DELAYS IN SHARE ACQUISITION NOTIFICATIONS DUE TO MISINTERPRETATION OF "*IMMEDIATE HOLDING*" FROM THE PERSPECTIVE OF *MAQASHID AL-SHARI'AH* (A Study of KPPU Decision No. 18/KPPU-M/2020)

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Abstract

The obligation to notify share acquisitions to the Business Competition Supervisory Commission (KPPU) is an important instrument to monitor transactions that have the potential to lead to monopolistic practices and unfair business competition. However, misinterpretation of the concept of immediate holding in the company's ownership structure can cause delays in fulfilling this obligation. This study aims to analyze the delay in notification of share acquisitions in KPPU Decision Number 18/KPPU-M/2020 based on the perspective of Maqashid Shari'ah Imam Al-Syathibi, specifically the concept of Hifz al-mal. This study uses a normative legal method with a statutory and conceptual approach. Legal materials were collected through library research and analyzed qualitatively with a descriptive-analytical method. The results of the study indicate that the obligation to notify share acquisitions is regulated in Article 29 of Law Number 5 of 1999 in conjunction with Article 5 of Government Regulation Number 57 of 2010 that Taiko Plantations Pte. Ltd. was imposed an administrative fine of Rp1,500,000,000.00 for late notification of the acquisition of shares in PT Putra Bongan Jaya. From a Hifz al-mal perspective, the imposition of this sanction is justified as an effort to protect the economic interests of the community and maintain the effectiveness of competition supervision. However, misinterpretation of the concept of immediate holding needs to be considered in assessing the proportionality of the sanction, without eliminating the notification obligation and the company's administrative responsibilities. Therefore, clarity is needed in the KPPU guidelines regarding company ownership structures and notification obligations to create legal certainty, justice, and economic benefits.

Keywords: *acquisition notification, immediate holding*, *maqashid shari'ah*

Introduction

Economic globalization and capital market liberalization have driven a significant increase in merger and acquisition activity, including in Indonesia. With increasingly fierce business competition, companies must continue to develop the latest innovations to ensure that they can survive in the market. Companies often carry out stock takeovers, which are called acquisitions as a means of innovation to ensure their survival and increase

the efficiency and productivity of the company's activities. However, uncontrolled acquisitions can result in excessive market concentration and undermine healthy business competition [1].

The problem of delay in notification of share acquisition in the Decision of the Competition Supervisory Commission *(KPPU)* Number 18/KPPU-M/2020 regarding the takeover of PT Putra Bongan Jaya shares by Taiko Plantations Pte. Ltd. Based on this case, Taiko Plantations Pte. Ltd. was declared late in submitting the notification of share takeover to KPPU and was sentenced to an administrative fine of Rp1,500,000,000.00 (one billion five hundred million rupiah). The delay is related to errors in understanding the notification obligation, especially regarding the calculation of asset value and sales as well as the company's ownership structure in the corporate *group*. Based on the considerations in the case, the share takeover was not proven to cause a change in market concentration or anti-competitive impact. This condition raises problems regarding the application of administrative sanctions against business actors who commit violations due to misinterpretation of rules, but it has not been proven to have a negative impact on business competition.

Delay in notification does not always originate from bad faith of business actors, but is often caused by errors in interpreting the company's control structure in a business group, especially the difference between *immediate holding* and *ultimate holding*. *Immediate holding* refers to an entity that directly controls or controls the business entity that is acquired, while *ultimate holding* is a peak entity that controls indirectly through several layers of ownership. Errors in determining which entities are required to notify and since when the 30-day deadline begins to be calculated can result in business actors being late, even though the transaction does not substantively have an anti-competitive impact.

Article 29 of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition "stipulates that companies that carry out corporate actions and result in the value of their assets and/or sales exceeding a certain amount are obliged to notify KPPU no later than 30 days after the corporate action is carried out. Such provisions show that the notification is made after the corporate action has been completed, or called *Post-notification*. "Similar provisions are strengthened in Article 5 of Government Regulation Number 57 of 2010 concerning Merger or Merger of Business Entities and Takeover of Company Shares That Can Result in the Occurrence of

[1] Didik Budiyanto, Ahmad Sudirman Abbas, and Irvan Iswandi, "Analisis Terhadap Perkara Keterlambatan Pelaporan Akuisisi (Perkara Nomor 02/KPPU-M/2018)," *Journal Of Islamic Studies* 1, no. 2 (2023): 210–26.

Monopoly Practices and Unfair Business Competition regulated regarding the obligation to notify the share takeover to KPPU [2].

Previous studies on the delay in notification of stock acquisitions from the perspective of business competition law have attracted the attention of a number of previous researchers. First, research by Indri Pratiwi Siregar in 2023 entitled "*Rule Of Reason* Against the Delay in the Notification of the Acquisition of Shares". The delay in the notification of the acquisition of PT Mitra Keluarga Karyasehat was caused by the company's ignorance of the legal obligation to submit a notification to KPPU within 30 working days from the effective date of the acquisition. In perspective *Rule of Reason*, KPPU not only assesses administrative delays, but also analyzes the economic impact of the acquisition on business competition. The results of the analysis show that the acquisition does not give rise to monopoly practices or abuse of dominant position because it aims to improve health services. However, because the notification obligation remains a mandatory legal provision, companies are still subject to administrative sanctions for late notification [3].

