The Implementation of the Term Affiliated Shares between Companies in Merger Control by the Indonesian Business Competition Authority (A Study of KPPU's Decisions)

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Abstract. The definition of affiliated companies in controlling mergers according to competition law based on Article 7 GR No. 57/2010 is an exception to the obligation of business actors to report their corporate actions to KPPU. The application of the term affiliated has several times led to differences of opinion leading to the imposition of sanctions in the form of late penalty for reporting mergers. It is necessary to deepen the definition and criteria for affiliated shares between companies in the shares acquisition according to Article 7 of GR 57/2010. This research is normative research that uses secondary data in the form of regulations by both the government and the KPPU. This study concludes that affiliated company shares are a controlling relationship that occurs due to share ownership of more than 50% or less than 50% but can determine the company's managing business entities. Whereas business entity policy makers are parties involved in determining the company's financial statements and business plans. A clear definition of the term company policy maker is needed, given the increasingly broad dynamics of determining business policies.

Keywords: Affiliated company; merger control; competition

1 Introduction

The provisions regarding the obligation to notify the merger, consolidation and acquisition of company shares with a relatively high late penalty [1] [2], encourage the authors to re-do a brief review of the obligation to notify the KPPU of mergers. One of the companies that was fined the highest in 2019 was a case involving PT Matahari Pontianak Indah Mall with an amount of Rp. 12.6 billion [3]. However, in order to avoid the threat of imposition of fines, this time the author focuses more on the provisions that exempt companies from being obliged to notify the KPPU of the merger, consolidation and/or acquisition of shares and/or company assets [4] (hereinafter abbreviated as merger). This requires a careful self-assessment, especially in relation to the requirements for the exemption.

Those who are not required to notify the company's corporate actions in the form of mergers are business actors whose assets or sales turnover does not exceed the limits

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stipulated in government regulations, in addition to business actors conducting mergers, consolidations and share acquisitions between affiliated companies [5]. The definition of shares between affiliated companies becomes crucial when the Business Competition Supervisory Commission (KPPU) carries out its duties as a supervisor according to Government Regulation (PP) 57/2010, because several times different interpretations have been found between business actors and KPPU regarding the definition of affiliated in relation to the controlling relationship between entities. business. This difference in interpretation often ends up in a case of late notification which ends in the imposition of a fine in accordance with Article 6 of PP 57/2010. In the last five (5) years, there have been at least three (3) KPPU's Decisions concerning late fines which dispute the application of the definition of affiliated shares between companies. The three cases are the takeover of company shares, where the acquisition of shares is a notification that dominates (more than 90%) reporting (notification) at KPPU [4].

Specifically, the form of share acquisition is the choice of business actors to obtain company licensing facilities, namely because the company to be acquired has obtained an official permit to carry out a business activity. Under these conditions, licensing is considered valuable, because the acquirer does not have to be bothered to take care of licensing issues that consume energy and costs. Furthermore, this transaction has a strategic impact, namely in addition to the goal of business efficiency, there is a transfer of control of the company from the acquired party to the acquiring party [6].

The main consequence of the takeover of shares is causing the transfer of ownership and control of the company's assets, including physical assets and intangible assets (e.g. company reputation, product reputation). On the other hand, takeovers can also increase efficiency for companies and more broadly, for the economy. Empirical evidence of this type of corporate action is profit and share value. Apart from that, it can increase profits (or the ability to increase profits) by way of efficiency, as well as its market power [7].

One of the legal consequences of the acquirer must comply with procedures that are both formal and substantive. The formal procedure is related to the validity (validity) of the company's share acquisition, while substantively within a certain time, the acquirer is obliged to report the corporate action to KPPU. This is because the takeover of shares can result in increased or reduced competition which has the potential to harm consumers and society. The takeover of shares resulting in the asset value and/or sales value exceeding a certain amount must be notified to the Business Competition Supervisory Commission (KPPU), no later than 30 (thirty) days from the date of the acquisition of the shares. Provisions regarding the value of assets and/or the value of the sale as well as the procedures for notification have been regulated through Government Regulation Number 57 of 2010 concerning Merger or Consolidation of Business Entities and Acquisition of Company Shares that May Result in Monopolistic Practices and Unfair Business Competition (PP No. 57/ 2010). This is explicitly emphasized that the purpose of establishing PP 57/2010 is to implement Article 28 paragraph (3) and Article 29 paragraph (2) of Law 5/1999.

Case Number 27/KPPU-M/2019 concerning Alleged Violations of Article 29 of Law No. 5/1999 jo. Article 5 PP No. 57/2010 is an example of a case that disputed the different interpretations of the affiliated share relationship which resulted in a fine for late notification to the KPPU [8]. This case began with the alleged delay in reporting the takeover of PT Gita Adhitya Graha (GAG) shares to the Business Competition Supervisory Commission (KPPU) in 2017 by PT Matahari Pontianak Indah Mall. The company's defense is that PT MPIM as the acquirer company and PT Gita Adhitya Graha as the acquired company have a share affiliated relationship, so they should not have the obligation to report the acquisition to the KPPU in

accordance with Article 7 PP 57/2010. In his defense, the reported party uses the definition of affiliated which is regulated in the provisions of company law and capital market law, so that the definition of affiliated does not only include shares but has a broader scope. The description above encourages the author to propose research problems, namely what is meant by the notion of the relationship between affiliated companies in the acquisition of shares according to Article 7 PP. 57/2010 and how it is applied in KPPU's decisions.

