International Journal of Multicultural and Multireligious Understanding

http://ijmmu.com
editor@ijmmu.com
ISSN 2364-5369
Volume 11, Issue 3
March, 2024
Pages: 1-11

Comparison of *Merger* Regulations in the Perspective of Competition Law in Indonesia and Malaysia

Weno Pratama; Paramita Prananingtyas

Master of Law, Diponegoro University, Jl. Imam Bardjo, SH., No.1-3, Semarang, Indonesia

http://dx.doi.org/10.18415/ijmmu.v11i3.5502

Abstract

The business activities conducted by a business entity demand innovation to have market value, added value, and differentiation from its competitors. One form of innovation is through mergers, which is related to cross-border business activities, involving regulations in the country where the business entity operates. This research aims to compare merger regulations from the perspective of competition law in Indonesia and Malaysia. An example of a business entity involved in a merger is Grab and Uber. To address this issue, the research employs a normative juridical research method. The findings conclude that merger regulations in Indonesia are stipulated in the Company Law, alongside the Competition Law and Government Regulation No. 57 of 2010 regarding mergers, acquisitions, and consolidations. In contrast, Malaysia does not yet have specific regulations concerning mergers in competition law, making the merger between Grab and Uber a non-issue in Malaysia.

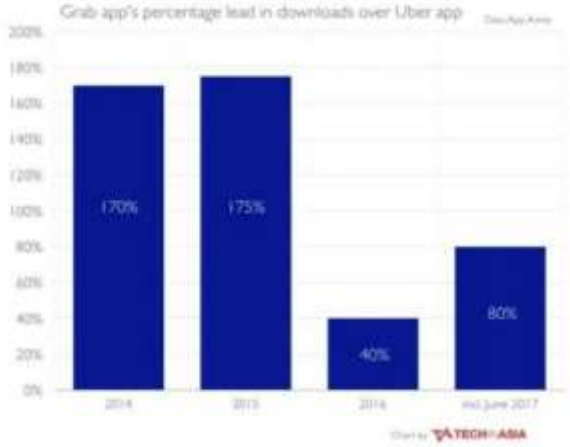
Keywords: *Merger; Business Competition; Regulation; Comparison*

Introduction

The ongoing era of globalization is heavily influenced by the advancement of technology across various aspects of human life. In terms of technological developments in this era of globalization, there is a shift from many businesses adopting conventional models to digital platforms or technology-based applications. A concrete example of this transformation is evident in the emergence of online-based public transportation services. The business development in the *online* transportation sector has attracted significant attention from entrepreneurs due to its robust and promising market potential. Consequently, this phenomenon has led to intense competition among business entities in this sector. Various innovations have been introduced to attract consumer interest and ensure survival in the competitive landscape. Notably, prominent players in the online transportation service sector in Southeast Asia include Grab and Uber, which gained prominence before the emergence of similar *platforms*.

Since their inception, transportation companies Grab and Uber have established themselves as operators in various countries in Southeast Asia, including Indonesia. In Indonesia, Grab's operations are managed by PT. Solusi Transportasi Indonesia, while Uber's operations are overseen by PT. Uber Indonesia Technology. Both companies play a crucial role as business developers and market expanders in

the Southeast Asian region (Nasution, 2021:3). It is important to note that Grab is an *online* transportation company originating from Malaysia and headquartered in Singapore. Grab first entered the Indonesian market in May 2014 (Gijipang, 2019:20). On the other hand, Uber is a transportation company based in San Francisco, California. Uber entered the Southeast Asian business market in 2013 after successfully becoming the number one *online* transportation service in the United States. It started operating in the Indonesian business market in August 2014 (Lukman, 2014). However, Uber's journey to attract *online* transportation users in the Southeast Asian business market did not go as smoothly as it did in the United States. It can be said that Uber faced challenges and encountered failures in the Southeast Asian business market, lagging significantly behind its competitors, one of which is Grab.



