried out can result in unfair business competition.
This approach focuses on the negative consequences resulting from the action, the court is obliged to consider various existing arguments, such as the arguments underlying the action, then look at the economic, justice aspects, and whether the action is legal or illegal. Business competition law also applies a Per Se Illegal approach, namely actions that are considered to be competitive in nature so as to harm various parties without the need for prior proof. Therefore, the actions carried out clearly harm competition. This action occurs in the form of agreements such as price fixing, closed agreements, cross share ownership, etc.[8]
The Rule of Reason approach has the advantage of using economic analysis to gain efficiency and knowing with certainty and clarity the relationship between competition and actions taken by business actors so that it can be accurately determined whether the legal actions of business actors are accurate or not. Meanwhile, the difficulty in applying the Rule of Reason is that the investigation process takes a long time and requires

[7] Safira Maharani. Keterlambatan Pemberitahuan Pengambilalihan Saham Perusahaan PT Mutiara Mitra Bersama Oleh PT Nirvana Property", Universitas Jember, 2021), p. 50.

[8] Choirul Adeffian. (2023). Metode Pendekatan Per Se Illegal And Rule Of Reason Terkait Penegakan Hukum Alternatif Persaingan Usaha Tidak Sehat. *Jurnal Kajian Ekonomi Hukum Syariah*, 9(2), p. 100, https://studialegalia.ub.ac.id/index.php/studialegalia/article/view/61.

knowledge in the field of economics. The Rule of Reason approach does not only apply to legal science, but also mastery of economics and its influence on market share.[9]

Incompetence was found in capturing data and theoretical forms which caused the series of decisions to be deemed inappropriate and inappropriate, such as the existence of a flow of evidence that was not strong and accurate regarding the acquisition of market share data, because there were many forms of performance approaches, rivalry approaches, and a structural approach. The Commission Council is required to have broad knowledge and understanding of economic analysis. It is hoped that this will result in decisions that can support efficiency in implementing the Law Prohibiting Monopoly Practices and Unfair Business Competition.

Judging from the elements that have been fulfilled above, and reinforced by the Commission Council in the case of delays in taking over shares as regulated in Article 29 of Law no. 5 of 1999 uses a Rule of Reason approach in this case. This approach is relevant for use in evaluating the consequences of certain agreements or business activities, in order to determine whether these agreements or business activities hinder or support healthy competition. Takeover of shares resulting in change of control of PT. BGAS is contained in Deed Number 03 dated 28 January 2019 which was made by a Notary in Subang Regency and was received by the Minister of Law and Human Rights of the Republic (through the Director General of General Legal Administration) on 4 February 2019.

The explanation is that notification is no later than 30 (thirty) working days from the legal effective date, namely February 4 2019. So the notification of share acquisition to KPPU is no later than March 19 2019. However, on March 22 2021 PT. Rumah Kasih Indonesia has just submitted a notification to the KPPU. From these facts, PT. Rumah Kasih Indonesia was delayed for 477 (four hundred and seventy seven) working days. It can be concluded:

1. The company is not aware of the existence of regulations regarding the obligation to notify the KPPU of share acquisitions. It is known that in legal science there is a principle of legal fiction, namely that when legislation has been promulgated in a country, a person cannot avoid it or pretend not to know. Based on this principle, the reason why the company is late in notifying the share acquisition on the pretext of not knowing the rules is an unfounded reason
2. Lack of understanding of Article 5 paragraph (2) PP No. 57 of 2010. The company is aware of the existence of regulations regarding the obligation to provide notification of share acquisitions, but the company is less concerned and responsive regarding these regulations. This is where the role of the KPPU should be present and provide more understanding regarding the rules for acquiring shares for each company
3. Information regarding the obligation to notify share acquisitions is not clear or detailed from the KPPU. The KPPU does not provide clear information to each company regarding the obligation to provide notifications, especially regarding sanctions for imposing fines on companies. Even though the principle of fiction

[9] Dinda Anggie Febryasyahri Altaf, "Keterlambatan Pemberitahuan Pengambilan Saham PT. Sinar Mitra Sepadan Finance Oleh Orix Corporation Kepada KPPU (Studi Putusan Nomor 16/KPPU-M/2020)", Universitas Jember, 2022), p. 40.

appears and assumes that everyone knows about laws or rules, it is not possible for everyone to be able to know the existence of a legal rule and its substance if the legal rule is not socialized optimally.16 With this, the principle of legal fiction must be supported by legal socialization. It is the responsibility of every state administrator to provide legal outreach, including the KPPU which is the state institution responsible or supervisor in every action of business actors. Legal socialization is needed as education for the public, therefore the KPPU has an obligation to clearly disseminate regulations regarding share acquisition to each company so that they understand well the regulations that have been made.

