

INTISARI

PERBANDINGAN PENGATURAN MERGER LINTAS BATAS DALAM HUKUM PERSAINGAN USAHA ANTARA INDONESIA DAN AMERIKA SERIKAT

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Penelitian hukum ini bertujuan untuk mencari tahu pendekatan hukum persaingan usaha untuk menilai merger lintas batas di Indonesia yang dibandingkan dengan pendekatan di Amerika Serikat untuk kemudian diidentifikasi. Hasil dari perbandingan tersebut dapat memunculkan saran mengenai pendekatan aturan yang kemudian dapat diadopsi di Indonesia. Metode penelitian yang digunakan adalah yuridis normatif dengan menggunakan pendekatan perbandingan hukum serta penggunaan data sekunder yang diperoleh penulis melalui studi kepustakaan. Sebaliknya metode analisis hasil penelitian yang digunakan adalah metode kualitatif dan pendekatan komparatif yang hasil penelitiannya disajikan secara deskriptif.

Hasil penelitian menghasilkan kesimpulan: Pertama, dalam menilai merger lintas batas Indonesia menggunakan bentuk notifikasi *post-merger* yang bersifat wajib serta *pre-merger* bersifat sukarela, pendekatan aturan masih berdasarkan asas teritorial, dan penilaian substantif atas merger yang terdiri dari penilaian awal dan penilaian menyeluruh. Sebaliknya, Amerika Serikat menggunakan notifikasi *pre-merger* yang bersifat wajib, pendekatan ekstrateritorial, dan penilaian substantif dari lembaga paralel dengan metode SLC tes dan penilaian keamanan nasional pada beberapa transaksi khusus. Kedua, beberapa kasus di Indonesia telah membenarkan pendekatan asas ekstrateritorial. Sebaliknya, Amerika Serikat menggunakan pendekatan asas ekstrateritorialnya dengan tolok ukur *effect doctrine*. Ketiga, Indonesia dapat mengadopsi bentuk notifikasi *pre-merger*, pengadopsian pendekatan asas ekstrateritorial, dan pengadopsian metode SLC tes dan penilaian keamanan nasional dalam merger lintas batas.

Berdasarkan temuan tersebut Penulis memberikan saran agar KPPU membuat panduan khusus terkait dengan penilaian merger lintas batas dengan pengadopsian SLC tes serta penilaian keamanan nasional atas transaksi. Selain itu, perlu disesuaikan sistem notifikasi merger di Indonesia menjadi *pre-merger* agar proses implementasi penilaian merger lintas batas dapat berjalan lebih efektif. Selain itu, perlu dipertimbangkan pula pengadopsian bentuk pendekatan asas ekstrateritorial melalui *effects doctrine*.

Kata Kunci: Merger Lintas Batas, Hukum Persaingan Usaha Indonesia, Hukum Persaingan Usaha Amerika Serikat

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ABSTRACT

A COMPARISON OF THE REGULATION OF CROSS-BORDER MERGERS IN COMPETITION LAW BETWEEN INDONESIA AND THE US

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This legal research aims to find out the competition law approach to assessing cross-border mergers in Indonesia which is compared with the approach in the United States and then identified. The results of the comparison can lead to suggestions regarding regulatory approaches that can then be adopted in Indonesia. The research method used is normative juridical using a comparative legal approach and secondary data obtained by the author through a literature study. On the other hand, the method of analyzing the research results used is a qualitative method and a comparative approach, whose research results are presented descriptively.

The research results lead to the following conclusions: First, in assessing cross-border mergers, Indonesia uses a mandatory post-merger notification and a voluntary pre-merger notification, a territorial approach, and a substantive assessment of the merger consisting of a preliminary assessment and a comprehensive assessment. In contrast, the United States uses mandatory pre-merger notification, an extraterritorial approach, and substantive assessments from parallel agencies with the SLC test and national security assessments in some special transactions. Second, several cases in Indonesia have justified the extraterritorial approach. In contrast, the United States uses its extraterritoriality approach with the effect doctrine benchmark. Third, Indonesia may adopt the form of pre-merger notification, adoption of the extraterritoriality principle approach, and adoption of the SLC test and national security assessment in cross-border mergers.

Based on these findings, the author suggests that KPPU make specific guidelines related to the assessment of cross-border mergers with the adoption of the SLC test and national security assessment of transactions. In addition, it is necessary to adjust the merger notification system in Indonesia to pre-merger so that the implementation process of cross-border merger assessment can run more effectively. In addition, it is also necessary to consider the adoption of an extraterritorial approach through the effects doctrine.

Keywords: *Cross-Border Mergers, Indonesian Competition Law, US Competition Law*

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