The data above reflects the disparity in Grab and Uber application downloads based on the iOS and Android platforms. In 2016, the difference between the two reached 40% in terms of download numbers. However, by June 2017, this gap widened even further, reaching 80% (Pratama, 2017). In 2018, Uber's presence did not undergo significant changes, and the company was unable to effectively compete in most Southeast Asian countries, except in Singapore (Kurniawan, 2021). Given the less favorable market conditions in Southeast Asia, in 2018, Uber took significant corporate action to salvage its business in the region. This involved selling all of its business units across Southeast Asia to its competitor, Grab. As part of the deal, in exchange for the sale of these business units, Uber became a 27.5% shareholder in Grab. The corporate action executed by Uber and Grab is termed a *merger* and stands as the largest *merger* ever to occur in Southeast Asia (Franedya, 2018).

It is important to note that the underlying objective behind the corporate action, in the form of a *merger* between Grab and Uber in Southeast Asia, was to deepen the utilization of technology owned by Uber, especially the proprietary technology previously held by Grab. This strategic move was taken to support Grab's business expansion and to broaden its infrastructure across the entire Southeast Asian region, ultimately increasing Grab's user base in the area. Additionally, the collaboration with Uber aimed to assist Uber in reducing the preparation costs for its *Initial Public Offering* (IPO), making the IPO plan more feasible. As a result of the *merger* with Uber, Grab became the first Southeast Asian *deacorn* with a valuation reaching US$10 billion, equivalent to Rp140 trillion. (Chia, 2018).

Based on a survey by *ilmuOne*, approximately 65.7% of Uber users, or around 1.3 million individuals, switched to using Grab's services. This means that Grab experienced an addition of approximately 700,000 new users from the previous Uber user base. Consequently, when combined, the total number of Grab users increased to 10.3 million people. This growth has a significant impact, especially when compared to the user base of competing services such as Gojek. These facts further solidify Grab's competitive advantage (Gunawan, 2018). On the other hand, this corporate action has drawn attention from every country that serves as a major market for Grab and Uber, including Indonesia and Malaysia.

As stipulated in Article 1, paragraph 6 of Law Number 5 of 1999 concerning Prohibitions of Monopolistic Practices and Unfair Business Competition (hereinafter referred to as the Business Competition Law), unhealthy business competition is defined as competition among business entities in conducting production and/or marketing activities of goods or services carried out dishonestly, against the law, or hindering fair business competition. One of the instruments of business competition is the extent of the network. The merger of Grab and Uber has resulted in the expansion of Grab's coverage, reducing the number of business entities in that market. The fewer business entities in a market, the greater the likelihood of unhealthy business competition occurring.

The Indonesian government, through the Business Competition Supervisory Commission (KPPU), officially sent a notification to PT. Solusi Transportasi Indonesia, the operator of Grab in Indonesia, regarding the conducted merger. Further analysis indicates that this corporate action has the potential to trigger monopolistic practices and unhealthy business competition among transportation service providers in Indonesia. Additionally, the Malaysian government, through the *Malaysia Competition Commission* (MyCC), conducted an investigation into alleged competition law violations by Grab and Uber following the corporate *merger.* In the end, MyCC imposed sanctions, including a fine, on Grab for proven abuse of its dominant position (Supianto, 2019).

Differences in the application of legal systems and regulations in each country, including Indonesia and Malaysia, lead to varied consequences after the corporate *merger* between Grab and Uber. Additionally, another differentiating factor is the level of development achieved by Grab and Uber, which significantly influences competition in the *online* transportation service sector in each country. Therefore, *the author* finds it important to conduct a comprehensive study comparing *merger* regulations from the perspective of competition law in Indonesia and Malaysia, as well as the impacts resulting from the *merger* between Grab and Uber on these countries.

Before *the author* selected the topic for the *paper* entitled "A Comparison of *Merger* Regulations from the Perspective of Competition Law in Indonesia and Malaysia (Case Study of the Grab and Uber Merger)," several prior writings with similar and related topics were identified. Among these earlier writings is a thesis written by Fasha Kairunissa in 2021, titled "Regulation of Merger Practices from the Perspective of Competition Law: A Comparative Study of Indonesia and Singapore (Case Study: *Notice of Infringement Decision Competition and Consumer Commission Singapore, Case Number* 500/001/18)" from the University of Indonesia. Additionally, there is also a thesis written by Dara Ayuningsari Nasution in 2020, titled "Legal Aspects of Business Competition on the Acquisition of Grab Transportation Company against Uber" from the University of Muhammadiyah North Sumatra.

