KPPU
Komisi Pengawas Persaingan Usaha

PROCEEDING
INTERNATIONAL SEMINAR
ACADEMIC NETWORK
ON COMPETITION POLICY

BUILDING KNOWLEDGE HUB AND REGIONAL EXPERTISE
TOWARDS THE HARMONIZATION OF
COMPETITION POLICY IN EAST ASIA REGION

Nusa Dua, Bali
September 6, 2017

WELCOME REMARKS

It is well-known that world of education plays a significant part of the economic development. First is by conducting policies analysis and sectoral researchers to provide reliable input to policy makers. Second, it to create a better generation through human development. Such application also works in the area of competition policy and law, whereas the world of academia is an engine of changes for supporting the development of competition policy and law study of a nation or a region.

The world of the future is a very rapidly changing world. In order to take advantage of the dynamics wave of change, it requires a fast perceptual ability to all changes, so that it did not drift in the flow of change. That is why the study of competition policy and law shall able to catch up with such robust development. Competition agency or regulator cannot stand alone to ride the wave of changes. It needs its relevant stakeholder to jointly assist them along the way, and that included the world of academics.

However, the problem is, there has been slow growth of expertise in competition policy and law in East Asia. For the past decade, there has been no forum for the academic to get together and discuss their recent works or studies in competition policy and law. Development in the number of the new expert in competition law in the region is also moving at a slow pace.

That is why competition agency of Indonesia, KPPU, want to take such initiative to gather the academics in East Asia in the September's international seminar on competition policy, coincide with the 13th East Asia Top Level Officials Meeting on Competition Policy and Law. It hopes that at such seminar, the academic can declare the establishment of their network, the East Asia Academic Network on Competition Policy and Law.

The East Asia Academic Network on Competition Policy will play the role of collaborating advance research and broadening network among themselves and with the regulator with the main objective of improving or developing knowledge hub and expertise in competition policy and law in East Asia.

In specific, the main objective of the East Asia Academic Network on Competition Policy and Law is to serve as a virtual network of academics in East Asia having interest in competition policy and law. The network will aim at improving the number of

study or research in competition policy and law, as well as join hand with the competition agencies or regulators to build the expertise in competition area of both competition agency and university.

The network will consist of academics in competition policy and law from universities in East Asia. Their chairmanship and management will be defined by themselves. Competition agency or regulator at the initial stage will assist the network to build and expand themselves. They are expected to have a yearly meeting as a back-to-back event with the East Asia Top Level Officials Meeting on Competition Policy and Law so that it can secure the involvement of competition agencies and regulators at their forum.

In addition, their activities may include conducting researches and studies in competition policy and law, conducting training or capacity building related activities or to the public, creating a web portal for their knowledge hub, and providing their expertise to competition agency or regulator.

Upon their establishment, they may generate their own funding in hosting events, and or get a support from competition agencies or regulators, or potential international development partners who share their common interest. At the initial stage, KPPU will secure its funding to assist with their initial works (like research/study and annual conference), as well as assist them to talk and discuss with international development partners.

It sincerely hopes that this proposal can be supported by all member of East Asia Top Level Officials Meeting on Competition Policy and Law (EATOP Meeting), so that KPPU and they can start their initial works following the establishment.

Thank you.

Jakarta, September 6, 2017

Muhammad Syarkawi Rauf
Chairman of KPPU

INTRODUCTION

Business competition is a major topic in both legal and economic studies. Therefore, a multidisciplinary approach is imperative in the assessment of business competition. In this approach, the role of universities is very important to fill the theoretical foundation so that the policy in handling cases of business competition can be taken appropriately.

The Business Competition Lecturer Forum (FDPU) in Indonesia is an independently founded academic association for the need to discuss business competition issues, through a multidisciplinary approach. Its members are spread from all over Indonesia, including lecturers from the areas of law, economics, and business, coming from public and private universities. The activities of FDPU are very diverse, such as seminars, workshops, and publications. In those activities, the FDPU can cooperate with other institutions, both government and private. The current international seminar held in Nusa Dua, Bali, Indonesia is one of them, in cooperation with the Indonesian Commission for Supervision of Business Competition (KPPU).

Because the preparation time of this seminar is quite short, the participation of this seminar is not enough socialized. Nevertheless, the reviewer's role to evaluate the papers sent at the panel session, as the results presented in this proceeding, is quite encouraging. For that, I would like to acknowledge Dr. Udin Silalahi and Dr. Dedie S. Martadisasta together with the papers contributors for their hard work. Thanks also to the KPPU who have facilitated this seminar. Hopefully this proceeding is useful to add references to business competition.

Nusa Dua, Bali, September 6, 2017

Shidarta
Chairman of FDPU

TABLE OF CONTENTS

The `Dieselgate-Affair`
Claims for Damages of Consumers
in the European Union Competition Law

Prof. Dr. Stefan Koos

One of the most important industry branches of Germany is the car industry. Few products are identified with `Made in Germany` as cars. German car manufacturers enjoyed excellent reputation in international markets in the past.

However, two years ago clouds came over this successful industry as it was revealed, that Volkswagen `tuned up` its turbo charged direct injection diesel engines using a secret software in order to reduce NO_x emissions during laboratory emission testings to meet US and EU emissions standards.[1] Estimated 11 million cars worldwide were sold with this software.[2]

The following crisis was just worn out, when the popular German news magazine "*Der Spiegel*" published an article about a gigantic cartel including all German car manufacturers. Pursuant to that article the car manufacturers Volkswagen, Audi, Porsche, Daimler and BMW colluded for years in a vast number of meetings forming a secret cartel internally called "*Der 5er Kreis*". The magazine wrote, that since the 1990s years more than 200 employees of the car producers met in more than 60 different secret coordinating task forces. The companies colluded on technical details, such as softtops of convertibles, the choice of suppliers and – especially important for the Diesel-Scandal - on the size of the urea, or AdBlue tank. Those tanks contain a substance to split nitrogen oxide into water and nitrogen. To get an optimal emission cleaning effect a big AdBlue-tank would be necessary, with small tanks the car owner has to refill the substance more often than the service intervals last. As small tanks are cheaper than

[1] The software activates certain emissions controls under testing conditions. Under normal traffic conditions the emissions are significantly higher (up to 40 times the US legal pollution limit, see http://www.npr.org/sections/thetwo-way/2015/10/08/446861855/volkswagen-u-s-ceo-faces-questions-on-capitol-hill - link 08/14/2017). The discrepancy between laboratory emissions and real life emissions can be also found in diesel engines of other car manufacturers such as Volvo, Nissan, Hyundai or Fiat, see https://www.theguardian.com/environment/2015/sep/30/wide-range-of-cars-emit-more-pollution-in-real-driving-conditions-tests-show - 08/1472017.

[2] Ewing, Jack (22 September 2015). "Volkswagen Says 11 Million Cars Worldwide Are Affected in Diesel Deception" https://www.nytimes.com/2015/09/23/business/international/volkswagen-diesel-car-scandal.html. *The New York Times* - Link 08/14/2017.

bigger tanks the cartel made an agreement on implementing small AdBlue tanks into their models.[3] In order to meet even with those small tanks the legal emission standards they used the mentioned secret software.

It is obvious, that this cartel was infringing the interest of the consumers to a peculiar extend. Especially in Germany relatively new cars are recently threatened by absolute driving bans for the inner city areas of the big cities such as Munich, Stuttgart or Hamburg.[4] Now diesel cars suffer a precedented price decline in the German market of pre-owned cars as a result of the awaited restrictions to this technology.

Can consumers sue the car dealer or car manufacturers for the damage they suffer because of the restrictions of the use and because of the value loss of their cars as result of the collusive behavior of the cartel?

Theoretically the car dealer could be sued applying §§ 434 ff. BGB (Bürgerliches Gesetzbuch). The requirements for this claim are a quality defect, a negligence of the seller and a damage. A quality defect in German law is not only a material defect but can also be an aspect which influences the usability as agreed by the parties in the purchase contract. However it is difficult to substantiate a defect, taking into consideration that most of the car producers used similar small AdBlue tanks and respective software to reduce the emissions. Latest when it comes to the test of the negligence a claim for damage against the car dealer would fail because it would be difficult to prove, that the car dealers had any deeper knowledge of the collusive behavior of the manufacturers. In consequence a claim for damage against a car seller could fail. Until now there are controversial decisions of German civil courts on this issue; one new decision states that the dealer has to be accountable for the knowledge of the Car Producer, if he is part of the corporate organization (LG Munich I 04/14/2016 - 23 O 23033/15). In another just recently published case the District Court of Brunswick 08/31/2017 - (3 O 21/17) denied the litigation of Volkswagen because the illegal software would not lead to a prohibition of the use of the car. The legal situation is therefore totally unclear at the moment.

If a claim against the car producers because of quality defects would fail, maybe a

[3] The companies agreed to use 8 liter AdBlue tanks in their vehicles sparing up to 80€ per vehicle, see https://www.forbes.com/sites/bertelschmitt/2017/07/22/dieselgate-product-of-vast-vw-bmw-daimler-car-cartel-conspiracy-fresh-report-says/ - Link 08/14/2017.

[4] https://www.cleanenergywire.org/news/cdu-forges-state-coalitions-coal-region-calls-restructuring-funds/munich-plans-diesel-driving-ban - 08/14/2017.

claim for damage may be possible:

Cartels are forbidden in the German antitrust law in § 1 AARC (see also forbidden activities of market dominating enterprises § 19 AARC) and in the EU-Antitrust law in Art. 101 TFEU (see also misuse of market dominating position Art. 102 TFEU). However so far there was no specific rule concerning claims for damages of consumers in case of an infringement of the antitrust law (similar to unfair competition law). In the German Civil Code BGB we find § 823 sentence 2, which states, that there is claim for damage in case of the "breaking of a law". However this broken legal provision must be a rule protecting the claimant. Even if the cartel of the car manufacturers is an infringement of a legal rule, following the dominant theory in the German legal science competition, law rules have not the primary purpose to protect the consumer against competition infringements in his individual interest.

A second structural problem to individual claims for damages of consumers is the lack of a class action in the German Civil Procedural Law comparable to US-Law. Consumer claims fail typically because a bigger single damage often cannot be proved or because the suffered damage of the single consumer is not big enough to file a suit.

In comparison to the autonomous German antitrust law we find in the EU-legislation a tendency to protect individual interests of the consumers also in the competition law. With the EU-directive 2014/104/EU ("Cartel Damages Directive") the claim for damages of individuals (consumers and concurrents) were strengthened binding for all member states of the EU. In the 9th amendment to the Act Against Restraint of Competition which became effective in June 2017 Germany transposed this Directive into national law. With the same amendment the option to hold accountable a parent company for the competition infringements of its subsidiary companies was integrated into the AARC.

The new claim for damages in § 33a AARC is referring to § 33 AARC which determines that an intentionally or negligent violation of provisions of the German AARC, of Art 101 or 102 of the TFEU or of decisions by the competition authority leads to a claim for damage compensation and for injunction (sentence 1). Claimant can be any affected person, competitors and other market participants impaired by the infringement (sentence 3), which means, that also consumers can have this claim.

The new § 33a AARC determines the responsibility of anyone committing an in-

fringement in sense of § 33 sentence 1 AARC. Especially important for claims of consumers is the facilitation of the burden of proof in sentence 2 of § 33a AARC. This sentence states, that it is refutably supposed, that a cartel is causing a damage. The burden of proof was a big obstacle especially for consumer claims. Applied to the example of the Diesel-scandal it may now be possible to assume a damage of a consumer who bought a car affected by the cartel of the car producers. It is likely that the average loss of market value of such a car may be a damage in a claim; if the authorities forbid certain car models for all use in public traffic in the future, the value of the car could be held as a damage of the car owner. Important for competitors is the option to take into account in particular the attributable profit made by the infringement by the infringer (sentence 3).

Once a national competition authority or the European Commission decided on the existence of a competition infringement the Civil Court which has to decide on the claim for damage is bound by this administrative decision (§ 33b AARC).

As not only intentionally but also negligent infringements lead to a claim for damage, it is important, that all enterprises take effective measurements to implement an adequate internal compliance organization. Already in 2013 the European Court of Justice decided, that an enterprise cannot rely on the wrong advise of a lawyer (less of an internal company law department) or even on the wrong decision of a national competition authority (ECJ – C-682/11 – 6/18/2013 – Schenker). This bears the risk of an unclear legal situation for the enterprises. However, as the German Antitrust Law is based on the principle of own responsibility of the enterprises to test *in advance* the compliance of their activities with the law and given the strong impact of non-compliance to the functioning of the competition, this is a consequent jurisdiction in order to avoid, that enterprises find easy ways to stay off their responsibility, just presenting favorable legal opinions. As consequence of this jurisdiction enterprises will have to ensure an effective monitoring of their compliance and of legal advising relating to their market activities. Legal advise of own legal departments may not be sufficient to avoid the allegation of negligence.

As conclusion it seems to be likely, that consumer claims may play a more important role in the future than until now. Because of the lack of Class Actions this does not apply to typical small damages of consumers which are only relevant in a collective

dimension. However in the Diesel-affair the damage of single consumers may already reach a significant size.

Reference

German AARC: https://www.gesetze-im-internet.de/englisch_gwb/index.html
(26.8.2017 – still without the 9th amendment to the AARC)

TFEU: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012E%2FTXT

Sentences of the European Court of Justice (several languages):
https://curia.europa.eu/jcms/jcms/j_6/en/

Economic Policy Package:
How Policy Delivery Affects Business Competition

Mireza Fitriadi, Mohamad Yudha Prawira and **Zil Aidi**
Independent Legal Consultant, Alumni of Gadjah Mada University
mireza_fitriadi@live.com; m.yudha.prawira@hotmail.co.id; zil.aidi93@gmail.com

Abstract

In the middle of 2015, Government of Indonesia has issued Economic Policy Package XII aimed to create better investment climate in the region/provincial. This policy was taken to improve business climate pursuant to the Indonesia's economic condition which are decreasing continuously and complicated investment climate for investors. In order to deliver the policy, local governments shall apply this deregulation packages into regulations as directed by central government. This paper brings facts that some of local government did not apply the Economic Policy Package XII. This condition has potential to create unfairness in business competition between regions. Therefore, KPPU as one of the committee to control business competition should take a part to provide advice to local government and central government in order to deliver their policy. Recommendations by KPPU are required to create better competition between regions.

Keywords: *Deregulation, Economic Policy Package, Local Government, Business Competition*

Background

In September 2015 to April 2016, Government of Indonesia ("**GoI**") has issued a dozen economic policy packages as response to the weakening Indonesia's economic condition. Based on World Economic database, formerly economic growth of Indonesia in general had slowed down in 2013 (5,6%), 2014 (5,0%) and 2015 (4,76%). Even for investment climate, the survey ease of doing business/EoDB) 2016, showed that Indonesia still have a bad investment climate which Indonesia be ranked 106 of 189 countries in the world.

Thus, through economic policy packages, GoI seeks to encourage the economy in

the region and creating better business climate. Specifically, with the economic policy package XII, GoI aimed to improve the business climate and EoDB rank in 2017. This policy applied by regulatory reform which is to simplify procedure, time and cost.

As for the policy package sequence still on-going today[1], now economic policy packages has shown some positive impacts in 2016. The improvement of economic growth in 2016 already experiencing an economic downturn trend changes by being increased to 5.02 percent. In fact, after the economic package XII Indonesia position according to the results of the EoDB 2017, rose to 91 and Indonesia as well established as the country's top reformers[2]. However, these positive impacts still not enough, considering the main objective of government policy package is the creation of the general welfare.

Variated act from local government to implement the economic policy package XII potentially create some economic disparities between regions. As in the study of Komite Pemantauan Pelaksaan Otonomi Daerah (KPPOD), the economic policy package XII is not fully implemented in the regions. Only Jakarta and Surabaya who had implemented the policy better than the others. It was because the central government focus on socialization and monitoring intensively only for both regions. Meanwhile, the other regions tend to slower the follow up of policy package[3].

Policy disparities between regions may cause unfair business competition between them as well. Entrepreneurs in Jakarta-Surabaya tending to get ease on the licensing and the cost for local taxation, while entrepreneurs in other regions potentially not having the same benefits. Burden on overlapping licensing and burden of tax cost is potentially creating barriers for entrepreneurs in other region. As unitary state, Indonesia should be able to create fairness on business competition in all regions. In advance, the various implementation on economic policy package between regions could create a larger economic gap between regions in Indonesia.

Therefore, this writing arranged in order to describe the potential problems related

[1] There are 15 Economic Policy Packages that has been issued by Government of Indonesia and still on going today.

[2] Earlier Indonesia was on rank 106 of 189 countries. World Bank. (2017). *Doing Business 2017: Equal Opportunity for All*. Washington DC, USA: World Bank.

[3] KPPOD. (2016). *Evaluasi Pelaksanaan Paket* Kebijakan *Investasi di Daerah*. Jakarta, Indonesia: Komite Pemantauan Pelaksanaan Otonomi Daerah

to unfair business competition that may occur when policy delivery of economic policy package XII being not implemented properly by local governments. By approaching on the concept of anti-competition policy making, regulation, economic impact disparities and the economic policy XII in the regions, this writing is going to discuss these problems.

Economic Policy Package XII

Economic Policy Package XII has been issued by GoI based on crummy investment climate in Indonesia which earlier, Indonesia was on the 106 of 189 countries on EoDB 2016. EoDB Measurement is used for viewing regulations and procedures to be complied by someone who wants to start business in Indonesia. The target business from EoDB measurement is the small medium enterprises (SME's) in trade and services sector. There are three indicators of EoDB measurement that must be followed by local government in Economic Policy Package XII: starting the business, construction permit and registering property. Therefore at least local government should change their regulation and implement the new policy. This policy is part of deregulation where the GoI change the regulation at ministry level to simplify the procedure, time and cost (specially for licensing). The differences between before (ex ante) and after (ex post) policy are exposed in following table:

Table 1 Regulation of Economic Policy Package XII

Before (Ex Ante)	After (Ex Post)
Trade Minister Regulation Number 77/MDAG/PER/12/2013 concerning Publishing Trading License (Surat Izin Usaha Perdagangan/ SIUP) and Company Register (Tanda Daftar Perusahaan/TDP) Simultaneously for Trade Company Publishing SIUP and TDP simultaneously for trade company in three days. **(Burden of time)**	**Trade Minister Regulation Number 14/MDAG/PER/3/2016 concerning revision of the Trade Minister Regulation Number 77/MDAG/PER/12/2013 concerning Publishing Trading License (Surat Izin Usaha Perdagangan/SIUP) and Company Register (Tanda Daftar Perusahaan/TDP) Simultaneously for Trade Company**[4] • Publishing SIUP and TDP simultaneously for trade company in two days. • Online System **(Simplify the procedure, time and cost)**

[4] By 2017, GoI also issued new regulation to support this regulation which are Trade Minister Regulation Number 7 of 2017 and Trade Minister Regulation Number 8 of 2017. The regulation stated that to abolished the re-registration process for SIUP and cost to re-registration process for TDP.

Publics Works and Public Housing Minister Regulation Number 24/PRT/M/2007 concerning construction permit (Izin Mendirikan Bangunan/IMB) • Publishing construction permit for all construction in 60 days. • Guidelines for publishing construction permit in the region **(Burden of time)**	**Publics Works and Public Housing Minister Regulation Number 05.PRT/M/2016 concerning construction permit (Izin Mendirikan Bangunan/IMB)** • Publishing construction permit for simple construction (one floor) in three days • Publishing construction permit for simple construction (two floor-four floor) in three days • Guidelines for publishing construction permit
No specific regulations for guidance to publishing construction permit and certificate for SME's	**Publics Works and Public Housing Minister Letter Number 10/ SE/M/2016 concerning Publishing Construction Permit and Certificate for SME's** Guidance for local government to publishing construction permit and certificate for SME's **(Simplify the procedure, time and cost)**
Regulation Number 90/M-DAG/PER/12/2014 concerning the guidance warehouse Guidance for local government to publish warehouse register (Tanda Daftar Gudang/TDG) and certificate separately	**Trade Minister Regulation Number 16/MDAG/PER/3/2016 concerning revision of Trade Minister Regulation Number 90/M-DAG/PER/12/2014 concerning the guidance warehouse** Guidance for local government to publish warehouse register (Tanda Daftar Gudang/TDG) and certificate simultaneously **(simultaneous procedure accelerating time and cutting burden of cost)**
Minister of Home Affairs Regulation Number 27 of 2009 concerning nuisance permit nuisance permit is one of basic permit to starting business **(overlapping with environment permit/environment document and burden of cost and time)**	**Minister of Home Affairs Regulation Number 19 of 2017 concerning abolish nuisance permit** Abolished nuisance permit

In order to deliver this policy into beneficiaries (SME's), Local Government should revise their regulations as well. The new policy is just a guidance for Local Government. Therefore, Local Government should deliver the policy by change their policy (deregulation at local level) and implement the new policy.

But in fact, there are some policy disparities that happened as the result of policy delivery process of Economic Policy Package XII did not going well in all regions.

There was only Jakarta and Surabaya who have followed up the policy by regulation and the implementation, while other regions have not done it yet. Other regions such as Bandung, Palembang, Pontianak and Manado did not implement Economic Policy Package XII comprehensively. Although in fact, those regions have an in-line policy with the Economic Policy Package XII, but this is not enough to accomplish all of the target of GoI policy. Only Jakarta and Surabaya had comprehensively implemented specific regulation regarding the policy as table below.

Table 2 Jakarta-Surabaya Implementation on Economic Policy Package XII

Regions	Regulation
Jakarta	1. Governor Instruction DKI Jakarta Number 42 of 2016 concerning The Acceleration of Ease of Doing Business Target. 2. Decision of One Stop Service DKI Jakarta Number 31 of 2016 concerning The Target of Ease of Doing Business Licensing and Non-Licensing Services.
Surabaya	1. Mayor Surabaya Regulation Number 6 of 2016 revision on Mayor Surabaya Regulation Number 1 of 2015 concerning business type that should have environment license. 2. Mayor Surabaya Instruction Number 3 of 2016 concerning the dismissal of nuisance permit in Surabaya

The other regions still not comprehensively follow up the GoI policy. Even in the Manado for example, there are local units that did not even know about policy packages that have been issued by GoI. Based on KPPOD study, these are a few regions who are not implement the Economic Policy Package XII regulation[5]:

1. ***Trade Minister Regulation Number 14/MDAG/PER/3/2016****:*

   Bandung, Denpasar and Palembang.

2. ***Minister of Public Affairs Regulation Number 22 of 2016****:*

   Pontianak, Palembang, Manado and Bandung

This condition happened because of several problems, especially from central and Local Government at the policy delivery process[6]. **First,** the packages information carried out in different ways to regional by central government. Distinction delivery of policy information has caused the diversity of knowledge in delivering deregulation in the region. The early package XII related to the effort to increased EoDB by 2017 has been

[5] KPPOD. (2016). *Evaluasi Pelaksanaan Paket Kebijakan Investasi di Daerah*. Jakarta, Indonesia: Komite Pemantauan Pelaksanaan Otonomi Daerah.

[6] KPPOD. (2016). *Evaluasi Pelaksanaan Paket Kebijakan Investasi di Daerah*. Jakarta, Indonesia: Komite Pemantauan Pelaksanaan Otonomi Daerah.

delivered only for Surabaya and Jakarta. Socialization to the leader of the regions brought a strong commitment to apply the policy. While socialization to other region still delivered in partial ways to local units by ministry and provincial government.

Second, the low integrity of employee in the regions still part of the problems that the package XII did not delivered well in regions. Some of the employee in the local units (especially planning units) did not have an initiative to search the new regulation that has been issued by GoI. Not all of the local units have the same initiative, therefore the implementation of policy delivered partially in the regions.

Third, the difference goals and agendas between central and local governments are the main obstacles upon the region. By issuing the policy package regulations, every region expected were able to deliver it. But it is turns out that local government just focus only on their planning document (RPJMD and RKPD). This have the big impact where the government didn't have the same perspective with new regulation and plodding to implement the policy package. Only Jakarta and Surabaya were actually had the responsibilities on policy package XII because both regions are the sample for EoDB 2017 measurement.

This disparities policy between region may create a problem for economy in Indonesia, especially in competition issue. Unfairness in business competition could be generated by the gap policy between one region and another. Jakarta and Surabaya could make a better investment climate while others still have problems on it.

Law Number 5 of 1999 Concerning Prohibition of Monopolistic Practices and Unfair Business Practices: Who Bound Who?

In order to create fair business competition, Law Number 5 of 1999 was designed to rectifies erroneous conduct by several economic actors who control the market.[7] The entrepreneurs who have been close to the ruling elite acquired excessive privileges that created a social gap, which leading to centralization of economic power against individual or certain groups. This condition was embodied in the form of, among others, monopolistic practices and unfair business competition which cause damage to the public

[7] Sutrisno Iwantono. (2004). Status, Wewenang dan Tugas KPPU, presented at Worskhop of Business and Competition Law, Jakarta, 2004.

and which are in contradiction with the goals of social justice.[8]

The decision was made due to change of national economic policy paradigm from centralistic approach where the government primary role is acting as agent of economic development to reasonable economic system where entrepreneurs act as sole player in the market.[9] Consequently, the two role of government that had long as businesses and regulator, turns into regulator only. Clear role separation between government as regulator and entrepreneur as economic player shall provoke better economic growth. Government as regulator is mandated to develop business climate to create fair and high competitive business environment in all economic sectors. One of government effort to create a fair business competition is clearly written in elucidation of Law Number 5 of 1999 stated that the law is promulgated to establish legal procedure and provide equal protection to all entrepreneurs, so it come to an end that Law Number 5 of 1999 was crafted to regulate fair business behaviour only between entrepreneurs/business actors.

Although focused on business actors but there are other factors outside business actors that play a role in creating a competitive market. One of the significant factors comes from government by their law which is accommodated on article 50 point a of Law Number 5 of 1999. This becomes logical because it is not uncommon government policy is contrary to the principle of fair business competition.

Business actors are the main subject of Law Number 5 of 1999. For instance, article 17 -24 prohibits a number of activities that should not be done by a business actor. Another example can be found on articles 25-28 that regulate some prohibition related to dominant position. All of those articles clearly regulate activities that can be done by an individual business actor. Furthermore, article 4 through 16 which are classified as prohibited agreements prohibit activities that done by two or more business actors since an agreement only possible occurs if there is more than one party.

The definition of business actor can be found on article 1 section e of Law Number 5 of 1999 that define business actor as an individual person or a company, in the form of legal or non-legal entity established and domiciled or engaged in activities within the legal territory of the Republic of Indonesia, conducting various kinds of business activi-

[8] General Elucidation of Law Number 5 of 1999.

[9] Hermansyah. (2008). Pokok-pokok Hukum Persaingan Usaha di Indonesia. Jakarta, Prenada Media Group.

ties in economic sector through contracts, both individually or collectively.

Unfair Competition as Result of Government Policies

On the other hand, unfair competition is not only affected by and between entrepreneurs, but also government policy by creating barrier on investment decisions for economic actor. The following paragraphs elucidate the components of a competition policy that have bearing on investment decisions:[10]

1. **Trade policy**

   A country's trade policy can play an important part in shaping competition in its economy. The volume of goods available in the market depends on the extent to which the economy is open to the outside world. Having a tight trade policy restricts competition in the market, and can result in the manipulation of the market by dominant domestic firms. On the other hand, trade liberalization results in an influx of goods into the economy, which could also have a huge impact on the nature and extent of competition in the market, and encourages domestic competition as well. In order to achieve an optimal level of competition in an economy the trade policy of a country should be formulated to stimulate private participation in the economy (both in terms of attracting new firms and also in strengthening the position of existing ones).

2. **Industrial openness**

   The level of competition in an economy reflects the country's attitude towards entry and growth of firms. Regulations focusing on entry and establishment of business in a country are important in shaping up competition. If a country has a restrictive industrial policy regime in which entry and growth of firms is subjected to stringent licensing conditions and monitoring, a low level of investment is guaranteed and the resulting level of competition is also low. An effective competition policy advocates for the removal of obstacles and facilitates investment flows by providing a predictable legal and regulatory environment that reduces the scope of arbitrary decision-making, thereby instilling transparency

[10] Centre for Competition, Investment & Economic Regulation (CCIER). (2008). Competition Policy Enforcement Experiences from Developing Countries and Implications for Investment, presented at OECD Global Forum on International Investment VII 'Best practices in promoting investment for development', Paris, France, 2008.

in the system.

3. **Attitude towards privatization**

   Privatization enhances the potential for competition by providing conditions conducive for entry of new players. Government involvement in the economy, particularly in direct competition with private companies, deters private participation and stifles competition. The intention of a country to improve competition in the market through privatization can be handicapped if proper care is not taken in planning its privatization program.

4. **Other critical policy considerations**

   There are certain other policy considerations that can have an impact on competition by affecting the firms' decision to enter an industry. The formulation of competition policy should take into consideration implications of such policies as well:

   a. Labour policy;

      Labour regulations impact production cost and convenience adversely and result in entry into the informal sector being preferred to significant investment in the formal sector.

   b. Exit Rules;

      Certain regulations like bankruptcy laws, insolvency laws might make it difficult for companies to exit their business in a country, and thus negatively affect investment decisions by prospective investors.

   c. Consumer protection policy.

      Although it is generally accepted that there is a convergence between the objectives of consumer protection policy and competition policy, there exists scope for conflict as well which works to the detriment of investment.

Dimension of policy is not only policy making but also policy implementation or delivery. A policy may good in making but poor in delivery. Policy making does not end with the passage of a regulation by President. Rather, it shifts from President Office to the bureaucracy-to the departments, ministry, agencies, commissions of the executive

branch and local governments.[11] Failure in delivery means failure in policy itself. This principal shall apply to Economic Policy Packages XII.

Erroneous implementation of those policy could be considered as government policy that creating barriers. Disparities between region in competition is reflected by local government attitude towards entry and growth of firms. As mentioned above, entrepreneurs in Pontianak, Palembang, Manado and Bandung may impeded to establish business than Jakarta and Surabaya due to tangled procedure to obtain nuisance permit.

Unfairness may generally occur in various of business and relevant market, if the local government does not remove the obstacle for licensing condition. This restrictive policy in local government may create obstacle to entry and shall continue when the impediment condition for business licensing still exist.

As previously mentioned, unfair business competition may be generated by government policy. That is why KPPU as the enforcer of Law Number 5 of 1999 as stated on article 35 letter e has a function to provide advice and consideration to the government on policies that are considered contrary to fair business competition.

The advice and consideration by KPPU does not have to wait for the request from the government but it can also come from KPPU's own initiative in observing the government policies that have potential creating unfair business competition. Furthermore, the subject of advice and consideration by KPPU can be addressed to the central government as well as the local government depending on the object of that particular policy.

There are several examples of government policies that considered contrary to fair business competition in Indonesia, as follows:

1. Government policy on airline service industry is one example of government policies that are contrary to fair business competition. At the beginning, aviation service industry is a prohibited sector for a new business actor. Moreover, The Government through the Minister of Transportation Decree Number 25 of 1997 intervened the market by appointing Indonesian National Air Carriers Association (INACA) to fix the upper and lower limit price for flights. In July 2001, KPPU advised the government to revoke the authority to INACA and cancel the

[11] See Thomas R Dye. (2013). Understanding Public Policy, 55-58. United States of America, Pearson Education Inc.

price fixing made by INACA.[12] The result of that advice can be seen from the current market of airline service which is very competitive and efficient. The airlines compete each other to make an affordable and safe product for customers. As today, we can see that flying by plane is no longer a luxury thing and everyone can enjoy it.

2. In March 2014, KPPU advised the government of Aceh province to revoke The Instructions of the Governor of Aceh Number 01 INSTR / 2007 concerning Enactment of Certificate of Business Entity / Certificate of Registration of Company in Nanggroe Aceh Darussalam Province. This policy requires business entities from outside the Aceh Province to re-register and obtain re-certification for a business entity certificate, or a corporate registration certificate from the Aceh Provincial Chamber of Commerce and Industry. In this policy, KPPU considers that the central government regulation on registration and certification obligation is national, so re-registration in the province will create barriers to entry for business actors outside the province in following the procurement process of goods and services in that area.[13] This condition also can lead to discrimination among the origin of business actors, as well as incurring new costs for business actors outside the region to compete in the province.
3. In the end of 2016, KPPU gave advice and consideration to the government of DKI Jakarta province related to Electronic Road Pricing (ERP). The policy that stated in the Governor Regulation (Pergub) of DKI Jakarta Number 149 of 2016 concerning Electronic Paid Traffic Control is considered potentially violate Law Number 5/1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition. The important points of the regulation that must be changed, namely Article 8 of Pergub DKI Jakarta Number 149/2016. The reason of this change is because it is only allowing the use of Dedicated Short-Range Communication (DSRC) technology of 5.8 GHz frequency in the application of ERP on the streets of Jakarta while there another technologies such as Radio

[12] Banyak Kebijakan Pemerintah Tidak Pro Persaingan Sehat (2009, February 21). Retrieved from http://www.hukumonline.com/berita/baca/hol21267/banyak-kebijakan-pemerintah-tidak-pro-persaingan-sehat

[13] Ini 5 Saran Komisi Pengawas Persaingan Usaha untuk Pemerintah (2014, June 30). Retrieved from http://www.viva.co.id/berita/bisnis/517413-ini-5-saran-komisi-pengawas-persaingan-usaha-untuk-pemerintah

Frequency Identification (RFID) or Global Positioning System (GPS). As a result, the inclusion of DSRC technology with a certain frequency prevents vendors with other technologies to follow the procurement.[14] DKI Jakarta Government accepted the advice from KPPU and revised Article 8 paragraph 1c of Pergub DKI Jakarta Number 149/2016 so that not only business actors with Dedicated Short Range Communication (DSRC) technology can follow the tender of ERP but also all business actors in the sector of information and communication technology with other technologies.

Government policies that mentioned above are the examples of policies that substantially or in policy making dimension contrary to fair business competition. Policies that are substantially inconsistent with fair business competition constitute the majority of the object of KPPU's advices and consideration. Potential problems arise when there is a policy that is not substantially contrary to fair business competition, otherwise aims to provide convenience for business actors but at the level of policy delivery leads to unfair business competition.

This condition seems to be seen in the unevenness of policy delivery of Economic Policy Packages XII between regions. As previously mentioned, this condition has the potential for disparities related to ease of investment between regions and further will be able to cause barriers and unfair business competition. As KPPOD results, Economic Policy Package XII didn't delivered well because both government (Central and Local) didn't delivered it well also. Distinction delivery of policy information, low integrity of officer, and different goals-agendas between central and local governments are the causes of lousy policy delivery.

Based on explanation above, there is an urgency of KPPU to supervise and then provide advice and consideration to government policies that are not only substantially contrary to fair business competition but also on its policy delivery potentially lead to unfair business competition.

Conclusion

[14] KPPU Apresiasi Langkah Pemprov DKI Merevisi Pergub ERP (2017, January 4) Retrieved from http://www.kppu.go.id/id/blog/2017/01/kppu-apresiasi-langkah-pemprov-dki-merevisi-pergub-erp/

The purpose of Law No 5 of 1999 is to ensure the certainty of equal business opportunities for large, medium, and small-scale business by regulating fair business behavior only between entrepreneurs/business actors. But it's not necessarily mean unfair competition occurred limited to condition provided by law. It also could be generated by improper policy delivery which creating barrier on investment decisions for economic actor. Regulations focusing on entry and establishment of business in a country are important in shaping up competition. If a country has a restrictive industrial policy regime in which entry and growth of firms is subjected to stringent licensing conditions and monitoring, a low level of investment is guaranteed and the resulting level of competition is also low, which is considered as barrier to entry those business.

Pursuant to the concept of government policy may shape unfairness in competition, improper implementation of deregulation may lead to generating unfair business competition by gap or discrepant policy between one region and another. Different treatment regarding ease on the licensing and the cost for local taxation (Economic Policy Package XII) between Jakarta-Surabaya and other regions, while entrepreneurs in other regions potentially not having the same benefits, may considered as unfair.

