

## CROSS-BORDER MERGERS AND ACQUISITIONS INFLUENCE OF A COMPANY ON WORKFORCE CONTINUITY

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### *Abstract*

*The rapid development of multinational companies around the world makes economic progress between countries also get good opportunities supported by processes or mechanisms for a company to always develop and boost its company to become bigger and reach all lines of society, inseparable throughout the world. Therefore, the projected scheme of Mergers and Acquisitions of companies against other companies by reaching companies outside their home country or commonly known as Cross Border Mergers and Acquisitions is widespread. However, behind the processes and mechanisms, there are impacts that must also be considered by a company resulting from the process, namely regarding the continuity of the workforce and employees. The method used in this study is a normative legal research method with specific reference to Indonesian laws and regulations, but still within the scope of discussion of multinational companies on companies from other countries. In this case referring to companies in Indonesia, this method is used as the objective to answer the problems being faced in order to find a proportional solution from the problem. From the results of this study, it can be concluded that the process and mechanism of Cross Border M&A can be carried out but also must pay attention to the legal rules in force in the country of the company that will be merged or acquired so that the company is responsible for any impacts that occur, especially the impact on workforce and employees concerned in order to create a good work system and support for all.*

**Keywords:** *Acquisitions, Companies, Cross Border Mergers, Workforce*

### 1. INTRODUCTION

Today multinational companies are increasingly widespread and massive in their development in the world accompanied by the flow of globalization where this rapid development does not rule out the possibility of closer relations between several of these multinational companies. One of them is the full ownership or merger of a company to another company, commonly referred to as the process of mergers and acquisitions, where the process occurs for a company to another company. The concept of mergers and acquisitions is developed from initial thoughts on an economic perspective on company capital schemes, which are divided into two ways for a company to increase its capital, namely through loans and equity. A company can increase its capital by issuing shares on the economic market as the fastest and easiest way to finance its operations with the aim of producing large-scale capitalization in the economic market with the aim of achieving the availability of financial assistance, other assistance, and to boost company capital in industries that grow rapidly without having to form a new company so that the merger of the two entities can return to increase opportunities in certain markets that are indeed the target.

It doesn't only happen between several or more companies in one country, but it is often find that the ownership of a company comes from a company that comes from

outside the country where the company is located. The level of ownership takes into account several important factors, where positive profits and prospects are the main reasons for the ownership, this is often referred to as cross border mergers and acquisitions. Where a company acquires another company by entering into a cross-border agreement with an orientation towards expanding a company's operations to the global market (Chandera & Atmaja, 2014), when the assets and liabilities of the two companies from two different countries are combined into one unit so that a new legal entity is formed, the role of the merger is active in this process, whereas in the case of an acquisition there is a process of transforming the assets and liabilities of a local company into a foreign company with the involvement of foreign investors in it, and automatically, local companies will be affiliated (Pinto & Branson, 2009).

Companies that can be merged and acquired like private companies, public companies, or direct ownership of the state (Efni, 2014), when the transaction is successful there will be a process of holding control over the operating authority of the company resulting from transaction fully (Law Teacher.net, 2013). Because the process is carried out with the involvement of 2 countries, according to the applicable legal terminology, the country of origin of the company making the acquisition in another country is referred to as the home country, while the country where the target company is located is referred to as the host country. Based on data from the 2000 World Investment Report, Cross Border M&A experienced an increase from the early 1990s to 2005, while in 2008 it experienced a decline both in terms of quantity and value due to the global economic crisis in 2007-2008 (United Nations Conference on Trade and Development, 2000). However, based on the prospectus of the World Investment Report 2009, Cross Border M&A in several regions in 2010 tended to always increase, especially in Asia where the economic crisis have less impact and this condition is also in line with the improvement in the global economy.

With high number of cross-border M&A transactions increasing, there are obstacles for a company where there are fundamental differences that differentiate between two cross-border companies, one of which is cultural differences between countries where the two companies are located and culture of the country they are in (Norhamida, 2006). As such, cultural aspects must be handled carefully, one of the things that stands out the most is the problem of employment in many developing countries where many feel disadvantaged by Cross Border M&A transactions, one of which is the prohibition on hiring and firing workers at will. In other words, with the emergence of these problems, a multinational company that acquires a local company in a country must ensure that they adapt their global policies to the conditions and situations in their destination country and required to adapt to local culture or the process of combining global views with local implementation.