Based on the background above, this paper will formulate research questions, including: How is the regulation of *crossborder mergers* in competition law in Indonesia and Malaysia based on the Case Study of the Grab and Uber *Merger*? What are the impacts of the corporate *merger* between Grab and Uber on competition practices in Indonesia and Malaysia?

Research Methodology

The research method employed in this study is normative juridical with a legislative comparison approach. The data utilized in this research are obtained from indirect sources, or the sources of data for this research are secondary data sources. Secondary data refers to data obtained indirectly by the *researcher* from its source (the research object) through other sources (Suptranto, 2003: 18). The research data obtained are subsequently analyzed qualitatively using relevant legal theories that align with the issues under investigation. *The researcher* presents and qualifies the data in accordance with the research problems descriptively, followed by detailed explanations and qualitative analysis. Qualitative analysis is a form of research that does not involve numerical data and can be acquired through recordings, observations, interviews, or written materials such as laws, documents, books, etc., which consist of

verbal expressions (Suteki & Taufani, 2020:213). The nature of this research is descriptive analysis. According to Maria S.W. Sumardjono, descriptive analysis research is aimed at organizing and classifying phenomena that will be depicted by the researcher, with the utmost effort to achieve perfection based on the structure of the research problems (Sumardjono, 2021:7). In this context, the research aims to describe and analyze the comparison of *merger* regulations from the perspective of competition law in Indonesia and Malaysia in the case of the *merger* between Grab and Uber.

Discussion

1. Regulation of *Crossborder Mergers* in Competition Law in Indonesia and Malaysia

Transportation is one of the key factors that significantly influences our daily activities to become more productive and efficient. The importance of transportation in supporting community life is one of the factors that has led to the development of transportation using technology in *smartphone* applications, particularly the use of *online* transportation for city mobility. In 2015, data shows that the average daily users of *online* transportation services reached 1.5 million/day and increased to 8 million/day in 2018 (Kusnandar, 2018). The increase illustrates that *online* transportation services are highly needed to support daily life.

One example of rapidly growing *online* transportation services in the Southeast Asian region is Grab and Uber. However, Uber faced challenges in competing with its rivals in this area. As a result, Grab, one of the largest *online* transportation companies in Southeast Asia, decided to undertake a corporate action in the form of a merger with Uber in Southeast Asia on March 26, 2018. The *merger* itself can be categorized into several types. Based on the type of business, the merger between Grab and Uber falls under a horizontal *merger*. A horizontal *merger* involves two or more companies, all of which operate in the same *line of business* or, if two or more companies predominantly share the same buying and selling markets, they merge into one entity. For example, this occurs in the phenomenon of mergers between palm oil companies (Fuady, 2008: 80).

Meanwhile, for a specific horizontal *merger*, if conducted within one business group, there are two companies within the same business group, known as *sister companies* (one group). Their shares are both held by a *holding* company, but after the horizontal *merger*, the *holding* company holds shares in the merged subsidiary that has combined. In the process of this horizontal *merger*, especially if a *merger* without liquidation is chosen. (Fuady, 2008: 83). In her lectures, Dr. Anna Maria Tri Anggraini, S.H., M.H., also explained that *Merger* Notification is one form of competition regulation, aiming to prevent the abuse of *mergers* leading to monopolistic practices. Furthermore, she elaborated that *mergers* can result in an increased market share and the creation of significant *market power*, posing a potential for abuse. Thus, the corporate merger action between Grab and Uber in Southeast Asia elicited diverse responses in each country. This is due to the differences in *merger* regulations within competition law in each country, which will be discussed in detail in this discussion, particularly in Indonesia and Malaysia.

Merger Regulations in Indonesia

In Indonesia, the provisions regarding *mergers* are regulated in various laws, including Article 1 number 9 of Law Number 40 of 2007 concerning Limited Liability Companies (Perseroan Terbatas) in conjunction with Article 109 paragraph 1 of the Omnibus Law on Job Creation. It defines a *merger* as a legal act carried out by one or more companies to merge with another existing company, resulting in the transfer of assets and liabilities from the merging company to the receiving company. Subsequently, the legal status of the merging company ceases to exist.