Second, Dewi Sugiarsih, Putri Ayu Indah Sholihah and Sumriyah who were researched in 2023 entitled "Analysis of the Delay in the Notification of the Takeover (Acquisition) of PT Karya Prima Agro's Shares by PT Dharma Setya Nusantara Tbk (Case Study Decision Number: 34/KPPU-M/2020)" concluded that the delay in notification occurred due to the company's lack of understanding of obligations *Post Merger Notification*. The company mistakenly considers that the reporting is only based on material value according to the provisions of the OJK, even though the business competition law uses the limit of the value of assets and the combined sales value as the basis for the notification obligation. As a result of this error, the company was still declared to have violated its administrative obligations based on Article 29 of Law Number 5 of 1999 jo. Government Regulation Number 57 of 2010 and was sanctioned by a fine by KPPU [4].

Third, a study conducted by Rahmad Hidayat in 2021 entitled "Delay in Notification of Acquisition in Affiliated Companies Reviewed from Business Competition Law in Indonesia (Study of the Decision of the Competition Supervisory Commission *(KPPU)* No. 27/KPPU-M/2019)" explained that the delay in notification of acquisition

[2] Asrul Huda and Budi Santoso, "Analisis Yuridis Terhadap Keterlambatan Pemberitahuan Pengambilalihan Saham (Akuisisi) (Studi Putusan KPPU Nomor 31/Kppu-M/2020)," *Notarius* 16, no. 3 (2023): 1456–70, https://doi.org/10.14710/nts.v16i3.42712.

[3] Indri Pratiwi Siregar, "Rule Of Reason Tehadap Keterlambatan Pemberitahuan Pengambilalihan Saham," *KNOWLEDGE, Jurnal Inovasi Hasil Penelitian Dan Pengembangan* 3 (2023): 258–72.

[4] Dewi Sugiarsih, Putri Ayu Indah Sholihah, and Sumriya, "Analisis Keterlambatan Pemberitahuan Pengambilalihan (Akuisisi) Saham PT Karya Prima Agro Oleh PT Dharma Setya Nusantara Tbk (Studi Kasus Putusan Nomor : 34/KPPU-M/2020)," *Deposisi: Jurnal Publikasi Ilmu Hukum* 1, no. 3 (2023): 95–118.

occurred due to differences in interpretation of the affiliate relationship. Business actors consider the transaction to be an exception so it is not mandatory to notify KPPU. However, based on Article 29 of Law Number 5 of 1999 jo. Government Regulation Number 57 of 2010, KPPU still states that there has been an administrative violation because the notification obligation does not fall due to the misinterpretation [5].

Based on this description, this study focuses on the delay in notification of stock acquisition caused by misinterpretation of the concept *Immediate Holding* in KPPU Decision Number 18/KPPU-M/2020. In contrast to previous research which generally discussed notification delays from the perspective of competition law, but also used the perspective of *Maqashid Shari'ah* according to Imam Al-Syathibi in the book *Al-Muwafaqat fi Ushul al-Syari'ah*. According to Al-Syatibi, the purpose of Islamic law is to realize the benefits of humans, one of which is through the protection of property (*Hifz al-Mal*). In addition, in ushul fiqh, it is known that there is a difference between intentional mistakes (*Al-amd*) and accidental errors (*al-Khata'*), so that the imposition of sanctions should consider the level of wrongdoing of the perpetrators so that it still reflects justice and benefits [6].

This research aims to first, how to regulate the obligation to notify the acquisition of shares in Indonesian competition law and how the concept of *immediate holding* affects the compliance of business actors, second, how is KPPU's consideration in Decision Number 18/KPPU-M/2020 regarding notification delays due to misinterpretation of *immediate holding* and third, how to analyze the delay in notification based on the perspective of Imam Al-Syathibi through the concept of *Maqashid Shari'ah.*

Method

This research is a normative legal research (*Normative Legal Research*), namely research that examines the law based on norms, laws and regulations, doctrines, and decisions related to the legal issues being studied. This research focuses on the analysis of the provisions regarding the obligation to notify the acquisition of shares and the delay in notification to the Business Competition Supervisory Commission (KPPU), especially in KPPU Decision Number 18/KPPU-M/2020. These problems are then analyzed using the

[5] Hidayat Rahmad, "Keterlambatan Pemberitahuan Akuisisi Pada Perusahaan Yang Terafiliasi Ditinjau Dari Hukum Persaingan Usaha Di Indonesia (Studi Putusan Komisi Pengawas Persaingan Usaha (KPPU) No. 27/KPPU-M/2019)," *"Dharmasisya" Jurnal Program Magister Hukum FHUI* 1, no. 30 (2022): 2057–66.

[6] (R & Paradise, 2023)

perspective of *Maqashid Shari'ah* Imam al-Syathibi, especially the concept of benefits and *Hifz al-Mal* (property protection) [7].