Further, regarding the differences in different work cultures, each partner in the business is required to understand each other's culture so that there is compatibility (Dalem & Sukerti, 2013). For example, differences in attitudes towards gender, minorities and diversity among workers are potential issues in causing conflict between partners and horizontally, between the workforce concerned. This condition can be equated with marriage between individuals from different countries, and without an understanding of empathy between both of them, this effort cannot be carried out and will not succeed. In recent years, there have been several Cross Border M&A transactions that failed mainly due to the inability to adapt to the cultural conditions of the workforce. Hence, it is crucial

for both entities to carry out due diligence on each other before entering into a merger or acquisition agreement.

The continuity of the workforce is an important aspect for the smooth running of the Cross Border M&A process, because the workforce as the main subject for the smooth running of a company plays a proportional role to the company in which they are located, by not paying attention to the welfare of the workforce, new problems will arise that cannot be avoided so that the continuity of the company as a result of the impact of Cross Border M&A will not run as desired so it is possible that this treatment will have a negative impact on the workforce. With relation to the topics that have been discussed above, the author intends to explore through an article entitled "CROSS-BORDER MERGERS AND ACQUISITIONS INFLUENCE OF A COMPANY ON WORKFORCE CONTINUITY". In guaranteeing the originality of writing this scientific article, the author makes comparisons with several previous studies related to the phenomenon being studied in this scientific article, namely:

- 1) A scientific article entitled "*Analisis Perbandingan Kinerja Keuangan Perusahaan Perbankan yang Go Public di Bursa Efek Indonesia Sebelum dan Setelah Merger dan Akuisisi Periode Tahun 2000-2012*" made by Okalesa & Zulbahridar (2014) which examines the financial performance of a company based on the banking sector on the IDX impacted its effectiveness before and after the merger and acquisition process.
- 2) The scientific article entitled "*Cross-Border Mergers and Acquisitions: Do Strategy or Post-Merger Integration Matter?*" made by Hopkins (2008) which examines the effectiveness of the Merger and Acquisition process on the company's future strategy.

The two studies above examine from a different perspective of the problem, where in point (a) discusses the financial viability of a banking company against the M&A process, meanwhile, point (b) focuses on the discussion on the effectiveness of a company which questions the future strategy that will it go so well or will it just happen the other way around? but still within the same scope, namely the discussion of mergers and acquisitions of a company and the impact on each of the issues that are used as an issue. The objectives to be achieved in this writing are to find out and understand more about the legal rules for the unification of two or more companies through the process of cross-border mergers and acquisitions and at the same time to know and understand how the survival of the workers of the two companies combined is impacted from cross border mergers and acquisitions.

## **2. RESEARCH METHODS**

The research method applied to the writing of this scientific article was a research method on normative law, whose references focus on legal rules and processes that occur, related to the survival of the workforce of a company on the impact of the unification of two or more companies where the workers were located through the processes and mechanisms of cross border mergers and acquisitions (Mahmud, 2016). Writing scientific articles examines how a rule of law coupled with processes and mechanisms plays a role in an event involving an individual or a group of people. Paying attention to the principles contained in business law by using an analytical approach so that facts can be known that

can strengthen the arguments for writing this scientific work so that legal clarity can be found from the problems faced.

### **3. RESULTS AND DISCUSSION**

#### **3.1. Process and Mechanism of Cross Border Mergers and Acquisitions of One Company Over Another**

The actions of a company against another company through a cross-border M&A mechanism are required to comply with the laws of the country where the company in which the company was taken over. For example, when a company from Singapore wants to take over or merge its company with a company in Indonesia, the Singapore-based company must follow and comply with the jurisdiction that applies in Indonesia. In other words, the country of origin of the company is taken over. Therefore, in order to make it easier for readers and not confusing, the author will explain more about the rules related to Cross Broder M&A that occur in Indonesia, which of course will also discuss further about Indonesian law specifically. In Indonesian law, a company that takes over a company must comply with the rules contained in article 5 paragraph (2) of Law No. 25 of 2007 concerning Investment, hereinafter referred to as UUPM, where in the article it is explained that only companies that Only in the form of a Limited Liability Company that can be taken over by a company originating from abroad by purchasing shares of the related company so that the Limited Liability Company concerned can be taken over.