Subsequently, in Article 28 of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, it is explained that business actors are prohibited from

engaging in mergers or consolidations of business entities that may result in monopolistic practices and/or unfair business competition. Business actors are also prohibited from acquiring shares in other companies if such actions have the potential to cause monopolistic practices and/or unfair business competition. In this context, business actors refer to entities that are companies or business forms, whether legal entities (such as limited liability companies) or other legal entities, engaged in a continuous and permanent type of business to gain profit.

In the positive legal regulations in Indonesia, as mentioned above, a *merger* is not prohibited per se. However, laws or regulations related to business competition stipulate that business actors must not engage in *mergers* that may lead to monopolistic practices and/or unfair business competition. Article 2 of Government Regulation of the Republic of Indonesia Number 57 of 2010 concerning Mergers or Consolidations of Business Entities and the Acquisition of Company Shares that May Result in Monopolistic Practices and Unfair Business Competition (hereinafter referred to as GR Number 57 of 2010), further emphasizes that monopolistic practices and/or unfair business competition occur when the business entity resulting from the *merger* is suspected of engaging in prohibited agreements, activities, and the abuse of dominant positions.

Furthermore, in relation to the merger case involving Grab and Uber, Article 5 paragraph (1) of Government Regulation Number 57 of 2010 stipulates that in the case of a business entity *merger* resulting in assets or sales value exceeding a certain amount, it is mandatory to provide written notification to the commission within a maximum of 30 (thirty) days from the effective date of the legal *merger*. When connected to the Grab and Uber case, based on available facts, it is mentioned that on March 28, 2019, the Business Competition Supervisory Commission (Komisi Pengawas Persaingan Usaha or KPPU) issued a recommendation to PT. Solusi Transportasi Indonesia (Grab's operator in Indonesia) to officially notify the KPPU. Subsequently, on April 3, 2018, Grab Indonesia formally responded to the recommendation. With this written notification, the KPPU conducted an assessment to provide an opinion on whether there were allegations of monopolistic practices and/or unfair business competition resulting from the corporate *merger* actions.

According to Article 3 paragraph (2) subparagraph a to d of Government Regulation Number 57 of 2010, it explains that the Business Competition Supervisory Commission (KPPU), in assessing a legally effective business entity *merger* that may result in monopolistic practices and/or unfair business competition, utilizes analyses, including the following: Market *Concentration*, Market concentration serves as an initial indicator to assess whether the merger may lead to monopolistic practices and/or unfair business competition. A business entity *merger* that creates low market concentration is less likely to result in monopolistic practices and/or unfair business competition. Conversely, if the *merger* results in high market concentration, there is a potential for monopolistic practices and/or unfair business competition, depending on other analyses within the relevant market.

Market Entry Barriers, without the presence of market entry barriers *post-merger*, a large market share would find it difficult to engage in anti-competitive behavior since there is a constant potential for competitive pressure from new players entering the market. Conversely, with high barriers to market entry, a dominant market position may have the opportunity to misuse its position to hinder competition or exploit consumers because new players would face challenges entering the market and exerting competitive pressure on existing market participants.

Potential Anti-Competitive Behavior, a merger that creates a relatively dominant market player compared to others facilitates that business entity to abuse its dominant position to maximize profits for the company, resulting in losses for consumers. Conversely, if a *merger* does not produce a dominant market player but there are still several significant competitors, it facilitates the occurrence of anti-competitive actions coordinated with competitors, whether directly or indirectly.

Efficiency, In the case of a planned merger aimed at improving efficiency, a comparison between the efficiency gained and the resulting anti-competitive impact is necessary. If the value of the anti-competitive impact exceeds the expected efficiency value from the *merger*, promoting healthy competition will be prioritized over fostering efficiency for business entities. Healthy competition, both directly and indirectly, will naturally give rise to more efficient market players.

Bankruptcy, In cases where the reason for a *merger* is to prevent the cessation of the business entity's operations in the market/industry, an assessment is required. If consumer losses would be greater if the business entity exits the market/industry compared to it remaining and operating in the market/industry, then there is no concern about a reduction in the level of competition in the form of monopolistic practices and/or unfair business competition resulting from the *merger*.