The approach used in this study includes the legislative approach (*Statute approach*), and conceptual approaches (*conceptual approach*). The legislative approach is carried out by examining provisions related to acquisition notification obligations, including Law Number 5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition, Government Regulation Number 57 of 2010, and other regulations related to acquisition and business competition. The case approach is used to review KPPU Decision Number 18/KPPU-M/2020, especially regarding notification delays and misinterpretations of the concept *Immediate Holding*. Conceptual approaches are used to analyze concepts *Maqashid Shari'ah*, especially in the *Hifz al-Mal* (protection of property), as well as the principle of proportionality, which is the conformity between the severity of the sanction and the degree of the mistake committed [8].

The legal materials used in this study consist of primary legal materials and secondary legal materials. Primary legal materials include Law Number 5 of 1999, Government Regulation Number 57 of 2010, KPPU Decision Number 18/KPPU-M/2020, and other laws and regulations related to business acquisition and competition. Secondary legal materials are in the form of books, scientific journals, previous research, expert opinions, and literature that discusses business competition law, acquisition, *Immediate Holding*, and *Maqashid Shari'ah* Imam al-Syathibi. The main source in analyzing perspectives *Maqashid Shari'ah* is the work of Imam al-Syathibi, in particular *Al-Muwafaqat fī usul Al shari'ah*. These legal materials are used to provide a theoretical basis in analyzing the problems being researched [9].

The analysis of legal materials was carried out qualitatively using a descriptive-analytical method. The descriptive method was used to explain the regulations regarding the acquisition of shares and the obligation to notify KPPU, while the analytical method was used to examine the delay in notification due to the misinterpretation of the concept *of immediate holding* in KPPU Decision Number 18/KPPU-M/2020. The analysis was carried out by examining the applicable regulations, legal considerations in the decision, the party responsible for delivering the notification, and the basis for sanctioning the delay. Furthermore, the problem was studied based on the perspective *of Maqashid shari'ah*,

[7] Jonaedi Efendi and Prasetijo Rijadi, *Metode Penelitian Hukum Normatif Dan Empiris* (Jakarta: Kencana Prenadamedia Group, 2023); Muhammad Nur Khaliq and Aji Pangestu, "Teori Maqasid Syari ' Ah Klasik (Asy -Syatibi)" 11, no. 1 (2025): 149–62.

[8] Desi Putri Rahayu, "Analisis Hukum Persaingan Usaha Terhadap Sanksi Keterlambatan Pemberitahuan Pengambilalihan Saham (Akuisisi) PT Wanabakti Sukses Mineral Oleh PT Saratoga Investama Sedaya Tbk. (Studi Putusan Nomor 17 KPPU-M/2020)" (Universitas Islam Negeri Kiai Haji Achmad Siddiq Jember, 2024).

[9] Bubun Bunyamin et al., "Alleged Delay in Notification of Takeover of Shares of Pt Kadi Indonesia Manufaktur by Nippo Corporation Decision : 16 / KPPU- M / 2023," *Formosa Journal of Sustainable Research (FJSR)* 3, no. 5 (2024): 953–62.

especially the principles *of Hifz al-mal* (safeguarding property), justice, and benefit. This study aims to assess the application of notification and sanction obligations based on positive law and see its conformity with the principles of legal certainty, justice, and protection of the economic interests of the parties.

Discussion

1. Stock Acquisition Regulation and Immediate *Holding Interpretation* Issues in Indonesian Business Competition Law

One form of economic activity carried out by business actors is the acquisition of companies. Acquisition is a company growth strategy that aims to expand business activities, increase competitiveness, or save companies that are experiencing difficulties, especially in terms of capital. Terms *Acquisition* of English origin *Acquisition*, which means acquiring or taking over ownership or control of a company. Acquisition in business terminology is defined as the acquisition of ownership or control of the shares or assets of a company by another company [10]. According to Summer N. Levine, an acquisition is a negotiation process between two companies, in which one company acts as the acquiring party who acquires ownership of most or all of the shares and assets of the other company as the acquired party [11].

Acquisition There are three types, namely horizontal acquisitions, vertical acquisitions, and conglomerate acquisitions. Horizontal acquisitions are the takeover of companies engaged in the same business field, producing similar products or services, and becoming competitors in the same marketing area. The main purpose of this acquisition is to expand market share and strengthen the company's position in competition. Vertical acquisition is the takeover of a company that is at different stages in the production or distribution process, so that the products or services are not the same. This acquisition aims to control the entire supply chain, from the provision of raw materials to the distribution of products to consumers. Meanwhile, conglomerate acquisitions are the takeover of companies engaged in completely different business fields and have no connections, both in the production process and marketing. This type of acquisition is generally carried out to diversify the business and reduce business risks [12].

[10] Muhamad sadi Is, *Hukum Perusahaan Di Indomesia*, 1st ed. (Jakarta: Kencana Prenadamedia Group, 2016).

[11] Faesha Nabbal, Annisa Nur Afifah, and Endang Kartini Panggiarti, "Proses Akuisisi Perusahaan: Strategi, Tantangan, Dan Dampaknya Bagi Kinerja Keungan Perusahaan," *Jurnal Maneksi* 12, no. 2 (2023): 293–98.

[12] Bayu Adhimastha, L Budi Kagramanto, and Endang Prasetyowati, "Hakekat Konsep Pengaturan Akuisisi Saham Perseroan Terbatas Berdasarkan Keadilan Dan Kepastian Hukum," *Universitas Wiralodra* 14, no. 1 (2023): 237–50.