As discussed earlier, government policy as one of the things that can lead to unfair business competition can occur at a substantial level and at the level of implementation of the policy. So far, KPPU has given more advises and considerations on policies that are substantially contrary to fair business competition. Meanwhile, there are also government policies that are in implementation contrary to fair business competition as occurred in Economic Policy Packages XII. Therefore, it is important for KPPU to actively supervise government policies in the implementation level in order to realize the fair competition. Role of KPPU as leading institution on promoting competitive market in Indonesia is necessary to provide advice and consideration to the government related to unfair policies or improper policy delivery. KPPU can assist and conducting advocacy to local government to shape better business climate.

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When Competition Meets Google: Disruptive, Digital, Revisited

Sih Yuliana Wahyuningtyas
Faculty of Law, Atma Jaya Catholic University of Indonesia
Email: yuliana.siswartono@atmajaya.ac.id

Abstract

On 27 June this year, the European Commission ruled a landmark decision imposing Google with € 2.42 fine for abusing dominance by giving illegal advantage to its own shopping services. While the legal battle after the Commission decision and debates remain, the decision could lend us magnifying glasses to look into how innovation in the digital market might affect competition law analysis. The Google case exemplifies the complexities when competition law analysis deals with disruptive innovation. The paper aims at identifying: (1) factors that play roles in the construction of illegality under the principle of equal treatment in Google comparison shopping service and (2) elements of analysis under EU Competition Law, in particular Article 102 TFEU, that could be useful for Indonesian competition law analysis. The study uses legal normative approach to tackle the issues. As regards the first issue, the paper identifies important factors for the applicability of the principle of equal treatment in the case: (1) the leveraging of market power in general search into comparison shopping, (2) the nature of multi-sided platforms (MSPs) and network effects, and (3) the concept of indispensability. On the second issue, it suggests that (1) for the use of relevant market as a basis for competition law analysis in competition for the market, instead of relying on the pure product market consideration, i.e. substitution concept, another parameter such as R&D investments for the relevant market definition could be used. (2) User data plays significantly important role for online business to gain market power and hence, for competition law analysis. (3) In considering the harmful effects of conducts, account should be taken of the impact to the interest of consumers in terms of the availability of choice and innovation, instead of on price.

***Keywords**: Google, innovation, MSPs, data*

1. Introduction

When Politico commented on the European Commission (hereafter, the Commis-

sion) Decision on *Google Shopping Case* under the headline "Margrethe Vestagers Google Decision Risks Messy Endgame",[1] it did not only address the Commission's reputation in handling competition law cases and the likely length and brutality of legal battle in the appeal process. It also addressed that the decision might set a precedent for online business empires in various sectors such as social networks and e-commerce. The decision seems to not only deliver a message that there is no company that is too big to get into competition authority scrutiny, but also to show the willingness of the Commission to tackle new and difficult challenges brought by the emergence of the digital market. As The Economist wrote under the headline 'Not So Froogle: The European Commission Levies A Huge Fine on Google': *"[i]ts case is not perfect, but it asks the right questions"*,[2] the end of the case remains to be seen in the coming years, but the Commission has at least found the exact competition law problems that exemplify the complexities when competition law analysis deals with disruptive innovation.

In its decision on 27 June, the European Commission fined Google € 2.42 billion - the highest fine in the European competition enforcement history - for abusing dominance by giving illegal advantages to its own comparison shopping services.[3] Focusing on the relevant market of general internet search in the entire 31 European Economic Area (EEA), the Commission found Google to be dominant in the market with over 90%[4] market share since 2008 with the exception of Czech Republic where Google is dominant since 2011.[5] What Google basically does is that it offers its search services for zero prices to users and gains its revenue from advertisers. According to the Commis-

[1] Politico, 'Margrethe Vestagers Google Decision Risks Messy Endgame' <http://www.politico.eu/article/margrethe-vestagers-google-decision-risks-messy-endgame/> accessed 13 August 2017.

[2] The Economist, 'Not So Froogle: The European Commission Levies A Huge Fine on Google' <https://www.economist.com/news/business/21724436-its-case-not-perfect-it-asks-right-questions-european-commission-levies-huge> accessed 1 July 2017.

[3] European Commission Memo, 'Antitrust: Commission Fines Google €2.42 Billion for Abusing Dominance as Search Engine by Giving Illegal Advantage to Own Comparison Shopping Service – Factsheet', 27 June 2017 <http://europa.eu/rapid/press-release_MEMO-17-1785_en.htm> accessed 27 June 2017.

[4] StatCounter, 'Search Engine Market Share in Europe' <http://gs.statcounter.com/search-engine-market-share/all/europe/#yearly-2009-2017-bar> accessed 12 August 2017.

[5] European Commission Memo, 'Antitrust: Commission Fines Google €2.42 Billion for Abusing Dominance as Search Engine by Giving Illegal Advantage to Own Comparison Shopping Service – Factsheet', Brussels, 27 June 2017 <http://europa.eu/rapid/press-release_MEMO-17-1785_en.htm> accessed 27 June 2017.

sion decision, under the principle of equal treatment, Google is obliged not to favor its own product advertisements over its competitors. The obligation cannot be separated from the fact that Google is dominant in the market. The outcome might have been different if it is conducted by small players. Thus, the case also emphasizes the additional responsibility under the EU competition law for dominant players in the market to maintain competition by ensuring not to create entry barriers.

The Commission decision in the *Google Shopping Case* might affect how Google would do business throughout Europe and how the Commission would take its stance in other cases, such as in the *Google Android Case*. Furthermore, it also lends us magnifying glasses to look into how innovation in the digital market might affect competition law analysis.

While price has traditionally been the main parameter for static competition analysis, in dynamic competition such as that taking place in the online business, the relevant parameter shifts to another indicator, namely innovation.[6] Innovation can result in the improvement of existing products (sustaining innovation) or in new technologies/business models that displace the earlier and create a new market (disruptive innovation).[7] However, current competition law may not be sufficiently suitable for considering innovation resulting in the introduction of new products that displace existing markets.[8] A method which paves the way for including dynamic efficiency into competition law analysis is required to analyze competition in a way that reflects the needs of innovative, new markets.

The paper will be structured in four parts. After discussing the background and presenting research questions in the *first* part, the *second part* discusses how various factors

[6] J. Drexl, 'Anticompetitive Stumbling Stones on the Way to a Cleaner World: Protecting Competition in Innovation Without a Market', *Journal of Competition Law and Economics* 2012, vol. 8, no. 3, (507), p. 511; J.G. Sidak and D.J. Teece, 'Dynamic Competition in Antitrust Law', *Journal of Competition Law and Economics* 2009, vol. 5, no. 4, (581), p. 585; T.A. Hemphill, 'Antitrust, Dynamic Competition, and Business Ethics, *Journal of Business Ethics* 2004, Vol. 50, Issue 2, (127), p. 128; J. Ellig and D. Lin, 'A Taxonomy of Dynamic Competition Theories', in J. Ellig, (Ed.), *Dynamic Competition and Public Policy: Technology, Innovation, and Antitrust Issues,* (Cambridge University Press, Cambridge 2001), p. 21; R.J. Gilbert and S.C. Sunshine, 'Incorporating Dynamic Efficiency Concerns in Merger Analysis: The Use of Innovation Markets', *Antitrust Law Journal* 1995, Vol. 63, No. 2, (569), p. 570; J.A. Schumpeter, *Capitalism, Socialism and Democracy*, 1942 (Routledge 2003), p. 82-83.

[7] C.M. Christensen, *The Innovator's Dilemma. When New Technologies Cause Great Firms to Fail*, Boston, Massachusetts, Harvard Business School Press, 1997, p. 10.

[8] C. Argenton, et.al., 'Law, Economics and Growth in Europe - Integrating Innovation into Competition Policy and Economic Regulation', *Final Draft* July 2013, p. 10.

play roles in the construction of illegality under the principle of equal treatment in Google comparison shopping service. The *third* part analyses which which elements of analysis under EU Competition Law, in particular Article 102 TFEU, could be useful for Indonesian competition law analysis under Law No. 5 of 1999. The *fourth* concludes.

2. The Principle of Equal Treatment and the Construction of Illegality in the *Google Shopping Case*

The Commission ruling on the *Google Shopping Case* is based on the principle of equal treatment under which Google is obliged to treat its comparison shopping service and its rival's equally. This is also the same principle underlining the concept of essential facility doctrine that obliges companies to provide access to its facility for competitors under condition that the facility is essential for competitors to enter the market. This part of the paper discusses how the principle of equal treatment applies in constructing the illegality of Google conducts taking account of various elements, namely the concept of disruptive innovation and dynamic competition, the analysis of relevant market and market dominance, the nature of multi-sided platforms (MSPs) and network effects.

2.1 Disruptive Innovation and Dynamic Competition

Bower and Christensen introduced the concept of disruptive innovation to explain the reason behind the failure of prominent companies to stay at the top of their industry when technologies or markets change.[9] They distinguish between two types of technological innovations: sustaining and disruptive technologies. Despite presenting improvement of an existing product, sustaining technologies do not affect established markets the way disruptive innovation does.[10] Disruptive innovation, on the other hand, introduces new technologies that displace existing markets. Such phenomenon is also referred to as 'dynamic competition' or 'competition for the market' to be contrasted with 'competition in the market' or 'static competition' that refers to the conventional type of competition taking place in established markets on the basis of price and product vol-

[9] See C.M. Christensen, *The Innovator's Dilemma. When New Technologies Cause Great Firms to Fail*, Boston, Massachusetts, Harvard Business School Press, 1997.

[10] J.L. Bower and C.M. Christensen, "Disruptive Technologies: Catching the Wave", *Harvard Business Review* 1995, vol. 73, no. 1 (January-February), (43), p. 45.

ume.[11]

Dynamic competition can be traced back to Schumpeter's concept of 'creative destruction'.[12] It typically leads to a monopoly position that is likely to persist for some time, until a new monopolist comes up that upsets the position of the previous incumbent.

2.2 Analyzing Relevant Market and Market Dominance

Under Article 102 TFEU, dominant companies are prohibited from abusing their power. To qualify an abuse of dominance, first of all dominance is required and for this purpose, a relevant market shall be defined. Based on the defined relevant market, several aspects shall be examined in the next phases to understand (1) the market structure (whether there are sufficient players or the market is concentrated to (a) certain market player(s) instead); (2) the level of competition (whether there is effective competition in the market); (3) how powerful the firm under scrutiny is in the market as regards the quantity aspects (market share) and quality aspects (its ability to influence prices, production, and distribution) and (4) how the company under scrutiny behaves in the market. The following paragraphs offer some views on the complexity in defining relevant market disruptive innovation cases.

In *Google Shopping case*, the Commission focuses on Google practices in the general internet search market and the impact to the comparison shopping market. While the design of Google's generic search algorithms, the demotion, and the way that Google displays or organises its search results pages as such are legal, the concern lies on the leveraging of Google's dominance in general internet search into a separate market: comparison shopping.

Here, the case shows the use of the concept of leveraging of market power which is a type of abuse that consists of an undertaking with market dominance in one market engaging in anticompetitive conducts in order to expand its market power into another market (traditional leveraging) or to protect its market dominance in the first market

[11] D.S. Evans and R. Schmalensee, "Some Economic Aspects of Antitrust Analysis in Dynamically Competitive Industries" in A.B. Jaffe, J. Lerner en S. Stern (eds.), *Innovation Policy and the Economy, Volume 2*, MIT Press, 2002, (1), p. 1.

[12] J.A. Schumpeter, *Capitalism, Socialism and Democracy*, 1942 (Routledge 2003), p. 82-83.

(dynamic leveraging).[13] However, it can be applied only in exceptional circumstances, because otherwise it could substantially reduce the incentive to innovate. Exceptional circumstances only occur when there are strong indications of the existence of opportunity and incentive to leverage market power. In the case of Google/DoubleClick, the problem is that the second market did not even exist during the merger assessment and the competition authority would also have difficulties to prove that R&D activities in both undertakings are conducted with the purpose of creating a new market.

Next to defining relevant market is the importance of market shares consideration to assess the competitive ability of companies in the market. Although useful, in dynamic markets such as the information and communication technology (ICT) sector, market shares may fluctuate over a short period of time. In the *Cisco* judgment, following the statement of the Commission, the General Court argued that in dynamic and quickly evolving markets, market shares are not an appropriate means to assess whether an undertaking has a dominant position, because they could be transitory in nature.[14]

Other online services such as search engines and social networks exemplify dynamic sectors that are subject to such observation. In practice, however, the Commission still used market shares in the markets for internet search and online advertising as can be seen in the acquisition of Yahoo's search business by Microsoft, the acquisition of DoubleClick by Google, [15] and the recent case of *Google Shopping*[16]. The Commission Decision does not include different service to merchant platforms, such as *Amazon* and *eBay*, in the same market. While comparison shopping services offer a tool for consumers to compare products and prices online and find deals from online retailers of all types, they do not offer the possibility for products to be bought on their site, which

[13] P. Crocioni, Leveraging of Market Power in Emerging Markets: A Review of Cases, Literature, and A Suggested Framework', *Journal of Competition Law and Economics* 2007, Vol. 4, No. 2, pp. 452 ff.; Case C-333/94P - *Tetra Pak International SA v Commission*.

[14] Case T-79/12, *Cisco Systems Inc. and Messagenet SpA v. Commission*, judgment of 11 December 2013, not yet reported, par. 69.

[15] Case No COMP/M.5727 – *Microsoft/Yahoo! Search Business*, 18 February 2010, par. 112-130 and Case No COMP/M.4731 – *Google/ DoubleClick*, 11 March 2008, par. 96-118.

[16] European Commission Memo, 'Antitrust: Commission Fines Google €2.42 Billion for Abusing Dominance as Search Engine by Giving Illegal Advantage to Own Comparison Shopping Service – Factsheet', Brussels, 27 June 2017 <http://europa.eu/rapid/press-release_MEMO-17-1785_en.htm> accessed 27 June 2017.

is exactly the business of merchant platforms. [17]

2.3 Multi-Sided Platforms (MSPs) and Network Effects

Google offers a good example of how multi-sided platforms (hereafter MSPs) and network effects work. According to Rochet and Tirole's definition, two-sided - or more generally multi-sided - markets are *"markets in which one or several platforms enable interactions between end-users and try to get the two (or multiple) sides "on board" by appropriately charging each side."*[18] The term "market" here is used with a loose meaning, unlike the use of the term in competition law analysis, such as in "relevant market". This term is often used interchangeably with "platform". Both terms "market" and "platform" refer to a place where different group of customers meet and interact.[19]

MSPs have been long recognized in traditional advertising-supported media like newspapers.[20] In the new-economy industries, MSPs become more common for instance in industries that are based on advertising-supported online platforms like Google or Facebook, software platforms and web portals. Understanding how MSPs work is important for competition law analysis, because it brings certain implications that differ from single-sided markets.

MSPs serve different groups of customers. One characteristic of MSP is that one group of customers will value the platform more when there are more customers of another group. [21] Google attracts advertisers because it has large number of users as the audience as potential buyers for the advertisers.

This implies that a group of customers is influenced by another group of customers. The link between the two groups is called 'indirect network effects', or 'indirect net-

[17] European Commission Memo, 'Antitrust: Commission Fines Google €2.42 Billion for Abusing Dominance as Search Engine by Giving Illegal Advantage to Own Comparison Shopping Service – Factsheet', 27 June 2017 <http://europa.eu/rapid/press-release_MEMO-17-1785_en.htm> accessed 27 June 2017.

[18] J.C. Rochet and J. Tirole, 'Two-Sided Markets: A Progress Report,' 37 *The RAND Journal of Economics* 645 (2006), p. 645.

[19] See D.S. Evans, (Ed.), 'Platform Economics: Essays on Multi-Sided Businesses', Competition Policy International, 2011, p. vi, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1974020 accessed 5 August 2017.

[20] L. Filistrucchi, T.J. Klein, and T.O. Michielsen, 'Assessing Unilateral Merger Effects in a Two-Sided Market: An Application to the Dutch Daily Newspaper Market', 8 (2) *Journal of Competition Law and Economics* 297 (2012), p. 298.

[21] M. Armstrong and J. Wright, 'Two-sided Markets, Competitive Bottlenecks and Exclusive Contracts', 32(2) *Economic Theory* 353(2007), p. 353.

work externalities', as the two groups do not internalize the networks effects, rather they are internalized by the platform. In the examples above, we can see positive indirect network effects (or positive feedback effects).[22] The positive indirect network effects result from the reduction of transaction costs, facilitation of matching, and making it easier for different groups of customers to exchange value between each other.[23]

The indirect network effects character requires a MSP to attract customers on either side of its platforms. The platforms will have to secure enough customers on both sides (critical mass) and bring enough value to either group of customers.[24]

The implication of this is that it may be necessary to charge asymmetrical pricing to different groups of customers ("skewed pricing")[25] in order to recover most costs for one side of the platforms while favouring the other. Therefore, it is common to find platforms that charge price at marginal cost or even provide services for free to a group of customers, while charging normal prices to the other group. These free services combined might at certain level generate dependence of users on the platform and can contribute to the maintenance of dominance in the market.

Users, in return, provide Google with different types of data that help Google analyze their behaviour to enable behavioural advertising. Indeed, users do not really get the services for free, but "paying" with data is difficult to convert into price. Not taking this into account could lead to a false perception of a selling below cost on one side of the platform. It is also incorrect to conclude that there is no market, simply because the services are at zero prices.

The merger case of *Google/DoubleClick* clearly exemplifies the issues concerning multi-sidedness, network effects, problems of defining relevant markets, and limitations of existing legal tools. The two parties concerned operated, in the case of Google, as an

[22] D.S. Evans and R. Schmalensee, 'The Antitrust Analysis of Multi-Sided Platform Businesses', NBER Working Paper No. 18783 February 2013, <http://www.nber.org/papers/w18783> accessed 8 August 2017.

[23] However, users may also dislike too many advertisements and hence, are discouraged to use the platform (negative indirect network effects). Unless indicated as negative, the term indirect network effects refer to the positive effects.

[24] C. Saphiro and H.R. Varian, *Information Rules: A Strategic Guide to the Network Economy*, Harvard, Harvard Business Press, 1999, p. 14.

[25] W. Bolt and A.F. Tieman, 'Heavily Skewed Pricing in Two-sided Markets', 26 (5) *International Journal of Industrial Organization* 1250 (2008), p. 1250; W. Bolt and A.F. Tieman, 'Skewed Pricing in Two-Sided Markets: An IO Approach', Money Macro and Finance (MMF) Research Group Conference 2005, p. 2-3, <http://econpapers.repec.org/paper/mmfmmfc05/75.htm> accessed 5 August 2017.

internet search engine providing online advertising space on its own websites and its network, and ran, in the case of DoubleClick, ads business for ad serving, management, and reporting technology worldwide, as well as services for intermediation platform (ad exchange). The fact that both undertakings did not operate in a single market, was a determinative factor in the Commission's decision to approve the merger. What was not taken into account, however, was that the merger would remove the border between search advertising (Google) and display advertising (DoubleClick) and in turn, contribute to Google dominance in the new market.

2.4 Indispensability and the Principle of Equal Treatment

In the *Google Shopping Case*, the Commission investigates the allegation of dominance abuse by 'allegedly lowering the ranking of unpaid search results of competing services' and 'according preferential placement to the results of its own vertical search services in order to shut out competing services', and lowering the 'Quality Score' for sponsored links of competing vertical search services, a decisive element to define the price for Google advertisers. [26]

The Commission in its ruling argues that Google's algorithm that places its comparison shopping service appears much higher in Google's search results than rival comparison shopping services has had a significant impact on competition in comparison shopping markets for the following reason: *First*, the impact on user clicks (traffic): according to the real-world consumer behaviour, surveys and eye-tracking studies, consumers generally click significantly more on search results at or otherwise near the top of the first search results page than on results lower down the first page, or on subsequent pages, where rival comparison shopping services were most often found. *Second*, the more visibility in the search results has increased traffic to Google's comparison shopping service, while rivals have suffered a decrease in traffic from Google's search results pages on a lasting basis.[27]

Google's illegal practices and the distortions to competition led to Google's comparison shopping service gaining significant market share at the expense of rivals.

[26] Antitrust: Commission probes allegations of antitrust violations by Google.

[27] European Commission Memo, 'Antitrust: Commission Fines Google €2.42 Billion for Abusing Dominance as Search Engine by Giving Illegal Advantage to Own Comparison Shopping Service – Factsheet', 27 June 2017 <http://europa.eu/rapid/press-release_MEMO-17-1785_en.htm> accessed 27 June 2017.

This has deprived European consumers of the benefits of competition on the merits: genuine choice and innovation.

The illegality of Google's practices lies in the different treatment applied to its own comparison shopping services and the rivals' that is prohibited under the principle of equal treatment. The principle applies under circumstances that the company is dominant in the market and the services provided have significant importance for rivals to enter the market. This sounds like a similar concept of indispensability in the *Microsoft case*[28] below.

For the application of the prohibition of refusal to deal, essential facility doctrine would become a useful tool to analyse under which circumstances a certain conduct qualifies a refusal to deal. In the EU *Microsoft case*, the Court of Justice of the European Union has accepted that a refusal to provide essential facility to competitors in order to enable them to enter or operate in the same market can amount to a violation of Art. 82 of the Treaty (now Art. 102 TFEU).[29]

In the *Microsoft case*,[30] European Commission ruled that Microsoft abused its dominance against Art. 82 EC by refusing to supply interoperability information to its competitors and thereby, restricting the interoperability between Windows PCs and non-Microsoft workgroup servers.[31] In its ruling, the Commission required Microsoft to disclose complete and accurate interface documentation in order to allow non-Microsoft workgroup servers for full interoperability with Windows PCs and servers.[32] Refusal to make interoperability information available would adversely impinge on the incentives of others to innovate and create new products.[33] However, from competition law viewpoint, under the general rule, there is no obligation to disclose interoperability information.[34] Only under exceptional circumstances, a refusal to provide interoperability in-

[28] Case T-201/04 *Microsoft v Commission* [2007] ECR II-3601, para 36.

[29] Case T-201/04 *Microsoft v Commission* [2007] ECR II-3601, para 36.

[30] Case T-201/04 Microsoft v Commission.

[31] Case T-201/04 *Microsoft v Commission*, para 36.

[32] Case T-201/04 *Microsoft v Commission*, para 192-193.

[33] D Curley, 'Interoperability and Other Issues at the IP-Antitrust Interface: The EU Microsoft Case' (2008) 11(4) The Journal of World Intellectual Property 296, 312; *Microsoft* [2007] OJ L32/23, para 783.

[34] Commission (EC), 'DG Comp Discussion Paper on the Application of Article 82 of the Treaty to Exclusionary Abuses' (December 2005), para. 238 <http://ec.europa.eu/competition/antitrust/art82/discpaper2005.pdf> accessed on 20 March 2017.

formation can qualify an abuse of dominant position under Art. 102 TFEU.

Art. 102 TFEU presupposes first of all a dominant position in the market.[35] In the next step, a compulsory licensing for interoperability as shown in the Microsoft case could be imposed only when (1) the product is indispensable,[36] 2) the refusal prevents the emergence of a new product, while there is a consumer potential demand for the new product,[37] (3) the refusal is not justified,[38] and (4) it excludes all competition on a secondary market.[39] [40] The element of indispensability in the *Microsoft case* referred to the degree of interoperability that *'was necessary in order to enable developers of non-Microsoft work group server operating systems to remain viably on the market'*.[41] The interoperability information was indispensable because of its importance to allow non-Microsoft work group server to interoperate with client PCs and because of Microsoft's significantly leading position in the client PC operating system market.[42]

The concept of indispensability can also be seen in *Google Shopping case*. The indispensability element lies on the market dominance of Google that leads to access – number of user views - needed by competitors to enter the market. Although EU competition law does not prohibit market dominance, it obliges dominant companies to observe the equal treatment principle under Art. 86 lit. c of EC Treaty.

In Indonesian case laws, the use of essential facility doctrine[43] can be seen for in-

[35] S Anderman, 'Does the *Microsoft* Case offer a New Paradigm for the 'Exceptional Circumstances' Test and Compulsory Copyright Licences under EC Competition Law?' (2004) 1(2) The Competition Law Review 7, 9.

[36] Joined cases C-241/91P and C-242/91P *Magill* , para 53.

[37] Joined cases C-241/91P and C-242/91P *Magill*, para 54.

[38] Joined cases C-241/91P and C-242/91P *Magill*, para 55.

[39] Joined cases C-241/91P and C-242/91P *Magill*, para 56, Case C-418/01 *IMS Health*, para 38; Case T-201/04 *Microsoft*, para 333-3.

[40] N Banasevic & P Hellström, 'Windows into the World of Abuse of Dominance: An Analysis of the Commission's 2004 Microsoft Decision and the CFI's 2007 Judgement', in L Rubini, (ed.), *Microsoft on Trial: Legal and Economic Analysis of A Transatlantic Antitrust Case* (Edward Elgar, Cheltenham 2010), 53-61.

[41] Case T-201/04 *Microsoft* , para 228; see also P Larouche, 'The European Microsoft Case at the Crossroads of Competition Policy and Innovation' (2008) 75 Antitrust Law Journal 601, 610.

[42] Case T-201/04 *Microsoft*, para 353.

[43] Law No. 5 of 1999 on the Prohibition of Monopoly Practices and Unfair Competition, see Art. 19 no. 1 that prohibits refusing or hindering other undertaking(s) to enter the market.

stance in the judgment of KPPU in *Telkom* case[44] in 2004. The case dealt with forcing other companies in retail level to refuse to deal with competitors.[45] In the judgment, KPPU stated that Telekom's local network was an essential facility for each international call service provider that offers the services on the local network.[46] In its decision, KPPU emphasized the freedom of consumers to choose services and the right to interconnection.[47]

3. Useful Elements for Competition Law Analysis

3.1 Relevant Market and Competition for the Market

Traditional competition analysis relies on an assessment of the effects of a certain type of behaviour in existing markets. However, disruptive innovation is harder to accommodate in such analysis, because the market itself might have not yet been existing.[48] Hence, a new approach to analyze competition for a future market or competition in innovation is needed.

The problem to define relevant market in cases of competition for the market might suggest that another basis for competition law analysis other than relevant market is necessary. Nevertheless, while this problem remains unresolved, it could be useful to consider a shift from the concept of substitution to another parameter for defining relevant market.

In Graef, Wahyuningtyas, and Valcke,[49] we propose to look into the approach in the area of Article 101 TFEU in the EU Horizontal Guidelines, in which the European Commission could look at R&D investments for the relevant market definition. The reason is because R&D expenses can be considered as input to new products and technolo-

[44] KPPU Decision No. 02/KPPU-I/2004 – *Telekom SLI*. *SLI* stands for *"Sambungan Langsung Internasional"* (Direct International Connection).

[45] This type of refusal to deal can be seen also in the case of *ABC*, see KPPU Decision No. 02/KPPU-I/2004 – *Telekom SLI*, KPPU Decision No. 06/KPPU-L/2004 – *ABC*.

[46] KPPU Decision No. 02/KPPU-I/2004 – *Telekom SLI,* para. 1.6.3.

[47] KPPU Decision No. 02/KPPU-I/2004 – *Telekom SLI,* para. 7.5.

[48] M.O. Mackenrodt, 'Assessing the Effects of Intellectual Property Rights in Networks Standards' in J. Drexl, (Ed.), *Research Handbook on Competition Law and Intellectual Property*,(Edward Elgar, Cheltenham 2008), p. 81-82.

[49] I. Graef, S.Y. Wahyuningtyas, and P. Valcke (2014): 'How Google and Others Upset Competition Analysis: Disruptive Innovation and European Competition Law', 25th European Regional Conference of the International Telecommunications Society (ITS), Brussels, Belgium, 22-25 June 2014, p.12.

gies – output that would create a new market that until then cannot yet identified. The counter argument against this is that (at least in the EU Horizontal Guidelines), this method requires visibility to identify R&D efforts at an early stage, while in the ICT sector (Google included), companies often do not disclose this type of information. However, in cases when it is hard to observe the precise R&D efforts, we could look into the assets to which potential competitors need access in order to take part in the ex-ante competition, i.e. competition for the new innovation and technology, and thus, the new market.

3.2 User Data and Market Dominance

The access to data on online platforms has become one of the issues that calls for the attention of competition authorities and courts worldwide.[50] When a dominant online platform refuses to give access to user data – under condition that the provision of access to user data has met the requirements under data protection and privacy rules - , this could constitute a refusal to deal and lead to liability under essential facilities doctrine. However, data already plays a role much earlier in competition analysis before it comes to a question on data access. Data control amounts to market power. Data in this regard refers to user data.

User data has become an asset for companies due to its potential to bring profit, among other things its use for the purposes of targeted marketing. To attract users, online platforms usually provide services for users for zero prices, while the revenue comes from other customers such as advertisers. Although users make their personal data available on online platforms, they cannot be treated as undertakings that supply data. Personal data is not to be regarded as a trade commodity although it has economic value. When users upload their personal data on online platform, the action is seen as a necessity for the purpose of merely using the service or getting the access to enable the use of the service and not to sell the data. Unlike other types of asset, despite being under the control of the online platform to which the data is submitted, user data is not under the proprietorship of the data controller. Thus, it cannot be used, processed, and transferred, traded to or shared with any third party without prior consent of the individual

[50] D.S. Evans, 'Antitrust Issues Raised by the Emerging Global Internet Economy', 102 *Northwestern University Law Review Colloquy* 285 (2008), p. 304; C.S. Yoo, 'When Antitrust Met Facebook', 19 *George Mason Law Review* 1147 (2012), p. 1154-1158; S. Weber Waller, 'Antitrust and Social Networking', 90 *North Carolina Law Review* 1771 (2012), p. 1799-1800.

user as the data subject.

If competition law shall treat personal data as it treats other types of company asset, the differences with other types of asset mentioned above shall be taken into account. However, it shall not focus on whether a violation of the user right to their personal data has occurred. Instead, as proposed by Geradin and Kuschewsky, the question addressed by competition law shall be whether online platforms have taken anticompetitive measures in the collection and processing such data, or in hindering competitors from acquiring user data, against the will of their users to port it.[51]

The prohibition of dominance abuse in Article 102 TFEU encompasses exploitative abuse and exclusionary behaviours. Among other forms of dominance abuse prohibited in the provision, Article 102 TFEU prohibits undertakings from "imposing unfair prices or unfair trading conditions" in lit. a. Hence, when consumers are required to give their personal data in return for using services provided by online platforms, competition law might intervene with the question whether exploitation of dominance has taken place in the collection and processing of data. Such question could be addressed for instance in cases when users are required to provide personal data beyond what is necessary for using the online platform services or when users are not or not sufficiently informed about the use and processing of the data being collected. Exclusionary behaviour occurs for instance when there is an element of excluding competition in the process of collecting, processing data, and impeding the portability of data.

3.3 Impact of Harms to Consumer Choice and Innovation

The *Google Shopping Case* shows how Google's illegal practices that led to the distortions to competition have deprived consumers of the benefits of competition on the merits: genuine choice and innovation. As addressed by Neelie Kroes, a former EU Competition Commissioner, *"[d]efending consumers' interests is at the heart of the Commission's competition policy"*,[52] protecting consumers is the main goal of European competition law. Illegality under Article 102 TFEU is not defined *per se*. Instead, it falls under the assessment on the qualification of dominance and the effect of harms. For defining the harmful effects, it relies on the impact of conducts to the interest of consum-

[51] D Geradin & M Kuschewsky, 'Competition Law and Personal Data: Preliminary Thoughts on a Complex Issue', Working Paper, p. 6-7 <http://ssrn.com/abstract=2216088> accessed on 10 March 2016.

[52] Neelie Kroes, 'Consumers at the heart of EU Competition Policy', Address at BEUC dinner (The European Consumers' Association) Strasbourg, 22nd April 2008.

ers. In the *Google Shopping Case*, the Commission displays how the interest of consumers in dynamic competition have been taken into account, where they are no longer defined by the level of price, but by genuine choice and innovation.[53]

In dynamic competition such as that taking place in the online business, innovation becomes a relevant parameter for competition. Especially where users get access with zero prices to online services such as search engines and social networks, their choice on service provider is based on aspects other than price, such as quality and the level of innovation. The term 'genuine choice' means that consumers should not be left with the choice of 'take it or leave it', but they should have choices first of all to negotiate their interests and second, to be able to switch to any other service provider without significant loss.

4. Conclusion

The paper concludes as follows:

(1) Various factors play roles in the construction of illegality under the principle of equal treatment in Google Shopping case. The papers identifies important factors for the applicability of the principle of equal treatment in the case: the use of the concept of leveraging of market power in one market (general search) into a separate market (comparison shopping), the nature of multi-sided platforms (MSPs) and network effects, and the concept of indispensability.

(2) The elements of analysis under EU Competition Law, in particular Article 102 TFEU, that could be useful for Indonesian competition law analysis is first of all, for the use of relevant market as a basis for competition law analysis in competition for the new market, instead of relying on the pure product market consideration, i.e. substitution concept, another parameter such as R&D investments for the relevant market definition cold be used. Second, user data plays significantly important role for online business to gain market power and hence, for competition law analysis. Third, in considering the harmful effects of conducts, consideration should be taken of the impact to the interest of consumers in terms of the availability of choice and innovation, instead of on price.

[53] Consider e.g. online transportation network v. conventional taxi. See S.Y. Wahyuningtyas, 'The Online Transportation Network in Indonesia: A Pendulum between the Sharing Economy and Ex Ante Regulation, *Competition and Regulation in Network Industries*, Volume 17 (2016), No. 3–4, p. 263.

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Merger Control Based on Anti-Monopoly Law in Indonesia: Comparison in Some Asean Member States

Anna Maria Tri Anggraini
Faculty of Law, Trisakti University, Jakarta
trianggraini@yahoo.com

Abstract

Merger control is one of the important aspects in the business competition regime, considering the impact of merger can lead to monopolistic practices and unfair business competition. The purpose of merger control in the perspective of competition law is to prevent potential violations of anti-monopoly laws through corporate actions in the form of mergers or acquisitions. Business competition supervisory authority in Indonesia (KPPU) has a role in controlling mergers by defining criteria for mergers, such as notification systems, notification conditions, substantive tests and time periods, notification results, and other technical matters related to parties required to make notifications, foreign mergers and challenges. How does the system of merger control in Indonesia and its comparison with the system in other ASEAN Member States (AMS)? And how AMS synergize on regional merger control system, particularly in the ASEAN region? One of the most interesting things about the merger control system in Indonesia is using mandatory post merger notification, that can lead to a heavy penalty for late reporting. This merger control comparative study aims to know merger control regulations and system in the ASEAN region, particularly some AMS which had already promulgated its competition law. The merger control in the ASEAN economic region requires an initial step to form a harmonization of the system by the competition authority of the respective country.

***Keywords**: Merger Control, Competition Law, ASEAN Member States.*

A. Introduction

Merger is a form of joining of two or more independent business actors or integrating activities carried out by two business actors thoroughly and permanently.[1] There are three forms of merger in competition law, namely horizontal merger, vertical merger, and conglomerate merger. *A horizontal merger* occurs when two companies have the same line of business join or when firms competing in the same industry merge. *Vertical mergers* involve different stages of production operations that are interconnected with each other, from upstream to downstream. Vertical mergers can also take the form of two types, namely upstream vertical merger and downstream vertical merger. *Conglomerate merger* occurs when two companies do not have the same line of business join. In other words, a conglomerate merger occurs between non-competing firms and has no buyer-seller relationship.

There are several objectives of the merger from the perspective of competition, among others:[2]

1. Mergers, consolidations, and takeovers constantly improves economic efficiency as an effort to improve national welfare;
2. Prevent monopolistic practices and/or unfair business competition by business actors as a result of merger, consolidation or acquisition;
3. Mergers, consolidations or acquisitions aimed at enhancing effectiveness and efficiency in business activities.