With the notification submitted to the KPPU by Grab Indonesia, as previously explained, it can be concluded that the KPPU has conducted an evaluation of the *merger* between Grab and Uber in Indonesia. According to the KPPU's study, when viewed from the perspective of market concentration, the *merger* between Grab and Uber did not result in monopolistic practices and/or unfair business competition. This is because the majority of *online-based* transportation services are still dominated by their competitors (Wijaya, 2018). Furthermore, considering the *post-merger* market entry barriers, there are no significant barriers to entry in the Indonesian market. Additionally, based on the facts from the year 2019, it was noted that there were at least 20 (twenty) more *online* applications in Indonesia, apart from Grab Indonesia and Gojek Indonesia, which served as major competitors for Grab Indonesia (Azka, 2019). From both analyses, it can be concluded that the *merge*r conducted by Grab and Uber in Indonesia is not a prohibited *merger* as regulated by the Competition Law or merely a corporate action that does not lead to monopolistic practices and/or unfair business competition.

Merger Regulations in Malaysia

The legal basis for Malaysia in regulating business competition in the country is known through the *Laws of Malaysia Act 71*, specifically the *Competition Act 2010* (referred to as the *Malaysia Competition Act 2010*). The *Malaysia Competition Act 2010* generally governs actions related to unhealthy anti-competitive practices, investigations, and enforcement under the *Malaysia Competition Act 2020*. The Competition Commission serves as the authority responsible for handling anti-competitive practices and resolving disputes related to business competition (Tahar, 2018: 5). Basically, the *Malaysia Competition Act 2010* does not specifically regulate corporate actions such as mergers. Therefore, corporate actions undertaken by two or more companies are interpreted as agreements under the interpretation of "*agreement*" in Part 1 Number 2 of the *Malaysia Competition Act 2010*. This section states that (Hussein, 2012: 79);

> *"Agreement means any form of contract, arrangement, or understanding, whether or not legally enforceable, between enterprises, and includes a decision by an association and concerted practices."*

More explicitly, it states that an agreement encompasses any form of contract, arrangement, or understanding, whether or not legally enforceable, between enterprises. This includes decisions made by an association and concerted practices. Based on this regulation, it can be observed that agreements related to corporate actions undertaken by two or more companies fall within the scope of the agreements referred to in the *Malaysia Competition Act 2010*.

The absence of specific regulations governing corporate actions in the *Malaysia Competition Act 2010* leads to the lack of oversight mechanisms for corporate activities conducted by several companies in Malaysia, particularly in the case of *mergers* discussed in this paper. A similar situation occurred in the *merger* case between Grab and Uber in Southeast Asia on March 26, 2018, where the companies GrabCar Sdn Bhd and Uber Malaysia Sdn Bhd in Malaysia were affected by the consequences of the merger.

However, since the *Malaysia Competition Act 2010* does not specifically regulate mergers and acquisitions related to unhealthy anti-competitive practices, the Grab and Uber *merger* in Malaysia did not pose a legal issue. Nevertheless, the *Malaysia Competition Act 2010* does prohibit unhealthy anti-competitive practices. Therefore, even though the corporate action of the merger between Grab and Uber in Malaysia may not be problematic, the agreements arising from this corporate action could serve as a basis for engaging in unhealthy anti-competitive practices prohibited by the *Malaysia Competition Act 2010.*

This can be observed based on the facts from the Grab and Uber *merger* case in Malaysia, which was mentioned not to be a legal issue. After the *merger*, Grab implemented restrictive clauses preventing its drivers from using their vehicles to promote and advertise other *online* transportation platforms. This is further supported by a *statement* from the CEO of the Malaysia Competition Commission (MyCC), Iskandar Ismail, who mentioned that restrictions on promoting other *online* transportation *platforms* would distort the market by creating entry and expansion barriers for existing and potential competitors of Grab. Based on this, MyCC held two discussions with Grab and Uber after the *merger* due to numerous complaints received. This was also emphasized in the press release dated July 12, 2018, from the Ministry of Home Affairs, Cooperatives, and Consumerism of Malaysia, essentially granting authority to MyCC to take *post-merger* actions against Grab and Uber leading to the formation of a monopoly in the relevant market and a monopoly that abuses its position as regulated under Section 10 of the *Malaysia Competition Act 2010.*