These three types of acquisitions, especially horizontal acquisitions, have the potential to cause a concentration of market power in one business actor so that it directly intersects with the law of business competition. Business competition law basically regulates the relationship of interests between business actors, where a business actor can be harmed by the actions of other business actors. Therefore, at first, the law of business competition has the character of a private law because it is related to disputes between business actors. However, violations of the law of business competition not only have an impact on the individual interests of business actors, but also have the potential to harm the wider community and the country's economy. On that basis, the law of business competition has developed into part of public law through the granting of authority to the state, especially KPPU, to impose administrative sanctions on violations that occur [13].

Acquisitions have the potential to have an impact on business competition As described above, it is important to understand in advance how the acquisition mechanism is regulated in the company's law. Based on Article 125 paragraph (1) of Law Number 40 of 2007 concerning Limited Liability Companies (UUPT), the takeover of the company can be carried out through two mechanisms, namely through the company's directors or directly from shareholders. Both mechanisms result in the transfer of control over the company, as stipulated in the provisions regarding control in the Limited Liability Company Law [14]. The takeover process through the company's board of directors is as follows [15].

a. Resolution of the GMS
b. Notification to the Company's Board of Directors
c. Preparation of Acquisition Plan
d. Acquisition of Plan Summary
e. Submission of Creditors' Objections
f. Making a Deed of Takeover before a Notary
g. Notification to the Minister of Announcement of Acquisition Results

The process of taking over shares directly from shareholders is a simpler procedure, namely the procedure for taking over shares of a limited liability company must be subject to the terms of acquisition as stipulated in the Limited Liability Company Law, which among other things regulates [16]

1. As stipulated in Article 127 paragraph (8) jo. Article 125 paragraph (7) of the Limited Liability Company Law, that shareholders do not need to make a plan of takeover first.

[13] Mustafa Kamal Rokan, *Hukum Persaingan Usaha:Teori Dan Praktiknya Di Indonesia* (Jakarta: PT RajaGrafindo Persada, 2012).

[14] Aida Nur Hasanah and Uswatun Hasanah, "Challenges Of Business Judgement Rule Implementation As An Effort To Protect Company Directors In Indonesia," *Jurnal Ius Civile* 9, no. April (2025): 113–34.

[15] Andara Tsabitha et al., "Dampak Akuisisi Terhadap Profitabilitas Perusahaan Menurut Undang-Undang Nomor 40 Tahun 2007 Tentang Perseroan Terbatas," *Media Hukum Indonesia(MHI)* 2, no. 4 (2024): 117–23.

[16] (Erica & Year, 2022)

However, the company's board of directors who will make the acquisition has the obligation to announce the summary of the draft in at least 1 (one) Newspaper and announce in writing to the employees of the Company who will make the acquisition, no later than 30 days before the invitation of the General Meeting of Shareholders (GMS);

2. Based on the provisions of Article 125 paragraph (8), the acquisition of shares must pay attention to the provisions of the Company's articles of association that are acquired regarding the transfer of rights to shares and agreements that have been made by the Company with other parties;
3. Within a period of no later than 14 days after the announcement of the acquisition by the board of directors, the creditor may file an objection to the company. As for if the creditor does not file an objection within that period, it will be considered to have approved the acquisition. If the objection from the creditor until the date of the GMS is not resolved by the company's board of directors, the objection will be submitted to the GMS in order to get its resolution. In addition, the acquisition cannot be carried out before this objection is resolved. This is in accordance with the provisions of Article 127 paragraph (2), (4), (5), (6), (7) of the Limited Liability Company Law;
4. In accordance with the provisions of Article 128 of the Limited Liability Company Law, that the acquisition plan that has been approved by the GMS will be stated in the deed of transfer of share rights made before a notary and must be stated by a notary deed in Indonesian;
5. Article 131 paragraph (2) of the Limited Liability Company Law, states that a copy of the deed of transfer of rights to shares must be attached to the submission of a notification to the Minister of Law and Human Rights (Kemenkumham) regarding the change in the order of the company's shareholders;
6. The Company's Board of Directors is obliged to announce the results of the acquisition into 1 or more newspapers. And no later than 30 days from the date of notification to the Ministry of Law and Human Rights or from the date of change in the basic amount approved by the Ministry of Law and Human Rights.

Acquisitions that have the potential to affect the structure of market competition are also subject to notification obligations to KPPU. Article 28 of Law Number 5 of 1999 prohibits business actors from merging, merging, or taking over shares of other companies if such actions may result in monopolistic practices and/or unfair business competition. As a consequence of the prohibition, Article 29 requires any corporate action that results in the value of assets and/or the value of sales exceeding a certain amount to be notified in writing to KPPU. Article 5 of Government Regulation Number 57 of 2010 then affirms the threshold of notification obligations, namely the value of assets resulting from corporate actions exceeding Rp2,500,000,000,000.00 (two trillion five hundred billion rupiah) and/or the value of sales exceeding Rp5,000,000,000,000.00 (five trillion rupiah), with a notification deadline of no later than 30 (thirty) working days from the date of the transaction becoming juridically effective. Article 6 of Government Regulation Number 57 of 2010 stipulates that late notification is subject to an administrative fine of

Rp1,000,000,000.00 (one billion rupiah) for each day of delay, with a maximum limit of Rp25,000,000,000.00 (twenty-five billion rupiah) [17].