Corporate restructuring means a basic revitalization to all business conduct aiming at creating more competitiveness. Such revitalization is not only related to business aspect, but also organization, financial management, and legal aspect.[3] To compete with big corporations both overseas and domestic, a company always tries to strengthen its capital, reduce production cost, pursue tax planning, increase production cost, trying to produce goods at the most efficient point aiming at increasing profit, and at the same

[1]Earnest Gellhorn and William E. Kovacic, *Antitrust Law and Economics* (St. Paul, Mennesota: West Publishing, 1994), p. 348.

[2]The KPPU Regulation No. 2 Year 2013 (Merger Guideline), Appendix, p. 1.

[3]Placidius Sudibyo, "Restrukturisasi Perusahaan," ("Corporate Restructuring"), paper presented at National Seminar on Corporate Restructuring Organized by Faculty of Law for the 41st Anniversary of Diponegoro University, Semarang, September 28, 1988).

time reduce inefficiency.[4]

In general, maximizing profit can be expected from merger and acquisition, because merger and acquisition can reduce production cost that is resulting to a more efficient product.[5] In this paper, merger comprises of merger, consolidation, and acquisition. Efficiency is created through the economic scale of the merger companies in their production aspect. In addition to it, efficiency can be achieved through a merger scheme such as exploiting economic scope, marketing efficiency, or centralizing research and development. Hence, merger can be used as a solution when business actor facing some difficulties, particularly liquidity, so that creditor, owner and employees can be protected from bankruptcy.[6]

Merger activities can be pro or anti competition. It can be anti-competitive if there is no control from the competition authorities. The existence of mergers in the business world should have a positive impact on failed companies. However, in practice, many merger activities are misused by business actors intending to expand their market share. In addition, there is often a clash between merger interests and efficiency reasons and business competition. Merger can directly or indirectly bring a relatively large influence on the competitive conditions in the relevant market. It can also cause or strengthen market power by increasing concentration on relevant market. The increase in market power can also increase their ability to coordinate either implicitly or explicitly.[7]

The main concern of competition law is more on the negative impact of merger. Therefore, the control of mergers by the competition authority is aimed at preventing monopolistic practices and unfair business competition in the relevant market. Merger, consolidation, or acquisition can affect market concentration in the relevant market. These three kinds of corporate actions can lead to increase or decrease of competition in the market that can be potentially harmful to consumer and the society.

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[4]Viscusi, W. Kip, John M. Vernon and Joseph E. Harrington, Jr, *Economics of Regulation and Antitrust,* 3rd Ed., (London: The MIT Press, 2001), p. 195.

[5]Syamsul Maarif, *Merger Dalam Perspektif Hukum Persaingan Usaha* (Merger in the Business Competition Law Perspective), (Jakarta: PT. Penebar Swadaya, 2010), p. 10.

[6]Andi Fahmi Lubis, et. al., *Hukum Persaingan Usaha Antara Teks dan Konteks* ("Business Competition Law Between Text and Context"), (Jakarta: The Business Competition Supervisory Commission (KPPU) in cooperation with Deutsche Gesselschaft fur Technische Zusammenarbeit (GTZ) GmbH, 2009), p. 189.

[7]Debra J. Pearlstein, et.al., *Antitrust Law Developments*, 5th ed. Vol. I (American Bar Association, 2002), p. 317-319.

In the United States, the main concern of the merger is the creation or strengthening of the market power of the merger company. While in the EU, some of the concern as a result of a merger, among others:

1. Fear of the birth of a giant business;
2. Foreign-controlled of strategic sectors;
3. Resulting in unemployment at merger related companies.

This is an important issue which often raise in the merger control such as jurisdictional thresholds, notification system, either mandatory or voluntary, criteria of foreign merger, notification requirement, duration reporting period until the issuance of opinion of the competition authority, as well as sanctions for infringement of merger control regulations. Competition law generally prohibits three main practices: (i) anti-competitive agreements; (ii) abuse of a dominant position or a monopoly; (iii) anti-competitive mergers. It can also have provisions related to unfair commercial practices.[8] Generally, competition law covers the following categories of mergers: mergers, acquisitions, and joint ventures (joint ventures may be regulated either under merger or anti-competitive agreement provisions).

Mergers falling under the prohibition should be screened and approved by the Competition Authority or other competent agency. Competition law may establish a system of either voluntary or mandatory notification of the (proposed) transaction to the Competition Authority. Competition law often provides for minimum (market share and/or turnover) thresholds over which a transaction shall or may be notified. Where notification is mandatory, failure to notify may lead to sanctions. Generally, a merger cannot be completed until approved by the Competition Authority.

This paper aimed to conducting comparative study of merger control in Indonesia as well as in some AMS. That is because merger control regulations can affect business activities in the ASEAN region, particularly after the promulgation of ASEAN Economic Community (AEC) as of the end of 2015. This paper also aims to describe merger control system, either voluntary or mandatory notification of the transaction to competition authority, the thresholds over which a transaction shall or may be notified, the substantive test, including the sanction of non-compliant with such regulations.

[8]Le Luong Minh, *Handbook on Competition Policy and Law in ASEAN for Business 2013*, 3rd Ed., Jakarta: ASEAN Secretariat, May 2013.

B. Merger Control System from the Perspective of Competition Law

Merger discussion usually also involves reporting system, the relevant competition authority, obligation to report before or after effective date, threshold criteria, substantive test, the Commission's opinion consisting of either objection, or no objection, and/or no objection with certain conditions. Here we choose comparison in four ASEAN member states (AMS), namely Indonesia, Thailand, Vietnam, and Singapore. The reason for that is because those four countries had already issued merger control regulations.

1. Merger Notification System and the Relevant Competition Authority

In Indonesia, merger regulation is regulated in Law No. 5 Year 1999 concerning Prohibitions of Monopolistic Practices and Unfair Business Competition (Law No. 5/1999) article 28 and article 29, as well as in the Government Regulation No. 57 Year 2010 regarding Merger and Acquisition (PP No. 57/2010). A specific technical regulation to implement the aforementioned Government Regulation is made by the Indonesian Anti Monopoly Agency (KPPU) by issuing the Commission Regulation number 02 Year 2013 regarding Merger Guideline. KPPU is an independent institution which has the authority to handle, decide or conduct an investigation of a monopoly practices case, either government or private sector having conflict of interest. In the exercise of authority and duties the agency is accountable to the president.[9] One of the duties of KPPU is to conduct merger review.

One of the ASEAN Member Countries (AMS) which regulates the merger and implementing it is Thailand. This country regulates the provisions of merger in Section 26 Trade Competition Act (TCA) BE 3542 (1999). Section 26 TCA prohibits mergers of businesses that may result in a monopoly or unfair competition, as prescribed by the Trade Competition Commission (TCC), unless permission is obtained from the TCC. The TCA empowers the TCC to enforce the merger control provisions. In addition, the TCC is responsible for prescribing notifications to enforce the TCA, including issuing notifications concerning the specific process by which certain mergers will be examined. TCC is empowered to set a minimum threshold of market share, total sales,

[9]Hermansyah, *Pokok-Pokok Hukum Persaingan Usaha di Indonesia* ("The Principles of Business Competition Law in Indonesia") (Jakarta: Kencana, 2008), 1st Ed., p. 73.

amount of capital, the number of shares or quantity of assets that will be subject to prohibition under this section, this is part of the pre-merger notification requirement.

Merger control provisions mandating pre-merger notification filing are included in Vietnam's competition legislation. Article 18 of the Law on Competition No. 27/2004/ QH11 prohibits mergers and acquisitions that result in a combined market share of 50%, unless expressly exempted by government legislation. The merger control regime entails mandatory pre-merger notification to the Vietnam Competition Authority (VCA), if the post-merger or post-acquisition combined market share is between 30% and 50%. The VCA, which is responsible for discovering, investigating, collecting, and searching for relevant evidence in restrictive competition cases,[10] co-exists with the Vietnam Competition Council (VCC), which is in charge of judging, making decisions, and resolving the complaints related to the competition restriction cases.[11]

The relevant regulation is the Singapore Competition Act (SCA), which was passed in October 2004. The SCA is enforced by the Competition Commission of Singapore (CCS), which was established as a statutory body under the SCA, and is under the purview of the Ministry of Trade and Industry. The CCS has power to investigate and impose sanctions. The SCA applies generally to prohibit: anticompetitive agreements,[12] the abuse of dominant position,[13] and mergers and acquisitions that substantially, or maybe expected to substantially, lessen competition within any market in Singapore.[14] The SCA was implemented in three phases, on 1 January 2005, the provisions establishing the Commission came into force. The provisions on anticompetitive agreements, decisions and practices, abuse of dominance, enforcement, appeal processes and other miscellaneous areas under the Competition Act came into force on 1 January 2006. The provisions relating to mergers and acquisitions came into force on 1 July 2007.

The discussion of the merger reporting system is whether the reporting nature is mandatory or voluntary before (pre-merger) or after effective merger (post-merger). One of the fundamental differences of merger control in Indonesia lies in its reporting

[10]Article 49 of the Vietnam Competition Act.

[11]Article 53 of the Vietnam Competition Act.

[12]Section 34 the Singapore Competition Act, Chapter 50B, (Original Enactment: Act 4; Revised Edition 2006, 31st January 2006)

[13]Section 47 the Singapore Competition Act.

[14]Section 54 the Singapore Competition Act.

system which legally requires reporting to be made after mergers and acquisitions are effective on a post-merger basis rather than before mergers (pre-merger notification) as generally done in other countries.[15] This is caused by the content of Article 29 of Law No. 5/1999 explicitly stating that reporting must be made no later than 30 working days after the date of merger and acquisition. Therefore, when a merger has been effectively enacted juridically becomes very important to be identified, and that date will be the starting point for the calculation of 30 working days of the business actors limit to report the merger or acquisition. The delay in making a notice to KPPU causes the business actor to pay a significant fine of Rp 1 Billion (US $ 110 thousand) per working day of delay with a maximum fine of Rp 25 Billion (US $ 2.84 million).[16]

Thailand's generic competition law includes a mandatory merger control filing regime, but with no fixed filing deadlines or guidelines for notification. Section 26 of The Trade Competition Act 1999 (TCA) prohibits companies from operating any merger that might give rise to a monopoly or unfair competition. The merger control regime entails mandatory notification to the Office of Thai Trade Competition Commission (TCC) once certain thresholds are met.[17] However, as the specific thresholds that have to be met to trigger mandatory notification have yet to be released, Section 26 of the TCA is not enforceable.[18] Accordingly, it may be concluded that it is possible for merging parties to bypass Section 26 of TCA as merger filing is not yet in force.[19]

The TCA empowers the TCC to enforce the merger control provisions. The TCC is responsible for prescribing notifications to enforce of the TCA, including issuing notifications concerning the specific process by which certain mergers will be examined. The TCC is empowered to set a minimum threshold of market share, total sales, amount of capital, the number of shares or quantity of assets that will be subject to prohibition under Section 26. This is part of pre-merger notification requirement. As no notification

[15]Syamsul Maarif, *Merger Dalam Perspektif Hukum Persaingan Usaha* ("Merger in the Business Competition Law Perspective") (Jakarta: Degraf Publishing, 2010), p. 32.

[16]Article 6 Government Regulation No 57/2010.

[17]Section 26 of the Trade Competition Act 1999 (Thailand).

[18]http://otcc.dit.go.th/otcc/ index_en.php. accessed 12 February 2016.

[19]Daren Shiau and Elsa Chen, "ASEAN Developments in Merger Control", *Journal of European Competition Law & Practice*, 2014, Vol. 5, No. 3, p. 151-152.

pursuant to Section 26 has been issued, the restrictions on mergers are not enforceable.[20]

Singapore's governing competition laws prescribed under the Competition Act, Section 50B of Singapore (SCA) includes a merger control regime that is based on voluntary notification. Section 54 of the Act came into force in 2007, and prohibits mergers (including autonomous full-function joint ventures made on a lasting basis) that have resulted, or may be expected to result, in a substantial lessening of competition within any market in Singapore for goods and services.[21] Practitioners should be aware that while merger notification to the CCS is voluntary, the CCS requires all parties to mergers to conduct a mandatory self-assessment, in accordance with the methodologies in the guidelines published by the CCS, read alongside its decided cases, on whether a merger filing is necessary. The self-assessment must be documented in a customary form which the CCS would accept as documentary evidence in order for the self-assessment to be accepted by the CCS.

The merger reporting system in some ASEAN Member Countries (AMSs) generally ordered to report before the merger was effective. This is a preventive effort of competition authorities to conduct an assessment of mergers that could lead to monopolistic practices and unfair business competition. The merger provisions in Indonesia are the only one that stipulates the mandatory post-merger notification system, with the consequence of imposing high sanctions on reporting delays. Therefore, the draft amendments to antimonopoly laws proposed by the House of Representatives changed the reporting system to mandatory post-merger notification. This will change the pattern, that every merger plan that meets all requirements of the merger or threshold definition aspect, must be reported to KPPU.

2. Jurisdiction, Threshold, and Substantive Test

There are limits to reporting the merger to KPPU, and there are at least three conditions that must be reported, namely fulfillment of:

a. definitions of mergers;
b. not merger between affiliated companies;
c. the asset or turnover threshold.

[20]Ibid.

[21]The Section 54 Prohibition may apply even where the merger takes place outside of Singapore, or where any merger party is located outside Singapore, so long as the merger has effect on any market in Singapore.

ad. a) Merger Definition

Government Regulation (GR) No. 57/2010 has defined the merger. But the important thing to note is the concept of control, especially in terms of acquisitions. The question of what percentage of the company's shares is taken over so that the definition of acquisition is met must always be linked to the concept of change in control. Acquisitions are deemed to occur in the event of a change of control, regardless of percentage of the company's shares are taken over.[22]

ad. b) Merger between Affiliated Companies

GR 57/2010 expressly states that merger or acquisition between affiliated companies is not an object that must be reported to KPPU. This is based on the notion that the focus of competition law is not on the event of mergers and acquisitions, but on the impact of mergers on competitiveness.

ad. c) Threshold of Asset or Turnover

Article 29 of Law No. 5/1999 specifically limits mergers that reach certain values of assets and turnover which must be reported to the KPPU. GR 57/2010 has stipulated the asset value of Rp 2.5 trillion or more and/or the turnover value of Rp 5 trillion or more.[23] As for the banking sector, it is based on the asset value of Rp 20 trillion or more.[24] Whether a merger is qualified and/or does not require intense dialogue between the merger party and the KPPU is depending on the complexity. In practice, KPPU is always open for discussion to assess whether a merger needs to be reported or not. Opportunities to open the dialogue will prevent the company from being fined or sanctioned from delay in reporting.

Pursuant to Section 26 TCA, the merger of businesses in Thailand include the following:

1) The merger made by a producer with another producer, by a distributor with another distributor, by a producer with a distributor, or by a service provider with another service provider, which has the effect of maintaining the status of one business and terminating the status of the other business or creating a new busi-

[22]Article 1 Government Regulation (GR) No 57/2010.

[23]Article 5 paragraph (2) GR No 57/2010.

[24]Article 5 paragraph (3) Gr No 57/2010.

ness;

2) The purchase of the whole or part of assets of another business with a view to controlling business administration policies, administration and management;
3) The purchase of the whole or part of shares of another business with a view to controlling business administration policies, administration and management.

Once the transaction is determined to be within the scope of the merger of businesses, that transaction will be evaluated against the criteria set by the TCC. A business operator who is involved in the of businesses as aforementioned that triggers the minimum threshold as prescribed in the notification by the TCC must obtain approval from the TCC.

Filing will be mandatory if the merger may result in a monopoly or unfair competition as prescribed in the notification issued by the TCC. An applicant who will perform a merger under section 26 of the TCA will be required to submit an application to the TCC in accordance with the form, rules, procedures, and conditions prescribed by the TCC pursuant to section 35 of the TCA. In addition, section 35 of the TCA requires the contents of an application for approval of a proposed merger of businesses, must specify, at least, the following:

1) the reasons and necessity for the proposed merger;
2) the method of achieving the proposed merger; and
3) the duration of the proposed merger.

The TCC has not issued any notifications on the filing application or the minimum thresholds for mergers. Therefore, pre-merger filing is not required, and there is no notification prescribing any exceptions.[25]

In Singapore, generally merger should be notified to the SCA if the merger parties think the merger may result in a substantial lessening of competition (SLC) within any market in Singapore. Merger parties should note the risk that if a merger is not notified, and the SCA may investigate a merger or anticipated merger on its own initiative if it has reasonable grounds for believing that Section 54 been infringed or will be infringed. The SCA has the ability to subsequently make directions or impose financial penalties

[25]Pakdee Paknara and Pattraporn Poovasathien, "Thailand Merger Control", file:///Users/annamaria/Documents/Merger%20and%20Akuisisi%20(konsultasi)/Thailand%20Merger%20Control%20–%20Getting%20The%20Deal%20Through%20–%20GTDT.webarchive, accessed 10 August 2017.

in respect of any infringement.[26]

The SCA is unlikely to consider to consider a merger or anticipated merger to give rise to competition concerns unless it meets or crosses the following indicative thresholds:

a. The merged entity will have a market share of 40% or more;
b. The merged entity will have a market share of between 20% or 40% and the post-merger market share of the three largest firms, that is, the concentration ratio of three firms (CR3), is 70% or more.

The above thresholds are merely indicative, and the SCA may investigate merger situations that fall below these indicative thresholds in appropriate circumstances. Conversely, merger situations that meet or exceed the thresholds stated in the notification guidelines are not necessarily prohibited by section 54.

In the case of a test system of a merger plan, there shall be at least 3 (three) main reasons for preventing or closing a merger transaction, namely (1) that a merger is conducted to establish a dominant position (dominant position=DP test); or (2) to substantially reduce competition (substantial lessening competition=SLC test); or (3) harmful to the public interest (PI test).

DP test is more commonly known as the substance test used in Europe, this standard essentially says that merger transactions should be prevented "(if it is) likely to create or strengthening dominant position. SLC test is used by competition authorities in the United States, which is then followed by many countries. In essence the SLC test says that merger transactions should be banned "(if it is) likely to substantially lessen competition or to facilitate its exercise". Some criteria must be analyzed to determine whether a merger transaction has the potential to reduce competition. The PI test says that mergers need to be prohibited when harming the public interest. In the United States, for example, the public interest, particularly employment, is taken into account in assessing merger transactions in the rail and telecommunications sectors.

The regulations on mergers in Indonesia do not explicitly address the use of testing system but from the procedures it can be categorized that Indonesia uses SLC test. Related to the substantive test, GR 57/2010 explains at least five factors that will be assessed to see the impact of competition resulted from a merger:

26

a. market concentration;
b. barriers to entry;
c. the potential of anti-competitive behavior;
d. efficiency; and/or
e. bankruptcy.

The Merger Guidelines provide further elaboration of each of those factors and in the assessment phase. If KPPU finds the reason of merger will cause negative impact to competition in further (comprehensive) assessment stage. KPPU will open a dialogue to discuss the possibility of actions needed by business actors who merger remedies in order to maintain the competition condition. KPPU also provides the possibility of remedies in order to maintain fair competition.

The type of substantive test conducted by KPPU shows the similarity of merger control system in Singapore and Thailand, using Substantial Lessening Competition (SLC) test. This testing system does not merely consider the impact after a merger resulting in a dominant position, called the Dominant Position (DP) test, or even a Public Interest (PI) test.[27]

After conducting the assessment, KPPU will issue a Commission Opinion on the merger or acquisition, either through the Consultation scheme or the Notification scheme. There are three possible opinions of the Commission, namely: [28]

a. No allegations of monopolistic practices or unfair business competition resulting from merger (no objection);
b. There are allegations of monopolistic practices or unfair business competition of merger merger (objection);
c. There is no allegation of monopolistic practices or unfair business competition due to merger with a form of advice / guidance to be met (conditionally no objection).

Based on the opinion of points b and c above, the merger party can not take any legal action against the Commission's opinion, because the law does not regulate so. Merger Guidelines states that if the business actor after obtaining the Opinion of Commission point c above does not carry out the record or essence of the note given, or after ob-

[27]Andi Fahmi Lubis et. al., *Loc. Cit.*

[28]Merger Guideline, p. 29.

taining Commission Opinion b above b still carry out the merger or acquisition, KPPU will take necessary action based on article 28 of Law no. 5/1999. In this case, KPPU has some differences of opinion with the merger party on the impact of the merger, so KPPU continued the process of handling cases which will be ended in a final decision.[29]

The table below shows the differences in merger control system in some ASEAN countries.

No	AMS	Provisions	Type of Notifications	Threshold	Length of Review	Penalty
1	Indonesia	Art. 28, art. 29 Law No. 5/1999	Voluntary pre-merger notification. Mandatory post-merger notification, if thresholds are met.	the asset exceeds IDR 2.5 trillion; or the turnover exceeds IDR 5 trillion or more than 20 trillion for banking	Pre-merger notification: Phase 1 Review: maximum of 30 working days. Phase 2 Review: maximum of 60 working days. Post-merger notification: Maximum of 90 working days. (SLC test)	Financial penalty of IDR 1 billion for each day of delay up to a maximum fine of IDR 25 billion.
2	Thailand	Art 26 Trade Competition Act (TCA) BE 3542 (1999).	Mandatory merger notification if thresholds are met. There are currently no jurisdictional thresholds that have been issued.	There are no jurisdictional thresholds. Jurisdictional thresholds are to be set by the notification, but no notifications have been issued yet.	90 days. However, if a decision cannot be completed within such period, the TCC may extend up to 15 days.	If a filing is not made for a merger of the businesses under section 26, a person would be liable to a term of imprisonment not exceeding three years or a fine of not exceeding THB 6 million, or both. A repeat offender is liable to double the penalty.
3	Vietnam	Section 16 to 24, The Competition	Mandatory merger notification if	Economic concentrations where the	45 days with up to two extensions of	Financial penalty of 1% - 3% of the total

[29]Merger Guideline, p. 29.

		Law No: 27/2004/QH 11	thresholds are met.	parties have a combined market share of between 30% and 50% are required to notify.	a maximum of 30 days each.	revenue in the financial year prior to the year in which there was a failure to notify shall be applied accordingly.
4	Singapore	Section 54, Chapter 50B Competition Act, Original Enactment Act 46 of 2004, Revised Edition 31st January 2006	Voluntary notification is encouraged for mergers that are likely to substantially lessen competition.	The merged entity will have a market share of 40% or more; or The merged entity will have a market share of between 20% to 40% and the post-merger combined market share of the three largest firms is 70% or more	Phase 1 Review – 30 working days. Phase 2 Review – 120 working days.	Merger parties may face a financial penalty not exceeding 10% of the turnover of each relevant merger party.
5	Malaysia	Competition Act 712, 2010. (No merger provisions)	NA	NA	NA	NA

The table above shows that each country in comparison has set a merger control system except Malaysia. Five other AMS governed the merger control in the provisions of competition law, such as:

1. Philippines: Chapter IV Section 16 – Section 23 Competition Act, No. 10667, 2015;
2. Brunai Darussalam: Chapter IV Section 23 – Section 30 Competition Order, 2015 Art 83 (3) Constitution of Brunai;
3. Myanmar: Chapter X, Section 30 - Section 33 The Pyidaungsu Hluttaw Law No. 9, 2015 (Competition Law);
4. Lao: Article 2 and 37 Law on Business Competition No. 60/NA 14 July 2015)
5. Cambodia: Draft Law on Competition of Cambodia (7 March 2016);

Foreign mergers are also included in the merger control system in Indonesia, considering the activities of business actors who do not recognize national borders. Although Law No. 5/1999 and GR No. 57/2010 does not govern this matter, the Merger Guideline stipulates it. KPPU states that it has jurisdiction over merger outside Indonesia as long as the merger has a direct impact on Indonesia domestic market. For foreign mergers, all reporting systems, reporting requirements, substantive tests, and applicable legal measures are similar to mergers occurring within the territory of Indonesia. Especially for the threshold value of the assets and turnover, Merger Guideline states that the assets are assets located calculated in parts of Indonesia and the turnover is sales originating in the territory of Indonesia. Thus, the asset threshold and turnover for foreign mergers do not take into account assets and turnover in abroad countries.[30]

In addition, Merger Guideline shows that KPPU adopts single economic entity doctrine,[31] because it considers business actors in Indonesia controlled by foreign party as one economic entity, so that Indonesian law can be applied to overseas parent company through extension of its business in Indonesia. It is stated in the Merger Guidelines that KPPU can impose a fine to a negligent foreign merger; or to business actors residing in

[30]Merger Guideline p. 10.

[31]Alison Jones and Brenda Sufrin, *EC Competition Law, Text, Cases, and Materials*, (New York: Oxford University Press, 2004), p. 123. KPPU used this doctrine for the first time in Temasek case (Decision No. 07/KPPU-L/2007), affirmed by Central Jakarta District Court Decision No. 02/KPPU/ 2007/PN.JKT.PST and Supreme Court Decision No. 01 /KPPU. 496 K/Pdt.khs /2008.

Indonesia controlled by overseas business actors.[32]

3. The Implementation of Merger Control Based on Law No. 5/1999

Here is one example of KPPU's evaluation of the merger report in Indonesia. On February 12, 2013 KPPU has received PT Carrefour Indonesia Takeover Notification by PT Trans Retail which has been registered with registration number A10713. On 22 April 2013, the Notice document shall be declared complete and the Commission shall conduct the Rating by issuing the KPPU Decision Number 11/KPPU/Kep/ IV/2013.

The result of assessment of the acquisition of PT Carrefour Indonesia shares by PT Trans Retail Indonesia is that with regard to the difference in price and specification of the products owned by CT Corp and PT Carrefour Indonesia, there is no overlap market due to the acquisition of PT Carrefour Indonesia shares by PT Trans Retail. After the acquisition, PT Trans Retail Indonesia will continue to use the Carrefour brand, and will consider the change of name to Trans-Carrefour. In the absence of overlapping business activities from the parties, it will not change the market structure in Indonesia's retail industry. The takeover of PT Carrefour Indonesia did not raise concerns about Carrefour's competitors and suppliers. In addition, there will be no foreclosure barriers due to the takeover of PT Carrefour Indonesia by CT Corp. The CT Corp has only one mall in Bandung City, so that other retail competitors still have the option to used other mall to conduct their business activities.

The conclusion made by KPPU is that the Commission considered that there was no allegation of monopolistic practices or unfair business competition caused by the acquisition of shares, as follows:

1) PT Trans Retail and PT Carrefour Indonesia do not have the same business activities;
2) in terms of price and product characteristics, PT Trans Retail products are not in the same relevant market with PT Carrefour Indonesia;
3) there will be no foreclosure barriers in the mall and shoping mall management market with the retail market, due to the large number of options to cooperate with other mall managers;
4) The Commission's opinion is only limited to the process of PT Carrefour

[32]Merger Guideline, p. 33.

Indonesia's shares takeover by PT Trans Retail. If in the future there is anti-competitive behavior done by both parties and subsidiaries, then the behavior is not excluded from Law Number 5 Year 1999 concerning Prohibition of Monopolistic Practices and or Unfair Business Competition.

Based on the above conclusions, the Commission is of the opinion that there is no allegation of monopolistic practices or unfair business competition caused by the acquisition of PT Carrefour Indonesia shares by PT Trans Retail.

C. The Need of Merger Control in ASEAN Region

Economic cooperation at the level of ASEAN within the ASEAN Economic Community (AEC) includes several elements such as (i) a single market and production base, (ii) a highly competitive economic region, (iii) a region of equitable economic development, and (iv) a region fully integrated into the global economy. In the AEC Blueprint, competition policy is identified as the keyword for creating "a highly competitive economic region". Such objective is to be achieved gradually by the year 2015. Such accomplishment in the area of business competition is marked by the finalization of guidelines under the title Guidelines on Developing Core Competencies Policy and Law for ASEAN.[33]

The embryo of cooperation in the area of competition policy and law was marked by, among other things, the establishment of the AEGC (ASEAN Experts Group on Competition).[34] Further development of cooperation was marked by the establishment of Guidelines on Developing Core Competencies Policy and Law for ASEAN Regional Guidelines on Competition Policy in 2010 serving as a priority for AEGC.[35] Subsequently, at a meeting in Bangkok on November 28-29, 2012 the said document was finalized under the title Guidelines on Developing Core Competencies Policy and Law

[33]Cassey Lee and Yoshifumi Fukunaga, "ASEAN Regional Cooperation on Competition Policy", ERIA Discussion Paper Series, *http://www.eria.org/ERIA-DP-2013-03.pdf*.

[34]Anonymous, "ASEAN Experts Group on Competition", *http://www.asean-competition.org/aegc*, accessed March 16, 2017.

[35]ASEAN Secretariat, "ASEAN Regional Guidelines on Competition Policy", 2010. The Association of Southeast Asian Nations (ASEAN) was established on 8 August 1967. "…The Member States of the Association are Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam. The ASEAN Secretariat is based in Jakarta, Indonesia..."

for ASEAN.[36]

The Regional Guidelines are based on the experience of individual countries as well as international best practices. Such Guidelines provide for various policy and institutional choices which can serve as guidelines for ASEAN Member States (hereinafter referred to as AMSs) in the context of endeavors towards creating an environment for fair business competition. The Guidelines are expected to raise awareness among AMSs about the significance of competition policy, aimed at encouraging development and enhancing cooperation among AMSs.

In general, the Guidelines set out provisions concerning the objective of establishing the guidelines, the benefits of competition policy, the scope of Competition Policy and Law (CPL), the role and responsibility of competition authorities, law enforcement powers, due process of law, technical assistance and capacity building, advocacy, and international cooperation in the area of competition in the context of free trade agreements (FTAs). The Guidelines adopted in August 2010 provide for three primary prohibitions, namely (i) anticompetitive agreements; (ii) abuse of a dominant position; and (iii) anticompetitive mergers (and acquisitions). However, neither the EC Blueprint nor the ASEAN Regional Guidelines on Competition have a binding effect on the respective member states.[37]

The mutual agreement on the prohibition of anti-competitive merger will bring legal consequences for every AMS to follow the agreement by enacting a joint merger control system in ASEAN region. The first thing is to establish the rules and regulations on the merger control system in each AMS state. To date, only four AMS countries, namely Indonesia, Thailand, Vietnam and Singapore have explicitly arranged the following formation of the Merger Guidelines.

Malaysia is the one of the AMS with a generic competition law that does not include merger control provisions. The Competition Act 2010 (effective January 2012) (the MyCC Act) only regulates anticompetitive agreements[38] and abuse of dominant

[36]The 6th ASEAN Competition Conference, 27-28 July 2016, Bangkok, Thailand. *http://asean.org/asean-combat-cartels-region/* accessed 12 March 2017. See also M. Muchtar Rivai and Darwin Erhandy, "Kebijakan dan Hukum Persaingan Usaha Yang Sehat: Sinergitas Kawasan ASEAN di Era Globalisasi", ["Fair Business Competition Policy and Law: Synergy in the ASEAN Region in the Era of Globalization"], *Jurnal Liquidity*, vol. 2, No. 2, July-December 2013, p.199-200.

[37]Daren Shiau and Elsa Chen, *Op. Cit.*, p. 150.

[38]Section 4 of the MyCC Act.

market positions,[39] but does not regulate anticompetitive mergers and acquisitions. The Malaysia Competition Commission (MyCC) is the enforcement agency for the MyCC Act.[40] Similarly, Myanmar has not explicitly set the mechanism of merger control on The Competition Law (The Pyidaungsu Hluttaw Law No. 9, 2015) The 7th Waxing Day of Taboung, 1376 M.E (24th February, 2015).

Meanwhile, the Philippines regulates merger control within Act No. 10667 concerning di Chapter IV concerning Mergers and Acquisitions, Section 16 - section 23, an Act Providing for a National Competition Policy Prohibiting Anti-Competitive Agreements, Abuse of Dominant Positions and Anti-Competitive Mergers and Acquititions, establishing the Philippine Competition Commission and Appropriating Funds therefor. Brunai also stipulates merger control in Chapter IV, section 23-30 Constitution of Brunei Darussalam, Order Made Under Article 83(3) Competition Order, 2015. Myanmar regulates merger control on Chapter X, Section 30 - Section 33 The Pyidaungsu Hluttaw Law No. 9, 2015. While Cambodia is still drafting its competition law in draft Law on Competition of Cambodia, version 5.5. 7 March 2016.

Merger control regulations in the ASEAN economic region is an important thing as a guarantee of business certainty. Currently only some AMS countries have rules and guidelines for the implementation of merger control, while some AMS countries only have the law without further implementing regulations. In contrary, some countries have not even regulated it. Meanwhile, there are some member states still drafting antimonopoly laws. The diversity of these conditions will hinder the formation of a merger control mechanism in the ASEAN region. Nevertheless, the signing of the AMS Guidelines on Competition Policy and Law (CPL) will facilitate the merger control in the ASEAN region.

D. Conclusion

Based on the above explanations, we conclude that all ASEAN Member States in fact have had competition law, except for Cambodia which is still in the the final draft for further promulgation. With respect to merger control, there are several aspects to be examined, such as such as notification systems, notification conditions, substantive tests and time periods, notification results, and other technical matters related to parties re-

[39]Section 10 of the MyCC Act.
[40]Section 14 of the MyCC Act.

quired to make notifications, foreign mergers and challenges; which need to be included in the competition laws and regulations. In the comparison among ten (10) AMS we find out that only Malaysia still has not regulate it in their competition law.

Among ten AMS, only Indonesia adopts mandatory post merger notification and voluntary pre-merger notification; while other AMS adopt pre-merger notification only. Considering that the intention of merger control regulation is to preventing monopolistic practices and unfair business competition, therefore it would be better if Indonesia could adopt pre-merger notification, similar with other AMS.

In view of the above, as the way forward, it would be best if AMS competition authorities can start to discuss and make harmonization to the merger control in the ASEAN region, so that the aim of ASEAN Economic Community in making an efficient and competitive business environment can be achieved.

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Analysis of Joint Venture Strategy of Market Expansion in The Philippines: Case Study Alfamart

Lim Sanny, Fathia Nur Aziza, Ramadila Tia Resty
Binus Business School
Bina Nusantara University
lsanny@binus.edu

Abstract

The purpose of this research is to provide an understanding of the Entry Mode – Joint Venture strategy which applied by Alfamart in expanding the market to the Philippines. The case study methode used is qualitative. Data is collected through interviews to several resource persons involved in the Department of International Business at PT SUMBER ALFARIA TRIJAYA, TBK. Based on result of the research, found the process of corporate internationalization, barriers to enter foreign markets, describe the factors affecting the choice of entry mode Entry Mode and provide a better recommendation for other entry mode strategies.

Keywords: *Internationalization, Entry Mode Strategy, Joint Venture*

Introduction

Technological developments and globalization already provide opportunities for free trade to be widely open. The ASEAN Economic Community (MEA) represents an achievement by 2015 by establishing regional economic integration, where the flow of trade in goods, services, capital and investment and labor flows moves freely without geographical obstacles. With the existence of the MEA, it is expected that economic growth in the ASEAN region will be a competitive economic area with equitable economic development. MEA is an important moment because it will provide opportunities for business actors in Indonesia to expand the market for national industrial products. On the other hand, the implementation of the MEA will also be a challenge, given the enormous population of Indonesia will become a market destination for other ASEAN country products. In the era of economic globalization, companies tend to merge, either with existing partners in one country or with partners abroad. Through mergers, there will be at least some advantages such as ease of entry

into new business, new market penetration, cheaper research costs, strengthened competitiveness, and increased productivity and efficiency.

Retail companies is one important part of the country's economic life of course in this era of globalization. Kotler (2009) explain that own retail business is all activity in selling goods or services directly to end consumers for personal and non-business needs. Retail is an important link of the distribution channel that connects the whole of the business and those that include physical transfer and transfer of ownership of goods or services from producers to consumers.

Figure 1 Popularity Shopping Channels Graphic
Source: MarkPlus Youth Study, 2015

MarkPlus Youth Study shows how minimarkets become the most popular channels to buy daily necessities in 18 cities in Indonesia, although traditional markets are still favored. As many as 61.1% of respondents prefer to visit minimarket, followed by traditional market by 57.2% and retail shop by 55.6%. The rest, namely supermarkets, hypermarkets, and department stores are still far behind.