After the investigation, MyCC found that Grab had abused its dominant position by imposing restrictive clauses on its drivers. Based on this, MyCC decided to impose fines on Grab for engaging in anti-competitive practices and abusing its dominant position. This action was taken because Grab violated Section 10(1) of the Malaysia Competition Act 2010, which states that *"An enterprise is prohibited from engaging, whether independently or collectively, in any conduct which amounts to an abuse of a dominant position in any market for goods or services."* Enterprises are prohibited from participating, either independently or collectively, in any conduct that constitutes an abuse of a dominant position in any market for goods or services (Albab, Widayanto & Sibarani, 2023: 81).

Enterprise is the term for a business entity used in the *Malaysia Competition Act 2010. Part 1 of the Competition Act 2010 states that:*

"Enterprise means any entity carrying on commercial activities relating to goods or services, and for the purposes of this Act, a parent and subsidiary company shall be regarded as a single enterprise if, despite their separate legal entity, both form a single economic unit within which the subsidiaries do not enjoy real autonomy in determining the actions of the subsidiaries on the market."

A business entity is any entity engaging in commercial activities related to goods or services. For the purposes of this law, a parent and subsidiary company are considered a single enterprise if, despite their separate legal entities, they form a single economic unit where the subsidiaries do not enjoy real autonomy in determining their actions in the market. Business entities, as defined in the *Malaysia Competition Act 2010*, are prohibited from engaging, either individually or collectively, in any action to abuse a dominant position, as specified in *Section 10(1)* of the *Malaysia Competition Act 2010 (*Widhiyanti, 2015:287).

The restrictive clauses imposed by Grab on its drivers fall under the category of anti-competitive practices prohibited by the *Malaysia Competition Act 2010*. These restrictive clauses constitute an abuse of a dominant position, as stipulated *in Section 10 (2) point (b) (ii) of the Malaysia Competition Act 2010*. In this case, Grab abused its dominant position by implementing restrictive clauses that could limit or control market access for other *online* transportation platforms in Malaysia. Therefore, Grab was fined by the Malaysia Competition Commission (MyCC) for the abuse of its dominant position..

The Malaysia Competition Act 2010 does not currently have specific regulations related to anti-competitive corporate merger actions. However, there are other regulations governing *mergers,* such as *the Capital Markets and Services Act 2007* ("CMSA") and its amendments, which *refer to the Malaysian Code on Take-Overs and Mergers 2016. The Malaysian Code on Take-Overs and Mergers 2016* has been revised and is now complemented by *the Rules on Take-Overs, Mergers, and Compulsory Acquisitions 2021*. These rules provide technical guidelines for corporate actions, including mergers, and detail the necessary procedures in such cases. *(*Edward, et all., 2021:19). The *merger* regulations within the CMSA and *the Rules on Take-Overs, Mergers, and Compulsory Acquisitions 2021* primarily focus on technical aspects related to activities in the capital market when mergers occur. These regulations cover matters such as offers, the process and procedures of offers, rules during the offer, minority shareholders' rights, and other related aspects. Therefore, the existing *merger* regulations do not encompass anti-competitive practices resulting from corporate actions, as they specifically address technical aspects within capital market activities when *mergers* take place.

2. The Impacts Arising from the Corporate Merger Action between Grab and Uber on Business Competition Practices in Indonesia and Malaysia

The differences in *merger* regulations in competition law between Indonesia and Malaysia also result in distinct impacts on the corporate actions carried out by Grab and Uber. These divergent impacts will be explained in the following discussion.

Indonesia

Merger conducted by Grab and Uber did not violate business competition practices in Indonesia, as stated by the Head of the Legal and Public Relations Bureau of the Indonesian Competition Commission (KPPU). This is based on the categorization of the corporate actions of Grab and Uber as an asset acquisition, which is not equated with share acquisition. Asset acquisition, in practice, is not limited to a legal action to take over shares but can also be applied to other instruments with characteristics similar to shares. The similar characteristics with shares include both having *value* for their owners to control and benefit from ownership. Therefore, if an acquisition is carried out, it may result in a change in control of the acquired business entity, impacting competition (Komisi Pengawas Persaingan Usaha, 2020:9). This is what Grab did, namely, acquiring Uber's assets.

