

## **MERGER DAN AKUISISI LINTAS BATAS MENURUT ASEAN REGIONAL GUIDELINES ON COMPETITION POLICY DITINJAU DARI PENGATURAN DI UNI EROPA**

Oleh:

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### **INTISARI**

Tujuan penelitian ini yaitu untuk mengetahui dan menganalisis (1) kelemahan *ASEAN Regional Guidelines on Competition Policy (ASEAN Regional Guideline)* khususnya kewenangan lembaga, penilaian substantif, dan notifikasi dalam merger dan akuisisi lintas batas ditinjau dari pengaturan di Uni Eropa; dan (2) bagaimana seharusnya *ASEAN Regional Guidelines* khususnya kewenangan lembaga, penilaian substantif, dan notifikasi dalam merger dan akuisisi lintas batas pada masa yang akan datang berdasarkan *lesson learned* melalui kajian pengaturan di Uni Eropa.

Penelitian ini merupakan penelitian hukum normatif yang dilakukan dengan studi kepustakaan dengan menelusuri data sekunder berupa bahan hukum primer, bahan hukum sekunder, dan bahan hukum tersier. Analisis data menggunakan analisis kualitatif.

Hasil penelitian dan pembahasan menunjukkan bahwa kelemahan *ASEAN Regional Guidelines* yaitu terkait dengan sifat dan substansi. *Pertama*, sifat dari *ASEAN Regional Guidelines* yang menggunakan pendekatan *soft-law* menyebabkan keberagaman hukum di antara negara-negara anggota ASEAN bahkan setelah dipublikasikannya *ASEAN Regional Guidelines*. *Kedua*, terkait kewenangan lembaga, penilaian substantif dan notifikasi. Terkait dengan kewenangan lembaga, tidak terdapat lembaga di tingkat ASEAN yang memiliki kewenangan untuk menegakan hukum persaingan usaha khususnya merger dan akuisisi lintas batas. Penilaian substantif dalam *ASEAN Regional Guidelines* menggunakan SIEC model, tetapi tidak detail dan tidak terdapat parameter dalam melakukan penilaian. Selanjutnya, terkait notifikasi, bahwa *ASEAN Regional Guideline* mengakui *mandatory notification* dan *voluntary notification* namun tidak menentukan atau menganjurkan notifikasi manakah yang sebaiknya digunakan. Hal tersebut menyebabkan perbedaan penerapan notifikasi di negara-negara ASEAN. Hasil penelitian selanjutnya terkait *lesson learned* melalui kajian pengaturan di Uni Eropa, pada masa yang akan datang, perlu dipertimbangkan beberapa hal seperti sifat dari *ASEAN Regional Guidelines* yang tidak hanya menggunakan pendekatan *soft-law* tetapi juga *hard-law*. Selain itu, perlu terdapat lembaga yang dapat menegakan hukum persaingan usaha khususnya terkait merger dan akuisisi lintas batas. Kemudian, perlu ditentukan parameter atau indikator dalam melakukan penilaian substantif. Selanjutnya, *ASEAN Regional Guidelines* perlu menentukan manakah model notifikasi yang digunakan serta mekanismenya.

**Kata Kunci:** merger dan akuisisi lintas batas, ASEAN, Uni Eropa.

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**CROSS-BORDER MERGER AND ACQUISITION ACCORDING TO ASEAN  
REGIONAL GUIDELINES ON COMPETITION POLICY OVERVIEWED FROM  
REGULATIONS IN THE EUROPEAN UNION**

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**ABSTRACT**

This research aims to reveal and analyze (1) the weaknesses of ASEAN Regional Guidelines on Competition Policy (ASEAN Regional Guidelines) particularly related to institutional authority, substantive test, and the cross-border merger notification and acquisition overviewed from regulations in the European Union; and 2) how the ASEAN Regional Guidelines should be improved in the future particularly related to the institutional authority, substantive test, and notification in the cross-border merger and acquisition based on the lessons learned through the studies of regulations in the European Union.

This research is a normative legal study that was conducted through library research by tracing secondary data in the form of primary legal materials, secondary legal materials, and tertiary legal materials. The data were analyzed using qualitative analysis.

The results of the research and discussion indicated that the weaknesses of ASEAN Regional Guidelines consist of the nature and the substance. First, the nature of ASEAN Regional Guidelines that uses soft-law approach lead to the diversity of regulations among ASEAN member states even after its publication. Second, the weakness is related to the substance of ASEAN Regional Guidelines specifically institutional authority, substantive test, and notification. In the ASEAN level, there is no institution that has the authority to enforce competition law particularly cross-border merger and acquisition. The substantive test under ASEAN Regional Guidelines uses the Significant Impediment to Effective Competition (SIEC) model, but it does not contain any detail provisions and has lack of indicators in conducting the test. Notification under the ASEAN Regional Guidelines recognizes both mandatory and voluntary notification, yet it doesn't specify which notification should be implemented. This gives rise to the differences in the application of notifications implemented by the ASEAN member states. Furthermore, several things need to be considered based on lessons learned through the regulations studies in the European Union that may be applied in the future such as the nature of ASEAN Regional Guidelines may be considered to acknowledge the use of both soft-law approach and hard-law approach. Moreover, there is also a need to establish an institution in the ASEAN level that has the authority to enforce competition law particularly cross-border merger and acquisition. The indicator or parameter needs to be determined in the ASEAN Regional Guidelines for conducting the substantive test or assessment. ASEAN Regional Guidelines also needs to specify which notification shall be implemented as well as its mechanism.

**Keywords: cross-border merger and acquisition, ASEAN, European Union.**