Before continuing, it would be nice to be able to understand more about mergers and acquisitions, where mergers according to Law no. 11 of 2020 concerning Job Creation, hereinafter referred to as the Job Creation Act, which amended the Provisions in the Company Law, explaining Article 109 number 1, that a merger is "a legal action carried out by one company or more to merge with other existing companies which results in the assets and liabilities of the merging companies are transferred by law to the company that received the merger and subsequently the legal entity status of the merging companies ends due to law, and according to Black's Law Dictionary, as "the fusion of absorption of one thing or right into another" (Garner, 2019). Meanwhile, acquisition according to the Job Creation Act with the same article explains that a takeover or acquisition is "a legal action carried out by a legal entity or an individual to take over company shares which results in a change in control over the company and is supported by Black's Law Dictionary as "the purchase of one company by another in order to fulfill particular strategic goals related to revenues, market share, product/serving offerings, or competition" (Garner, 2019).

In Indonesia itself, the rules regarding mergers and acquisitions are differentiated based on their needs and requirements, bearing in mind that these two matters are indeed a different process, so the strengthening and supporting regulations must also be different. The legal rules regarding mergers are clearly stated in UUPT (Limited liability Company Law) and Government regulation (PP) No. 27 of 1998 concerning Merger, Consolidation and Acquisition of Limited Liability Companies, hereinafter referred to as Government regulation (PP) No. 27. Whenever a foreign company seeks to merge its company with an Indonesian company through the Cross Border M&A mechanism, the company must meet the applicable conditions, such as paying attention to:

- 1) Company, minority shareholders, and employees of both companies;
- 2) Competition for businesses with good or healthy intentions for the benefit of the general public;

- 3) The relevant business partners and creditors of the companies implementing the merger.

However, it should be noted that companies wishing to carry out these processes and mechanisms are advised to use the "Legal Due Diligence" method to find out the objectives and potential problems that will then be faced when the mechanism and procedures for the merger are carried out, so that more information about the two companies can be understood, especially the two countries concerned so that the Cross Border M&A process runs smoothly and does not encounter significant obstacles. Besides, Article 123 of the Company Law, explains that a company that will acquire a company in Indonesia must prepare a merger plan for the company, where the directors of the two companies who will carry out the process are responsible for preparing the plan that has been discussed previously, containing at least :

- 1) "name and place of each company, reasons and explanations of Directors of the companies that will carry out the merger, merger requirements, procedures for valuation and shares conversion of each company and plans for amendments to the articles association of the company that accepts the merger, if any";
- 2) "Financial reports for the last 3 (three) financial years of each company, plans for continuation or termination of the business activities of the companies that will carry out the merger and the pro forma balance sheets of the companies that receive the merger in accordance with the accounting principles that apply in Indonesia";
- 3) "Methods of settling the status, rights and obligations of the members of the Board of Directors, Board of Commissioners and employees of each company, ways of settling the rights and obligations of companies that will merge with third parties and ways of settling the rights of shareholders who disagree with the company's merger";
- 4) "Names of members of the Board of Directors and Board of Commissioners as well as salaries, honorarium and allowances for members of the Board of Directors and Board of Commissioners of the company that is receiving the merger, the estimated implementation period, reports on the conditions, developments and results achieved from each company that will carry out the merger";
- 5) "The main activities of each company, changes that occur during the current financial year, and details of problems that arise during the current financial year that affect the activities of the company that will carry out the merger."

After the draft has been completed, it is required to seek approval from the Board of Commissioners of each company involved. Then, the announcement of the Summary of the Merger Plan, in which a company is required to announce that their company will carry out a merger with another company, by giving notification to the employees of each company concerned no later than 30 days. The last one is the making of the merger deed where after the draft of all documents has been successfully fulfilled, the drawing up of the deed of merger in front of a Notary using good and correct Indonesian, which is then attached a copy of the deed in the notification of the merger to the Minister of Law and Human Rights for recorded in the company register. Furthermore, the Board of Directors of the company concerned accepts and officially merges the two companies involved through and announces it in at least 1 newspaper with a period of at least 30 days from the date of the merger.