Table 1 Composition of Modern Retail Sales Indonesia (%)

Brand	Company	2009	2010	2011	2012
Wholesale/Hypermarket					
Carrefour	Trans Retail Indonesia, PT	1.5	1.4	1.5	1.4
Hypermart	Matahari Putra Prima Tbk, PT	0.9	1.0	1.0	1.1
Giant	Hero Supemarket Tbk, PT	0.9	0.9	1.0	1.1
Lotte Mart	Lotte Shopping Indonesia, PT	-	0.0	0.0	0.1
Supermarket					
Superindo	Lion Superindo – Gelael, PT	0.3	0.3	0.4	0.4
Alfa Midi	Midi Utama Indonesia Tbk, PT	0.1	0.2	0.3	0.4
Foodmart	Matahari Putra Tbk, PT	0.1	0.1	0.1	0.1
Hero	Hero Supemarket Tbk, PT	0.1	0.1	0.1	0.1
Minimarket/Convenience Store					
Alfamart (minimarket)	Sumber Alfaria Trijaya, PT	1.6	2.0	2.3	2.5
Indomart (minimarket)	Indomarco Prismatama, PT	1.2	1.5	1.8	2.0
Circle K	Indonesia Utama, PT	0.1	0.1	0.1	0.1
Others		93.4	92.5	91.5	90.8

Source: Euromonitor

Source: Euromonitor, 2014

Based on the Table 1, show that for the category of mini market or convenience store, Alfamart occupies the first position that has the highest sales rate in Indonesia with continued improvement for four consecutive years starting from 2009 to 2012. Then followed by Indomart in the second and last position Is Circle K, which is a chain of international convenience store franchises from the United States.

To face the existence of MEA in 2015 PT Sumber Alfaria Trijaya, Tbk (Alfamart) has been expanding into overseas markets, precisely in the Philippines since 2014 ago. The existence of Indonesian retail in the Philippines is seen as an excellent opportunity to pave the way for penetration of Indonesian products to the Philippines. At present, a number of daily needs products from Indonesia are well known by Filipinos, such as Kopiko instant coffee, Bimoli cooking oil, Energen cereals, Indomie instant noodles, Wings soaps and detergents.

The Philippines is Southeast Asia's largest consumer-oriented food and beverage marketplace for products and one of the fastest growing markets in the world, importing $ 898.4 billion in US flagship products by 2015. This condition is sure to be Profitable for retailers in the food and beverage sector (USDA, 2016). In the Philippines, modern retail markets such as supermarkets, hypermarkets and convenience stores (including 'minimarts) are essential for those who live in Metro Manila and other big cities because customers want more convenience and flexibility. Alfamart's entry into the Philippines in an effort to expand the market has been running for three years, with a joint venture

strategy (Audriene, 2016).

Literature Review

Studies of the internationalization of Swedish companies resulted in formation of the Uppsala model by Johanson & Vahlne in 1977. In 1988, the network aspect was added to the model by Johanson & Mattson, which led to the network model of internationalization (Johanson&Vahlne, 2009).

The Uppsala model presents that a company goes through four steps of gradual engagement during the internationalization process. In the beginning, the firm has no regular export activities. On the next phase, the firm engages in indirect exporting. Third phase is the establishment of a sales agency and finally, on the fourth phase, the company sets up a wholly owned foreign subsidiary (Johanson & Wiedersheim-Paul in Bedi & Kharbanda, 2010). Overpass through stages of the process is referred as the establishment chain. The selection of the target country depends on so called psychic distance which means the psychologically perceived difference between home and the target countries that the managers may have. It consists of factors that make it difficult to understand foreign environments (Johanson & Vahlne, 2009). These factors can be such as language, political system, level of education and industrial development. An internationalizing firm seeks to find a target country where the psychic distance is low.

The creators of Uppsala model have developed revised model in 2009 which is taking into account also networks. Thus the firm is embedded in an enabling yet constraining business network where firms are engaged in many different interdependent relationships. In the model firms are acting for strengthening their positions in networks, which results in internationalization. Existing business relationships have a considerable impact on the particular geographical market a firm will penetrate. Moreover, the relationships impact which mode to use because they enable identifying and exploiting opportunities. Identifying opportunities is altogether essential and learning and commitment are strongly related to this. In order to create opportunities the firm has to create strong commitment in the network so that it has better access into the knowledge, which is told only to network insiders (Johanson & Vahlne, 2009).

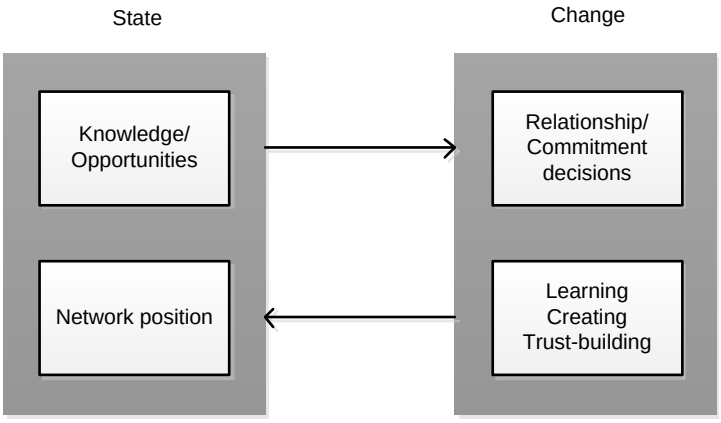

Figure 2 The business network internationalization process model
Source: Johanson & Vahlne, 2009

The Figure 2 shows that the opportunity is part of the knowledge. Needs, capabilities, strategies and networks are also important factors. In all things there are differences ranging from knowledge, trust and commitment and may therefore be different in the way they promote successful internationalization. In a profitable process, providing learning outcomes, beliefs, and commitments that are expected to be the focus of the company to enjoy friendship and position within the network. The last important difference in the new model is that current activity can lead to learning, creation and development of trust for the future.

Yip (in Ofili, 2016) identifies four factors that drive the internationalization of an enterprise, as illustrated in Figure 3. The first factor identified is the market factor. Companies are moving into new markets with the simple fact that consumers have the same needs in different markets. Some consumer needs also become visible globally in the sense that the same customers in one market may require similar products or services in other markets. Furthermore, marketing also encourages companies to benefit from the fact that they can use similar advertising and branding strategies in different markets.

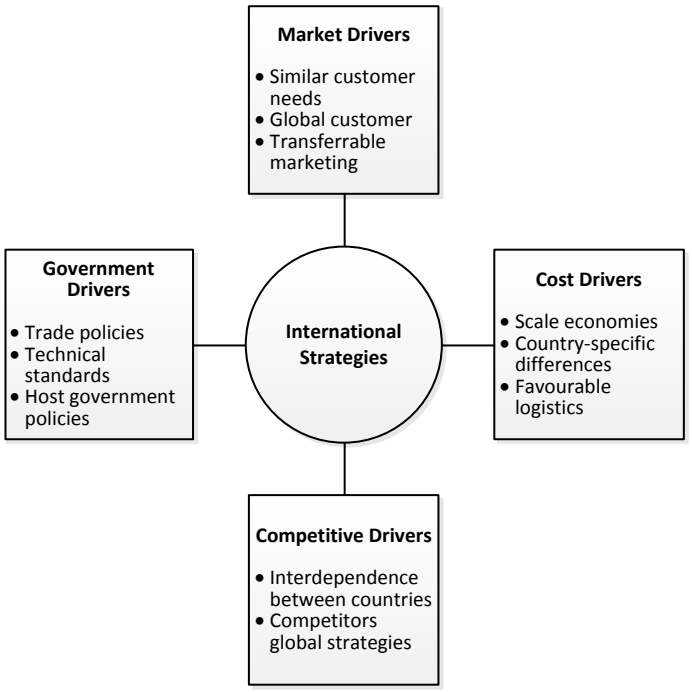

Figure 3.Internationalization Drivers
Source: Yip (in Ofili, 2016: 204)

Joint ventures occur when companies of at least two different countries (usually one from a local), set up a new company to produce products or provide services together. Strategic alliances are more or less the same as joint ventures. However, the main difference between the two is that in strategic alliances, most parties do not place equity or invest in an alliance whereas if their joint ventures invest (Albaum & Duerr, 2011). In an equity joint venture, a legal entity or a new joint company is created, whereas in strategic alliance partners do not create any legal entity, but separate after they reach their destination. In addition, a joint venture in which no committed equity can be referred to as a contractual non-equity contract or a project-based undertaking. Thus, it can be concluded that strategic alliances and non-equity joint ventures are the same thing.

According to Yan & Luo (2015) there are two models of organizational effectiveness most relevant to the international joint venture, the Goals Model and the Strategic Constituencies Model. The Goals Model is undoubtedly the most popular and dominant approach to assessing the effectiveness of an organization in the international joint venture context. Viewing the organization as a rational and goal-oriented system, this model focuses on organizational goals and deals with the extent to which the organization can achieve its objectives. The effectiveness criteria emphasized in this model typically

include the organization's end results, such as quantity and quantity and product quality, profit benchmarks for non-profit firms, hospital beds, championship numbers for sports teams, or nationally rewarding ratings for the program MBA. The appeal of this criterion is that its performance level can be calculated, not diverse, and easy to compare between different organizations or between different time periods in the same organization.

While the Strategic Constituencies Model views the organization as a political entity, in which personal interests compete for control of resources. Unlike the Goals Model, where the higher the level of goal achievement, the more effective the organization, the Strategic Constituencies Model does not necessarily link the maximization of satisfaction of all its constituents to organizational effectiveness. Ironically, in the view of this model, organizational effectiveness becomes "the organizational ability to minimally meet the demands of its various constituents for the sustainability and development of the organization, since each organizational constituency has a different purpose and value orientation that is unlikely to be fully met".

Research Design

The research method used is qualitative exploratory using secondary and primary data. Interview conducted on 4 respondents who occupy management positions in Alfamart. Data analysis techniques used to process research findings that have been transcribed through the process of data reduction, data filtered and compiled again, presented, verified or made conclusions.

Discussion

Trading competition in various industries is growing rapidly every time. These developments encourage business owners to raise their wings to the upper classes to maintain their existence. It is increasingly pressing business actors to continue to struggle and innovate is because of the free trade that began to grow, thus encouraging foreign companies into the country and shift gradually the local players. In addition, changes in international regulations and governance have also increased significantly in many countries compared to what happened in the past. As well as the advent of internet and cheaper travel facilities (especially air travel) has also contributed positively to the growth and development of international business. As for the development of this busi-

ness, business actors do internationalization of their market, with the aim that they can develop and maintain their business amid increasingly competitive market conditions.

Along with the emergence of globalization, Alfamart's market expansion is also supported by the existence of the ASEAN Economic Community (MEA) which has been launched since 2015. ASEAN is a big market where ASEAN's population reaches 8.49% of the world's population or reaches more than 586 million in 2012 with ASEAN's GDP value reaching USD 2.093 billion or about 2.99% of world GDP. Seeing the good market potential in ASEAN countries, since 2014 the Philippines was chosen as the destination of Alfamart's overseas market expansion which is also a "gateway" to other ASEAN countries due to the strong demographic aspect in the Philippines and various other aspects. According to Kotler in Daulay (2011: 61) in considering the markets for the purpose of international expansion must study the economic situation of each country. There are three characteristics that reflect the attractiveness of a State as an export market. First, the population of that State. Second, the industrial structure of a State. The industrial structure of a State determines the need for its products and services, the level of income, the level of employment and so on. Third, the distribution of State income.

Thus, in addition to the population factor, the market growth factor is an important consideration for a company to choose a market abroad. The pattern of consumption of a country is a market appeal that needs to be taken into account to choose and enter the global market (Toyene & Walters in Daulay, 2011: 61). In terms of lifestyle and consumption patterns of the community it can be concluded that the Philippine market has excellent potential for the retail sector. In addition, the food retail sector in the Philippines is well established and growing. Sales of the food retail business increased 7% in 2015 to $ 45.04 billion. This growth is the result of an increase in consumer spending capacity, continuing mid-term segment growth, increased tourism activity in the country, and positive economic growth outlook. The following graph shows the level of retail food sales in the Philippines from 2011 to 2016.

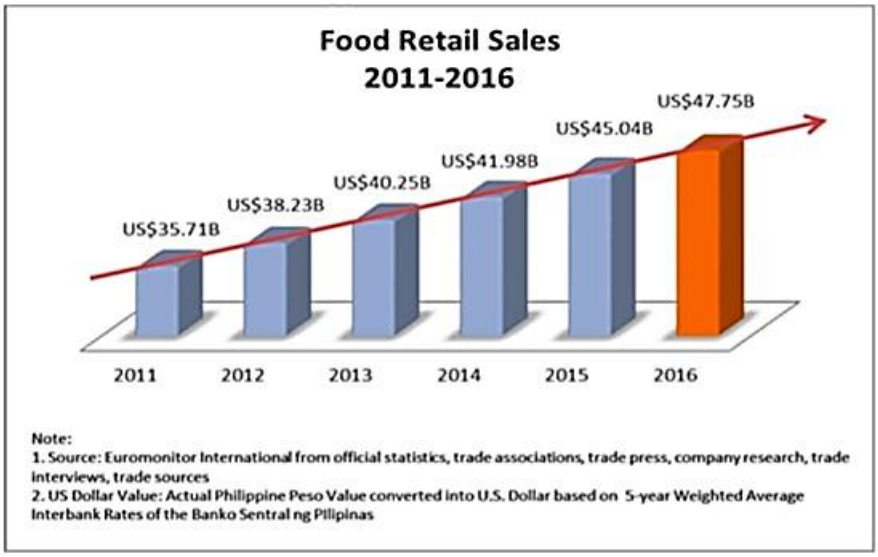

Figure 4 Food Retail Sales in the Philippines Graphic
Source: USDA, 2016

From the graphic shows that food retail sales in the Philippines has increased since last year. The highest increase in sales as mentioned earlier occurred in 2015, at 7% after having only increased by 5% (in 2013) and 4% (in 2014). This is allegedly due to the robust performance of the Philippines economy in 2015 has boosted the performance of the local food retail market. Population growth, rising middle income, rising number of multiple income families, higher disposable income, and a rapidly changing lifestyle and awareness of food quality and safety have contributed to the continued growth of the food sector.

Furthermore, when companies have decided to enter certain markets they must understand important issues, such as political stability, per capita income, the pace of economic growth, business cycles, fuel prices, exchange rates and inflation rates in the target country. In addition, things to note are the availability of skilled workers, the size, and the dissemination of demographic, security, and cultural market segments (Thomas in Ofili, 2016)

The economic growth of the Philippines over the last 3 years was the greatest in Asia, beating China. The increase is 7% annually. Here is a graph showing the Philippines' economic growth for 3 years from 2013 to 2016:

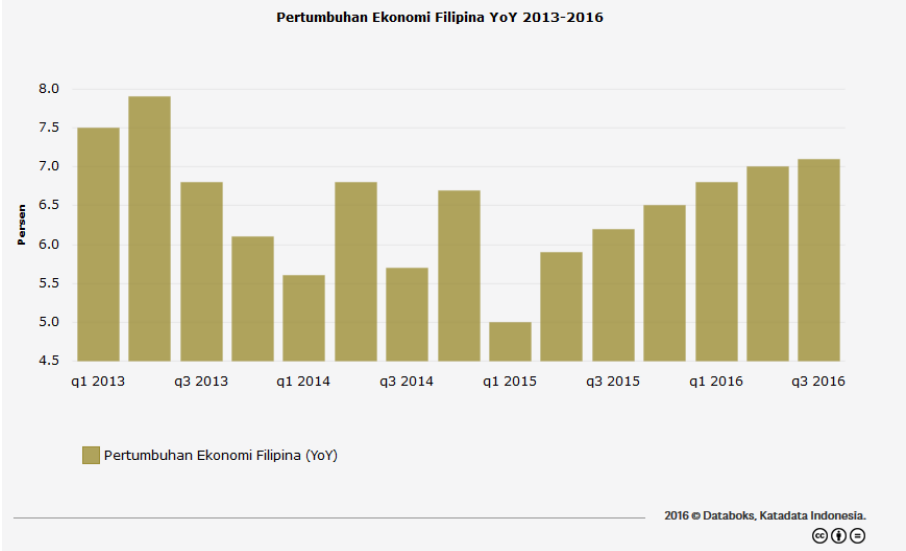

Figure 5. Phi Philippines' Economic Growth Chart
Source: databoks, 2016

The Philippines economy in the third quarter of 2016 recorded the highest growth in the last three years and the fastest in Asia compared with China which grew only 6.7 percent and Vietnam 6.7 percent, and Indonesia 5.02 percent. Reports from the Philippine Institute of Statistics show that in Q3 / 2016, the Gross Domestic Product of the Philippines grew 7.1 percent compared to the same quarter of the previous year. This achievement exceeds the estimate of analysts in the previous Bloomberg survey, which is 6.7 percent. This growth is the highest since the third quarter of 2013. Compared with the previous quarter, the Philippine economy also grew 1.2 percent. The high growth indicates the strength of the Philippine economy is facing a global economic slowdown.

A. Relationship Commitment Decisions

Globalization increasingly fosters the phenomenon of International Joint Venture (IJV). Entry mode of foreign markets is an internationalization process in which a corporate entity that initially national scale then expands the market to reach an international area with an export medium which then leads to a joint venture. The need to obtain resources and markets that are outside of its traditional operating area. For companies with weaknesses in infrastructure, resources, experience, and management, alliances with other companies in the form of joint ventures are an effective alternative to entering the international market. In addition, the joint venture can be the ideal choice when it comes to entering areas that have political differences, laws, laws, cultures, lan-

guages, and currencies. Joint ventures are also an effective way to enter new markets quickly, in addition to partnering, sharing risks while taking advantage of knowledge concerning the expertise of local companies. From here the main motives and motives of the joint venture as a strengthening of existing business, restructuring and development of new capabilities of the company. Benefits include consideration of economies of scale and synergy, access to opportunities and greater resources, elimination of competitors and entering overseas markets.

The legal-political environment in the face of global market entry into a country must be different for each country. Some entry strategies will be more feasible in some countries because of their implementation Supported by the rules and regulations as well as the conditions of the country itself (Koch in Tepjun, 2016: 81). If host country governments place excessive restrictions on foreign ownership, this will encourage companies to adopt a lower control mode of entry (Brouthers in Tepjun, 2016: 81).

Another reason to join a joint venture with another company is that the risks and costs that arise in an effort to achieve targets in international markets can be shared with foreign partner companies. Of course, income is also shared, but after all, if a company wants to expand its business faster to overseas markets, have a goal on a large scale, or are developing new technologies it will surely need help from other companies that may have technologies to achieve its objectives.

However, sometimes companies that want to enter foreign markets should spend a little more capital. This is as submitted by Informant III that in the Philippines itself for the problem of sophisticated technology in terms of quantity is still inadequate, thus causing the technology there the price becomes very expensive. In addition, joint ventures are often used to deal with competition by creating stronger competitive units with better value, better quality, and accelerated access to markets. Alfamart took the SM Group company, a business group founded by Henry Sy, the retail king in the Philippines. This is certainly a favorable point for Alfamart's side in terms of competition or strength in the market and its capital, and can help minimize the challenges that may arise when entering the Philippine market.

SM Group through SM Investments Corporation (SMIC) is the parent company of a number of companies in the development of shopping centers, retail, real estate, banks, and tourism. SM Group manages retail business through SM Prime Holdings Inc. SM

Prime Holdings houses over 40 shopping centers and retail outlets in the Philippines. The network consists of three forms, namely SM Supermarket, SM Hypermarket, and SaveMore.

In addition to working with the largest retailer there is SM Group, Alfamart also took several local companies to support their facilities, one of which is a provider company. Thus, in addition to government regulations requiring foreign retailers to cooperate with local retailers, relationships with local partners also enable companies to acquire knowledge and skills and access to markets that require high resources

B. Current Activities

Furthermore, after successfully entering into the Philippine market through a joint venture strategy with strong local players, Alfamart had to do a marketing strategy to be successful as it is today. Companies also need to make marketing efforts using a strategy through a situation-driven approach, based on culture, population and market conditions. The first thing that became the focus of Alfamart is about the introduction of the concept of minimarket carried by Alfamart in the Philippines. Where before Alfamart's presence in the Philippines, people only know the concept of convenience stores, such as 7-Eleven, FamilyMart, and so forth. The difference between minimarkets and convenience stores is minimarkets selling daily necessities ranging from rice, oil, cigarettes, toiletries, food, drinks and others. While convenience stores only sell goods that are directly consumed, and more dominated food and beverages.

Table 2. Type of Channels by Definition

Type	Definition
Supermarket	A selling area of between 400 square meters and 2,500 square meters, at least 70% of which is devoted to food and everyday commodities. Mostly located inside shopping malls, department stores or within a commercial complex.
Hypermarket / Warehouse Store	A hybrid of a department store and supermarket with a sales area of at least 2,500 square meters, 35% of which is allocated for non-food products. Non- food items offered include: furniture, appliances, clothes, etc.
'Mini-marts' (New Category)	A new retail format in-between the convenience store and the supermarket. It is a type of neighborhood grocery store that offers basic goods, fresh meat, poultry and vegetables as well as food-to-go products.
Convenience Stores (Including gas marts)	A store with sales area of 150- 300 square meters and operates for longer hours (usually on a 24 hr. basis) that serve for impulse purchases. Mostly found in a condominium building, beside gasoline stations, near intersections or corner streets or near a BPO office. Offers ready-to-eat meals and have limited line of f&b and non-food/household items.

Type	Definition
"Mom & Pop" / Sa-ri-Sari Stores	Small neighborhood stores owned and managed by a household in the community, selling a variety of essential items such as rice, cooking oil, sugar, etc. Much smaller than convenience stores, they are usually built within or beside operator/owner's own house.
Wet Markets	Usually sell "fresh" meat, fish, vegetables, fruits and other domestically-produced items. Mostly local products but offer some imported items, especially fresh fruits.

Source: USDA, 2016

This minimarket concept can also be said to be the "differentiation" of Alfamart from its competitors who have already started operating in the Philippines. Differentiation is an action performed by a company in winning the competition in the market by establishing a set of meaningful differences on the products offered to differentiate the product of the company with its competitors' products, so that it can be perceived or perceived by the consumer that the product has the added value expected by the consumer. In addition to bringing added value, Alfamart minimarket concept is also used to tailor its business to the consumer behavior or culture of local communities and business needs in the Philippines. Here are some consumer behavior in the Philippines that Alfamart attention to bring added value to his business, namely:

1) They like frozen food, so Alfamart provides it, like whole chicken, fish, squid, etc.
2) They have eating habit for snack feeding (RTE) and ready to drink (RTD), then Alfamart sells grab and go food, such as grilled chicken with rice, bakpao, siomay, hot dog, and Sort of.
3) They are not afraid to drive by motorcycle and do not like to walk away, then Alfamart has a concept to get closer to consumers, so consumers do not have to go all the way to the supermarket to shop for everyday needs, simply go to the minimarket almost Equally complete and easier to reach without having to drive by car or board a public transport.
4) They like to dress neatly just to go to a supermarket or modern retail, then Alfamart comes with facilities that are almost the same as the supermarket and the location close to the residential area. The goal is that consumers can be more relaxed to shop, do not have to wear a neat dress or a splashy makeup.

Furthermore, it takes marketing and branding efforts to introduce the concept of minimarket to the local Filipino community. Marketing and branding itself are two

things that are used to create a comprehensive and much more reliable marketing approach for businesses that want to grow rapidly and last long. Which in doing marketing should bring the prospect closer to making a purchase. If it has become a consumer, then it should take it closer to making repeat purchases. While the task of branding is to demand that every marketing communications can communicate the uniqueness of business directly and light to the prospect of consumers in a way that makes the business more compelling than the competitors and of course preferred by anyone in the market.

C. Existing Challenges in Philippines Market

For new companies starting a joint venture is not easy. Not many companies have the expertise to negotiate in the formation of a joint venture company. Because the company must have a broad view of helicopter view, understand the commercial aspects of business, understand corporate finance, understand how to fund, and master the legal aspects. Moreover, the company must also have adequate flying hours and reliable negotiating skills. Alfamart's trade activities in the Philippines there are obstacles to deal with. Some international trade barriers include language, cultural, legal and regulatory differences. Trading companies may also experience misunderstandings during the contract term, causing problems with payments for goods, transport or insurance. Land-based law, work property, intellectual and public health vary from country to country and can cause problems for international companies. The movement of currency exchange rates and rising inflation or interest rates in foreign countries is a trap for traders. Tariffs and quotas on imported goods, combined with subsidies for domestic industries, contain dice against foreign firms in many countries.

In accordance with the Institutional Theory of Luo (in Tepjun, 2016: 80), it is explained that in countries with large cultural distances from country of origin, the role of important agents or partners demonstrating the importance of networks to overcome international obstacles. In order to enter a high-risk country, the company may need help from a local partner who can provide with access to knowledge of foreign markets and stock risk. It also relates to Transaction Cost Theory (TCT) where companies can find the most efficient and economical way to minimize the transaction costs involved in doing business in overseas markets such as information seeking costs and opportunistic costs must be able to deal with internal and external uncertainty. Some scientists say

that cultural distance can create high internal uncertainty for the company (Hollensen, 2011). The second type of uncertainty is external uncertainty. They can be seen in terms of state risks such as technological, political, currency changes and economic fluctuations (Anderson & Gatignon in Tepjun, 2016: 79).

Furthermore, in Barney's Resource-based Theory (in Tepjun, 2016: 79) it describes the firm's perspective of the specific resources they possess and their ability to produce competitive advantage. If a company has sufficient resources and can be used effectively to contribute in their competitive advantage, the company can compete and achieve long-term goals in overseas markets. With regard to resources and manpower, the challenge Alfamart encounters in its business process is about the termination of labor contracts different from those in Indonesia. Philippine government regulations have a rule that each worker is only given a six-month work contract. This is as conveyed by a spokesman for the Philippine president; Ernesto Abella on, that the DOLE (Ministry of Labor and Employment) in a cabinet meeting held in Malacañang, Philippines in 2016 has committed to reducing an end of contract worker 's contract within six months (http://www.philstar.com). In many ways, contractualization is rampant in this country. The 'endo' workers in particular are bound by a period of six months so the company will not make them permanent employees after six months under the Employment Act. From this arrangement, a 6-6-6 scheme in which an 'endo' worker is employed and fired every five months so employers will not make them permanent employees. This regulation is certainly a challenge for Alfamart, because it will be difficult to find experienced and potential employees, thus making them have to do recruitment and training over and over again.

Another obstacle in terms of human resources is the lack of mobility of Filipino society itself that is influenced by local culture. Most of the people there have no private vehicles, such as two-wheeled ones, which are not only due to poverty levels, but also because of their fear of two-wheel drive that they consider dangerous. This can certainly hinder the company's operational processes that require speed.

In addition, each country has unique tax regulatory and business environment characteristics. Based on data from Philippines Sales Tax Rate (2017), in the Philippines alone the Sales Tax rate reached 12 percent. The Sales Tax rate in the Philippines averages 11.82 percent from 2006 to 2016. Sales tax rates are taxes charged to consumers

based on the purchase price of certain goods and services. Revenue from Sales Tax Rates is an important source of revenue for the Philippine government (Romero, 2016). This tax regulation difference is one of the obstacles Alfamart in the Philippines.

Another issue that is a problem for Alfamart in the Philippines is a business operational system there that is different from in Indonesia, so that needed some changes. Based on the Philippine Retail Food Sector Report 2016, it is mentioned that there are several credit conditions including for the retail sector, including:

- For retail, most of its products are consigned. Importer collects payment after 30 days.
- For products purchased directly, retailers request a 60-90 day credit terms from the importer.
- Food service industry, hotels and restaurants require 30-60 day credit.
- Food manufacturing industry demands 30 days of credit.

D. The impact of internationalization on company performance

In running a business or leading a company, every leader must be able to measure the performance of the company as a tool of navigation or indicators in order to grow larger and competitive. Company performance indicators are usually called Key Performance Indicators (KPIs) and everyone in the company from board management level to staff have the accountability to achieve the KPI. The measured things can be various types ranging from the amount of income, the number of units sold, service level, cost of service, conversion rate, productivity rate, on time delivery, collection rate, net profit, etc.

To measure whether or not the achievements of each of the KPIs are concerned, we should be able to compare them based on the following three points:

1) Growth compared to last year. The most easily calculated indicator is by comparing the performance of last year.
2) Achievement of the budget. Usually at the end of each year the company always does budget planning for next year.
3) Growth compared to industry or competitors. It is important to see how the performance of competitors or the industry as a whole, the data can be obtained from various sources ranging from formal such as Nielsen (for FMCG, retail),

Media Partner Asia (for the media industry) or informally leaked from the salesmen in the field

To see Alfamart's achievement in the context of its joint venture with SM Group in the Philippines, the following comparison of Alfamart with its competitors in the Philippines is related to its sales growth in 2015 (a year after Alfamart started its expansion in the Philippines):

1) **Lowest average sales per store but catching up fast**

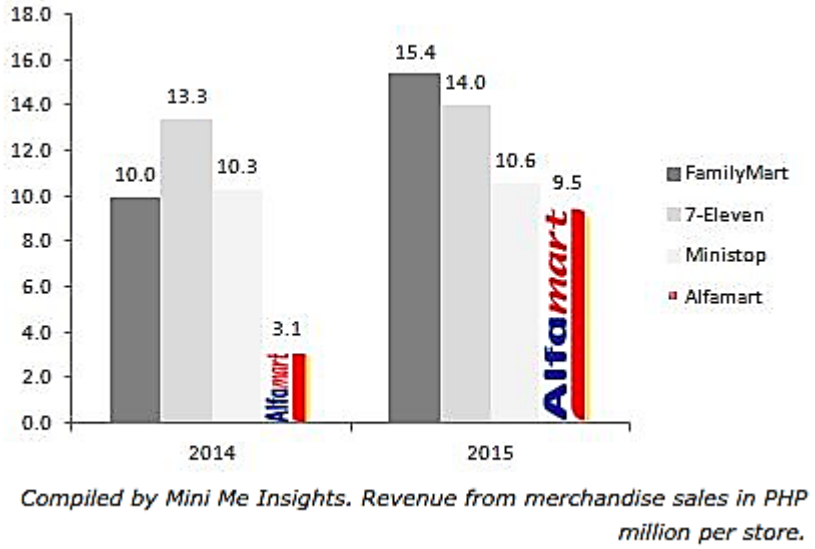

Figure 6. Revenue from merchandise sales in PHP million per store.
Source: Hong, 2016

Figure 6 above shows that among the four retail chains (excluding Circle K and Lawson), the average sales per store for Alfamart is the lowest in PHP 9.5 million (USD 0.2 million) by 2015. However, the average sales per store went up so fast from the previous year, due to the large number of stores opened by Alfamart for less than a year of standing and also due to the fact that Alfamart is the only retail company with a mini market concept that sells products at prices comparable to supermarkets, but lower than convenience stores. Another notable difference is Alfamart sells frozen ready to cook meat, a category that can not be found in convenience stores.

2) **Alfamart net sales up by 9x times in 2015**

PHP billion	2014	2015	% yoy
7-Eleven	17.11	22.40	30.94
Ministop	4.62	5.49	19.01
FamilyMart	0.91	1.66	82.85
Alfamart	0.09	0.95	902.15
TOTAL	22.72	30.50	34.21

Compiled by Mini Me Insights from company information

Revenue from merchandise sales.

Figure 7. Comparison of Net Chains Four Convenience Store Retail Chains in the Philippines
Source: Hong, 2016

Of the four retail chains, Alfamart posted the highest revenue increase, up 9x times, in 2015 compared with a year ago. The strong growth is attributed the net increase of 44 outlets in 2015 and a very small base in 2014. The first Alfamart outlet opened in June 2014, as seen in Figure 7.

1) Expenses

Rent (%)	2014	2015
7-Eleven	4.19	5.01
FamilyMart	11.18	8.37
Ministop	5.70	6.42
Alfamart	32.39	8.45

Utilities (%)	2014	2015
7-Eleven	6.50	5.63
FamilyMart	10.90	9.18
Ministop	6.78	7.10
Alfamart	5.23	0.94

Personnel costs (%)	2014	2015
7-Eleven	2.14	2.54
FamilyMart	15.26	9.40
Ministop	2.35	2.26
Alfamart	9.64	4.37

Compiled by Mini Me Insights from company information
As a percentage of revenue from sale of merchandise

Figure 8. Comparison of Expenses' Convenience Store Retail chains in the Philippines
Source: Hong, 2016

Those are a few ratios to benchmark Alfmart's cost structure with its convenience store peers. As the minimart chain commenced operation in 2014, it took a while before operation stabilised. Newcomers are more likely to experience higher rent and personnel cost as a share of revenue from merchandise sales. Strangely, utilities cost (communications, light and water) for Alfamart is very low at at 0.94% of its revenue in 2015 com-

pared to 5.23% of its revenue a year ago as seen in Figure 8.

E. Key Success Factors of Alfamart in Philippines

Behind all the obstacles and challenges that exist in the business process of course Alfamart have their best solutions and ways to deal with all the challenges that exist. Alfamart has some key to their success in raising their business in foreign markets. Persistence is meant here is where the flow on the business process graph is up and down but still within safe limits, not out of the way it should be. When a decline does not result in significant losses.

The function of management itself is the basic elements that always exist in the management process that becomes the guideline for managers in carrying out activities to achieve goals.

1. Planning

   Munnjaya (in Mairizon & Kiswanto, 2013) explains that there are several benefits to be gained if an organization has a plan, then the organization will know clearly the goals to be achieved and how to achieve them.

2. Organizing

   Organizing is a process for designing formal structures, grouping and organizing and dividing tasks or work among members of the organization, so that organizational goals can be achieved efficiently. Organizing is the process of organizing the organizational structure in accordance with the goals of the organization, the resources it has, and the environment that surrounds it.

3. Actuating

   Movement is a function of guidance and giving of leadership and movement of people so that people want and like to work. Based on this understanding it is clear that the role of movement (actuating) is very important, because the movement serves to move other management functions, such as planning, organizing, and supervision.

4. Controlling

   Controlling is a determinant of what has been done by means of evaluating work performance and if necessary applying corrective actions so that the results of work in accordance with the monitoring plan are an affectivity for determining, correcting important deviations from the planned activities. Control-

ling can be defined as a process to "guarantee" that the goals of organization and management are achieved. It deals with how to make the activities as planned.

The success of a business will also be achieved when the company is able to know the shortcomings and advantages they have. In addition, companies that have decided to enter certain markets, they also need to conduct PESTEL analysis (Political, Economic, Social, Technology, Environment and Legal). This analysis contains important issues on the intended country, such as political stability, per capita income, the pace of economic growth, business cycle, fuel prices, exchange rates and inflation rate in the target country. In addition, things to note are the availability of skilled workers, the size, and the dissemination of demographic, security, and cultural market segments (Thomas in Ofili, 2016). This analysis is useful for companies to take appropriate steps to implement their strategies in foreign markets.

So, it can be seen that the key success factors of Alfamart in the Philippines is to maintain the persistence of flow in their business process graph, applying POAC (Planning, Organizing, Actuating, Controlling) from the management side, and do not forget to analyze market development, PESTEL (Political, economic, social, technology, environment and legal) model before deciding to enter the intended country.

Conclusion

This research is expected to provide practical implications for companies to gain a better understanding of entry mode strategies. Alfamart's organizational effectiveness in the Philippines itself proves that the performance of their joint venture strategy has been successfully executed. Of course this is because it is supported by a network with strong local partners and regulation from the Philippine government itself, so this strategy needs to be maintained.

In addition, PT. Source Alfaria Trijaya, Tbk. As one of the largest retail companies in Indonesia with their business, infrastructure, sales, marketing and financial experience, they can increase their business expansion to different countries by re-using joint venture strategies or apply other strategies, such as master franchise, As has been done by other major retail companies. Expected by the increasing number of Alfamart business expansion in the global market, Alfamart name can be increasingly recognized in overseas markets. This is certainly also a positive value for Indonesia, because through

Alfamart outlets abroad, national products, including products from SMEs (Small and Medium Enterprises) can reach a wider market.