4. There was no direct delivery regarding the delay in notification of share acquisition from KPPU to the company.

The Commission Council's considerations in deciding this case took into account several things, which are essentially as follows::

1. There are juridical considerations, namely based on Article 6 PP No. 57 of 2010, KPPU has the authority to impose sanctions in the form of administrative action against business actors in the amount of Rp. 1,000,000,000.00 (one billion rupiah) for each day of delay, with a maximum overall administrative fine of Rp. 25,000,000,000.00 (twenty five billion rupiah) which was proven to have violated the provisions as stipulated in Law no. 5 of 1999
2. There is consideration in the legal facts of the delay in notification of share acquisition to KPPU, namely:[10]
    a. That referring to Notification Stipulation Number 14021 dated 30 December 2021, it can be concluded that there is not a single allegation of monopolistic practices or unfair business competition in the transaction to take over shares of PT. BGAS by PT. Rumah Kasih Indonesia. PT. Rumah Kasih Indonesia has carried out activities that demonstrate its efforts to comply with the principles of healthy business competition
    b. Always appreciate and strive to continue to apply the principles of good corporate governance as evidenced by the fact that to date PT. Rumah Kasih Indonesia has never committed the same or similar violations related to prohibitions on monopolistic practices and unfair business competition
    c. There is no intention of PT. Rumah Kasih Indonesia deliberately did not or was late in reporting the PT share takeover transaction. BGAS because the Reported Party never received information about the legal notification obligation
    d. PT. Rumah Kasih Indonesia has never committed the same or similar violations as regulated in the Law in less than 8 (eight) years based on a decision that has permanent legal force or acted as an initiator in the violation
    e. That PT. Rumah Kasih Indonesia admitted that it had made a delay in notifying the Commission due to PT. Rumah Kasih Indonesia for reporting obligations. Acknowledgment of PT. Rumah Kasih Indonesia is proven by the attitude of the reported party who, with

[10] *Ibid,* p. 96.

his own awareness, immediately carried out the notification process on March 22 2021 with Register Number A14021, after receiving notification from PT. Mitra Keluarga Karyasehat, Tbk, through Letter Regarding the Obligation to Notify Share Takeovers to KPPU, No. 06/MIKA-III/2021, March 12 2021.

f. That the takeover of PT. BGAS by PT. Rumah Kasih Indonesia is known to provide social benefits, namely increasing community health service options in Subang Regency and its surroundings, by providing BPJS or JKN-KIS services which previously did not exist at Mutiara Hati Hospital.
g. PT. Rumah Kasih Indonesia is always cooperative during the trial process by always being present and submitting requested documents during the Commission Council Session
h. PT. Rumah Kasih Indonesia has never been found guilty in a unanimous decision for violating Law no. 5 of 1999.

So, in this decision, the Commission Council, based on legal considerations and the facts of the trial, made a decision in essence:[11]

1. PT. Rumah Kasih Indonesia was proven to have violated Article 29 of Law No. 5 of 1999 Juncto Article 5 PP No. 57 of 2010
2. Punish PT. Rumah Kasih Indonesia paid a fine of Rp. 1,000,000,000.00 (one billion rupiah).

Judging from the four elements that have been fulfilled, namely: the element of merging business entities, the element of asset value or sale, the element of merging unaffiliated companies, and the element of the obligation to notify the KPPU, it can be seen that the criteria for the obligation to notify the KPPU of share acquisitions include: The Acquisition Occurrence Shares, Asset Value and/or Certain Sales Value, Acquisition of Unaffiliated Company Shares, No later than 30 (thirty) Days after the Acquisition is Made. Based on the description above, it can be concluded that PT. Rumah Kasih Indonesia has not been proven to have carried out monopolistic practices and unfair business competition. However, PT. Rumah Kasih Indonesia was proven to have violated Article 29 of Law no. 5 of 1999 which caused PT. Rumah Kasih Indonesia was sentenced to an administrative fine of Rp. 1,000,000,000.00 (one billion rupiah). Thus, the KPPU Decision Number 13/KPPU-M/2022 is in accordance with Law no. 5 of 1999.

4. Conclusion

The legal considerations in KPPU Decision Number 13/KPPU-M/2022, regarding alleged violations of Article 29 of Law No. 5 of 1999 in conjunction with Article 5 of Government Regulation No. 57 of 2010, have not fully explained the articles in the implementing regulations concerning the imposition of fines as stated in Article 6 of Government Regulation No. 57 of 2010. PT. Rumah Kasih Indonesia has fulfilled the four elements mentioned, and therefore, PT. Rumah Kasih Indonesia has been legally proven to have violated the provisions of Article 29 of Law No. 5 of 1999, resulting in an administrative fine of IDR 1,000,000,000 (one billion rupiah).

[11] *Ibid,* p. 100.

The sanctions imposed are based on legal facts that work in favor of the Reported Party. Therefore, it is concluded that KPPU Decision Number 13/KPPU-M/2022 aligns with the provisions of Law No. 5 of 1999. Based on the above conclusions, the author provides recommendations that are expected to contribute to better business competition. It is hoped that the KPPU will implement mandatory changes to the acquisition notification system before it becomes legally effective, in order to avoid losses for business actors, such as fines or delays in acquisitions, and to streamline the regulation of acquisition notification obligations.

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