Regarding the delivery time, two notification systems are known. On the system *Pre-notification*, every business actor who will take over shares (acquisition) is required to submit a notification to the Competition Supervisory Commission(KPPU)before the transaction acquires legal force or is carried out. On the contrary, *Post-notification* is a notification mechanism after the acquisition is completed and is legally effective [18].

Indonesia implements a system *Post-notification*, so that any transaction that has met the threshold of asset value or sale must be notified to KPPU after the transaction is effective after the transaction takes effect. This obligation is automatic and does not require consultation before the transaction is made, in contrast to countries that use the system *Pre-notification*. Based on the Assessment Guidelines for Mergers, Mergers, or Acquisitions issued by KPPU, the party obliged to submit the notification is determined based on the change of control (*change of control*) against the business entity that was acquired [19]. Based on practice, the determination of control becomes more complex if the transaction involves a business group with a multi-level ownership structure. In this condition, it is necessary to distinguish between *Immediate Holding* as a direct controller and *Ultimate Holding* as the supreme controller (*beneficial owner*) who control the company through a series of subsidiaries in stages.

The obligation to notify the takeover of shares to the Competition Supervisory Commission(KPPU)still has the potential to cause errors in its application, especially related to the identification of the party responsible for making the notification. One of the mistakes that can occur is the assumption that the notification obligation only applies to the ultimate *holding* company as the final controller in a business group. In fact, the determination of the party who is obliged to make a notification needs to be based on the legal provisions that govern the takeover transaction and the party who carries out the action. The company structure consisting of several layers of ownership, an understanding of the position of the takeover company and the immediate *holding company* is important to determine the proper implementation of the notification obligation.

In addition to the identification of the responsible party, errors can also occur in the calculation of the notification threshold. It is not enough to calculate the value of assets and

[17] Salsabilla Hassani and 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, https://doi.org/10.31629/selat.v10i1.4948.

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

[19] Febrian Hernanda, Rinitami Njatrijani, and Ro'fah Setyowati, "Kajian Yuridis Keterlambatan Pemberitahuan Akuisisi Saham PT Global Loket Sejahtera Oleh PT Aplikasi Karya Anak Bangsa," *Diponegoro Law Journal* 11, no. 30 (2022).

sales by looking at the financial condition of the acquiring company separately, but it is necessary to pay attention to the combined value (*combined value*) the business entity involved in accordance with the provisions regarding the relationship between affiliation and business group. Errors in identifying the scope of the business group can affect the determination of whether or not the notification threshold is met, as well as causing errors in setting the initial calculation of the 30-business day deadline. This problem is increasingly relevant in cross-border transactions involving multi-layered ownership structures, as lack of understanding of these provisions has the potential to cause delays in notification to KPPU [20].

2. Analysis of KPPU's Considerations in Decision Number 18/KPPU-M/2020 Regarding Delayed Notification Due to Misinterpretation *of Immediate Holding*

Taiko Plantations Pte. Ltd. is a foreign company domiciled at 220 Orchard Road #05-01 Midpoint Orchard, Singapore 238852 and was established under the laws of Singapore on 11 February 2009. Taiko Plantations Pte. Ltd. is 100% owned by Taiko Plantations Sdn. Bhd. Then, the Supreme Holding Company (BUIT) of Taiko Plantations Pte. Ltd. is Kuala Lumpur Kepong Berhad (KLK Berhad), a public company established under the laws of Malaysia on 6 July 1973 which has several businesses engaged in plantations, property, manufacturing and investment, among others.

PT Putra Bongan Jaya is a legal entity established based on Deed Number 28 dated August 30, 2005 made before Lia Cittawan Nanda Gunawan, S.H., Notary in Samarinda. The company was established to carry out business activities in the fields of agriculture, industry, trade, land transportation, and services. Prior to being acquired by Taiko Plantations Pte. Ltd., PT Putra Bongan Jaya's share ownership structure as of July 17, 2018 consisted of PT REA Kaltim Plantations as the holder of 139,308 shares and PT Hansa Limanswakarya as the holder of 7,332 shares. The object of the case in KPPU Decision Number 18/KPPU-M/2020 is the alleged delay in notification of the takeover (acquisition) of PT Putra Bongan Jaya's shares by Taiko Plantations Pte. Ltd. to the Business Competition Supervisory Commission (KPPU).

The transaction value of the share takeover is 139,308 shares of PT Putra Bongan Jaya by Taiko Plantations pte. Ltd., the total share ownership is 95% and the total transaction value is IDR 216,920,628,135.00 (two hundred and sixteen billion nine hundred and twenty million six hundred twenty-eight thousand one hundred thirty-five rupiah) or at a price of IDR 1,557,130.00 (one million five hundred and fifty-seven thousand one hundred and thirty rupiah) per share.

[20] Ade Nugroho, Akhmad Safik, and Nisa Istiani, "Penerapan Yurisdiksi Ekstrateritorial Dalam Pemberitahuan Akuisisi Lintas Negara," *Binamulia Hukum* 14, no. 1 (2025): 99–114, https://doi.org/10.37893/jbh.v14i1.1008.