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Pre-evaluating Technical Efficiency Gains from Horizontal Merger and Acquisition in Pre-merger Notification Regime

Maman Setiawan[1]
Faculty of Economics and Business, Universitas Padjadjaran
Hanif Pradipta
Faculty of Economics and Business, Universitas Padjadjaran

Abstract

This research proposes a horizontal merger and acquisition (M&A) analysis in the pre-merger notification regime using a pre-evaluation of the technical efficiency gains. This study uses panel data from all commercial banks in Indonesia during period 2002-2013. To predict the level of the technical efficiency of the banks in the M&A plan, this research uses a modified data envelopment analysis (DEA) approach. Moreover, the predicted technical efficiency score of the banks in the M&A plan is compared with the real technical efficiency score after the M&A. This research found that there were potential gains from the M&A plan of the banks. Furthermore, this research concluded that there was no a significant difference between the predicted technical efficiency score of the M&A plan and the real technical efficiency score after the M&A. This research also found that the potential gains from the M&A mostly came from the learning effects rather than from the harmony and scale effects.

***Keywords**: Data envelopment analysis, efficiency, banking, potential gains from merger and acquisition*

I. Introduction

Indonesian Commission for the Supervision and Business Competition (KPPU) is amending the UU No. 5 Year 1999 and KPPU has been discussing the amendment with the House of Representative (DPR) since previous years. One of the important points that is included in the amendment is a transformation from the post-merger notification to the pre-merger notification. This future transformation requires KPPU to assess the impact of the merger and acquisition (M&A) plan on the competition and efficiency before the merger takes place.

[1] Corresponding author: maman.setiawan@unpad.ac.id

In the post-merger regime notification, KPPU has established methods to assess the impact of the merger on the competition and efficiency. The assessment is usually based on the merger impact on the market structure and/or market power/efficiency. Another criteria is also based on the assessment on the possibility of the undertakings to conduct anti-competitive practices after the merger and acquisition is approved. The merger will be cancelled if the M&A causes a significant increase in the market structure and/or market power/efficiency. This can cause the high cost for the undertakings if the KPPU cancelled the merger and acquisition. Therefore, this can be considered as one of the reasons to switch from the post-merger notification to the pre-merger notification.

During their period 2010-2016, KPPU evaluated about 332 merger cases (KPPU, 2017). All the merger cases have been passed by KPPU. In spite of this, some mergers have been passed with some conditional requirements and remedies. The conditional requirements and remedies were related to clearing up the potention of the damage from the M&A on the competition and market efficiency. The future pre-merger notification system may allow KPPU to reject or give remedies before the M&A takes place. Thus, the possibility of the welfare losses from the merger and acquisition (M&A) will be reduced earlier.

Regarding the methods to evaluate the merger, there is a different approach between the assessment method in the post-merger notification and the pre-merger notification. The assessment in the post-merger notification is mostly aim to provide the impact evaluation of the on-going M&A on the competition and efficiency compared to the period before the M&A. On the other hand, the evaluation of the M&A plan in the pre-merger notification regime is aimed to predict the impact of the M&A plan on the competition and efficiency that may cause losses to the consumer. Therefore, study about the pre-evaluation approach to assess the M&A plan in the Indonesian economy is important for the KPPU as well as the business sectors.

This research proposes a method to assess the impact of the M&A plan by using a pre-evaluating technical efficiency gains before the M&A takes place. This is an alternative method that can be used by KPPU to assess the impact of the M&A plan on the efficiency in the pre-merger notification regime. This also can be used to complement the analysis of the market structure. The advantage of using this pre-evaluation approach is that KPPU can have an impact prediction of the merger plan on the competi-

tion and efficiency by using the inputs and outputs data which are easily available. However, the limitation of this method is related to the inability of this method to assess the market power directly which is also a concern of the KPPU in the merger assessment. Also since this method is a prediction, an evaluation of this prediction should be conducted routinely for the result validity.

Furthermore, this research uses the bank as the empirical case for the merger plan assessment. Indonesian banking sector is a nice case to evaluate the merger assessment in the pre-merger notification regime, since this sector has been consolidated from the period after the economic crisis in 1997 until the current period. Based on the data from Central Bank of Indonesia (2014) and Indonesian Financial Service Authority (OJK) (2015), there were about 21 commercial banks consolidating into 9 banks during the period 2002-2013. Moreover, the banking sector also has a complete data for the M&A evaluation.

II. Literature Review

Previous research has ever investigated the merger and acquisition assessment using both pre-and post-merger impact evaluation. Regarding the post-merger impact evaluation, Avkiran (1999) investigated the effect of the merger and acquisition on the Australian Bank in the period 1986-1995 using the data envelopment analysis (DEA) method. The research found that the merger causes lower efficiency for the acquiring banks indicating the negative effect of the merger on the efficiency. Drake and Hall (2003) investigated the effect of merger on the Japanese banks in the financial year ending March 1997. This research found that merger between big banks caused lower efficiency while the merger for the small banks created higher efficiency. Furthermore, Santoso (2010) investigated the effect of the merger on the efficiency in the Indonesian banks using DEA. The research found that merger and acquisition did not increase efficiency significantly. However, there is a rare research assesing the efficiency impact of the merger in the Indonesian economy.

Regarding the pre-evaluation of the merger impact, Kristensen, Bogetoft, dan Pedersen (2010) found that merger can have a potential for the firms to be efficient. This potential comes from the skill exchange and re-allocation of the resources after the firms joint together in their operations. Bogetoff and Otto (2011) introduced a method to

assess the merger impact of the merger plan on the technical efficiency by using the condition in the transformation of the input into the output before the merger. Potential gains from the merger and acquisition encompass three effects including technical efficiency/learning effect, scope or harmony effect, and size/scale effect. Learning effect is related to the ability of the firms to adjust with the best practices when they joint together in the merger and acquisition. Scope/harmony effect is related to the mix or combination of resources used causing less resources to produce or use the inputs combination in better ways. Size effect or scale effect is related to the larger scale of operation that can reduce the use of resources. Furthermore, Halkos et al. (2014) conducted pre-evaluating technical efficiency gains from the merger and acquisition (M&A) in Japanese regional banks. They found that possible M&A formed by smaller banks performed better efficiency compared to the larger banks. Therefore, the M&A for the larger banks should be evaluated carefully. Moreover, there is a sparse research conducting the pre-evaluation impact of the merger and acquisition in the Indonesian banks.

III. Modeling approach

This research uses the pre-evaluation of the technical efficiency gains from the M&A plan using the method of Bogetoff and Otto (2011). The total efficiency gains from the merger and acquisition can be assessed using the formal a radial Farrel like input based measure, as follows:

$$E^H = minE_{[} \boldsymbol{e} ! \boldsymbol{R}_+ | \left(E\, Jx^k_{ksH}, £y^k_{ksH}\right)\boldsymbol{e}\ T_J \qquad (1)$$

Where E^H is the maximal proportional reduction in the aggregate inputs Jx^k_{ksH} that can produce the aggregate output profile $£y^k_{ksH}$. If E^H <1 there is an efficiency gain from the M&A and if E^H > 1, the M&A produces inefficiency or cost. The score of E^H = 0.7 indicates that 30% of inputs can be saved by integrating the firms in the merger H. The score of E^H= 1.4 indicates that 40% of additional inputs will used in the firms integration. The total efficiency gains from the M&A can be divided into *technical efficiency/learning effect, scope or harmony effect,* and *size/scale effect.* The technical efficiency or learning effect is derived through the projection of the (x^k, y^k) onto $(E^k x^k, y^k)$ for all k**e** *H. E^k is* the standard technical efficiency score of the k^{th} firm and use the projected plans $(E^k x^k, y^k)$, *k***s** *H,* as the basis for calculating the adjusted overall gains E^{*H} from the merger and acquisition:

$$E^{*H} = \min_{[} \backslash E \mathbf{e} \boldsymbol{K}_{+} \mid (Ej \hat{} E^{k} x^{k}, \pounds y^{k}) \mathbf{e} T \quad (2)$$
$$keH \qquad keH \qquad J$$

Thus, the learning effect (LH^{E}) can be defined as:

$$LE\ H\ = \frac{E^{H}}{E\ H} * \quad (3)$$

Scope or harmony effect (HA^{H}) can be derived from the examination on how much we can reduce the average input in the production of the average output:

$$HA\ H = \min_{[}\{\ HA\ GK_{+} \mid (HA — TE\ k\ x, — \mathrm{V_J})\mathrm{GI} \quad (4)$$
$$Ht \hat{} H \qquad Ht \pounds r \qquad J$$

Where H is both the set and the number of elements in the set of the firms in the merger and acquisition. The use of average input and output is intended not to take into account the expansion of size yet. This is also relevant if the merged firms do not have the significant differences in size. If the $HA^{H} < 1$ indicates a potential gains due to improved harmony, while $HA^{H}>1$ indicates a cost in harmonizing the inputs and outputs.

Moreover, the size and scale effect *Sf* is measured by how much could have been saved by operating at full scale rather than average scale:

$$SI^{H} = \min_{\mathrm{I}} \backslash SlGK_{+} \mid (SI.HA^{H} Y_{4} E^{k} x, Y.y^{k}) \hat{} T \backslash \quad (5)$$
$$keff \qquad keH \qquad J$$

If the $Sf^{I}<l$, the rescaling is advantageous and the integration has economies of scale. If the $Sf > 1$, the rescaling is costly and the returns to scale property doest not favor with the larger firms after the integration.

Regarding the potential gains from the merger and acquisition, the basic decomposition of the overall potential efficiency gains from the M&A can be derived by:

$$E^{H} = LE^{H}.HA^{H}.SI^{H} \quad (6)$$

Where LE^{H} measures what can be gained by making the individual firms efficient. The another potential gain is E^{*H} which is created by the harmony effect HA^{H} and the size effect *Sf*.

Table 1. Mergers and acquisition between banks

No.	Bank After M&A	Banks before M&A	M&A Period
1.	Mutiara Bank	CIC Bank, Danpac Bank and Pico	2004

No.	Bank After M&A	Banks before M&A	M&A Period
		Bank	
2.	Artha Graha International Bank	Interpacific Bank and Artha Graha Bank	2005
3.	Tokyo Mitsubishi UFJ Bank	Bank of Tokyo Mitsubishi and UFJ Bank	2006
4.	Commonwealth Bank	Arta Niaga Kencana Bank and Commonwealth Bank	2008
5.	Windu Bank	Winu Kentjana Bank and Mulicor Bank	2008
6.	CIMB Niaga Bank	Niaga bank, CIMB/Lippo Bank	2008
7.	Index Selindo Bank	Index Selindo bank and Harmoni International Bank	2008
8.	Rabbo Bank International Bank	Haga Bank, Hagakita Bank, Rabobank Duta Bank	2008
9.	OCBC NISP Bank	OCBC Indonesia Bank and NISP Bank	2010

Source: Central Bank of Indonesia (2014) and OJK (2015)

IV. Data

This research uses secondary data from all the commercial banks having M&A in Indonesia during the period 2002-2013. There were 9 mergers and acquisitions during the period 2002-2013 as shown in the Table 1. The banks having M&A during the periods include Mutiara bank, Artha Graha International bank, Tokyo Mitsubishi UFJ Bank, Commonwealth bank, Windu bank, CIMB Niaga bank, Index Selindo Bank, Rabbo Bank International bank and OCBC NISP bank. The merger periods of the banks were different between the banks. However, 5 of the 9 merged banks occured in 2008 including Commontwealth bank, Windu bank, CIMB Niaga bank, Index Selindo bank and Rabbo Bank International bank.

To estimate the technical efficiency, this research uses the intermediation approach as applied by Sealey and Lindley (1997). The input variables include deposit, administration and employment cost, interest cost and commission. The deposit includes giro, saving account, and other deposits. The interest cost and commission include all interest cost and commission paid by the bank. Administration and employment cost include salary and wages and all administration costs such as rent cost, promotion, etc. The output variables include total of loan and interest revenue and commission. The total loan is defined as the loan given to the debtor/customer both in Rupiah and foreign exchange. Interest revenue and commission include all the bank revenues from the operation.

Table 2. Descriptive Statistics

Variable	Mean	Standard Deviation	Minimum	Maximum
Deposits (Million Rp)	12,272,106	23,693,631	13,957	157,323,703
Interest cost and commission (Million Rp)	730,120	1,568,723	7,026	12,017,195
Administration and employment cost (Million Rp)	515,194	1,161,074	6,754	9,232,744
Loan (Million Rp)	10,925,913	22,897,666	11,354	143,641,115
Interest revenue and commission (Million Rp)	1,392,773	2,975,057	16,590	19,783,489

Source: own calculation

Table 2 is the descriptive statistics of the variables used for the estimation of the technical efficiency before and after the merger and acquisition. Most of the variables vary significantly between banks and periods. This is shown by the larger standard deviations of the variables compared to their means. For example, average deposits of the banks were 12,272,106 million Rupiah and this is less than the standard deviation of the variable which reached to 23693631 million Rupiah.

V. Results

Table 3 shows the average technical efficiency of the banks before the merger and acquisition including Mutiara Bank, Artha Graha bank, Tokyo Mitsubishi UFJ bank, Commonwealth bank, Windu bank, CIMB Niaga bank, Index Selindo bank, Rabbo Bank International bank and OCBC NISP bank. The banks were not efficient with the average technical efficiency score was 0.520. This indicates that the banks can still decrease the inputs by 48% given the same output. Tokyo Mitsubishi UFJ bank is the bank with highest average technical efficiency score compared to the rest of the banks. Likewise, the Mutiara bank is the bank with the lowest technical efficiency score compared to the rest of the banks.

Table 3. Average technical efficiency before merger and acquisition

No.	Bank after M&A	Banks before M&A	Period before M&A	Average technical efficiency of the banks before M&A
1.	Mutiara bank	CIC bank, Danpac bank and Pico bank	2002-2003	0.281
2.	Artha Graha International bank	Interpacific bank and Artha Graha Bank	2002-2004	0.602
3.	Tokyo Mitsubishi UFJ Bank	Bank of Tokyo Mitsubishi and UFJ Bank	2002-2005	0.855
4.	Commonwealth bank	Arta Niaga Kencana Bank and Commonwealth bank	2002-2007	0.428
5.	Windu bank	Winu Kentjana bank and Mulicor bank	2002-2007	0.425
6.	CIMB Niaga bank	Niaga bank, CIMB/Lippo Bank	2003-2007	0.485
7.	Index Selindo bank	Index Selindo bank and Harmoni International Bank	2002-2007	0.525
8.	Rabbo Bank International bank	Haga bank, Hagakita bank, Rabobank Duta Bank	2002-2007	0.562
9.	OCBC NISP bank	OCBC Indonesia bank and NISP bank	2002-2010	0.518
Average technical efficiency			2002-2013	0.520

Source: own calculation

Table 4 provides the estimation of the predicted technical efficiency score or overall gains from the merger and acquisition plan as well as the real technical efficiency score after the merger. From the Table 4, it is seen that there are differences between the the predicted technical efficiency scores and the real technical efficiency scores. In spite of this, the prediction of the technical efficiency in the M&A of Index Selindo bank (0.573) reached the close value to the real value of the technical efficiency after the merger (0.576).

Table 4. Efficiency gains from merger and acquisition

Bank after M&A	Period of M&A	Predicted technical efficiency or overall efficiency gains	Technical efficiency after the M&A	
			Period	Average technical efficiency
Mutiara bank	2004	0.299	2004-2013	0.326
Artha Graha International bank	2005	0.427	2005-2013	0.516
Tokyo Mitsubishi UFJ Bank	2006	0.729	2006-2013	0.904
Commonwealth bank	2008	0.499	2008-2013	0.430
Windu bank	2008	0.488	2008-2013	0.441
CIMB Niaga bank	2008	0.644	2008-2013	0.563
Index Selindo bank	2008	0.573	2008-2013	0.576
Rabbo Bank International bank	2008	0.691	2008-2013	0.511
OCBC NISP bank	2010	0.408	2010-2013	0.645

Source: own calculation

Table 5 provides the test to analyze on whether the differences between predicted technical efficiency score and real average technical efficiency score are significant statistically. From the Table 5 it is seen that F-stat=0.056 is less than the F-critical=4.494 indicating that the hypothesis of no significant differences between the predicted technical efficiency score and the real technical efficiency score is not rejected. Thus, there is no difference between the two technical efficiency scores statistically. The result can be an indication that this pre-evaluation method can be used by KPPU or other competition authorities to measure the efficiency gains of the horizontal M&A plan.

Table 5. ANOVA test

Source of Variation	SS	Df	MS	F	P-value	F crit
Between Groups	0.001	1	0.001	0.056	0.816	4.494
Within Groups	0.376	16	0.024			
Total	0.377	17				

Table 6 provides the information of the basic decomposition of the overall gains from the merger. From Table 6 it is seen that the average of the predicted technical efficiency for the merged banks was 0.529. The coefficient indicates that there is a potential saving about 47.10% after the merger and acquisition. The average potential gain from the merger and acquisition was 0.959 indicating that there is a potential adjustment of the technical efficiency after the M&A. The coefficient indicates that there is still adjustment in the resources by 4.1% if the banks already reached the full technical efficiency before the merger. The average gain from the learning effect was 55.90% indicating that there will be resources saving about 44.10% because of the exchange skills or resources in the best practices after the consolidation. The average gain from the harmony effect was 96.10% indicating that there still can be a resource saving about 3.9% after the merger because of the new or mix combination of inputs and outputs. Lastly, the gain from the size effect was 99.90% indicating that 0.1% of the inputs still can be reduced because of the larger size after the merger.

Table 6. Decomposition of the overall gains from the merger and acquisition

Merger period	**Bank after M&A**	**Predicted efficiency after M&A (E^H)**	***Learning effect*** **(LE^H)**	***Potential gains*** **(E^{*H})**	***Harmony effect*** **(HA^H)**	***Size effect*** **(SI^H)**
2004	Mutiara bank	0.299	0.301	0.992	0.996	0.996
2005	Artha Graha International bank	0.427	0.431	0.991	0.991	1.000
2006	Tokyo Mitsubishi UFJ Bank	0.729	0.908	0.802	0.802	1.000
2008	Commonwealth bank	0.499	0.501	0.995	0.995	1.000
2008	Windu bank	0.644	0.645	0.998	0.998	1.000
2008	CIMB Niaga bank	0.573	0.624	0.918	0.923	0.994
2008	Index Selindo bank	0.691	0.714	0.967	0.967	1.000
2008	Rabbo Bank International bank	0.488	0.502	0.972	0.974	0.998
2011	OCBC NISP bank	0.408	0.408	1.000	1.000	1.000
Average		0.529	0.559	0.959	0.961	0.999

Source: own calculation

VI. Conclusion

This research proposes a method to pre-evaluate the technical efficiency gains from the merger and acquisition (M&A) plan in the pre-merger notification regime. The method applies a modified data envelopment analysis (DEA). The method is applied on the 9 cases of the merger and acquisition (M&A) in the Indonesian banking sector during the period from 2002 to 2013.

This research found that there were potential gains from the merger and acquisition plan of the banks. Although the predictions of the overall gains or technical efficiency scores were slightly different from the real average technical efficiency scores after the merger and acquisition, the differences of the technical efficiency scores between the periods were not statistically significant. This can be an indication that the pre-evaluation method can be used by KPPU or other competition authorities to measure the efficiency gains of the horizontal M&A plan in the pre-merger notification regime. Furthermore, the basic decomposition of the overall gains from the M&A shows that the banks mostly gained the efficiency from the learning effects rather than from the harmony and size effects.

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Sharia Fintech: Positive Innovation in Consumer Perspective

Dwi Marlina Wijayanti
FEBI UIN Sunan Kalijaga Yogyakarta
marlina.wijayanti@gmail.com

Alex Fahrur Riza
FEBI UIN Sunan Kalijaga Yogyakarta
alex.fahrurriza7@gmail.com

Abstract

This study aims to understand the role of Sharia fintech in providing transaction and business convenience. The development of financial technology (fintech) encourages sharia businessmen to create sharia fintech products. In addition to using sharia principles, sharia fintech develops because it provides the benefits of ease to its users to solve various financial problems and help in running a business. The role and benefits of sharia fintech are measured using user satisfaction on sharia fintech products. Based on the Technology Acceptance Model (TAM) construct, perceived easy of use (PEoU), perceived usefulness (PU), and attitude are the determinants of user satisfaction in sharia fintech products.

This study used self-administered survey. The sample in this research is sharia fintech users in Indonesia. The results indicate that the community perceives the usefulness of sharia fintech in conducting various transactions. They are satisfied with sharia fintech products because they use digital technology and sharia principle. The existence of sharia fintech alters their perceptions and behaviors to continue using the product in various transactions and business. This research contributes both practically and theoretically. For goverment, this research can be a reference to make regulations related to sharia fintech.

Keywords: *Sharia Fintech, Perceived Easy of Use (PEoU), Perceived Usefulness (PU), Attitude, Satisfaction*

1. Introduction

Technological developments have an impact on development of financial industry (Nam et al., 2016). Currently, many emerging new markets in cyberspace (digital market), one of them is financial technology (fintech). In Indonesia, development of financial technology or fintech began booming in 2015 and growing rapidly in 2016. Policy makers respond quickly to this development by attending the 2015 World Economic Fo-

rum (WEF) to determine the pace in facing fintech development. Fintech becomes an alternative transaction for community because it makes easier for people to access financial products, simplify transactions, and increase financial literacy. The development of fintech is very rapid in Non-Bank Financial Industry (IKNB). Some types of fintech developing in Indonesia are payment, lending, financial planning, retail investment, crowd funding, remittance, and financial research. The number of fintech in Indonesia until 2016 reached 142 companies with transaction value during 2016 as much as Rp 199 trillion. The rapid development of fintech be a concern for Bank Indonesia and Financial Services Authority (OJK) which is applied by establishing various regulations such as regulation of Peer to Peer (P2P) lending business which was released on December 29, 2016. In addition, the concrete form undertaken to oversee fintech is a regulatory sandbox as a testing laboratory for fintech actors to be monitored and evaluated in terms of feasibility, domino effect, consumer protection, licensing aspect, and taxation on products before products released to the market (Pratama, 2017).

The number of startup fintech encourage the growth of sharia fintech. Sharia fintech services have great potential as more than 85% of Indonesians are Muslim. In fact, the number of sharia fintech in Indonesia is still very small. Fintech is dominated by conventional business finance. There are three crowd funding platform based on equity and two crowd funding platforms based on active loans in accordance with sharia compliant in 2016. The small number of sharia fintech in Indonesia is reflected in development of sharia fintech in Southeast Asia. In Southeast Asia, there are two largest sharia fintech namely Ethis Crowd and Kapital Boost. In addition, sharia finance industry is also dominated by sharia crowd funding platforms from other countries such as Blossom, Launch Good, Narwi, and Skola Fund.

The rapid development of sharia fintech abroad is caused by the many benefits and success of business in this sector. For example, EthisCrowd (Singapore sharia crowd funding Platform) established in 2014 successfully collected a collective fund of USD 362.44 million from institutions and investors in Southeast Asia and the Gulf region. This achievement confirms that global investor confidence in sharia fintech business. The funds collected are used by EthisCrowd to finance its expansion plans in Asia Pacific, supporting corporate governance, project selection processes, and improving technology infrastructure. EthisCrowd is also investing in subsidized housing projects in In-

donesia.

Indonesia is still lagging for the sharia fintech startup. However, since 2015 began to emerge sharia fintech in Indonesia such as Paytren and SyarQ. Paytren is the largest local sharia fintech in Indonesia that emphasizes the sharia principles. Paytren's goal is to make it easier for partners to access financial products, increase financial literacy, and simplify transactions. Paytren provides convenience to its partners to make various payment transactions easily and practically. One merchan Paytren that provides financial products is Financial Treni (FinTren). Fintren has three categories: SaveTren (savings product), InvesTren (Investment product), and ProTren (protection product/insurance). The rapid development of sharia fintech in Indonesia and in some Asian countries can not be separated from the sharia principles which is used as a basis in making transactions such as *murabahah*. Today, more and more individual users and businesses are using fintech sharia products. This happens because of the benefits that they feel from these products.

The advantages of sharia system from conventional system is the existence of profit and loss sharing (PLS) which gives justice between fintech company and its consumer. According to Universite Catholique de Louvain, the growth of sharia finance segment is the fastest. Furthermore, Indonesia also has a large market for halal products and is included in the Top 10 expenditure in each halal industry, the first rank is halal food industry and the 10 rank is the sharia finance industry. Sharia financial system no doubt, because we can see how the development of Islamic banking in Indonesia, but still a homework is the perception of consumers about this sharia financial system. Therefore, this paper will discuss consumer perceptions of sharia fintech, whether useful for solving financial problem and business activities or not.

The benefits of sharia fintech should be measured quantitatively. The benefits perceived by sharia fintech users are proxied with their satisfaction with a product. The more they feel satisfied means the product is increasingly beneficial in transactions and running a business. Satisfaction is a positive affective reaction to the outcome of previous experience (Ganesan, 1994). Based on experience using sharia fintech then users can feel positive or negative benefits of products they use.

Technology Acceptance Model (TAM) is used in this study to explain some factors that cause individuals feel the benefits from using a product, because TAM explains or

predicts user acceptance of information technology (Hu et al., 1999). TAM explains that perceived easy of use (PEoU), perceived usefulness (PU), and attitude are factors that encourage individual acceptance a product (Igbaria et al., 1995). PEoU is a convenience in using or applying a product. The easier to use the more satisfied users on a product because individuals like something instant and not difficult. Jung et al. (2015) states that PEoU has a positive relationship with user satisfaction. The importance of PEoU factors in influencing user perceptions becomes a reference for business owners to create innovative products that are easy to use. In addition, PEoU is also a determinant of PU. PU is the benefit/usefulness of a product in meeting the needs of users. When an individual feels that sharia fintech product is a product that is easy to use then they will assume that the product is useful to them (Hu et al., 1999). Perceptions of usefulness arise when they are able to operate sharia fintech products. Furthermore, PU is also a determinant of user satisfaction. Users who feel the usefulness of a product will feel the benefits of ease in solving financial problems. This can be seen from perception of their satisfaction.

PU and PEoU are factors that determine individual acceptance of technology. Both have a positive effect on attitude (Chuang, 2016). Attitude is individual's (positive or negative) judgment on new technology (Ajzen, 2002; Halilovic & Cicic, 2011). Users believe that sharia fintech is easy to use (can start to use without guidance) and is useful in solving their financial problems (can accomplish their tasks or work quickly) thus helping to improve user attitude towards sharia fintech services. That is, when consumers believe that sharia fintech service is easy to use and useful for their work then their positive judgment on the use of sharia fintech products will be higher. Thus, PEoU and PU in the use of sharia fintech products are cognitive factors for consumers to accept sharia fintech products (Hu et al., 1999).

In addition to PEoU and PU, attitude is also a factor affecting user satisfaction. Attitude is reflected in the trust and positive judgment of users on new technologies (Chau & Hu, 2002; Davis, 1989). They will like sharia fintech products and will utilize the product to increase their satisfaction. Users of sharia fintech products who feel that sharia fintech products are easy to use and useful will increase trust and positive feelings (attitude). Furthermore, positive feelings and judgments on sharia fintech products will have an impact on the perception of product usefulness in solving user financial prob-

lems, which in this study is measured using user satisfaction.

This research is the first study to test TAM on user satisfaction with sharia fintech product. User satisfaction is created from the ease, usefulness, and attitude of users on sharia fintech products. The rapid development of fintech occure because users feel that fintech products provide convenience for them in solving financial problems, same with sharia fintech. Previous research conducted by Chuang et al. (2016) states that it is important to test fintech in different concepts with different norms to see users' attitude. In addition, the phenomenon of sharia practices is growing and in demand by many people, especially in Indonesia with a Moeslim population that reaches 85% of the total population of Indonesia. Therefore, this study uses the concept of sharia fintech to understand the role of sharia fintech in solving financial problem.

2. Development of Hypotheses

2.1 Financial Technology (fintech)

Fintech is an industry that uses IT technology centered on gadgets (e.g mobile phones and tablet computers) to improve the efficiency of the financial system (Kim et al., 2015). Fintech refers to changes in the industry derived from the convergence of financial services and information technology. One example of fintech practice is the phenomenon of non-financial businesses that use innovative technology to provide services, such as remittances, payments, and investments without cooperation with Bank. In Indonesia, such services are included in Non-Bank Financial Industry (IKNB).

Financial technology (fintech) is growing rapidly in Indonesia in last two years. This development is based on human needs in modern and practical life. The online transaction system is preferred over the manual system as it allows the user to access and transact financial products. The development is marked by the number of emerging startup that provides financial services that are packed using technology. Alt and Puschmann (2012) mentioned that fintech refers to a new solution that demonstrates the development of innovative applications, processes, products, or business models in incremental financial services industry. The practical function of fintech encourages business owners to look at fintech products.

2.2 Sharia Financial Technology (Sharia fintech)

The issue of sharia-based financial institutions began to steal public's attention. No

exception to business owners in financial industry. In fintech world began to appear startup doing funding and investment practices using sharia principles. In Southeast Asia, there are two largest sharia fintech namely Ethis Crowd and Kapital Boost. The products offered by fintech are not only for commercial but also provide facilities for people who want to become donors for various charitable activities. All products use sharia principles. In Indonesia, the development of sharia fintech has a very wide opportunity, because not many business owners who founded sharia fintech. Indonesia is one of the largest market share for sharia-based products. Currently, sharia fintech business in Indonesia which is growing among them is Paytren and SyarQ. Paytren is sharia fintech with the most users established in 2013 by offering payment services, purchases, deposits, investments, and insurance. SyarQ is a new startup in March 2017 by offering merchandising services based on *wa'ad* and *murabahah*. People who start to turn to sharia products make sharia fintech business become favorite in the future.

2.3 *Technology Acceptance Model* (TAM)

TAM was introduced by Davis in 1986. TAM explains that the individual's intention to use information technology is determined by PU and PEoU that is integrated with the individual's attitude (Davis, 1989). TAM explains that acceptability of new technologies is influenced by individual beliefs explained by two variables: PEoU and PU (Geven et al., 2003). PEoU is an indicator of cognitive effort required to study and to use an information technology product. PU is a measure of individual subjective judgment on utility provided by a new information technology product (Hu et al., 1999). Davis et al. (1989) defines PEoU as a user belief that using fintech services is easy to do and does not require a great effort to learn it, whereas PU is defined as user confidence interpreted through the level of usability in using fintech services. Attitude is defined as the level of user ratings (positive/negative) in using the fintech service (Ajzen, 2002; Halilovic & Cicic, 2011).

Nam et al. (2016) states that the important point of TAM is PU directly affect the attitude when PEoU affect PU and attitude. That is, PEoU emphasizes the level of individual belief that using sharia fintech products is not a difficult thing but in practice is easy to use (Davis, 1989). Furthermore, the use of sharia fintech products will encourage increased PU. The level of individual confidence that sharia fintech products can improve their performance is influenced by the ease of operating the product. Previous

research conducted by Wixom & Todd (2005) and Shipps & Phillips (2012) states that PEoU affects PU. Therefore, based on the perception that sharia fintech product is an easy to use product, the usefulness of sharia fintech product can be felt, so the first hypothesis is as follows:

H1 PEoU has a positive effect on PU

TAM describes two specific constructs that influence the attitude of PEoU and PU (Chen, 2016). The acceptance of the new technology of sharia fintech is explained by individuals' attitude to use product. PEoU emphasizes the amount of effort required to use sharia fintech products whereas PU is usefulness level of sharia fintech products (Kim et al., 2016). Attitude is a positive or negative feeling and assessment in general when individuals use new technology (Ajzen, 2002; Halilovic & Cicic, 2011).

Chuang et al. (2016), Nam et al. (2016), Wixon & Todd (2005), and Shipps & Phillips (2012) states that attitude is influenced by PEoU and PU. Increasing the intention to use sharia fintech products requires user trust that sharia fintech products are easy to use and useful (Chau & Hu, 2002; Davis 1986, 1989). Users believe that sharia fintech is easy to use and useful in solving their financial problems thereby helping to improve the attitude of users towards sharia fintech services (Chuang et al., 2016). Based on TAM model and previous research result, the hypothesis is formulated as follows:

H2 PEoU have positive effect on attitude

H3 PU has positive effect on attitude

2.4 User Satisfaction

User satisfaction becomes the benchmark of the usefulness of sharia fintech products. Through the level of satisfaction it can be seen how big the role of sharia fintech products provide ease in solving various financial problems. User satisfaction is derived and is based on experience in using a product (Sahin et al., 2011). User satisfaction is defined as a set of feelings and beliefs about the activities of individuals (Cetin, 2011). Satisfaction can also be interpreted through individual reactions to product experience they use. User satisfaction is seen from the indicators of the usefulness, effectiveness, efficiency, and performance of a product (Mather et al., 2002). Mariani et al., (2013) states that information technology is a factor that affects the level of user satisfaction. The characteristics of information technology are interpreted using PEoU, PU, and atti-

tude.

TAM is a valid construct for explaining user satisfaction (Mather et al., 2002). User satisfaction has been used by previous researchers to test positive user behavior after using information technology products (Chiu & Wang, 2006; Dalcher & Shine, 2003; Szymanski & Hise, 2000; Wixom & Todd, 2005). The results of previous research indicate that PU and Attitude have positive effect on user satisfaction (Al-Hawari & Mouakket, 2010; Shipps & Phillips, 2012). Research conducted by Jung et al. (2015), Wong et al. (2014), and Hou et al. (2013) indicates that PEoU and PU have a positive effect on user satisfaction. Based on the concept of TAM and the results of previous research, then PEoU, PU, and attitude have a positive effect on user satisfaction, so the hypothesis is formulated as follows:

H4 PEoU has a positive effect on user satisfaction
H5 PU has a positive effect on user satisfaction
H6 Attitude has a positive effect on user satisfaction

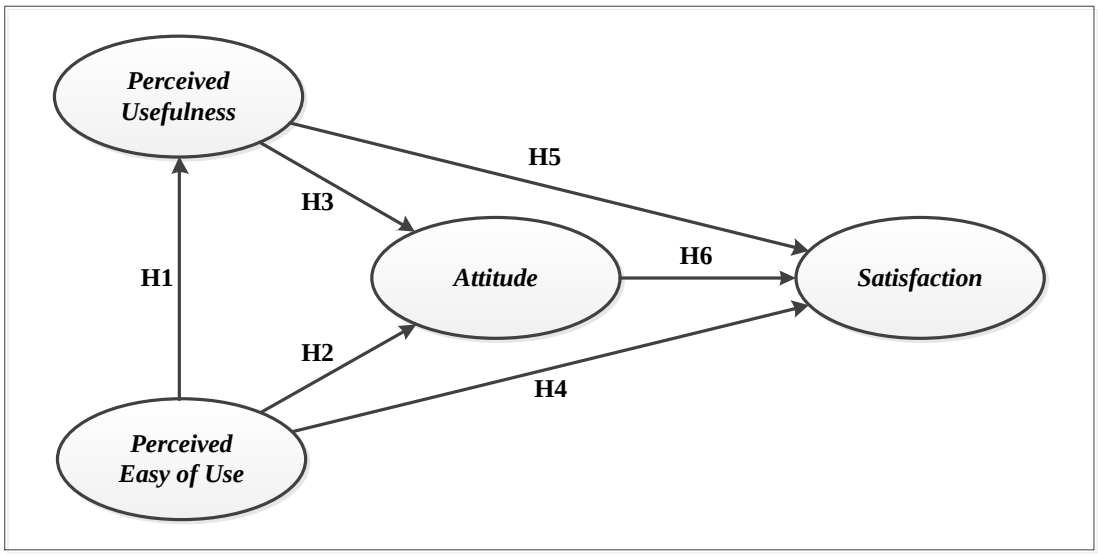

Figure 1: Research Model

3. Research Methods

This research uses survey method. Survey method is quite effective and efficient to be applied in primary data collection. Although survey methods have low internal validity, this method makes it easy for us to reach samples spread in Indonesia. This research is a quantitative descriptive research that try to understand respondent general answer about perception on sharia fintech. Variables in this study are PEoU, PU, attitude, and user satisfaction. Data were collected using online surveys directly answered by users of

sharia fintech. The questionnaire contains closed and open questions to measure users' perception of sharia fintech. Sample in this study is Paytren user spread all over Indonesia. Paytren users are selected because Paytren is sharia fintech from Indonesia with the largest users.