The acquisition itself has 2 fields which are carried out through 2 different processes and mechanisms. First, is the acquisition of a company that is closed and secondly, the

acquisition of a company that is done openly. However, at this time, the author will explain more about the process and mechanism through the acquisition of a public company, which is controlled by the controller of the public company, called the controller, directly or indirectly, provided that:

- a) Have shares of a publicly listed company of more than 50% of the total shares with fully paid-up voting rights; and
- b) Have the ability to determine, either directly or indirectly, in any way the management of the company's policies.

The rules that are used as a reference for the implementation of the acquisition of a company, especially foreign companies for companies in Indonesia through the Cross Border M&A process and mechanism, emphasize the rules contained in various Financial Services Authority Regulations (hereinafter referred to as POJK), where POJK No.31/2015, No. 9/2018, no. 17/2020, no. 42/2020 plays a large role in the occurrence of an acquisition transaction for a company. In accordance with the rules of Article 4 paragraph (1) POJK No. 9/2020 explains that public companies are required to obtain shareholder approval independently at the General Meeting of Shareholders (GMS), in terms of:

- 1) "The affiliated transaction value meets the material transaction value limit that must obtain the approval of the GMS";
- 2) "Affiliated transactions that can disrupt the business continuity of a public company, and/or";
- 3) "Carrying out affiliated transactions based on OJK's considerations requires the approval of independent shareholders".

Where the agreement is intended to protect independent shareholders because they may refuse a transaction process that has a conflict of interest. Then, Article 2 paragraph (1) and Article 6 Letter K POJK No. 31/2015 explains that a company is required to submit a report on information on court changes to its company through the issuer concerned in the form of changes in its control over direct or indirect actions towards the issuer to its responsibility to the OJK and making announcements to the public. And then, Article 14 jo. Article 13 POJK No. 9/2018 explains that there must be an offer for a tender where the controller must carry out the tender offer for 30 days after the announcement is in the form of text through a national daily newspaper, with the intention that the shareholder has the opportunity to sell the shares must hand over the shares to the custodian appointed by the controller. In the event that a company takeover of another company in Indonesia is carried out directly on the shares of the company concerned which are listed and traded on the Indonesia Stock Exchange as previously mentioned in the of this scientific article writing.

However, through the well-organized processes and mechanisms as described above, there were also negative impacts arising from the ongoing transactions, which were most visibly felt by the workers or employees of the two companies that were merged or taken over, where there were many uncertainty and suitability between the two companies, which will then be discussed in the following discussion.

### **3.2. The Impact of Cross Border Mergers and Acquisitions on Companies on the Survival of the Workforce**

The ongoing process of Cross Border M&A around the world has such a significant impact, especially on the course of the economic and financial system for a country involved in such a transaction. The main thing is that the companies in the two countries

that carry out activities that are most affected by the process and without a doubt the entities Inside it, namely the workforce or commonly known as employees, are also affected by the process of their companies (Kusumadewi & Darmadha, 2018). According to the Job Creation Act, Article 81 Number 42, explains that the status of an employee in a company as a result of the M&A process depends on the two companies where the employee takes shelter so that the problem is regarding the continuation of the employment relationship or the employer's willingness to accept the employee concerned. Therefore, it can be concluded that the status of employees in a company that is taken over does not change, provided that both parties concerned agree to mutually continue the working relationship that existed before (Banu, 2018). As an affirmation, employees of a company that is in M&A do not automatically change themselves to become employees of the company that took over because of differences in the working relationship between the company that was taken over and still bound by its employees. Previously, in a work agreement according to Article 1 Number 14 of the Labor Law, which read: "A work agreement is an agreement between a worker/laborer and an entrepreneur or employer which contains working conditions, rights and obligations of the parties." Where, in this case it is also required to include written conditions containing clauses in accordance with the agreement of the worker and the company concerned.