The notification obligation for the takeover of shares carried out by Taiko Plantations Pte. Ltd. is based on Article 29 of Law Number 5 of 1999 in conjunction with Article 5 of Government Regulation Number 57 of 2010. This provision requires business actors to submit a notification to KPPU no later than 30 working days from the time the takeover takes effect juridically if the value of the assets and/or the combined sales value has met the specified limit. In this case, the results of KPPU's calculation show that the value of the combined assets reached Rp13,285,957,219,485.00, while the combined sales value reached Rp11,652,967,904,500.00. Thus, the two values have exceeded the limit specified in Article 5 paragraph (2) of Government Regulation Number 57 of 2010, namely Rp2,500,000,000,000.00 for the value of assets and Rp5,000,000,000,000.00 for the value of sales [21].

The main problem in this case does not lie in the non-fulfillment of the limit of asset value and sales, but in the Reported Party's understanding of the parties that must be taken into account in determining the combined value. Based on the Reported Party's statement, the delay in notification occurred due to a mistake in understanding the provisions of the notification of the takeover of shares. The Reported Party initially understood that the notification obligation was only related to *the immediate holding* or the company that was directly the parent of the company being taken over. This understanding caused the Reported Party not to include the entire structure of the business group up to the Highest Parent Business Entity in the calculation of asset value and sales value.

The mistake then caused the Reported Party to not realize that the takeover transaction of PT Putra Bongan Jaya had met the limit of the asset value and/or sales value which gave rise to the obligation to notify KPPU. Thus, the error that occurred can be understood as an error in understanding and applying the legal provisions regarding the mechanism for calculating the combined value, especially related to the control structure in the business group. This is relevant because the provisions of Article 5 of Government Regulation Number 57 of 2010 not only take into account the value of assets and sales of companies that directly carry out the takeover, but also take into account business entities that directly or indirectly control or control the business entity that conducts the transaction [22].

The Reported Party's attitude after learning of the notification obligation is also an important part in assessing its good faith. After receiving the meeting invitation from KPPU, Taiko Plantations Pte. Ltd. appointed legal counsel from Hanafiah Ponggawa & Partners (Dentons HPRP) to provide legal assistance. At the meeting with KPPU on March 12, 2020, the Reported Party received an explanation of the mechanism for calculating the asset value threshold and the sale value as well as the obligation to submit a notification no later than 30 working days from the juridical effective date of the takeover. After

[21] (Competition Supervisory Commission, 2020)
[22] (Competition Supervisory Commission, 2020)

understanding these provisions, the Reported Party immediately prepared the necessary documents to submit the notification to KPPU.

The process of fulfilling the document faced a number of obstacles, considering that the share takeover transaction had taken place in mid-2018 so that the Reported Party needed to collect the transaction documents that had passed. In addition, the notification submission process took place in April 2020, when the COVID-19 pandemic was occurring and Large-Scale Social Restrictions began to be implemented in Jakarta. Despite these obstacles, Taiko Plantations Pte. Ltd. still submitted a notification to KPPU on April 8, 2020. This series of actions shows that there are efforts to fulfill administrative obligations after the Reported Party has gained a more precise understanding of the applicable legal provisions [23].

The obligation to notify the acquisition of shares is stipulated in the provisions of Article 29 of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, where substantially this provision aims and functions as a mechanism in identifying the potential and impact of transactions on business competition. Stock takeover is not only seen as an internal activity of the company, but also as a legal action that has the potential to change the market structure and affect the level of competition between business actors **[24].**

KPPU Decision No. 18/KPPU-M/2020 regarding the alleged delay in the notification of the takeover of shares of PT Putra Bongan Jaya by Taiko Plantations Pte. Ltd., a foreign business entity engaged in the plantation sector. The Commission Panel in its decision stated that Taiko Plantations Pte. Ltd. was legally and convincingly proven to have violated Article 29 of Law Number 5 of 1999 juncto Article 5 of Government Regulation Number 57 of 2010 because it submitted a notification of the share takeover to KPPU past the deadline of 30 working days since the transaction became juridically effective. For this violation, the Commission Panel imposed an administrative fine of Rp1,500,000,000.00 (one billion five hundred million rupiah).

There are two important elements in the ratio legis of this decision. First, the element of proof of the impact of business competition The Commission Panel concluded that the takeover of PT Putra Bongan Jaya's shares by Taiko Plantations Pte. Ltd. was proven not to result in monopoly practices and unfair business competition, because the transaction did not cause a change in market concentration, did not cause a change in market strength, and was not vertically integrated with other Taiko Plantations business lines. Second, the formal element of late notification regardless of the unproven

[23] (Competition Supervisory Commission, 2020)

[24] Axcel Deyong Aponno et al., "Akibat Hukum Atas Keterlambatan Akuisisi Saham Antara Pt. Dharma Satya Nusantara Tbk. Terhadap Pt. Agro Pratama," *Borneo Law Review* 6, no. 1 (2022): 29–41, https://doi.org/10.35334/bolrev.v6i1.2646.

anticompetitive impact, the Commission Panel still stated that the violation was proven because the delay in notification itself had fulfilled all elements of Article 29 juncto Article 5 of Government Regulation Number 57 of 2010, namely the fulfillment of KPPU's authority, the fulfillment of the threshold of the value of assets and/or the value of combined sales, the exceedance of the 30-day notification deadline, and the enactment of the provisions of administrative fine sanctions [25].