TAM measured using an instrument developed by Davis (1989) and used also by Davis et al. (1989), Mathieson (1991), and Hu et al., (1999). PEoU measure using two question items, PU measure using six question items, attitude measured using two question items. Furthermore, user satisfaction measured using instruments from Sahin et al. (2011). The instrument consists of three question items and three open questions. Each variable is measured using a 5-point Likert scale. To test the hypothesis, data obtained from the survey were analyzed using multiple linear regression. Multiple linear regression is based on functional relationship between more than one independent variable (Cooper & Schindler, 2011). Multiple linear regression is used to understand the effect of variables in TAM's model. In this study, regression analysis consists of three models tested using statistical analysis tools SPSS 23 which can be seen in Table 3.

4. Results and Discussion

Respondents in this research are 30 sharia fintech users spread in Indonesia. Bryman (2012) mentioned that the number of samples has been adequate because it has reached the minimum number. Respondents consist men and women, age ranging from 20-50 years old, education ranging from high school to master degree, status ranging from students, employees, entrepreneurs, and work experience ranging from 6 month up to over 2 years. Data show that the respondents came from various cities in Indonesia which show that sharia fintech has been accepted by Indonesian people.

Before testing the hypothesis, it is necessary to test the validity and reliability of the instrument so that data obtained reliable and valid (Cooper and Schindler, 2011). The results show that variables in this study is reliable with cronbach Alpha values for PU 0.919, PEoU 0.866, attitude 0.728 and satisfaction 0.886. In addition, validity test show good values with KMO values 0.716 and Barlett's 297,282 with a significance level of 0.000. Furthermore, instruments of each variable are already concentrated on their factors that have been tested using confirmatory factor analysis (CFA).

The measurement model consists of four latent variables and each variable contains two up to six indicators represented by survey questions. Indicators of each variable can

be seen in the following table.

Table 1: Factor Analysis and Measurement Item Result

Factor	Mean	S.D	*Factor Loading*	Item Label - Item Description (Indicator)
Perceived Usefulness (PU) *Cronbach* α = 0,919	4,60	0,67	0,849	Paytren allows me to complete work faster
	4,57	0,63	0,915	Using Paytren can improve my performance
	4,63	0,61	0,918	Using Paytren can improve my productivity
	4,63	0,56	0,619	Using Paytren can improve my business effectiveness
	4,67	0,34	0,828	Overall, Paytren is useful in completing my work
Perceived Ease of Use (PEoU) *Cronbach* α = 0,866	4,90	0,30	0,795	It is easy for me to operate Paytren according to my needs
	4,83	0,46	0,888	It is easy for me to understand the use of Paytren
Attitude *Cronbach* α = 0,728	4,90	0,30	0,824	Using Paytren for my work is a good idea
	4,73	0,52	0,765	Using Paytren for my work is a wise thing
Satisfaction *Cronbach* α = 0,886	4,67	0,48	0,868	I am satisfied with service provided by Paytren
	4,77	0,43	0,806	I am satisfied with Paytren
	4,60	0,56	0,849	The services provided by Paytren are very satisfying
KMO Test	0,716			
Barlett's Test	297,282			
Sig.	0,000			

4.1 Hypothesis Testing

Correlation analysis is required before hypothesis testing by calculating mean and standard deviation for each variable and make correlation matrix used to test hypothesis. The results of correlation analysis show in Table 2 below.

Tabel 2: Mean, Standard Deviation, Cronbach α , and Correlation Analysis

Variable	Mean	DS	1	2	3
Perceived Usefulness (PU)	4,62	0,51			
Perceived Ease of Use (PEoU)	4,88	0,27	0,403 (*)		
Attitude	4,78	0,37	0,705 (**)	0,746 (**)	
Satisfaction	4,70	0,40	0,524 (**)	0,714 (**)	0,842 (**)

** The correlation is significant at 0.05 level*

*** Significant correlation at 0.01 level*

Table 2 shows that majority of respondents indicated a positive response to sharia fintech at a relatively high scale for each variable. PEoU (mean = 4.88) was the highest, followed attitude (mean = 4.78), then satisfaction (mean = 4.70), and the lowest is PU (mean = 4.62). This indicates that respondents feel the ease (PEoU) and benefit (PU) in sharia fintech, and also have a positive attitude towards sharia fintech. In the end, respondents feel relatively high satisfaction with 4.70 from scale of 1-5. We saw a signifi-

cant relationship between PU, PEoU, attitude, and satisfaction that correlated positively at P <0.01 then PEoU correlation with PU significant at P <0,05 level.

Regression analysis use to test hypothesis. Regression output consists of model 1, model 2, and model 3. Regression test results can be seen in Table 3 below.

Table 3: Regression Analysis of Model I, Model II, and Model III

	Model I Perceived Use-fulness		Model II Attitude		Model III Satisfaction		Collinearity Statistics		
	Beta	**Sig.**	**Beta**	**Sig.**	**Beta**	**Sig.**	**VIF**	**Tolerance**	**SE**
Perceived Ease of Use H1, H2, H4	0,766	0,027	0,766	0,000	0,245	0,305	2,416	0,414	0,234
Perceived Usefulness H3, H5	-	-	0,353	0,000	-0,076	0,514	2,133	0,469	0,115
Attitude H6	-	-	-	-	0,836	0,001	4,024	0,249	0,217
R2	0,163		0,751		0,730				
F	5,539		40,751		23,447				
Sig.	0,027		0,000		0,000				

Table 3 shows some information. First, model 1 shows PEoU as independent variable and PU as dependent variable. Statistically, regression analysis on model 1 has a significant positive effect with F value = 5,439; R2 = 0.163; P = 0.027 where F arithmetic is greater than F table, then Ho is rejected and Ha is accepted. This regression analysis indicated that PEoU had a significant positive effect on PU (P <0.05; β = 0.766). This indicates that H1 is accepted.

Model II shows PEoU and PU as independent variable and attitude as dependent variable. Statistically, regression analysis on model II has a significant positive effect with F value = 40,751; R2 = 0.751; P = 0,000 where F arithmetic is greater than F table, then Ho is rejected and Ha is accepted. This shows that PEoU has a significant positive effect on attitude (P <0,01; β = 0,766) and PU have positive significant effect on attitude (P <0,01; β = 0,353). This indicates that H2 and H3 are accepted.

Model III shows PU, PEoU, and attitude as independent variable and satisfaction as dependent variable. Statistically, the regression analysis on model III has significant positive effect with F value = 23,447; R2 = 0,730; P = 0,000 where F arithmetic is bigger than F table, Ho is rejected and Ha is accepted. This shows that PEoU has significant positive effect on satisfaction (P <0,01; β = 0,245) and attitude has significant positive effect on satisfaction (P <0,01; β = 0,836). Then PU has a significant positive effect on satisfaction (P <0.01; β = 0.076). This indicates that H4, H5, and H6 are accepted.

Other information based on multi collinear test indicates that VIF value is less than 10, tolerance value is more than 0.01, and standard error value is less than 1. Data indicate that there is no multi collinear problem, so statistical test is reliable and robust. Regression results show that all hypotheses are supported significantly.

4.2 Open Question Analysis

We gave an open question to know users' perception and reason in using sharia fintech products. Furthermore, We grouped the answers into several factors based on the core similarity of respondents' answers. Open question analysis can be seen in Table 3 below.

Table 4: Open Question Response

Item Question	Factor	Frequency	Percentage (%)
Reasons to use Paytren	Ease of Transaction	8	19 %
	Ease of Use	3	7 %
	Business Ease	11	26 %
	Business Objectives	14	33 %
	Alms	6	14 %
Paytren supports ease in doing business / job? Yes / No (the reason)	Effective and Efficient	12	30 %
	Flexible	6	15 %
	Complete	2	5 %
	Facilitate Business	13	33 %
	Profitable	7	18 %
Do you know fintech sharia besides Paytren?	Yes	1	3 %
	No	29	97 %

Table 4 shows that respondents' reason using sharia fintech at most is for business purposes that is 33%. Furthermore, a second open question analysis shows that respondents feel that sharia fintech provides ease in conducting transactions and running their business. The information is known from the answers of all respondents who answered "yes". We group respondents' reasons into several factors as listed in table 4 above. Based on statistical analysis, it can be seen that 33% respondents feel sharia fintech facilitate the business, then 30% response to feel sharia fintech make business become effective and efficient.

4.3 Discussion

TAM explains that individual's intention to use information technology is determined by PU and PEoU integrated with individual attitude (Davis, 1989). This study focuses on user perceptions and attitudes toward sharia fintech products and the results are as expected by us that sharia fintech supports easiness in conducting transactions and business. Then, we also gave an open question to re-confirm respondents' reasons using sharia fintech. We analyzed and classified respondents' answers into several factors that became the reason they used sharia fintech. The reasons are provide ease of transaction,

ease of use, ease in doing business, and concept of alms. The most important finding is discovery of information that innovation in fintech products by applying sharia principles is very useful, promising, and growing.

Other facts show that most respondents do not know other fintech sharia than Paytren, this is in accordance with our investigation that there is few sharia fintech in Indonesia. But we are optimistic that sharia fintech development will grow rapidly like sharia bank, potential of Muslim population in Indonesia is very big, the better economic development, the more advanced technology, the more fintech transactions in Indonesia today, and more and more innovative businessmen who are always looking for promising business opportunities.

In accordance with the results of previous studies conducted by Wixom and Todd (2005) and Shipps and Phillips (2012) using TAM models to test the responses of technology users, as well as research by Chuang et al. (2016) testing TAM model on fintech, the result is not much different from TAM model on conventional fintech and sharia fintech context. This is indicated by the acceptance of hypotheses proposed in this study. Users feel that fintech sharia products are easy to use and useful, so users have a positive attitude on sharia fintech products and ultimately provide satisfaction for users (Jung et al., 2015; Wong et al., 2014; Hou et al., 2013).

Thus, although the birth of fintech can disrupt conventional monetary system and need to be anticipated by existing regulations. The government must remain flexible and be able to collaborate with entrepreneurs who are always innovating. This needs to be watched because consumers are very satisfied and feel the benefits of these innovations (fintech). Regulation must follow the development era because this information age will produce various business model innovation as a domino effect from the development of information technology, artificial intelligence technology, and robotic technology which of course will change human life. If firms are too comfortable and lazy to innovate, then zombie company will be faced by the financial industry in Indonesia and causing the company can not compete.

Consumer market driven is the current marketing paradigm, means companies create a product or service based on consumers' wants and needs. Although the new innovations can create chaos, it is undeniable that the benefits of innovation are felt as evidenced by the start-up successes in technology such as Gojek, Traveloka, Bukalapak,

and so on that are able to change the market structure in this modern era. Therefore, disruptive innovation must be dealt with in collaboration. We can take examples from sharia concepts that collaborate with existing modern systems such as sharia banking, sharia fintech, sharia capital markets, and etc. Obviously, the concept of sharia provides a win-win solution for companies and consumers.

5. Conclusion

5.1 Conclusions and Implications

This study understand the role of sharia fintech in facilitating business owners or consumers to solve their financial problems. To know the role of sharia fintech, we use TAM's construct to know their satisfaction perception on sharia fintech products. TAM explains user satisfaction on fintech products that is influenced by PEoU, PU, and their attitude. The results show that PEoU is positively associated with PU. These results support previous research conducted by Wixom & Todd (2005) and Phillips (2012). If the product is easy to use then the usefulness of sharia fintech product can be felt. Another result shows that PEoU and PU are the determinants of attitude. User believes that sharia fintech is easy to use and useful in solving their financial problems so the user attitude towards sharia fintech services increases (Chuang et al., 2016). These results support research conducted by Nam et al. (2016), Wixon & Todd (2005), Shipps & Phillips (2012). Furthermore, PEoU, PU, and high attitude have a positive effect on user satisfaction. User satisfaction becomes the benchmark of the usefulness of sharia fintech products. These results support research conducted by Al-Hawari and Mouakket (2010), Shipps and Phillips (2012), Jung et al. (2015), Wong et al. (2014), and Hou et al. (2013).

Based on open questions, sharia fintech users feel the benefits of the products they use, that is make it easier for them to make transactions, run business, and solve their financial problems. This happens because the services of sharia fintech products are very suitable with what they need and because sharia fintech perform activities in accordance with sharia principles (without usury).

This study provides some important contributions both practically and theoretically. Practically, this study provides important information to businesses that there is a market share waiting for sharia fintech products that can simplify business processes and solve financial problems. This is an opportunity for businesses to create new business

(startup) in accordance with current issues. Theoretically, this study contributes literature by conducting TAM's construct test on sharia fintech. There is no previous research linking that two topics so that the results of this study provide new knowledge in the academic world.

5.2 Applicative Opportunities

5.2.1 For Practitioners

The results of this study can be used as a reference for corporate managers to be a consideration in determining the strategy in running the business. Companies must be up to date on innovations that accelerate. Sharia fintech has an advantage because there are elements of alms and the benefit of ummah, where devout Muslims will feel better when using sharia fintech as free from the element of usury. The results of this study are important enough to understand attitudes and behavior of consumers in using sharia fintech. In this information technology era, to succeed the marketing of new technology, marketers should focus on consumers.

Practitioners have to continue to innovate because the development of technology is very fast. We are optimistic about sharia fintech industry opportunities that can be an alternative for the financial industry. Fintech could be a substitution of conventional finance industry. This is because the pattern of human life tends to lead to things that are instant, flexible, and easy. Seeing the success of EthisCrowd in Singapore that can raise funds and utilize with sharia methods to help businesses spread across Southeast Asia, fintech in Indonesia will start implementing sharia system in their business model and help society closer with sharia principles.

5.2.2 For the Government

New business models can be an opportunity and threat to established business models. The rapid innovation entering into various industries (including the financial industry) can lead to disruptive innovation and conflict if not properly regulated. This should be noted by government as regulators to anticipate fintech phenomenon that growth and investment levels grow exponentially. For the government as regulator, it is necessary to pay attention to regulations that can control the development of fintech so as not to become disruptive economy, because rules in many interrelated fields in this transition of new industry era are still not clear. Government needs to determine a more flexible legal concept in order not to turn off the innovation but not too free because it will lead to un-

healthy competition. The balance between the interests of goverment, society, and business actor needs to be considered for the common good.

Sharia fintech can be an excellent alternative to overcome these problems, because the concept of sharia fintech exemplified by Paytren has an advantage in balancing technological advances, business efficiency, social, and spiritual. Using this concept, benefits arising from innovation can be felt and negative impacts arising from innovation can be minimized. The Financial Services Authority (OJK) needs to issue a policy explaining the fintech border and requirements that can stand as sharia fintech. Most consumers use sharia products simply because they see sharia labeling on a financial product, but do not fully understand whether the product characteristics are really in accordance with sharia principles. For irresponsible businessmen, this weakness can be utilized to provide sharia labels on products that do not fully use sharia principles. OJK can evaluate sharia-labeled financial products so that sharia not only as a marketing strategy but as a real sharia-based product. As explained by Pratama (2017) that the legal system conducive to business actors is not a law but rather a policy such as directive or guidance so that the structure does not interfere with the existing legal order. Therefore, it is appropriate if OJK issued a clear direction policy on sharia fintech products so that there is no difference in understanding the views of sharia practice.

5.2.3 For Consumers

Today, people need a modern and practical life. The online transaction system is preferred over the manual system because it allows user to access and transact financial products. Based on analysis, consumer confidence increased in sharia fintech products. In addition to providing convenience in the transaction, sharia fintech products based on sharia principles and free from usury. Consumers have other alternatives in doing financial transactions. The wider the reach of sharia fintech the more people will turn to shariah products. Society will be free from doubt in using financial products. The Indonesian people are interested in products labeled kosher (halal), not least in financial products. Emergence of sharia fintech in Indonesia is very helpful for society in selecting financial products.

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Online-to-Offline (O2O) as a New e-Business Model Concept (An Analysis of Klikmall Lintas Korpora)

Sevenpri Candra and **Alexander Chang**
BINUS Business School, Bina Nusantara University, Jakarta, Indonesia
seven@binus.ac.id

Abstract

Future competition now expanding from online commerce, the online commerce offers from their exists in the resource integration and terminal consumers. O2O mode is new commerce model which does a deeper explore to the sales channels, and has a very good prospect. Klikmall is a company engaged in e-commerce with a marketplace concept. The purpose of this study is to evaluate the company's O2O business model design to see whether it is suited to be launched. The method used in this study is a descriptive method using qualitative data. The evaluation is done based on the findings of the previous study about the development of O2O business model by Xingang Weng dan Liying Zhang. The conclusion of this study is that the O2O business model made by the company is suited to be launched even if the mobile network still needs to be improved.

Keywords: *O2O Mode, Online and Offline, Mobile Commerce, E-Business*

Introduction

Online Business in Indonesia is growing rapidly. We can see this growth by looking at the increase of the number of transaction done online. The value of transaction done via online in Indonesia rises from USD 8 Billion in 2013 to USD 12 Billion in 2014 and it is predicted that this number will rise in the future (Kominfo, 2015). Even with the rising number of transaction done by e-commerce, there are still people who doesn't do online shopping because of the shipping cost. Research by Nielsen in 2014 shows that 50% of Indonesian people doesn't want to do online shopping because of the shipping cost. To deal with this problem, one of the alternative that can be used is Online-to-Offline (O2O).

O2O is a model of e-commerce where customer purchases product online and go to the offline store to take the product (Du & Tang, 2014; Wu, Sun, & Xu, 2014; Xing & Junxuan, 2014). By using this model, customer will not be charged by the shipping cost.

O2O is first introduced in United States and now is growing rapidly in China. O2O is an electronic commerce mode based on online effective interactivity. This efficient integration mode between virtual world and real world gets support and recognition from all walks of life. O2O aims to maximize the use of offline and online resource; they promote each other and depend on each other to achieve a win-win situation (Tiansheng & Jiong, 2015; Weng & Zhang, 2015).

Klikmall Lintas Korpora (Klikmall) is an e-commerce company created by groups of retailers working together. Those groups are Boga Group, Kompas Group, Panca Group, PT. Bersama Cipta Rasa, PT. Britannido Mitra Pratama, PT. Central Mega Kencana, PT. Delami Garement Industries, PT Fun World Prima, PT Hero Supermarket. Tbk, PT. Marche International, PT. Monica Hijau Lestari, PT. Nusantara Sejahtera Raya, PT. Optik Melawai Prima, PT. Pilofice, PT. GF Culinary, Ratu Pertiwi Group, and Warung Podjok in Indonesia for creating a concept of online companies (E-Commerce) with O2O model. This company is created in 2015 and is still in preparation stage. The company has already made a design of O2O model that they want to use to do their business.

Seeing as O2O concept is still new in Indonesia and there is too little company that adopts it, the researcher is interested to do an evaluation to the model designed by the company to help them prepare them self before the launching to help the company to make a better preparation for its launch. The purpose of this study is to evaluate the O2O model design that Klikmall has made whether it is suitable to be launched or not.

Literature Reviews

Offline business is a business model that uses real stores and does not use internet media to perform its operations. This method is done by showing the product or service directly to the customer. Advantage of offline business is a strong relationship from company to customer so that customer loyalty is better than online concept. In addition, this concept makes it easier for customers to trust the product because customers can directly see and touch the product. The disadvantage of an offline business is the cost that must be provided to make this a large offline business. In addition, offline business is difficult to reach areas far from where he operates.

O2O business model is a new emerging E-Commerce business model in America

that combines online business or e-commerce concepts with offline business. O2O stands for Online to Offline, which combines e-commerce features with offline services. In operation, the O2O model has a basic operation that can be seen in the following figure.

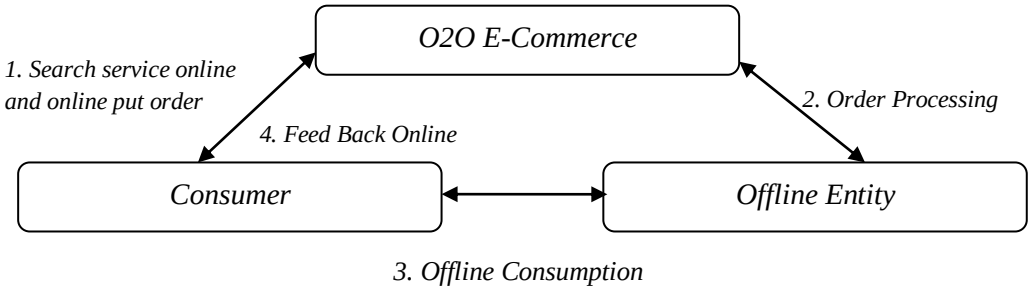

Figure 1 Operation Flow Chart
Source: Adapted from (Weng & Zhang, 2015)

O2O business model is a newly emerging business model in America that combines the concept of online business or e-commerce with offline business. In Indonesia, one of e-commerce that offering this service is matahari mall. Matahari mall offering order through online and take the product from the outlet that already chosen by buyer. But the payment can be through credit card, transfer or cash on pickup. The payment should be make before customer pickup the product from the outlet. According to research conducted by (Tiansheng & Jiong, 2015) stated that there are four models of O2O based on the way it operates:

1. Online to Offline: The concept of O2O where the customer is collected and transact online but the value obtained by the customer is offline
2. Offline to Online: The concept of O2O where customers are given product information through offline promotional activities and customers will be directed to the online shop to find additional information or conduct transactions.
3. Online to Offline to Online: The concept of O2O where the customer will be given information online, then the customer will try the products we have offline and then the customer back to online to make transactions.
4. Offline to Online to Offline: The concept of O2O where customers are collected offline, then view or try products online, then perform transactions offline.

Based on the results of research by (Shang & Yang, 2015), there are five types of O2O business model:

1. Commerce O2O: The model in which retail companies create a method of

spending so that customers can buy products online.

2. Try on O2O: The model in which an E-Commerce company builds a physical channel for customers to try the product they want to buy. Customer will place an order online and come to one of the channels to try.
3. Promotional O2O: The model in which companies conduct online promotions for online users to come to offline stores.
4. Experience O2O: The model in which the company provides information about the products in the offline store.
5. Crowdsourcing O2O: a model in which an E-Commerce company builds a web-site or application that gathers sellers or shopkeepers and customers to transact through the website.

According to (Weng & Zhang, 2015), there are five important networks that must be considered in making business model:

1. Physical Network

   Physical network is a network where customers can conduct transactions. There are two forms of physical network that is physical store and online platform. Physical store: physical store is a real store where customers can take goods or receive physical services from the store. Physical stores must be equipped with tools that support online activities such as spending, advertising or advertising, and payments. An example is the Paradise Dynasty restaurant which is equipped with promotional tools featuring QR code that can be scanned by the customer and tent card on his desk.

   Online Platform: Online Platform is a place that can be accessed by customer to do goods search and purchase transaction. All activities related to the search for goods, information dissemination, digital advertising, purchases, and payments. An example is the Website Lazada.com which offers a wide range of products online where customers live to access his website to start shopping.

2. Service Network

   A service network is a network system used on the physical network and a mobile network that allows both networks to perform the process. Service networks allow companies to transmit information, communicate with users, serve customers and respond to complaints and questions. Service Network also allows

companies to perform service processes such as order acceptance, discount service, agreement making, information dissemination and so forth. Development service network can be integrated with the use of social media that is widely used by customers such as Facebook, Instagram, Twitter, and other social media

3. Logistics Network

   Logistic network is a network that allows companies to deliver products and information to the customer. The construction of the logistics network for O2O will vary according to user demand requirements. Its development must be integrated with the Internet, logistics network, service network, and marketing network. The construction of this logistics network should support the process carried out in the service network and integration of data from each product to the addition and reduction of the product amount so that customers can feel the advantages and ease in the search of the product.

   In the O2O model, the core of the Logistics Network is Virtual Warehouse. The virtual warehouse is a concept where the amount of inventory is monitored significantly based on data exchange with the help of information systems. By using the Virtual Warehouse, the company can sync inventory on the O2O platform, so that transaction fulfillment can be made to stores in different areas. The development of logistics networks will ultimately provide benefits in the areas of efficiency, cost, and consumer experience.

4. Data Network

   Data network is a network that made the company so that companies can get data that can be used to perform analysis and calculations in the system. All data types from customer orders to brands, from brands to raw materials, from raw materials to other relationships using data to enter into an industry chain, so that data collection is very important to do. Data network on O2O model collects data from user where the process to collect data is data collection, data preparation, data conversion, data extraction, data mining, using data which then used to analyze characteristic of group user, then analyze personal characteristic and preference to get Valuable knowledge for the company.

   The collected user data is data on age, gender, residence, personal data of users, and user habits to spend money to shop. These data are then analyzed to deter-

mine the preferences of a group of users and users individually to be able to do the right marketing and effective. With the mobile internet equipped with location based service, then the data about the user address can be collected more easily. In addition, to make the user willing to share information about himself then the company should encourage the user to share the information. One way that is used is to provide marketing incentives. The form of marketing incentive is various, can be a voucher, promotion, event, various other promotional activities.

Once the data about the user address is collected, then the company can analyze the specific character of a group which then becomes the basis for making the decision to conduct marketing activities.

5. Mobile Networks

Mobile network is a network that is used so that users can access and perform the shopping process anywhere and anytime. Seeing that in the present day the use of internet through smartphone has become a trend that has become the habit of almost all people by using mobile network internet or Wifi is available free of charge in various locations, the mobile network is a must to have an e-commerce company to be able to compete with other companies.

Mobile networks must be able to perform all services provided through the physical network. Mobile networks must be able anytime and anywhere to provide services such as order receipt, information dissemination, membership handling, and other services available in the company. Mobile networks also allow customers to make payments online and cashless so there is no money exchange in the form of cash.

To build a mobile network, companies must be able to create a system that can transmit information from a user's mobile phone, disseminating information through network service, logistic network, and integrated network data over the internet. Mobile network should be able to use the advantages of LBS (Location Based Services). Location Based Service is a general term used to describe the technology used to locate the device the user is using. Use of this technology will facilitate the company in running its service and logistics company.

In addition to the system must also note the level of data security and security

systems that make the company can maintain the confidentiality of user data. The company's mobile network must be able to keep the data provided by the user confidential and privacy. In the end, a mobile network will have all the functions that exist in the physical network, but its use will be more common as well as mobile network will optimize location based service. One form of this mobile network is the mobile application.

Research Methods

The framework analysis will be using by the study from O2O business model (Weng & Zhang, 2015). The result of this result says that in developing an O2O business model, there are 5 networks that we need to take attention to. Those 5 Networks are physical network; service network; logistics network; data network; and mobile network. There is still limitation from this framework analysis, the O2O business model only evaluate from infrastructure that already prepared by organization. So, this analysis only evaluate the readiness of organization in implement this O2O business model. This research will evaluate whether the design made by Klikmall has the suitable networks in it.

1. Physical Network. The analysis carried out on the physical network is the analysis of the platform used and the hardware used to connect the business processes of offline and online business model drafted by the company.
2. Service Network. Analysis of service network is done by analyzing the media used in O2O model which has been designed by company to support the activity done in physical network. The service network should be able to facilitate the company's operational activities such as handling complaints and providing assistance.
3. Logistics Network. Analysis of logistics network is done by analyzing how the company perform its activities is how companies deliver products and information about the products from the company to the customer. In addition, the analysis is also conducted on how the company manage the synchronization of inventory data in offline stores with existing data in the company system so that customers can get the best service and the company can improve efficiency and reduce costs.
4. Data Network. The analysis of network data is done by analyzing how the com-

pany design can collect information and how the company system can analyze data and do the right marketing with the target. In addition, the analysis is carried out on the methods used by the company to encourage customers to be willing to provide information to the company through the platform.

5. Mobile Platform. The analysis of the mobile platform is done by analyzing how the function of the mobile platform that has been designed by the company can perform the same function with the physical platform and how the mobile platform can assist in dissemination of information that optimize location based services. Location Based Service can facilitate the company to provide information to customers and facilitate corporate promotions.

Research Findings

The model used by the company Klikmall.com is a Crowd sourcing model O2O where Klikmall.com collects merchants to open an online store on its website. Klikmall is using 2 ways to deliver the product to customer. There is a delivery method which is the same as the other online store and another method called pick up in store which is the basics of O2O. The result of this analysis is shown below:

1. Physical Network

   To make O2O model, Klikmall uses 2 types of physical network. They are online platform and offline platform. The online platform used by Klikmall is a virtual 3D Platform that can be accessed by using a web browser, going to www.klikmall.com. This platform is used as the place where the transaction take place. The offline platform used is the physical store that the merchants have. The use of this store is to let customer pick up the products they buy. The online platform can be accessed by using a computer or mobile phone that has a web browser.

2. Service Network

   The service network allows users to communicate with each other or do transmit information. Klikmall used an application called Zopim to enable users to communicate each other. Also, Klikmall has prepared an information center in the online platform for users who have problems using the platform. Klikmall also uses social media to connect with its users. The social media used by Klikmall are Facebook, Twitter, and Instagram

3. Logistics Network

   The logistics network is used to enable products to be transferred to customer and the information of this product to be seen by customer. For logistics purposes Klikmall has create an arrangement with JNE to connect its counting system and deliver the product. This is only used when customer has chosen to use delivery method. For pick up in stores, the customer must come to the store that they have chosen as the pickup place. The address of the stores is shown in the platform, so the customer can just choose where to take their products. The process is as seen on Figure 2 and Figure 3.

4. Data Network

   Data network is used to collect data to be used in decision making for marketing campaign. Data first collected when customer sign up into the platform. The data taken is name and email address. The data about the traffic is collected by using UTM system in Google analytics. UTM system records every time a link is clicked and user get in to the store. Google analytics then will show the recap of the records for klikmall to use.

5. Mobile Network

   The mobile network allows user to access the platform by using mobile devices. There are 2 ways to access platform by mobile devices. They are web based platform, the same as the online platform, and an application. The application needs to be downloaded first and it has a feature of QR code scanning.

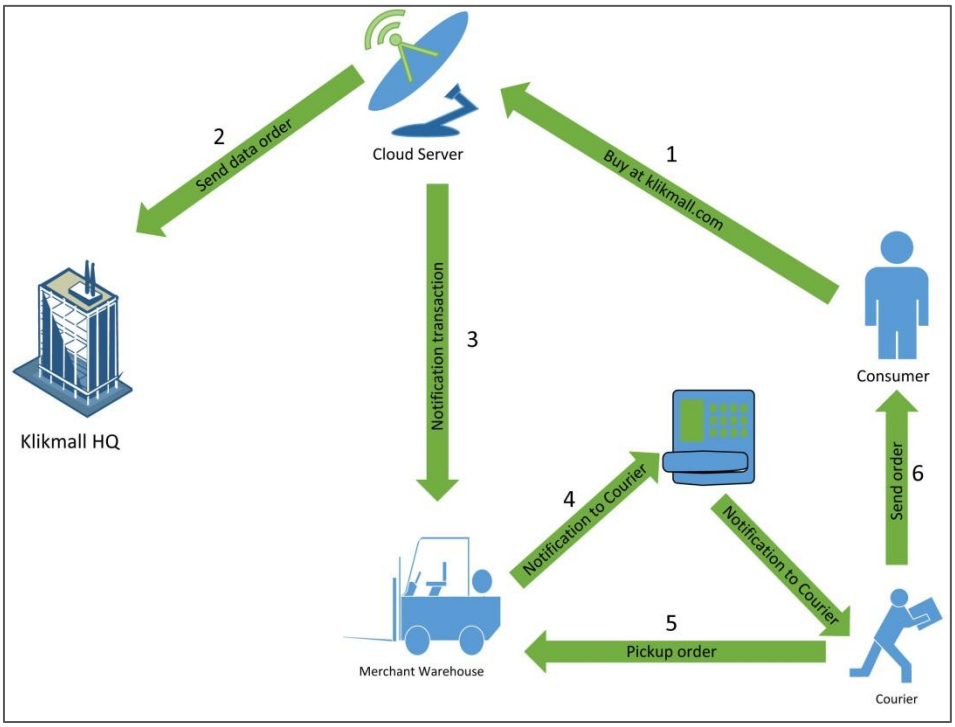

Figure 2. Delivery Proses
Source: Author

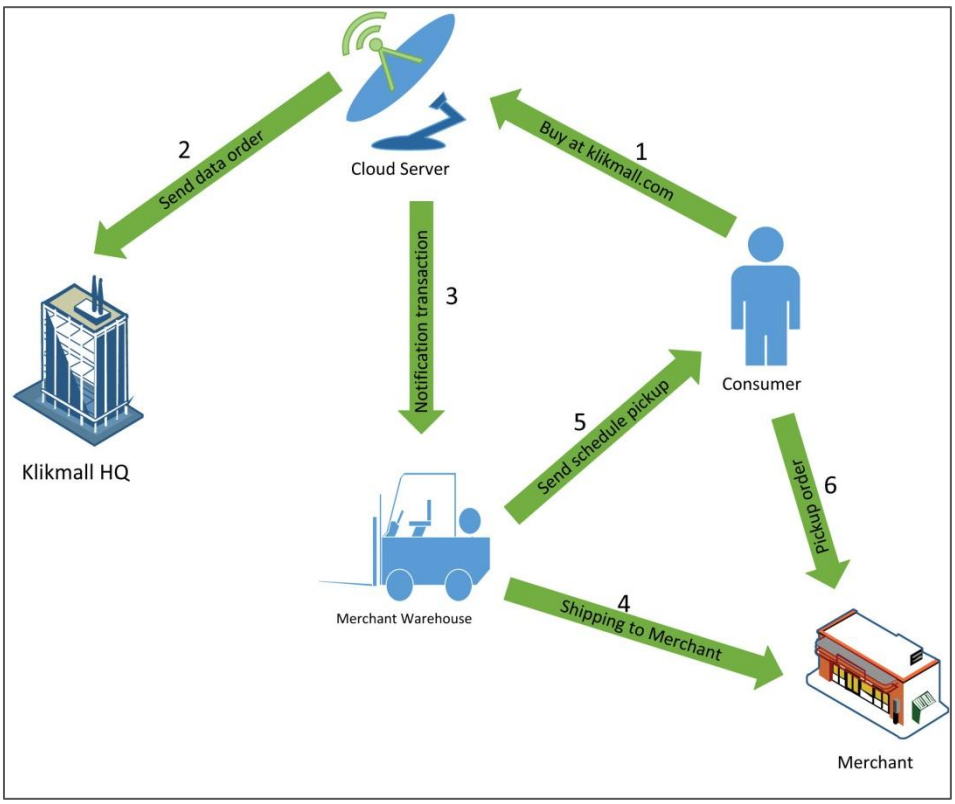

Figure 3 Pickup in Store Process
Source: Author

Conclusions

The conclusion of this research is that the O2O model design made by Klikmall is suitable to be launched for these reasons, like the physical networks supports the transactions to be done; the service networks supports information from user or Klikmall to be transmitted and allows users to communicate; logistics network allows products and information about the products to be accessed by customer; data network allows Klikmall to record the traffic data; mobile network allows user to get into Klikmall platform anywhere and anytime even though it is not taking advantage of its Location based services. In developing a mobile network, Klikmall should take advantage of location based services as it makes promotion and information transmission easier and more accurate.