However, a negative aspect in this process when a company that takes over does not agree to continue the working relationship that has been going on with the employees where the company that was taken over will occur and new problems arise, namely termination of employment or layoffs (Noegroho, 2017). As an illustration, the larger the two companies involved, the greater the possibility of massive layoffs from the company being taken over due to a cultural or work system mismatch between both of them (Achmadi, 2019). Matters relating to layoffs are explained in more detail in Article 81 Number 42 of the Job Creation Act, which is a refinement of Article 15A Paragraph (1) letter a of the Labor Law, as follows:

1. "Termination of employment can occur for any reason":
  - a. "Companies merge, consolidate, take over, or separate companies and workers/laborers are not willing to continue the employment relationship or employers are not willing to accept workers/laborers."

Employees affected by this are entitled and the company is obliged to provide severance pay and award money while the employee is serving and working at the company (Sutrisno & Sumarsih, 2004), and if possible and there is a clause in the agreement, there is also compensation for rights that should be received with the following conditions, in accordance with the Articles 81 Point 44 of Job Creation Act:

1. "Severance pay is given under the following conditions":
  - a. "Working period less than 1 year, 1 month salary";
  - b. "Working period 1 year or more but less than 2 years, 2 months wages";
  - c. "working period 2 years or more but less than 3 years, 3 months wages";
  - d. "working period 3 years or more but less than 4 years, 4 months wages";
  - e. "working period 4 years or more but less than 5 years, 5 months wages";
  - f. "working period 5 years or more but less than 6 years, 6 months wages";
  - g. "working period 6 years or more but less than 7 years, 7 months wages ";
  - h. "working period 7 years or more but less than 8 years, 8 months wages ";
  - i. "working period 8 years or more, 9 months wages."

2. "Self-service award money is given under the following conditions":
  - a. "working period 3 years or more but less than 6 years, 2 months wages";
  - b. "working period 6 years or more but less than 9 years, 3 months wages";
  - c. "working period 9 years or more but less than 12 years, 4 months wages";
  - d. "working period 12 years or more but less than 15 years, 5 months wages";
  - e. "working period 15 years or more but less than 18 years, 6 months wages";
  - f. "working period 18 years or more but less than 21 years, 7 months wages";
  - g. "working period 21 years or more but less than 24 years, 8 months wages";
  - h. "working period 24 years or more, 10 months wages."

In addition, cultural differences between the two countries are also a note that must be used as a reference, because when it comes to the merger or takeover of two companies from two different countries or in this article referred to as cross border M&A, it is undeniable that there are also cultural differences between the two. which includes the prevailing culture, customs, work system or the capabilities of employees in the country concerned. Thus, the unification of the two cultures must be a concern that deserves attention and protection as its rights and obligations are not due to existing cultural differences, making companies that take over other companies the right to 'dispose of' their employees and labor, so that there is social and cultural inequality in the company as a result of the merger and acquisition.

Based on the explanation above, it can be seen that a company that carries out the Cross Border M&A process must pay attention to the welfare of its workforce, because it is the main entity of the sustainability of a company, and if indeed the process has an impact on the reduction of workforce, a company is required also to fulfill all the rights and obligations that are the rights of the workforce concerned.

#### **4. CONCLUSION**

Based on the discussion that has been explained, the authors conclude that with Cross Border Mergers and Acquisitions process by one company over another company with a cross-border scheme, the process and mechanism are so detailed and there are differences between both of them, making it easier for investors or companies that wish to Merge or acquire an entity or company. However, behind the positive side that occurred, there is also another side that needs to be understood further, namely regarding the continuity of the workforce for the two companies undergoing the M&A process, which is most visible in the main subject, namely labor or commonly known as employees, in the second discussion section it was clarified regarding the continuity of the workforce as a result of a merger or acquisition, where when the two companies agreed to carry out actions in accordance with the M&A rules, a new problem arose, namely the layoffs of employees who were deemed not in accordance with the goals and work system taking over company. Hence, the protection of employees must be prioritized if circumstances force to lay off employees, through wages, severance pay, and thank-you money schemes related to employee services that have been provided to the company.

Based on the result and conclusion above, we suggest that before the implementation of the M&A process, it would be better if due diligence was carried out first on the two companies and the two countries where the companies originate so that differences that may not be able to be reconciled can be avoided, then; secondly, after the process is completed, it is hoped that the two companies will continue to pay attention to

their workforce or employees so that legal protection is guaranteed for the employee, regardless of whatever decision the company will impose on the employee.

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