The important thing that is the basis of this study is the consideration of the Commission Panel that the delay in notification occurred because the Reported Party did not understand the provisions of Law Number 5 of 1999 concerning the obligation to notify the acquisition of shares to KPPU. Based on the case of the acquisition of PT Putra Bongan Jaya by Taiko Plantations Pte. Ltd., the misunderstanding is related to the interpretation of *immediate holding*, namely a company that directly owns shares in the acquired company. The Reported Party allegedly understands that the notification obligation is only related to the direct parent company, so it is not appropriate in understanding the calculation of the value of assets and sales of the business group as well as the determination of the effective time of the notification obligation. As a result, the notification to KPPU is submitted after the deadline of 30 working days as stipulated in the applicable regulations.

The legal construction built by KPPU in this decision confirms the character of the notification obligation as a norm that *is strict* administrative liability to prove violations is simply based on the fulfillment of the formal element of delay, without the need to prove the existence of intentionality or real anticompetitive consequences. Such an approach is consistent with the nature *of the post-notification* regime in Indonesia which places the obligation to report as a stand-alone administrative compliance requirement, regardless of whether there is a substantive impact on business competition. The implication is that *non-intentional* misinterpretation of the law, including misunderstandings *of the concept of immediate holding*, does not eliminate the administrative liability of business actors, even though morally the error is different in quality from violations committed deliberately to avoid KPPU's supervision.

3. Analysis of Delay in Notification of *Immediate Holding* Misinterpretation in the Perspective *of Maqashid shari'ah*

Imam al-Syathibi has the full name Abu Ishaq Ibrahim bin Musa bin Muhammad al-Lakhmi al-Gharnathi. As a great scholar in the field of ushul fiqh, one of his monumental works is the book *Al-Muwafaqat fi Ushul al-Syari'ah*. In the book, Imam Al-Syathibi explained that the main purpose of establishing the sharia is to realize the benefits of human beings and prevent harm. This principle is related to efforts to obtain benefits and avoid losses. According to Al-Syathibi, benefits are divided into three levels, namely *Dharuriyat* (basic necessities), *Hajiyat* (supporting needs), and *Tahsiniyat* (complementary needs). All

[25] (Competition Supervisory Commission, 2020)

three are related to the maintenance of the five main elements of human life, namely religion (*Hifz al-Din*), soul (*Hifz Al-Nafs*), Sense (*Hifz al-'aql*), descendants (*Hifz al-Nasl*), and treasures (*Hifz al-mal)* [26].

One of the main elements that is relevant in the context of business competition law is *Hifz al-Mal*, namely the protection of property and economic interests. This concept is not only related to the protection of individual property ownership, but also includes efforts to safeguard the economic interests of the community and prevent losses due to unfair business practices [27]. Healthy business competition is a means to realize benefits because it can create fair business opportunities, protect the interests of consumers, and prevent the concentration of economic power that has the potential to harm society. Therefore, the obligation to notify the Competition Supervisory Commission(KPPU) can be seen as an instrument to protect the economic interests of the community. Through these notifications, KPPU can assess transactions that have the potential to cause excessive market concentration, strengthen dominant positions, or lead to monopoly practices and unfair business competition [28].

Linkage between *Hifz al-Mal* and notification obligations can be analyzed through KPPU Decision Number 18/KPPU-M/2020 involving Taiko Plantations Pte. Ltd. in the takeover of shares of PT Putra Bongan Jaya. In this case, Taiko Plantations Pte. Ltd. was declared late in submitting the notification of the share takeover to KPPU and was sentenced to an administrative fine of Rp1,500,000,000.00 (one billion five hundred million rupiah). The delay was related to the misinterpretation of the notification obligation, especially regarding the concept of *Immediate Holding* in the company's ownership structure. This problem shows that the complexity of the corporate group structure can cause difficulties in understanding the party who is obliged to deliver the notification and determine the time when the obligation begins. This case needs to be assessed not only from the aspect of formal compliance with the regulations, but also from the purpose of the notification obligation in protecting the benefits and economic interests of the community [29]

Perspective *Hifz al-Mal,* The imposition of administrative sanctions for late notification can be justified because it aims to maintain healthy business competition and protect the economic interests of the community. The sanctions encourage business actors

[26] Abu Ishaq Ibrahim ibn Musa Al-Syathibi, *Al-Muwafaqat Fi Usul Al-Syari'ah* (Beirut: Dar Al Kutub Al-Ilmiyah, 1920); Mulya Anshari and Cahaya Permata, "Deforestasi Hutan Lindung Dalam Proyek Strategis Nasional Food Estate Perspektif Maqasid Syariah," *Al Qalam: Jurnal Ilmiah Keagamaan Dan Kemasyarakatan* 18, no. 3 (2024): 2031–47.

[27] Herni Hidayani Harahap and Uswatun Hasanah, "Perlindungan Hukum Pada Nasabah Terhadap Ketersediaan Fisik Produk Tabungan Emas Perspektif Hifdz Al-Maal," *Jurnal Ilmiah Penelitian Law Jurnal* VII, no. 1 (2026): 83–99.

[28] 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, https://doi.org/10.26740/jsh.v3n1.p143-173.