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Statistical Modeling of Financial Cycle in Emerging Market Economies Country Using Panel Regression Approach

Ferdinand David Aritonang
Institute of Statistic (STIS), Jakarta, Indonesia
E-mail: 13.7620@stis.ac.id

Abstract

Since 2010 there are a downward trend for emerging market economies (EMEs) growth which has been driven by structural factors such as diminishing capital accumulation and productivity gains and waning global trade integration. Global credit aggregates explains part of the cyclical movement in output for most EMEs which raise the growth of EMEs and make strong capital inflow that can boost economic activity in EMEs. Therefore, the main objective of this research is to find out the factors affecting financial cycle that is approached by variables stock market capitalization to GDP. This research used a panel data that consist of 15 annual data from 2000-2014 and 8 cross section such as Indonesia, Malaysia, Singapore, Thailand, Philippine, India, South Korea, and China which is taken from World Development Indicators (WDI) and Global Financial Development Database (GFDD). The variable which is used as dependent variables is stock market capitalization to GDP. Meanwhile, another variables which is used as independent variables comprised bank net interest margin, foreign direct investment, net inflow, stock market return, bank cost to income ratio, real interest rate, and inflation as GDP deflator. The method used to answer the research's objective is panel regression with fixed effect model (FEM) modified seemingly unrelated regression (SUR). The empirical result showed that foreign direct investment net inflow, stock market return has a significant effect positively, while bank net interest margin, bank cost to income ratio, real interest rate, and inflation has a significant effect negatively. Thus, the increasing of foreign direct investment, stock market return and controlling bank net interest margin, bank cost to income ratio, real interest rate, and inflation can become the solution to maintain financial cycle (stock market capitalization to GDP) on the determined and future year.

***Keyword**: Financial Cycle, Emerging Market Economies, Fixed Effect Model*

1. Introduction

Emerging market economies (EMEs) generally do not have the same level of market efficiency like advanced economies, but emerging market do typically have a physical financial infrastructure, including banks, a stock exchange, and a unified currency. However, since 2010 there are a downward trend for EMEs growth which has been driven by structural factors such as diminishing capital accumulation and productivity gains and waning global trade integration (European Central Bank, 2016). In addition, external factor also give an impact for a slowdown of EMEs growth comprises global trade dynamics, the global financing environment, and commodity market fluctuation.

European Central Bank (ECB) finds that financial cycle information as captured by the behavior or domestic and global credit aggregates explains part of the cyclical movement in output for most EMEs which raise the growth of EMEs and make strong capital inflow also helped to boost economic activity in EMEs countries. Gerhard Runstler (2016) showed that if the properties of financial cycles are sufficiently different from those of regular business cycles, then monetary and fiscal policy are imperfect instruments for addressing them and the case for macro-prudential policy as a separate third stabilization policy is strengthened.

Peter Praet (2016) in a panel on International Monetary Policy also indicated that a natural tendency and capacity of financial intermediaries to transfer this expected increase in future income is a factors which closely correlated with financial cycles. Moreover, Global financial cycles are associated with surges and retrenchments in capital flow, boom and bust in asset prices and crisis (Helena Rey, 2015).

There are several considerations to weaken the potency of the global financial cycle such as act on one of the sources of the financial cycle, act on the transmission channel cyclically, act on transmission channel structurally and impose targeted capital control. Adrian Blundell (2015) showed that economic theory predicts that capital control have significant negative effects: they reduce the supply of capital; raise the cost of financing; increase financial constraints for domestic firms that do not have direct access to international capital market; reduce the discipline of markets on decision making; increase the risk of corruption; lead to costly effects of avoidance and enforcement; and reduce property rights so that approvals for long-term investors.

Based on those problems, the main purpose of this research paper is to find out the

factors affecting global financial cycle which is approached with variables of stock market capitalization to GDP. Meanwhile, another variables which is used as independent variables comprised bank net interest margin, foreign direct investment, net inflow, stock market return, bank cost to income ratio, real interest rate, and inflation as GDP deflator.

2. Theory and Literature Review

Stock market capitalization to GDP ratio is used to determine whether an overall market is undervalued or overvalued. If the ratio around 50%, it indicates that the market is undervalued, while the ratio greater than 100%, it indicates the market is overvalued. Overvalued and undervalued as the classification of condition from stock market capitalization to GDP. Overvalued or undervalued stock has a current price that is not justified by its earnings outlook or price/earnings ratio, so it is expected to drop in price. Thus, the fluctuation of those price can describe a financial cycles. Based on Stijn et al (2011), financial cycles closely follows that of business cycles that divided by recovery phase and contraction phase. The main characteristic of financial cycle are duration, amplitude, and slope.

The structure of market economic in emerging market has a resistance during the global financial crisis. Based on Kose and Prasad (2010), characteristic of EMEs tend to have less dependence on foreign finance currency-denominated external debt. The majority of emerging markets have become a lot less reliant on foreign finance, particularly external debt. EMEs also has a large buffer of foreign exchange reserves, following the Asia financial crisis of 1997-1998, emerging markets around the world have built up large buffers of foreign exchange reserves, partly as a result of export-oriented growth strategies and self-insurance against crises.

In particular, commodity-exporting countries have been shielded to some extent from the slowdowns in the advanced economies by strong growth in EMEs. In addition, emerging markets have become more diversified in their production and export patterns, such diversification offers limited protection against large global shock. Broader divergence of EME business cycle from those of the advanced economies. This has happened on account of the factors noted above, along with greater intra-group trade and financial linkages. Emerging market economies also has more stable macroeconomic policies, including flexible exchange rates. In another side, rising per capita income levels and a

burgeoning middle class have increased the size and absorptive capacity of domestic markets. From those reason, the stability condition in emerging market economies will impact the behavior of cycle business in Asia Pacific region that extend enterprises to diversify their asset.

Panel data is a combination between time series and cross section data. Based on Gujarati (2014), using a panel data bring a several benefit such as cope heterogeneity problem explicitly, give a huge information and variation, give an appropriate information of changing dynamic, measure and detect an impact that can't be covered by cross section or time series, give a simple understanding of complexity model, and minimize a bias from individual aggregation.

The general form of panel regression according Baltagi (2013):

$$yit = \mathbf{a} + X'itP + Uit$$

where I denote a cross section and t denote a time series, **a** is a scalar, **p** is a matrix K x and Xit is an observation of it from K as explanatory variables, yit is dependent variables for individual i and time series t.

The research by Stijn Claessen et al (2011) entitled **Financial Cycles: What? How? When?** has an objective to provide a comprehensive empirical overview of financial cycles. The method is using classical methodology that conclude financial cycles tend to be long and severe, especially those in housing and equity markets, they are highly synchronized within countries, particularly credit and house price cycles, and financial cycles accentuate each other and become magnified, especially during coincident downturns in credit and housing markets. Another research by Adrian Blundell-Wignal and Caroline Roulet (2014) entitled **Capital Controls on Inflows, The Global Financial Crisis and Economic Growth: Evidence for Emerging Economies** has the purpose to further investigate the issue of whether countries that had such controls on inflow in place prior to the crisis were indeed less vulnerable during the GFC, and also to examine the more general question of whether capital controls have an adverse effect on economic growth over the entire economic cycle. The method used probit model approach, the alternative is using panel regression. The result showed that study on controls on capital inflows in emerging economies, using a probit regression are replicated and tested for stability. Moreover, capital restriction on inflows to emerging markets are

strong and upward pressure on managed exchange rates and reserves accumulation is greatest.

3. Methodology

The data is obtained from World Bank website, World Development Indicator (WDI) and Global Financial Development Database (GFDD). The period of data from 2000 – 2014 including 8 emerging market economies (EMEs) countries such as Indonesia, Malaysia, Singapore, Thailand, Philippine, India, South Korea, and China. The data that is used in this research are stock market capitalization to GDP as dependent variable, bank net interest margin, foreign direct investment, net inflow, stock market return, bank cost to income ratio, real interest rate, and inflation as independent variables. The following details of the explanation of each variable:

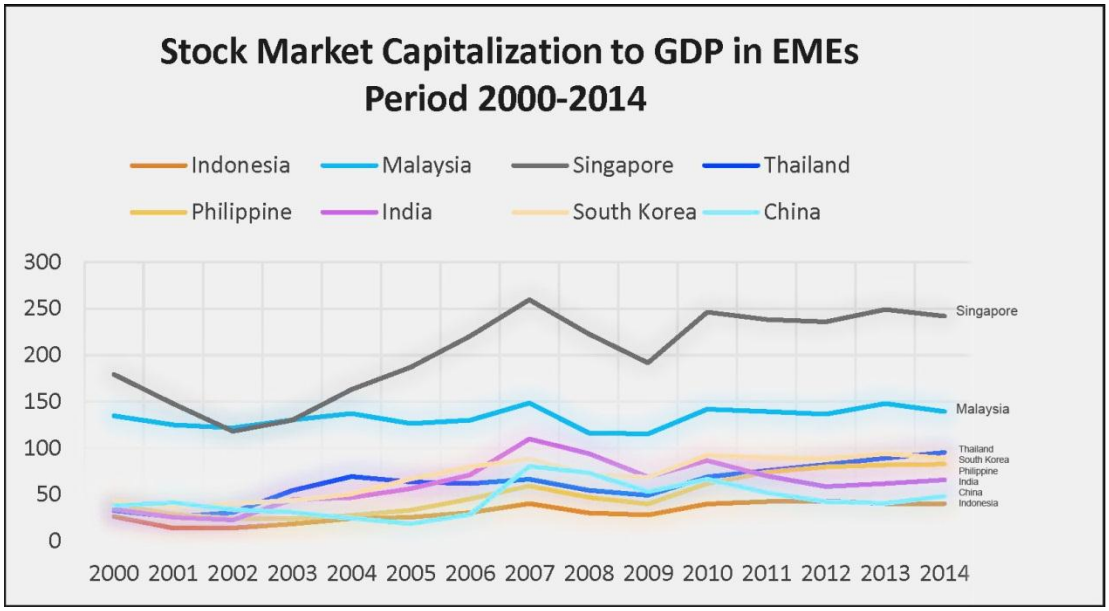
Table 1 Sources of Data Summary

No.	Data	Unit	Sources
(1)	(2)	(3)	(4)
1	Stock Market Capitalization to GDP	%	GFDD
2	Bank Net Interest Margin	%	GFDD
3	Foreign Direct Investment, Net Inflow	%	WDI
4	Stock Market Return	%	GFDD
5	Bank Cost to Income Ratio	%	GFDD
6	Real Interest Rate	%	WDI
7	Inflation, GDP Deflator	%	WDI

4. Result and Model Specification

4.1 Descriptive Analysis

Descriptive analysis is used to describe the center measurement such as mean, median, modus and dispersion measurement such as standard deviation and variance. Below, the table of descriptive analysis:



Source: World Bank (edited)

During 2000-2014, almost EMEs countries have a fluctuate movement of stock market capitalization to GDP. Singapore and Malaysia always has value greater than 100, it indicates that market in those country is overvalued. Overvaluation may result an emotional buying spurt, which inflates the stock's market price. As theoretical, it also indicates that the market is perfectly efficient which also ideal for investor. Meanwhile, another countries such as Indonesia, Thailand, Philippine, India, South Korea, and China have an undervalued market averagely. It indicates that those countries is still depend in traditionally economic activities, but from 2000-2014 those countries has an upward trend and has a potential market. Stock market capitalization to GDP can show the condition of financial cycle in those countries.

4.2 Inference Analysis

The best model to estimate these parameters is using fixed effect model. There are a several test to get the best model, chow test is conducted to select the best model between common effect model and fixed effect model. The decision is reject H0 which proved by p-value under 0.05 and conclude that fixed effect model is the best model rudimentary. The next step is continuing with Hausman test to select the best model between fixed effect model and random effect model, the decision is generating p-value under 0.05, it concludes that fixed effect is the best model. The adjusted model around 0.9908, it means 99.08% of the variance of dependent variable can be explained by in-

dependent variables. If we investigate in simultaneous test (F-test), we found that F-statistic around 991.52 with p-value 0.00. It indicates all independent variables affect the dependent variables simultaneously. Finally, the result shows:

Table 2 Estimation Financial Stability Model

Variable	Coefficient	Std. Error	t-Stat	Prob.
(1)	(2)	(3)	(4)	(5)
NIM	-2.82	0.46	-6.17	0.000
INFLOW	1.95	0.33	5.88	0.000
STOCKRETURN	0.14	0.03	4.009	0.000
COST INCOME	-0.39	0.05	-6.56	0.000
INTEREST	-5.17	0.37	-13.61	0.000
INFLATION	-4.67	0.38	-12.09	0.000
C	138.34	4.58	30.23	0.000
Adj R2	0.990843			
F-stat	991.5236			
Prob	0.000			

Bank net interest margin (NIM) has a negative relationship with stock market capitalization to GDP and significant in alpha 5%. Statistically, the output showed that increasing 1% of bank net interest margin will decrease stock market capitalization to GDP around 2.82%. It indicated that the higher bank net interest margin is associated with higher operating expense which reduce a possibility to invest in stock. Therefore, it disrupt a transaction of stock.

Foreign direct investment net inflow (INFLOW) affect stock market capitalization to GDP significantly in 5%. The increasing of net inflow will give a positive impact to stock market capitalization to GDP due to increasing funding flow in domestic region that stimulate investor to invest their money either in real sector or monetary sector. Thus, increasing 1% of foreign direct investment net inflow will increase 1.95% of stock market capitalization to GDP.

Stock market return (STOCKRETURN) described a profitability which is gained from stock market transaction. Consecutively, increasing a stock market return will increase stock market capitalization to GDP due to enhancement of capital formation in their financial cycle. Therefore, the model explained that increasing 1% of stock market return will increase 0.14% of stock market capitalization to GDP.

Bank cost to income ratio (COST_INCOME) showed a ratio between bank revenue and bank expenditure. The higher bank cost to income ratio adduce an inefficiency of banking management. Moreover, it also increasing a likelihood a bankrupt due to inef-

fective of investment. Thus, the model elucidate increasing 1% of bank cost to income ratio will decrease stock market capitalization to GDP around 0.39%.

Real interest rate (INTEREST) has a negative relation to stock market capitalization to GDP. According to the model, increasing 1% of real interest rate will decrease 5.17% of stock market capitalization to GDP. It showed that real interest rate give the biggest impact for stock market capitalization to GDP rather than another variable. The increasing of real interest rate will push an investor to deposit their money in banking sector that decrease investment either in real sector or monetary sector. Thus, the low and stable interest rate will keep stock market capitalization to GDP enthusiastic.

Inflation (INFLATION) has a negative relation to stock market capitalization to GDP. The model explained that increasing 1% of inflation will decrease 4.67% of stock market capitalization to GDP. It indicated that increasing of inflation will reduce the purchasing power of people and make people reluctant to invest their money. Thus, it will bring an impact to stock market capitalization to GDP negatively due to people tend to use their money.

Individual Effects

Table 3 Individual Effects

No	Country	Effect
(1)	(2)	(3)
1	Indonesia	-6.915
2	Malaysia	37.800
3	Singapore	74.277
4	Thailand	-22.953
5	Philippine	-16.495
6	India	0.014
7	South Korea	-16.531
8	China	-49.196

Individual effect can be interpreted as a value of dependent variables in model when all independent variables are constant. According table 3, when all independent variables are constant, stock market capitalization to GDP Singapore is the highest than another country, while China is the lowest one.

Singapore's statistical modeling has an intercept around 212.617. It indicates that economic activity of Singapore has a high dependency in stock traded. Singapore also well known as a country which rely service sector especially banking and financial trad-

ed. Therefore, when bank net interest margin, foreign direct investment net inflow, stock market return, bank cost to income ratio, real interest rate, and inflation are constant, stock market capitalization to GDP of Singapore is the highest one and become the most competitive country of financial cycle in EMEs.

In statistical modeling of China, the intercept is 89.144. This intercept is the lowest than another country. It indicates when bank net interest margin, foreign direct investment net inflow, stock market return, bank cost to income ratio, real interest rate, and inflation are constant, stock market capitalization to GDP of Singapore is the highest one and become the less competitive country of financial cycle in EMEs. It shows that economic of China is still depend on real sector, while in finance sector China still have a several problem that must be constructed. Another country such as Indonesia, Malaysia, Thailand, Philippine, India, and South Korea also have an intercept near Singapore and still have a potency to develop their financial sector.

5. Conclusion

According to the result, foreign direct investment net inflow, stock market return has a significant effect positively. Meanwhile, bank net interest margin, bank cost to income ratio, real interest rate, and inflation has a significant effect negatively. The result indicated that emerging economies countries should apply tight monetary policy to keep real interest stable and control the movement of inflation. Moreover, in banking sector, management should arrange an efficiency from revenue and expenditure. In fiscal policy, stabilization of political and security is the most priority to invite foreign investor to invest their money. In addition, to keep high of stock market capitalization to GDP, government should facilitate stock transaction effectively to encourage stock market return.

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UNPRESENTED PAPER

The Influence of Regulation, Competition and Buyer Power on Supplier Performance in Modern Retail Supply Chain in Indonesia

Dedie S. Martadisastra
Economic and Business Faculty, Trisakti University, Jakarta
Corresponding Author: dediemart@gmail.com

Abstract

The purpose of this study is to understand the development of supplier performance in domestic packaged processed food supply chain which is influenced by regulations, competition and buyer power of retailers. The paper presents the results of a survey of suppliers of the package processed food of micro up to large scale enterprises. The findings of the research result indicate the heterogeneity of the performance of the package processed food suppliers in modern retail supply chains. How suppliers are faced with regulation, competition and buyer power in modern retail supply chains, but on the other hand suppliers tend to be influenced by the way suppliers deal with modern retailers. it may be indicated that some suppliers benefit from the presence of modern retailers, but they face some of the challenges posed that cause some terms of relationships to be unfair, unilateral price fixing, and poor supervision so that the development and growth of supplier performance are subject to limitations. The further research is needed to refine the results of this initial study.

***Keywords**: Supplier performance, Modern Retail Supply Chains, Regulation, Competition, Buyer power.*

Introduction

The trade sector including the retail industry is an important and noteworthy industrial sector, especially in its contribution to the Indonesian economy. Various types of modern retail formats do business activities in Indonesia, but generally found three types, namely minimarket, supermarket and hypermarket. Retail sector has a large enough position and opportunity to develop from year to year. Modern retail growth an-

nually records a range of 10% to 30%. This is indicated by the expansion of modern retail to the rural areas as well as entering the residential areas of the people (Pandin 2009).

Berasategi (2013) concluded that in anticipating unfair trade practice, the paradigm of thinking of competition authorities in advanced and developing nations is growing from the conventional, to evolution and to modern paradigm of thinking. Conventional paradigm of thinking puts forward observations about sellers' power that includes inter-brand competition and intra-brand competition (Moraga, 2013). Under such conventional paradigm, modern retailer having the strong buyer power could not only get lower buying price but also determine a lower selling price (Chen, 2008). At the evolution paradigm, modern retailers expand market share and market concentration, resulting in an increase in buyer power that would bring about unbalanced in bargaining power in supply chain (Stichele and Young, 2009). Modern paradigm stated that the platform of modern retailer is place having constraint and potential to bring about unfair competition (*competitive bottlenecks*) and have two-sided markets (Rochet and Tirole, 2003, 2005).

An increase in the buyer power of modern retailers results in transfer of risks and reducing the competition among suppliers and would influence consumers through reduction of innovation, long term losses, choices, and higher prices. The effects are often neglected, that affects sustainability of consumption and production (Nicholson and Young, 2012). The majority of modern retailers, in a bid to slow rising bargaining power of their suppliers, first increase their market share and market power of downstream. Control of market and dominant position could be used as an effective instrument in negotiating terms with suppliers in upstream market by setting more favorable conditions such as price discount by modern retailers (Roller, 2004).

Competition among modern retailers and their suppliers in Indonesia is very tight with the fast growing number of outlets of modern retailers and their suppliers, following the liberalization in the regulation on retail industry. Tight competition has led to concentration and strengthening of bargaining position, growing buyer power of modern retailers that result in the emergence of anti-competition move and caused an unbalanced condition in the supplier-modern retailer relationship that hurts the suppliers (Muslimin and Nuryati, 2007; Pandin, 2009).

Although the government has sought to prevent such malpractice by issuing a series of regulations and policies including Presidential Regulation (Perpres) 112/2007, Trade minister regulation (Permendag) no.53/2008, Law no.5/1999, Law no.8/1999, unfair competition continues. In 2005, modern retailer Carrefour introduced business relations which was not fair to its suppliers and in 2009, Carrefour increased market concentration and exploited the surplus in its suppliers, resulting in condition of being unbalanced and negative impact on competition. Competition authorities in Indonesia (KPPU), based on the competition policy of the Law /5/1999 have punished and fined modern retailer Carrefour on the two competition offences (KPPU 2009).

The condition of being unbalanced in the supplier-modern retailer relationships concerned complex factors, but what is worth research is how far the regulation, competition, bargaining power and buyer power could determine partnership or *relationships between suppliers and modern retailers in supply chain of modern retailers* and how much the impact on the performance of the suppliers. Therefore, this research is aimed: (1) Examining empirically the impact of regulations on competition and suppliers-modern retailers relationship, competition on suppliers-modern retailers relationship, buyer power on suppliers-modern retailers relationship, suppliers-modern retailers relationship on the performance of suppliers; (2) Developing buyer-seller relationships models based on the theory of relationship marketing within the scope of the content and implementation of regulation; (3) Improved regulation Perpres 112/2007, Permendag 53/2008 and competition policy UU/5/1999 amendments.

Review of Literature

Regulations: A number of researchers have identified the main characteristics of regulation. Baldwin and Cave (1998) in Amod (2009) stated that regulation is: (1) Imposition of rules by the government with mechanism in control and its upholding, normally applied through public agency; (2) Regulation is a direct intervention in economy and the intervention could be in any forms; (3) Regulation is all mechanisms of social control, consisting of all mechanisms of social control and have impact on all aspects of characteristics of sources intentionally or unintentionally.

In addition, Stigler (2003) stated that regulation is an act of the pressure group and produces law and policy supporting the business sector and protecting consumers,

workers and the environment. Udayasankar *et al.* (2009) stated that regulation is a mandate, designed to protect shareholders or investors. Regulation could also be interpreted as a restriction on efficiency in business. Mayasari *et al.* (2011) stated that the main objective of deregulation is to increase and improve industrial competitiveness and efficiency, and reduce the price without sacrificing quality. Nugroho (2012) stated that regulation is issued by the government to serve the public, to control market competition, prevent monopoly which could endanger the country's economy.

Soekanto (1985) stated that effectiveness of regulation or law is reflected by the condition having been created and how far the target has been reached. From the point of views of culture, or law, a regulation is effective if implementation of the regulation is backed up by commitment, no conflict of interest, understanding of all concern, consistency, professional integrity or honesty, without discrimination (Sosiawan, 2011). Maloni and Benton (1999) stated that regulation would have impact on relationships between suppliers and buyers that could seen in the transactions they made.

Competition: Porter (1980, 1985) in Hunt (2001) stated that competition is a continued attempt by corporations to grab comparative advantage in resources that will give leading position in market competition and most important to have a super financial performance. Udayasankar *et al.* (2009) stated that competition is a mechanism of market operation that allows a company to operate naturally and has a tendency, if competition is tighter creating greater market efficiency. Competition is a match between companies in selling goods and service they produce (KPPU, 2009).

Competitive market structure can be divided into four categories that include perfect competition, monopoly, monopolistic competition and oligopoly. In markets characterized by perfect competition, there are many firms, each of which small relative to the entire market. A monopoly is a firm that is the sole producer of a certain type of goods or services in the relevant market. In a market characterized by monopolistic competition, there are many firms and consumers, just as in perfect competition. In an oligopolistic market, a few large firms tend to dominate the market. Concentration ratio measure how much of the total output in an industry is produced by the largest firms in that industry. The most common concentration ratio is the four-firm concentration ratio. Herfindahl-Hirschman index (HHI) is the sum of the squared market shares of firms in a

given industry, multiplied by 10,000 (Baye, 2009).

The model of Porter's five forces explained that structure of an industry determines the characteristics of competition between companies, bargaining power of suppliers, bargaining power of buyers, threat of new entrants, threat of substitute products or services and competition among existing firms, and would make industry more attractive and potential to gain profit. Therefore, competition in an industry will depend on the five basic forces of competition (Porter, 2004). In competition, suppliers could have weak or strong bargaining power, which will have its impact on the terms and conditions of transactions made. Transactions between suppliers and buyers will create value for both sides. However, if the buyers have better bargaining power, the possibility of suppliers to earn a higher proportion of value would be smaller and the profit would be lower. The bargaining power of buyers would determine the amount of profit earned by suppliers. The bargaining power of buyers is one of five forces that determine the intensity of competition in industry (Porter, 2004 ; Ehmke *et al.*, 2009).

Buyer Power: Specifically a number of researchers describe the buyer power as a bargaining power or a countervailing power. But a number of other researchers define buyer power as a strength of demand for lower price that: (1) The buyer power is wider than the strength of monopsony; (2) The buyer power is more than just the ability to cut prices (Chen, 2008). Dodd and Asfaha (2008) cited a number of definitions of buyer power from three researchers: (1) There will be buyer power when a company has dominant position as a buyer of goods or services or because the company has a strategic advantage and leverage because of its economic scale or other factors, that it would have more favorable conditions of trade transaction with suppliers than other buyers from suppliers (OECD, 2008); (2) There is buyer power when a company or group of companies have more favorable conditions of trade transactions with suppliers than other buyers or are given lower prices or more favorable non price conditions than under normal competition (Dobson *et al.*, 2001); (3) Buyer power is a bargaining power of buyers, facing suppliers in business negotiation. With economic scale and the significance of purchases, the buyers have the ability to change alternative suppliers (Dodd and Asfaha 2008)

Buyer power is the ability of buyers to cut selling prices of suppliers to below the

normal price level that the buyers would earn larger profit or the ability of buyers to demand more favorable trade terms. Normal selling prices are prices that give maximum profit for suppliers under a situation when buyers have no power. Under perfect competition market structure among suppliers, the normal selling price of suppliers is a competitive price and buyer power is a monopsony power. Under an imperfect competition market structure among suppliers, the normal selling price is above the competitive price and buyer power is a countervailing power (Chen, 2008).

Buyers will have the biggest power when making big purchases. If suppliers sell to large scale buyers, the buyer will have a greater leverage to force suppliers to lower the price and give more favorable conditions for the buyers as the suppliers do not want to lose potential buyers. Buyers also have certain level of power facing suppliers, but the bargaining power is not always the same. They are not the same in sensitivity to prices, quality and services. The presence of powerful buyers would reduce the potential profit for suppliers. By demanding price cut, negotiating improvement of quality, increasing the services and arranging suppliers, the buyers would be able to increase their market competition and reduce the profit of industry (Porter, 2004).

Buyer-Supllier Relationships: Relationship marketing is a concept that includes interaction between buyers and sellers at a point where relationships or partnership is developed to provide room for future business deals. The goal of marketing relationship marketing is to expand and serve the consumers through partnership or relationships between suppliers and buyers. Buyer-seller relationships is mutually beneficial relationships or partnership. It would expand through exchange of mutual benefit. In order that the relationships could last, harmony, interaction, lasting period of exchange would be needed. Relationships is developed with interactions in a certain period. Relationships between two units (units could be organizations, persons, communities even states), each unit has a role to play and expected norms of characteristics (Walz, 2009).

The main definition of buyer-seller relationships is that there is at least an economic interaction. Further interactions are expected to take place. The parties involved must know the identities of each other, they must be convinced that there are relationships, interdependence. Definitions of relationships is that parties must share information, must trust each other, must be convinced that there is relationships, at least there is one

economic interaction, parties must know the identities of each other (Walz, 2009).

There are a number of main factors determining relationships between suppliers and modern retailers to be integrated. They are commitment, conflict, conflict resolution, cooperation, trust (Maloni and Benton, 1999). Business needs other companies as partners, to share cost, risks, increase core competence and speed to reach the market (Reagan, 2002). The minimum degree of cooperation needed in relationships and closer cooperation reflects the degree of trust and mutual help. Relationships between suppliers and buyers is relationships between two or more companies, cooperating and involved in information sharing, harmonization of decisions and incentives aimed at achieving super performance (Simatupang and Sridharan, 2005).

Performance: From the point of view of suppliers, performance depends on elements of inter-relationships that is to expand closer trade cooperation to direct suppliers to boost business by focusing on management category decision related to consumer value, better understanding of the role of trade promotion, controlling management technology aspect effectively, seeking to understand concrete cost of supply chain and efficiently managing it, in line with respective targets of modern retailers (Hamister, 2007).

The performance of suppliers is determined by a number of complex factors. In connection with the aspect of performance of suppliers, performance of suppliers constitutes results of the impact of factors, that is relationships between suppliers and buyers, asymmetric powers of two parties and intensity of competition (Chuah *et al*., 2010). Business relationships between suppliers and modern retailers concerns transaction costs. Based on the relation contracting theory, an effective contract could strengthen relationships between suppliers and buyers and create stronger competitiveness of buyers. If the competitiveness is applied to management of suppliers, it would increase the value of supply chain that will contribute to the better performance of suppliers (Chuah *et al.*, 2010).

Power is defined as a function, the opposite of relative dependence between buyers and suppliers. Power could and could not be mediated. Power asymmetry would result in variation in performance. Under a condition of power asymmetry, buyers would tend to maintain exploitation or integration (Maloni and Benton, 1999). Relationships between buyers and suppliers do not always without conflict. It is often that conflict would

hurt the suppliers. Imbalance in power between modern retailers and suppliers would force both sides to maintain and rely on their respective powers. The power of mediation relationships tends to be bad for buyers and on the other hand the power that hurt suppliers does not always come to surface. Suppliers would look for ways of bringing balance to the asymmetric power (Maloni and Benton, 1999).

Conceptual Framework: Those theories and concepts and earlier research if combined are expected to support and provide a comprehensive study on models of combination of influence of regulations, competition and buyer power over relationships between suppliers and modern retailers and their influence on the performance of suppliers.

Hypothesis of Research: The hypothesis being presented is as follows: H_1: Regulation has its influence on competition; H_2: Regulation has its influence on relationships between suppliers and modern retailers; H_3: Competition has its influence on relationships between suppliers and modern retailers; H_4: Buyer power has its influence on relationships between suppliers and modern retailers; H_5: Relationships between suppliers and modern retailers has its influence on the performance of suppliers. The Figure 1 below shows the conceptual framework of research.

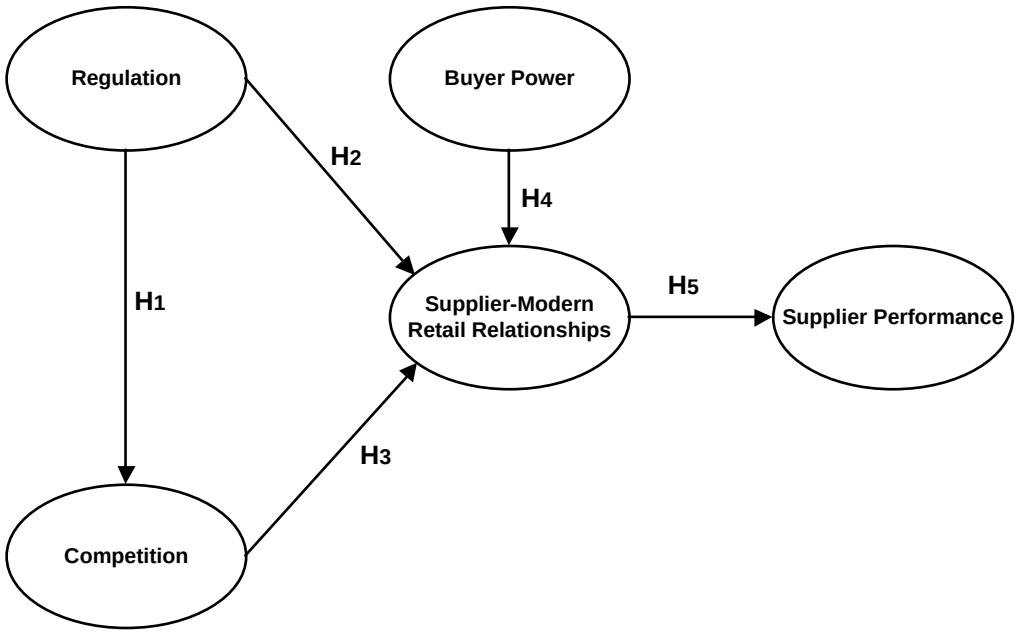

Figure 1. Conceptual Framework of Research

Research Methods

This research is a quantitative research which is descriptive and verifying in nature. Population or units of analysis are 3555 supplier companies of foodstuff, mostly based and operating in the Greater Jakarta area. Supplier companies are large scale, medium, small and micro enterprises (Law on UMKM, 2008). 217 supplier companies are selected through sampling non-proportional strata.

Questionnaires: Questionnaires served as an measurement instrument according to conceptual framework and practical ways. All primary data were collected from the answers to the questionnaires. Questionnaires used five-point Likert scale and hybrid ordinally-interval scale (Hermawan, 2009).

Modeling: This research is verifying in nature, to see the relationships between variables through hypothesis and modeling as well as solution techniques using the method of Structural Equation Modeling (SEM) analysis was utilized using Partial Least Square (PLS). PLS is part of SEM, but it gives an advantage of providing sample of data being not too big, theory could be in the form of government regulation, could analyze reflexively, formatively, etc. (Chin, 2000; Chin, 2001; Yamin and Kurniawan, 2011; Ghozali, 2011; Mateos, 2011).

Results

Results of Evaluation of Measurement Model

The results of processing of all constructs of studies are descriptive and factor loading and Cronbach's's alpha. Test of validity and test of reliability of instrument in the questionnaires was made by using SPSS 18. The test of samples in 30 supplier respondents, which gave value of factor loading of all indicators that formed dimensions, factors or constructs already had bigger value (0.553-0.960) than 0.55 (Hair *et al.*, 2006). It is concluded that all indicators are valid where value at more than 0.55 means that there is internal consistency of statements in the questionnaires that construct of the entire dimensions could be formed. Similarly with coefficient of Cronbach's alpha all dimensions or construction with a number of questions, all bigger (0.797-0.960) than 0.60 which means all constructs are reliable.

Evaluation of Model of Measuring

The discriminant test of the validity of first phase through *cross loading* value produced indicators which have good discriminant validity. Second phase test to evaluate the discriminant validity of construct by seeing the value of Average Variance Extracted (AVE). Based on the root value of AVE all constructs have good discriminant validity. Output latent variable correlation is used to compare the maximum value of construct correlation with the root value of AVE. The result is dominated by construct which has higher root value of AVE than the correlation maximum value. Therefore, all constructs of dimension have good discriminant validity. Table 1 below shows the value of AVE and root of AVE,

Table 1. Value of AVE and root of AVE of Research Construct

Constructs	AVE	Root of AVE	Reliability of Root of AVE > AVE
KM	0.812337	0.9012974	Good
TT	0.589027	0.76748094	Good
PM	0.78579	0.88644797	Good
Regulation	0.278109	0.52736041	Good
RT	0.599505	0.77427708	Good
PS	0.594549	0.77107004	Good
Competition	0.517544	0.71940531	Good
BB	0.805688	0.89760125	Good
HR	0.768502	0.87664246	Good
SS	0.988888	0.98877999	Good
Buyer Power	0.573441	0.75725887	Good
KO	0.611776	0.78216111	Good
KF	0.593164	0.77017141	Good
MK	0.553904	0.74424727	Good
KJ	0.522353	0.72273993	Good
KP	0.501744	0.7083389	Good
Relationships between PS-RT	0.221517	0.47065593	Good
KE	0.903057	0.95029311	Good
KN	0.805223	0.89734219	Good
Performance	0.220652	0.4697361	Good

Source: Output SmartPLS version 2.0

Evaluation concerning reliability of internal consistence could be examined in the value of composite reliability and Cronbach's alpha. The output of composite reliability and Cronbach's alpha shows that the value of composite reliability for all constructs is more than 0.7, indicating that all constructs in the model is estimated to meet the criteria of discriminant validity. The lowest value of composite reliability is 0.859191 on MK dimension construct. In the Cronbach's alpha, the value recommended is more than 0.6

(Chin, 2000; Yamin and Kurniawan, 2011; Ghozali, 2011). The result showed that the value of Cronbach's alpha for all constructs is more than 0.6. The lowest value is 0.698987 (HR). Therefore, it could be concluded that all constructs being tested have good reliability. Table 2 below shows the value of composite reliability and Cronbach's alpha,

Table 2. Value of Composite Reliability and Cronbach's Alpha

Constructs	Composite Reliability (> 0.7)	Cronbach's Alpha (> 0.7)	Construct Reliability
KM	0.896308	0.775556	Good
TT	0.918776	0.898037	Good
PM	0.948103	0.930712	Good
Regulation	0.842474	0.817297	Good
RT	0.936765	0.924643	Good
PS	0.935881	0.923525	Good
Competition	0.95474	0.949332	Good
BB	0.892251	0.764579	Good
HR	0.869091	0.698987	Good
SS	0.999899	0.999997	Good
Buyer Power	0.868975	0.809915	Good
KO	0.924955	0.904894	Good
KF	0.877666	0.839065	Good
MK	0.859191	0.791765	Good
KJ	0.929056	0.916585	Good
KP	0.937469	0.928258	Good
Relationships between PS-RT	0.959759	0.957184	Good
KE	0.965428	0.946018	Good
KN	0.925301	0.879787	Good
Performance	0.959751	0.957184	Good

Source: Output SmartPLS Version 2.0

Effect of Factors, Path Coefficients, t-Statistics and Significances:

Based on evaluation of structural model coefficient values of path coefficient values and t-statistics of all constructs could be determined that relationships between variables and impact of variables on other variables (significance), strength of relationships between variables, effect of independent variables on dependent variables to test the hypothesis of the research, could be seen (Yamin and Kurniawan, 2011; Ghozali, 2011). Table 3 below shows effect of factors, path coefficients, t-statistics, and significances.