From the data obtained, it is explained that the corporate action carried out by Grab and Uber is categorized as a *merger,* with Uber acquiring a 27.5% ownership stake in Grab. As mentioned in the statement from the Ministry of Domestic Trade and Consumer Affairs of Malaysia, the corporate action conducted by Grab and Uber is identified as a *merger.*

After the *merger*, Grab's market share became 20.8%. Article 4, paragraph 2 of the Competition Law states that,

> *"Business actors are reasonably suspected or deemed collectively to control the production and/or marketing of goods and/or services as referred to in paragraph (1) if 2 (two) or 3 (three) business actors or groups of business actors control more than 75% (seventy-five percent) of the market share for a specific type of goods or services".* Based on the above data, it can be observed that the *merger* of Grab and Uber did not result in a significant increase in Grab's market share in Indonesia. Thus, the merger conducted by Grab and Uber in Indonesia does not affect business competition in Indonesia and does not violate the provisions of the Competition Law.

Malaysia

The merger conducted by Grab and Uber was not considered a problem according to MyCC because there are no regulations governing corporate actions of consolidation, acquisition, and merger in

the *Competition Act 2010.* The issue in Malaysia regarding the corporate action of Grab and Uber, which was a merger, involved the abuse of dominant position by Grab. After the investigation, MyCC found that Grab had abused its dominant position by imposing restrictive clauses that prohibited its drivers from promoting content related to Grab's competitors in their vehicles. Based on this, MyCC decided to impose a fine of RM86 million, equivalent to IDR 291 billion, on Grab for engaging in anti-competitive practices and abusing its dominant position.

Following the investigation conducted by MyCC into the *merger* between Grab and Uber, MyCC found that Grab had abused its dominant position against its drivers. This action is prohibited under *Section 10 of the Malaysia Competition Act 2010*. During the investigation into the abuse of dominant position, MyCC realized that efforts to prevent the abuse of dominant position by businesses should involve regulations governing corporate actions that may result in anti-competitive practices, particularly related to *mergers*. The absence of regulations on this matter allows businesses to freely engage in corporate actions without considering the potential anti-competitive impacts, enabling them to abuse their dominant positions arising from such corporate actions.

To address the legal vacuum concerning the regulation of *mergers* in the Malaysian Competition Act, MyCC proposed amendments to the *Malaysia Competition Act 2010*. Corporate actions in the form of *mergers* have significant impacts that warrant attention regarding the occurrence of anti-competitive practices. Unregulated corporate actions, including *mergers*, can lead to monopolistic practices, reduced competition, market access barriers, influencing the prices of goods or services, and potentially causing an increase in the cost of living (Malaysia Competition Commission, 2022: 18). Moreover, Malaysia is the only country in ASEAN that does not have specific regulations regarding anti-competitive business *mergers*. Therefore, MyCC deems it necessary to amend the *Malaysia Competition Act 2010*.

The proposed amendments to the *Malaysia Competition Act 2010* by MyCC are outlined in the *Consultation Paper on the Proposed Amendments to The Competition Act 2010 (Act 712) ("Consultation Paper")* dated April 25, 2022, accompanied by a supplementary document titled *Salient Point of the Proposed Amendments to the Competition Act 2010*. These amendments will empower MyCC to regulate *merger* and acquisition activities, except in cases where transactions might fall under the jurisdiction of the *Energy Commission, Malaysian Communications and Multimedia Commission, Bank Negara Malaysia, and Malaysian Aviation Commission*. The proposed amendments by MyCC pertain to prohibited mergers or anticipated *mergers* that may result in a *Lessening of Competition* (SLC), the jurisdiction for *merger* control regulation, notification to MyCC if a *merger* or anticipated *merger* exceeds the specified threshold, the review period by MyCC for the given notifications, the obligation not to consummate an anticipated merger until MyCC issues a decision, the outcomes of MyCC's review, and additional provisions related to mergers *(*Malaysia Competition Commission, 2022: 21). Based on this, even though Malaysia still lacks specific regulations regarding *mergers* in competition law, Malaysia has made efforts to catch up with the proposed *Consultation Paper* by MyCC. Despite being in the consultation stage, the amendments are targeted to be completed by October 2023.