[29] (Business Competition Supervisory Commission, 2020; Syafitri & Sativa, 2025)

to comply with notification obligations so that KPPU can supervise stock takeover transactions that have the potential to disrupt business competition. However, the imposition of fines also needs to consider the economic interests of the company subject to the sanction. Therefore, the amount of sanctions must pay attention to the level of error, the cause of the violation, and the proportionality between the violation and the punishment given. Concept *Hifz al-Mal* emphasizing the importance of maintaining a balance between the protection of the community's economic interests and justice for business actors so that law enforcement can realize the common benefit [30].

Application *Maqashid Shari'ah*, especially the concept *Hifz al-Mal*, not only aims to protect the economic interests of the community, but also pays attention to justice in imposing sanctions. This is in line with the principle *Raf' al-Haraj*, i.e. avoiding excessive difficulty, and tanasub or proportionality in the application of the law [31]. In the case of Taiko Plantations Pte. Ltd., the delay in notification occurred due to a mistake in understanding the concept *Immediate Holding* on the company's ownership structure. If the mistake is not made deliberately to avoid the obligation to notify KPPU, these circumstances need to be considered in determining appropriate sanctions. Moreover, the complexity of the company group structure can cause difficulties in understanding the notification obligation. The imposition of sanctions needs to consider the cause of the delay, the level of error, the impact on business competition, and the company's cooperative attitude. Sanctions are still needed to protect the economic interests of the community and ensure compliance with the law, but their application must also be fair and proportionate so as not to create an excessive financial burden for business actors.

Based on the perspective *of Maqashid shari'ah* Imam Al-Syathibi, especially the concept *of Hifz al-mal*, KPPU Decision Number 18/KPPU-M/2020 shows the importance of maintaining a balance between the protection of the community's economic interests and justice for business actors. The imposition of an administrative fine of Rp1,500,000,000.00 is an effort to enforce the notification obligation and maintain the effectiveness of business competition supervision. Although no adverse anti-competitive impact was found, administrative violations still need to be acted upon because the notification obligation is an important part of KPPU's supervision. However, misinterpretations of the concept *of immediate holding* also need to be considered in determining the proportionality of sanctions, especially if the delay occurs due to misunderstanding and not intentionality to avoid legal obligations. Therefore, sanctions must still provide legal certainty while considering the level of error and the circumstances behind the violation. In addition, KPPU needs to clarify guidelines on the concepts of *immediate holding* and *ultimate holding*, the parties who are required to submit notifications, and the calculation of

[30] Muhammad Kharuddin and Zulham, "Perlindungan Hukum Terhadap Peserta Program Makan Bergizi Gratis Perspektif Maqāṣid Al-Syari'ah," *Al-Sulthaniyah* 15, no. 2 (2026): 406–20.

[31] Muhammad Zulkarnain Mubhar, Hawirah, and Imam Zarkasyi Mubhar, "Prinsip Keseimbangan Antara Al-'Usr (Kesulitan) Dan Al-Yusr (Kemudahan) Dalam Al-Qur'an;Pedoman Bagi Muslim Dalam Menyikapi Kehidupan Moderen," *Al-Mubarak Jurnal Kajian Al-Qur'an & Tafsir* 10, no. 2 (2025): 94–109.

notification deadlines in transactions with cross-border ownership structures. This clarity is expected to reduce misinterpretations and increase compliance of business actors. Thus, the purpose of *Hifz al-mal* can be realized through law enforcement that protects the economic interests of the community while ensuring the application of sanctions that are fair, proportionate, and oriented towards the common good.

Conclusion

The obligation to notify the acquisition of shares in Indonesian business competition law is regulated in Article 29 of Law Number 5 of 1999 jo. Article 5 of Government Regulation Number 57 of 2010. KPPU Decision Number 18/KPPU-M/2020, Taiko Plantations Pte. Ltd. was late in submitting the notification because it misunderstood the concept *of immediate holding*, so it did not take into account all business groups up to the Supreme Parent Business Entity in calculating the combined value. KPPU still declared a proven violation and imposed an administrative fine of Rp1,500,000,000.00, emphasizing that the notification obligation is *a strict administrative liability* that does not depend on the existence of intentionality or anti-competitive impact. Based on the perspective of *the maqashid shari'ah* of Imam al-Syathibi, especially *Hifz al-mal*, the sanctions can be justified because they maintain the effectiveness of supervision and the economic interests of the community. However, unintentional misinterpretations, reported cooperative attitudes, and unproven anti-competitive impacts need to be considered so that sanctions remain fair, proportionate, and beneficial.

The Competition Supervisory Commission(KPPU) as a supervisory institution issues clearer and more detailed guidelines on the difference between *immediate holding* and *ultimate holding*, how to calculate the value of assets and combined sales in a business group, and the early determination of the 30-day working deadline. KPPU also needs to strengthen socialization and consultation for business actors, especially those with layered or cross-border ownership structures. In addition, KPPU can consider imposing more proportionate sanctions, by making accidental misinterpretation a mitigating factor without removing the notification obligation. For business actors, it is recommended to involve legal counsel from the early stages of the acquisition plan so that the notification obligation can be fulfilled on time. The next research can compare several other similar KPPU decisions, or examine the possibility of implementing the *pre-notification* system as an alternative, by using a broader *maqashid shari'ah* approach so that the study of business competition law is more comprehensive.

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