Table 3. Effect of Factors, Path Coefficients, t-Statistics and Significances

The Effect of Factors/Constructs	Path Coefficients	t-stat	Sig.
Effect of regulation on competition	0.421	2.191	p<0.05
Effect of regulation on relationships between PS-RT	0.102	2.901	p<0.05
Effect of competition on the relationships between PS-RT	0.366	5.246	p<0.05
Effect of buyer power on the relationships between PS-RT	0.066	2.005	p<0.05
Effect of dimensions of KO, KF, MK, KJ, KP on The relationships between PS-RT :			
Commitment-KO	0.164	2.005	p<0.05
Conflict-KF	0.064	2.184	p<0.05
Conflict resolution-MK	0.085	2.804	p<0.05
Cooperation-KJ	0.244	5.152	p<0.05
Trust-KP	0.346	6.442	p<0.05
Effect of relationships between PS-RT on suppliers performance	0.998	449.631	p<0.05

Source: Output SmartPLS Version 2.0

Discussion

Regulations including Presidential Regulation (Perpres) 112/2007 and Regulation of The Trade Minister 53/2008, have greater details on partnership, trading terms and nurturing, while supervision of consumer welfare and protection with the Law/5/1999, on prohibition of monopoly and unfair business competition and the Law /8/1999, on protection of consumers. The regulations rule that cooperation between suppliers-modern retailers must be implemented under the principle of mutual benefit, clear, reasonable, fair and transparent and trading terms must be clear, reasonable, fair, mutually beneficial and agreed upon by both sides without pressure. Regulations have effect on the relationships between suppliers and buyers in interaction of exchange between the two sides. Profit between the two sides could often be explained through bargaining power where there is transactions (Maloni and Benton, 1999; Hertog, 1999; Stigler, 2003; Nugroho, 2012).

In order that the regulation is effective, it is necessary to promote the Presidential Regulation and The Regulation of The Trade Minister into laws, as law regulations are more binding for business players or policy makers in retail industry. Sanctions, process of law enforcement and the law enforcers must be determine in greater details in the law regulation. As for the law enforcers, there must be an institution which functions specially to uphold the law. Through the model, the position of controlling retail industry would be very strong and would be very strong to bind all stakeholders in retail industry (KPPU, 2009).

Competition has its effect on the relationships between suppliers and modern retailers and the impact is strong, but not sufficiently effective. The finding in the research on competition confirms the opinion that competition tends to create the potential of collaboration of closer relationships between suppliers-modern retailers in supply chain and encourage development of products and improvement of quality, price reduction, flexibility, service and innovation (Maloni and Benton, 1999; Reardon and Berdegue 2006; Zhang *et al*., 2005).

Buyer power has its effect on the relationships between suppliers and modern retailers. However, the effect is not significant. The finding from the research confirms opinion that buyer power in relationships between suppliers and modern retailers could absorb suppliers' surplus with discount and cost to be paid by suppliers. Such condition could weaken the competitiveness of the suppliers and cause distortion of competition in the market of suppliers. Suppliers will reduce investment and spending on development of new products or innovation, resulting in a decline in the quality of products and there would be less choices for consumers (Dodd and Asfaha, 2008; Chen, 2008; OECD, 2008; Ehmke *et al*., 2009, Nicholson and Young, 2012). Buyers have power especially big buyers as large purchases, concentration and bargaining power are significant to force price cut and relaxation of terms in their favor as the suppliers do not want to lose their potential customers. The suppliers are in a weak position that the relationships becomes asymmetry (Dodd and Asfaha, 2008; Chen, 2008; Ehmke *et al*., 2009).

The five dimensions of formative forms – commitment, conflicts, management of conflict, cooperation, trust have effect on the relationships between suppliers and modern retailers. The effect could be weak or quite strong. Results of research show that the most important dimension with greater effect among the five formative factors is trust. The finding from the research about the dimensions of KO, KF, MK, KJ, KP, corroborate opinion that a number of main parameters that make relationships between buyers and suppliers become integrated are commitment, conflict, conflict resolution, cooperation, trust and information technology (Maloni and Benton, 1999; Duffy and Fearne, 2006; Sheu *et al*., 2006; Chou *et al.*, 2011).

The relationships between suppliers and modern retailers has effect on the performance of suppliers and the effect is very strong. The finding from the research is related

to the construct of financial performance and non-financial performance. Implementation of financial performance and non-financial performance could improve the performance of suppliers and modern retailers. The most important factor with greater effect among the two factors of performance is non-financial performance. The higher the level of integration of relationships of business players would result in better performance (Maloni and Benton, 1999; Duffy and Fearne, 2006; Ou *et al*., 2010).

Conclusion

Regulations have strong effect on competition showing the importance of regulations in determining whether competition is good or bad. However, the impact of regulations is not effective partly because the regional administrations have not succeeded in fully or effectively arranging zonation and distance between retail modern outlets and weak regulation on licensing procedure that competition is not conducive.

Regulations have weak effect on the relationships between suppliers and modern retailers as indicated by the domination of the bargaining power of modern retailers resulting in imbalance in the relationships between suppliers and modern retailers despite the regulation on competition. The weak impact is caused by regulation being not effective, not firm in slapping sanctions and implementation being not clear.

Competition has fairly strong impact on the relationships between suppliers and modern retailers. The tighter the competition the closer would be the relationships between suppliers and modern retailers. However, the effect of competition in its implementation is determined more by the characteristics of modern retailers in competition which are expansive in building up its bargaining power that the bargaining power of supplier is weak facing modern retailers.

Buyer power has weak effect on the relationships between suppliers and modern retailers. As shown by the study, not all aspects of the relationships between suppliers and modern retailers are influenced by the buyer power. The effect of buyer power is marked only by the big cost burden imposed on suppliers.

Relationships between suppliers and modern retailers in modern retail supply chain have strong impact on the performance of suppliers. Asymmetry in power which is controlled by modern retailers causes strong effect of relationships between suppliers and modern retailers on the performance of suppliers in improving the performance of sup-

pliers.

Big suppliers and those selected by modern retailers have showed an improvement in performance but other suppliers such as micro and small suppliers have remained in the doldrums. Therefore, improvement is necessary in The Presidential Regulation Number 112/2007, Regulation of The Trade Minister Number 53/2008 and in the implementation of the competition policy UU/5/1999. The regulations have to be properly implemented and there should be coordination between the central government and the regional administrations. Detailed and clear guidelines should be provided in maintaining good relationships between suppliers and modern retailers. Micro and small suppliers should be effectively involved. Socialization needs to be intensified and violations should be strictly dealt with sanction.

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The Learning Design of Competition Law in Universities in Indonesia

Dr. Siti Anisah, S.H., M.Hum & Ratna Hartanto, S.H., LL.M

Abstract

The need for learning competition law at university level today is very signi-ficant. However, how is the ideal learning design of competition law in the higher education system in Indonesia? The ideal competition law learning design should pay attention to two important matters. First, the qualification of competence in each level of education. The learning of competition law at level 5 (Diploma 3) should be different from that at the next level of education (S1, profession, S2, and S3). Second, the integrity of learning system of every education level as a form of the implementation long life learning. By applying different qualifications of competence in each level of education, each student is expected to get a deeper or broader competence in the advanced education level so as to realize the spirit of long life learning, considering that in the next education level students can further deepen the knowledge gained.

Keywords: *learning design, competition law, university*

A. Introduction

Universities are required to implement Law No. 12 of 2012 concerning Higher Education[1] and its implementing authorities. The regulation concerning the management of higher education that is rigorously made, at first glance appears to be asymmetric with the rapid development of science and law practice. As a result, a quick and flexible response is required in the organization of higher education so as not to be obsolete. One of the fastest growing areas of law is business competition. The business competition case today is developing rapidly, where many business actors who have very good knowledge just take advantage of the weaknesses of competition regulation in Indonesia.

[1] Hereinafter Law No 12 of 2012.

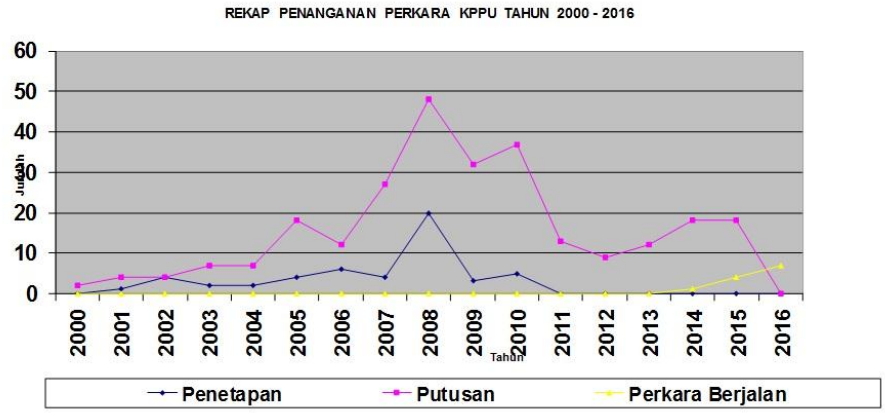


Table 1. Summary of Case Handling
by Indonesian Business Competition Supervisory Commission in 2000 – 2016.
Source www.kppu.go.id

The development of competition cases now requires the proficiency in competition law for various legal professions both for law enforcement officers (judges) and lawyers as well as competition law experts. Thus, the need for learning Competition Law at the university level today is very significant. However, how is the ideal learning design of competition law in the higher education system in Indonesia?

B. The regulation of Higher Education in Indonesia

The 1945 Constitution of the Republic of Indonesia mandates to the Government of the Republic of Indonesia to undertake and organize a national educational system that elevates faith, devotion to God Almighty and noble morality in order to educate the nation and to advance the knowledge and technology by upholding the values of religion and national unity for the advancement of civilization and the welfare of mankind. University as an educational unit that holds higher education has a duty to organize higher education with the principles of democracy, fairness, and non-discrimination by upholding human rights, religious values, cultural values, pluralism, unity, and unitary of the nation.

This mandate results in a rigid and diverse regulation on the implementation of higher education in Indonesia. Law No. 12 of 2012 regulates 3 (three) types of higher education, i.e. Academic Education,[2] Vocational Education,[3] and Professional Educa-

[2] Art 15 para (1) of Law No. 12 of 2012 states that academic education is a Higher Education of undergraduate and/or postgraduate program directed at the mastery and development of the branch of Science and Technology.

[3] Based on Art 16 para (1) and (2) of Law No. 12 Year 2012, vocational education is a Higher Education with a diploma program that prepares students for jobs with particular applied skills to applied under-

tion.[4] Each type of higher education has a qualification based on competence as regulated in Presidential Regulation No. 8 of 2012 concerning Indonesian National Qualification Framework (KKNI).[5] Higher education occupies education level 3 to level 9, in order as follows:[6]

1. Graduate of Diploma 1 equivalent to level 3;
2. Graduate of Diploma 2 equivalent to level 4;
3. Graduate of Diploma 3 equivalent to level 5;
4. Graduate of Diploma 4 or Applied Bachelor or Bachelor degree equivalent to level 6;
5. Graduate of Applied Master or Masters equivalent to level 8;
6. Graduate of applied Doctoral Education and Doctor equivalent to level 9;
7. Graduate of professional education equivalent to level 7 or 8;
8. Graduate of specialist education equivalent to level 8 or 9.

The implementation of higher education should also pay attention to the provisions of Regulation of Minister of Research, Technology, and Higher Education No. 44 of 2015 on National Standards of Higher Education (SNPT).[7] The SNPT is described below.

graduate courses and can be developed by the Government to an applied magister program or an applied doctoral program.

[4] Based on Art 17 para (1) of Law No. 12 of 2012, professional education is Higher Education after the undergraduate program that prepares students in jobs requiring special skill requirements.

[5] KKNI (*Kerangka Kualifikasi Nasional Indonesia*) a framework of competency qualification grading that can pair, equalize and integrate between the field of education and the field of job training and work experience in giving recognition of work competence in accordance with the work structure in various sectors.

[6] Art 5 of Presidential Regulation No. 8 of 2012 concerning Indonesian National Qualification Framework.

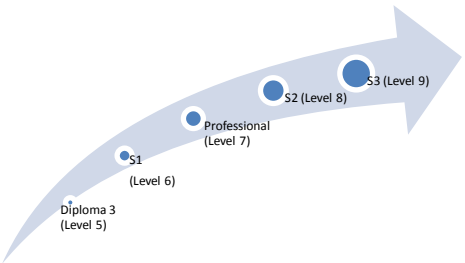
[7] SNPT (*Standar National pendidikan Tinggi*) is a standard unit that includes Standard of National Education, in addition to National Research Standards, and National Standards of Community Service (National Standards of *Tri Dharma* in Perguruan Tinggi).

National Standard of Education	National Standard of Research	National Standard of Community Service
1 Standard of Graduate Competence	1 Standard of Research Outcome	1. Standard of Community Service Outcome
2 Standard of Learning Substance	2 Standard of Research Substance	2. Standard of the content of Community Service
3 Standard of Learning Process	3 Standard of Research Process	3. Standard of Community Service Process
4 Standard of Learning Evaluation	4 Standard of Research Evaluation	4. Standard of Community Service Evaluation
5 Standard of Lecturersand Teaching Staffs	5 Standard of Researchers	5. Standard of Community Service Participants
6 Standard of Learning Infrastructure and Facility	6 Standard of Research Infrastructure and Facility	6. Standard of Community Service Infrastructure and Facility
7 Standard of Learning Management	7 Standard of Research Management	7. Standard of Community Service Management
8 Standard of Learning Financing	8 Standard of Research Funding and Financing	8. Standard of Community Service Funding and Financing

Based on Article 5 of SNPT, Standard of Graduate Competency is the minimum criteria of graduate qualification that includes attitudes, knowledge, and skills expressed in the formulation of graduate learning achievement. Qualification of Attitudinal Ability has been mandated by SNPT and is valid starting from education level 1 to 9. Meanwhile, Qualification of Knowledge Capability is different for each level, for example the knowledge for level 6 is different from knowledge for level 8. Similarly, Skill Qualification, both General and Special Skill, has some distinctions for each level.

C. Higher Education in Law in Indonesia

Higher education in law in Indonesia comprises of some levels, as follows:



If we see from the type of education, the higher education in law as described in the preceeding chart can be classified as follows:

Academic Education	Vocational Education	Professional Education
S1	Diploma 3	Professional
S2	-	-
S3	-	-

According to the qualification of competence, the minimum Graduate Learning Achievement that must be mastered on every level of higher education in law is described in the following tables.

DIPLOMA 3 DEGREE			
ATTITUDE	**KNOWLEDGE**	**GENERAL COMPETENCE/SKILLS**	**SPECIFIC COMPETENCE/SKILLS**
a. pious to God Almighty and able to show religious attitude; b. uphold the value of humanity in carrying out duties based on religion, morals, and ethics; c. contribute to improving the quality of societal life, nationhood, statehood, and progress of civilization based on Pancasila; d. acting as a proud and patriotic citizen, having nationalism and a sense of responsibility to the state and nation; e. Diverse in culture, views, religion and beliefs, as well as the original opinions or innovation of others; f. cooperate and have social sensitivity as well as concern for society and environment; g. Obey the law and discipline in societal life and statehood; h. Internalize academic values, norms, and ethics; i. demonstrate a responsible attitude towards the work in the field of expertise independently; j. internalize the spirit of independence, perseverance, and entrepreneurship; and k. able to be ethical, fair, law-abiding, sensitive, and caring about the social environment in designing and implementing the law.	Have no qualification yet	a. able to complete wide-ranging work and analyzing data with a variety of suitable methods, both uncommon and standard ones; b. able to demonstrate qualified and measurable performance; c. able to solve the problem of work with the nature and context appropriate to the field of applied expertise, based on logical thinking, innovative, and responsible for the results independently; d. able to prepare the reports of work results and processes accurately and legitimately, and to communicate them effectively to other parties in need; e. able to cooperate, communicate, and be innovative in his/her work; f. able to take responsibility for the achievement of group work and to supervise and evaluate the completion of work assigned to the worker under his / her responsibility; g. able to conduct a self-evaluation process against work groups under his/her responsibility, and manage the development of work competence independently; and h. able to document, store, secure, and rediscover data to ensure validity and prevent plagiarism.	Have no qualification yet

S1 (BACHELOR DEGREE)			
ATTITUDE	**KNOWLEDGE**	**GENERAL COMPETENCE/SKILLS**	**SPECIFIC COMPETENCE/SKILLS**
a. pious to God Almighty and able to show religious attitude; b. uphold the value of humanity in carrying out duties based on religion, morals, and ethics; c. contribute to improving the quality of societal life, nationhood, statehood, and progress of civilization based on Pancasila; d. acting as a proud and patriotic citizen, having nationalism and a sense of responsibility to the state and nation; e. Diverse in culture, views, religion and beliefs, as well as the original opinions or innovation of others; f. cooperate and have social sensitivity as well as concern for society and environment; g. Obey the law and discipline in societal life and statehood; h. Internalize academic values, norms, and ethics; i. demonstrate a responsible attitude towards the work in the field of expertise independently; j. internalize the spirit of independence, perseverance, and entrepreneurship; and k. able to be ethical, fair, law-abiding, sensitive, and caring about the social environment in designing and implementing the law.	theoretical concepts in depth about: 1) norms, fairness and verity; 2) structure of three legal theories, including at the least: Roman legal theory, Anglo-Saxon, and Adat law; 3) sources, doctrins, principles and norms of three legal system, including at the least: Roman legal theory, Anglo-Saxon, and Adat law; 4) the system and national legislation of Indonesia that include history, material, substantial, formal and procedural aspects, include at the least: Private Law, Criminal Law, Administration Law, International Law, Adat Law, and Islamic Law; 5) legislation system and customary applied in Indonesia that regulate at least: a) the relationship between state and person; b) the relationship between one state and other states; c) relationship between persons; d) state instutions and complementary tools as well as the internal interraction process; b. theoretical concept, principles, and methods of dispute settlement procedures before the court and after; c. general concepts of philosophy of law, comparative law, sociology, economy, politic, and the forms of a state and its complementary tools; d. legal document search methods in both print and digital form, legal interpretation, legal argumentation, and validity analysis of legal arguments; and e. factual knowledge about the use of information and communication technology in the field of law.	a. able to apply logical, critical, systematic, and innovative thinking in the context of development or implementation of science and technology that pays attention to and implements the humanities value appropriate to his/her area of expertise; b. able to demontrate independent, qualified and measured performance; c. able to examine the implications of the development or implementation of science and technology that concerns and implements the humanities value in accordance with their expertise, scientific method and ethics in order to produce solutions, ideas, designs or art criticisms; d. able to prepare a scientific description of the results of the above study in the form of a mini-thesis or final project report, and upload it in the university website; e. able to take decisions appropriately in the context of problem solving in the area of expertise, based on the results of analysis of information and data; f. able to maintain and develop networks with counselors, colleagues, colleagues both inside and outside his/her institution; g. able to take responsibility for the achievement of group work and to supervise and evaluate the completion of work assigned to the worker under his / her responsibility; h. able to conduct a self-evaluation process against work groups under his/her responsibility, and manage the independent learning; and i. able to document, store, secure, and rediscover data to ensure validity and prevent plagiarism.	a. able to apply the law obediently, ethically, justly, sensitively, and caring about the social environment; b. able to inventory, collect, manage, document information and data of legal issues in Indonesia that are important and valid, by utilizing relevant information and communication technology; c. capable of analyzing valid and important information and data in the process of drafting legal documents and concept of legal problems-solving on a limited scope; d. able to formulate the concept of problem solving and legal case applicable in Indonesia in a limited scope in a way of contextually, systemically, holistically , and accountable to relevant stakeholders, utilizing juridical thinking methods, legal theoretical concepts, data management, and diagnostic problem-solving skills; e. able to formulate legal elementary documents in litigation and non-ligand process in contextual, systemic, holistic, and accountable to relevant stakeholders by utilizing juridical thinking method and legal theoretical concept; f. able to propose alternative solutions to legal issues and legal cases in Indonesia contextually, systemically and holistically, and communicate them verbally and/or written in good and correct Indonesian language, especially within the scope of the academic community, in accordance with academic ethics; g. able to design a legal concept within a limited scope that reflects ethics, fairness, sensitivity, and concern for the social environment; and h. able to utilize the latest development of information and communication technology in order to empower the community to obey the law.

PROFESION DEGREE			
ATTITUDE	**KNOWLEDGE**	**GENERAL COMPETENCE/SKILLS**	**SPECIFIC COMPETENCE/SKILLS**
a. pious to God Almighty and able to show religious attitude; b. uphold the value of humanity in carrying out duties based on religion, morals, and ethics; c. contribute to improving the quality of societal life, nationhood, statehood, and progress of civilization based on Pancasila; d. acting as a proud and patriotic citizen, having nationalism and a sense of responsibility to the state and nation; e. Diverse in culture, views, religion and beliefs, as well as the original opinions or innovation of others; f. cooperate and have social sensitivity as well as concern for society and environment; g. Obey the law and discipline in societal life and statehood; h. Internalize academic values, norms, and ethics; i. demonstrate a responsible attitude towards the work in the field of expertise independently; j. internalize the spirit of independence, perseverance, and entrepreneurship; and k. able to be ethical, fair, law-abiding, sensitive, and caring about the social environment in designing and implementing the law.	Have no qualification yet	a. able to work in the field of his/her main expertise for a specific type of work and have a minimum working competency equivalent to the standard of competence of his/her profession; b. able to make independent decisions in carrying out his professional work based on logical, critical, systematic, and creative thinking; c. able to communicate thoughts / arguments or innovative works that are beneficial to professional development and entrepreneurship, which can be accounted scientifically and professional ethics, to the society especially his/her professional circle; d. able to critically evaluate the work and decisions made in carrying out its work by him/herself and his/her colleagues; e. able to improve their professional expertise in specific fields through training and work experience; f. able to improve the quality of resources for the development of an organization's strategic program; g. able to lead a work team to solve problems in the field of his/her profession; h. able to work with other professions in the same field to solve the problem of his/her field; i. able to develop and maintain networking with the professional community and clients; j. able to take responsibility for work in the field of his/her profession in accordance with the code of ethics of his/her profession; k. able to improve the capacity of learning independently; l. able to contribute in the evaluation or development of national policy in order to improve the quality of professional education or the development of national policy in the field of his/her profession; and b. capable of documenting, storing, auditing, securing, and rediscovering data and information for the purpose of developing the work of his/her profession.	Have no qualification yet

S2 (MASTER DEGREE)			
ATTITUDE	**KNOWLEDGE**	**GENERAL COMPETENCE/SKILSS**	**SPECIFIC COMPETENCE/SKILLS**
a. pious to God Almighty and able to show religious attitude; b. uphold the value of humanity in carrying out duties based on religion, morals, and ethics; c. contribute to improving the quality of societal life, nationhood, statehood, and progress of civilization based on Pancasila; d. acting as a proud and patriotic citizen, having nationalism and a sense of responsibility to the state and nation; e. Diverse in culture, views, religion and beliefs, as well as the original opinions or innovation of others; f. cooperate and have social sensitivity as well as concern for society and environment; g. Obey the law and discipline in societal life and statehood; h. Internalize academic values, norms, and ethics; i. demonstrate a responsible attitude towards the work in the field of expertise independently; j. internalize the spirit of independence, perseverance, and entrepreneurship; and k. able to be ethical, fair, law-abiding, sensitive, and caring about the social environment in designing and implementing the law.	a. jurisprudence theory, including nature law, legal positivism, legal realism, and critical legal studies; b. theories in international law, private law, criminal law, administrative law, constitutional law, adat law; c. in depth theoretical concept of legal policy, anthrolopogy and sociology of law in the society; d. theoretical concept of the role of law in development in general; e. normative and sociological legal research methodology by inter- or multi-diciplinary approach; and f. techniques of writing legal scientific papers in the form of a thesis in accordance with international standards of legal paper writing and academic ethics.	a. mampu mengembangkan pemikiran able to develop logical, critical, systematic, and creative thinking through scientific research, the creation of designs or works of art in the field of science and technology which concerns and applies the humanities value in accordance with their field of expertise, prepares scientific conception and result of study based on rules, procedures and scientific ethics in the form of a thesis or other equivalent form, and uploaded on the university website, as well as papers published in scientific journals accredited or accepted in international journals; b. able to perform academic validation or study in accordance with their areas of expertise in solving problems in relevant communities or industries through the development of knowledge and expertise; c. able to formulate ideas, ideas, and scientific arguments in a responsible and academic manner, and communicate them through the media to the academic community and the wider community; d. able to identify the scientific field that became the object of his research and place it into a research map developed through interdisciplinary or multidisciplinary approaches; e. able to take decisions in the context of resolving issues of science and technology development that take into account and apply the humanities values based on analytical or experimental studies of information and data; f. capable of managing, developing and maintaining networking with colleagues, peers within institutions and the broader research community; g. able to improve the capacity of learning independently; and h. capable of documenting, storing, securing, and rediscovering research data in order to ensure validity and prevent plagiarism.	a. capable of extending or deepening existing legal theories through legal research with interdisciplinary approach; b. able to conduct legal reasoning contextually, systemically, holistically, and scientifically accountable; c. able to formulate the concept of solving legal problems in Indonesia as well as outside the context of the Indonesian state in a contextually, systemically, holistically, and scientifically accountable manner; d. able to advocate law enforcement by professional in the field of law obediently, ethical, fair, sensitive, and caring about social environment; e. able to perform academic validation or studies in accordance with their area of expertise on a draft law that is being drafted or a product of rules based on standards that reflect ethics, fairness, benefit for the wider community, sensitivity, and concern for the social environment; and f. able to inventory, collect, manage, document information about various issues / cases and solving legal cases effectively and efficiently by utilizing the search engine information correctly.

S3 (DOCTORAL DEGREE)			
ATTITUDE	**KNOWLEDGE**	**GENERAL COMPETENCE/SKILLS**	**SPECIFIC COMPETENCE/SKILLS**
a. pious to God Almighty and able to show religious attitude; b. uphold the value of humanity in carrying out duties based on religion, morals, and ethics; c. contribute to improving the quality of societal life, nationhood, statehood, and progress of civilization based on Pancasila; d. acting as a proud and patriotic citizen, having nationalism and a sense of responsibility to the state and nation; e. Diverse in culture, views, religion and beliefs, as well as the original opinions or innovation of others; f. cooperate and have social sensitivity as well as concern for society and environment; g. Obey the law and discipline in societal life and statehood; h. Internalize academic values, norms, and ethics; i. demonstrate a responsible attitude towards the work in the field of expertise independently; j. internalize the spirit of independence, perseverance, and entrepreneurship; and k. able to be ethical, fair, law-abiding, sensitive, and caring about the social environment in designing and implementing the law.	Have no qualification yet	a. capable of discovering or developing new scientific theories / conceptions, contributing to the development and practice of science and / or technology that concerns and implements the humanities value in his/her field of expertise, by producing scientific research based on scientific methodology, logical thinking, critical, systematic, and creative; b. capable of preparing interdisciplinary, multidisciplinary or transdisciplinary research, including theoretical and / or experimental studies of the fields of science, technology, art and innovation articulated in the form of dissertations, and papers published in reputable international journals; c. able to choose appropriate, current, advanced, and beneficial research on humanity through interdisciplinary, multidisciplinary, or transdisciplinary approaches, in order to develop and / or produce problem solving in the fields of science, technology, art, or society, based on the results of a study on the availability of internal and external resources; d. able to develop a roadmap of research with interdisciplinary, multidisciplinary, or transdisciplinary approaches, based on a study of the main objectives of the study and its constellations on broader objectives; e. able to develop scientific and technological or art arguments and solutions based on a critical view of facts, concepts, principles or theories that can be accounted for scientifically and academically, and communicate them through mass media or directly to the public; f. able to demonstrate academic leadership in the management, development and fostering of resources and organizations under their responsibility; g. able to manage, including storing, auditing, safeguarding, and rediscovering data and research information under his/her responsibility; and h. able to develop and maintain collegial and welfare relationships within their own environment or through networks of collaboration with non-institutional research communities.	Have no qualification yet

Based on the competency qualification table above, it appears that each level of legal education, ranging from level 5 (Diploma 3), level 6 (S1/Bachelor Degree), level 7 (profession Degree), level 8 (Master Degree), and level 9 (Doctor Degree) each of them have different aspects of knowledge, general skills, and special skills. This is in accordance with government provisions that every level of education should require different knowledge mastery, as well as mastery of various aspects of general skills and special skills. Taking into account the qualifications of each competency, there is no expected redundancy or repetition of learning given the competence of graduates for each different level of education. In law of higher education, the subject of business competition law can be taught at the level of Diploma 3, Bachelor, Profession, Master or Doctor with the following aspects:

Diploma 3	Bachelor	Profession	Master	Doctor
The pursuit of business competition law is emphasized on the mastery of colleting document skills / filing document or supporting document in all law enforcement process considering that D3 program graduates are expected to master the practical skills aspect.	The pursuit of business competition law is emphasized on the understanding the material law of competition as well as understanding the legal practices of business competition	The pursuit of business competition law is emphasized on the mastery of the skills of preparing documents for business competition law such as preparing the document of defense and answer to the examination of business actors (clients) by KPPU	The pursuit of business competition law is emphasized on the mastery of analysis and comparison of material law and formal business competition (considering business competition law is a relatively new and still be the developing law and does not have the root of legal tradition in Indonesia)	The pursuit of business competition law is emphasized on the mastery and development of the theory or doctrine of business competition law in accordance with the Indonesian philosophy

Based on the preceeding regulation and examples, the optimization of business competition values is to be internalized by involving activities owned by every major in universities, not only Law, Economics and Industrial, but also those majors that have relation to cases subject to the violations resulting from KPPU's judgment, including those prioritized sectors in competition law enforcement.

As an explanation of the national standard of education as determined through SNPT, here is one of the models that can be offered for a program, cooperation between program, or cooperation between programs and KPPU:

1. Some offers that may be inserted to the programs under the National Standards of Education include:
   a. standard of learning substance; through the competition law material as a study material in the course of study with attention to differences in learning content at each level of education.
   b. standard of learning process; The learning process through curricular activities must be done systematically and structured through various courses and with a measurable study load; it is obliged to use effective learning methods in accordance with the characteristics of the course to achieve certain abilities defined in the subject, in the course of the fulfillment of graduate learning achievements.
   c. Some learning methods that can be selected for the implementation of the course learning include: group discussions, simulations, case studies, collaborative

learning, cooperative learning, project-based learning, problem-based learning, or other learning methods that can effectively facilitate the fulfillment of the graduate learning achievements. The selection of the learning methods should be adjusted to the learning achievement at each level of education.

d. Through this method of learning, the Competition Law lecturers can develop various methods above to be used in the learning process to the students. For example, the group discussion method can discuss the actual issues of business competition that develop during the school term, and the results of this discussion can be communicated with KPPU as part of the academic study. Similarly, through case study methods, students can dissect cases that have been decided by KPPU and / or other cases from abroad or cases that have yet happened in Indonesia but occurred in other countries. The result of this case study can be submitted to KPPU as a study material in competition law enforcement in Indonesia.

e. In addition, each course may use one or a combination of several learning methods. It also can be accommodated in some forms of learning, such as lectures and seminars. Students can hold public lectures and / or seminars that not only involve students, but also the business actors and law enforcement officers (other than KPPU). Such events are often done by other law enforcement agencies, especially when there are legal phenomena that intriguingly catch public attention, and/or cases that are under the national and international headlines.

f. standard of lecturers and teaching staffs; is a minimum criterion about the qualifications and competence of the lecturers and the teaching staffs to organize education in order to fulfill the graduate learning achievement. Through this standard, the head of the program (i.e. dean) may organize some kind of "revitalization" activities for the lecturers in cooperation with the KPPU, or if there is an international partner of KPPU coming to Indonesia bringing fresh business competition materials or any developing competition material that has been adopted in Indonesia.

2. With regard to the National Standards of Research, law department may undertake these interesting subjects, among others; standard of research substance; is a minimum criterion of the depth and breadth of research material. The department may

design a wide range of research topics, for example, in a reference to case handling by KPPU over a given period, a review of competition policy, or a review of a particular industry. In collaboration with KPPU, the research topics that have been determined by using higher education research standards can be "auctioned / tendered" to all universities.

3. For the National Standard of Community Service, through the standard of the content of community service; which is a minimum criteria of the depth and breadth of community service material, a cooperation can be done to broaden the understanding of the community, for example through the socialization of competition law through radio; Micro, Small and Medium Business (UMKM) groups; and/or poster contests for young lecturers and/or students.

The arrangement of curriculum by each program may also involve KPPU, as regulated by Law No. 12 of 2012 stating: "The formulation of professional education curriculum shall be conducted with the Ministries, other Ministries, Non Ministry Institutions (e.g. KPPU), and/or professional organizations responsible for the quality of professional services with reference to the National Standards of Higher Education."[8] Such a provision opens up an opportunity to KPPU, with reference to various national standards of higher education as mentioned above, to actively engage with the Ministry of Research and Technology and Higher Education in the preparation of curriculum that is "charged with business competition". Finally, "Cooperation with Ministries, other Ministries, NMGIs, and/or professional organizations, among others a study program of law could establish standards competency, graduate qualifications, curriculum development, use of learning resources, and competency tests."[9]

D. Conclusion

The ideal design of competition law learning should pay attention to the following matters:

1. Qualification of competence in each level of education. The learning of competition law at level 5 (Diploma 3) should be different from the learning of competition law

[8] Art 36 of Law No. 12 of 2012. Art 1 number 23 explains the Non-Ministrial Government Institution (hereinafter NMGI) as a central government institution that carries out certain governmental duties.

[9] Art 17 para (2) Law No. 12 of 2012.

at the next level of education (S1, profession, S2, and S3).

2. Integrity of the learning system from each level of education as a form of implementation of long life learning. By applying different qualifications of competence in each level of education, each student is expected to get a deeper or broader competence in the advanced education level so as to realize the spirit of long life learning, considering that in the next education level students can further deepen the knowledge gained.

Reference

Law No. 12 of 2012 concerning Higher Education

Presidential Regulation No. 8 of 2012 concerning Indonesian National Qualification Framework

Regulation of Minister of Research, Technology and Higher Education No. 44 of 2015 concerning National Standard of Higher Education