Conclusion

The regulation of *mergers* in competition law is essentially subject to each respective country. In Indonesia, the regulation of mergers is governed by the Company Law in conjunction with the Competition Law and Government Regulation No. 57 of 2010 concerning the implementation of *mergers*, acquisitions, and consolidations. In contrast, Malaysia currently lacks regulations specifically addressing *mergers*. However, the merger case involving Grab and Uber has prompted attention to further regulate *mergers* in competition law in Malaysia. The regulations are targeted to be completed by October 2023.

The differences in regulations between Indonesia and Malaysia have varying impacts on the *merger* between Grab and Uber. In Indonesia, the Grab and Uber *merger* did not significantly increase

market share, and thus did not violate the provisions of the Competition Law. This reflects the application of the law in accordance with the conditions prevailing in each country. On the other hand, Malaysia does not have specific regulations regarding *mergers* in competition law, making the Grab and Uber *merger* not an issue in Malaysia.

References

Books

Edward, M. Y. (2010). *Crowdfunding di Indonesia.* Jepara: UNISNU Press.

Marmudji, S. S. (1985). *Penelitian Hukum Normatif Suatu Tinjauan Singkat.* Jakarta: Grafindo Persada.

Sumardjono, M. S. (2021). *Bahan Kuliah Metodologi Penelitian Ilmu Huku.* Yogyakarta: Universitas Gadjah Mada.

Taufani, S. d. (2020). *Mertode Penelitian Hukum (Filsafat, Teori, dan Praktik).* Depok: Rajawali Pers.

Usaha, K. P. (2020). *Pedoman Penilaian Terhadap Penggabungan, Peleburan, atau Pengambilaliha.* Jakarta: KPPU.

Journal

Commission, M. C. (2022). *Consultation Paper on The Proposed Amendments to The Competition Act 2010 (Act 712).* Kuala Lumpur: MyCC.

Fuady, M. (2008). *Hukum tentang Merger (Berdasarkan Undang-Undang Nomor 40 Tahun 2007).* Bandung: Citra Aditya Bakti.

Hussein, S. M. (2012). Competition Law in Malaysia. *Jurnal Arena Hukum*, 79.

K., M. T. (2015). Penalaran Deduktif dan Induktif Siswa dalam Pemecahan Masalah Trigonometri Ditinjau dari Tingkat IQ. *Jurnal APOTEMA*, 70.

Nasution, D. A. (2021). Perspektif Hukum Persaingan Usaha Atas Tindakan Akuisisi Perusahaan Transportasi Grab Kepada Perusahaan Uber. *Jurnal Fakultas Hukum, Universitas Muhammadiyah Sumatera Utara*, 3.

S.H.S Ulil Albab, E. W. (2023). Pengawasan Pelaksanaan Kemitraan UMKM dan Usaha Besar: Perbandingan Pengaturan di Indonesia dan Malaysia. *Jurnal Persaingan Usaha*, 287.

Suptranto, J. (2003). *Metode Penelitian Hukum dan Statistik.* Jakarta: Rineka Cipta.

Tahar, A. M. (2018). Kajian Harmonisasi Hukum Persaingan Tiga Negara Anggota ASEAN Berdasarkan The ASEAN Regional Guidelines on Competition Policy. *Jurnal Cepalo*, 5

Widhiyanti, H. N. (2015). Pendekatan Per Se Illegal dan Rule of Reason Dalam Hukum Persaingan Usaha (Perbandingan Indonesia-Malaysia). *Jurnal Arena Hukum*, 287.

Rules

Undang-Undang No. 40 Tahun (2007) Tentang Perseroan Terbatas.

Undang-Undang Nomor 5 Tahun (1999) tentang Larangan Praktek Monopoli dan Persaingan Usaha Tidak Sehat.

Peraturan Pemerintah Nomor 57 Tahun (2010) Tentang Penggabungan Atau Peleburan Badan Usaha dan Pengambilan Saham Perusahaan yang Dapat Mengakibatkan Terjadinya Praktek Monopoli dan Persaingan Usaha Tidak Sehat.

Copyrights