2 Research Methods

This research is normative research, which is conducting research by describing the data obtained based on legal norms, concepts, and rules that are relevant to the object [8]. The concept used is the concept of affiliation and control of the company and the affiliated stock relationship. The nature of this research is prescriptive, namely research that aims to get advice on what to do to overcome certain problems [9]. This study uses secondary data, which was obtained from various library materials, related to doctrinal opinions and practices of other countries regarding the reasons for compiling the rules for notification of share takeover notification according to PP no. 57/2010 and KPPU Regulation No. 3/2019. In addition, to obtain information on the reasons and background of KPPU's enactment of the Regulation, an interview was conducted with informant Daniel Agustino Agustino, Director of Mergers and Acquisitions of KPPU.

The data obtained in connection with this research was conducted by means of a document study of secondary data, namely in the form of legal materials consisting of Law no. 5/1999, PP No. 57/2010, KPPU Regulation No. 3/2019, as well as three (3) KPPU decisions, namely Decision on Case No. 09/KPPU-M/2017, Decision No. 18/KPPU-M/2019, and Decision No. 27/KPPU-M/2019. In addition, non-legal materials are also used which function to provide explanations of concepts, norms, doctrines and principles related to the object of research, research results. This non-legal material is taken from textbooks and scientific works related to the understanding of shares between affiliated companies and company control.

At the next stage, efforts are made to answer the main problems and obtain conclusions and suggestions. The data that the authors obtained in this study were processed and analysed with a qualitative approach [10]. Conclusions in this study are carried out using deductive reasoning methods [9], namely the reasoning process that starts from a general statement or thesis about the takeover mechanism from the perspective of competition law, to arrive at a specific conclusion about a particular matter, namely the understanding of the relationship between affiliated companies. in the acquisition of shares according to Article 7 PP No. 57/2010 and its application in KPPU's decisions [11].

3 Analysis and Discussion

3.1 Definition of Affiliated Company According to Applicable Rules

The main concept used in this research is affiliation, where each legislation has a different definition of affiliation. UU No. 8 of 1995 concerning the Capital Market, Article 1 number 1 states, “One of the affiliations is that there is a family relationship due to marriage and descent to the second degree, both horizontally and vertically; relationship between the party and the employee, director or commissioner of that party; relationship between 2 (two) companies

where there are one or more members of the same board of directors or commissioners; the relationship between the company and the parties, either directly or indirectly controlled by the company; relationship between 2 (two) companies controlled, either directly or indirectly by the same party or; relationship between the company and the major shareholders".

The definition of affiliated is also found in the Elucidation of Article 34 paragraph (2) of Law no. 40/2007 concerning Limited Liability Companies which explains that affiliated relationships include family relationships due to marriage or descent to the second degree, both horizontally and vertically with employees, members of the board of directors, board of commissioners or shareholders of the company; In addition, it also includes control relationships with the company, either directly or indirectly, as well as ownership of shares in the company of 20% or more. While the Elucidation of Article 7 PP No. 57/2010 explains that what is meant by affiliated is:

a. the relationship between companies, either directly or indirectly, controlling and being controlled by the company;
b. the relationship between two (2) companies that are controlled, directly or indirectly, control or are controlled by that company; relationship between two (2) companies that are controlled, directly or indirectly, by the same party; or
c. the relationship between the company and the major shareholders.

The three limitations in Article 7 PP No. 57/2010 above shows that the definition of "affiliated company relationship" is more emphasis on who is the "controlling" party in the company. This limitation also means that this regulation limits the definition of affiliated relationship only to companies that have share ownership links. Meanwhile, inter-company relationships caused by concurrent positions of directors and commissioners are excluded. The keyword in this provision is "intercompany relationship", so the term affiliated does not refer to individual relationships, such as marriage or blood relations.

This is different from the notion of an affiliated relationship in a broader corporate law called a related party [12]. Meanwhile, discussions among countries that are members of the Organization for Economic Co-Operation and Development (OECD) are concerned with harmonization of legal definitions between interested parties and affiliated parties, where the two terms are referred to as the related party [13].

The two boundaries of the term affiliated from two different legal regimes boil down to understanding the term corporate control. The term control is not explicitly explained in Law no. 40 of 2007 concerning Limited Liability Companies (UUPT), only Article 1 number 11 states, that "A takeover is a legal act carried out by a legal entity or individual to take over the shares of a company which results in the transfer of control over the company". In addition, the word control is also contained in Article 125 paragraph (3) of the Company Law, namely "A takeover as referred to in paragraph (1) is an acquisition of shares which results in the transfer of control of the company." However, unfortunately, the term "control" of the company is not explained further, only this term is explained in Article 1 number 11 which states "a takeover is a legal act carried out by a legal entity or individual to take over the shares of the company which results in the transfer of control over the company".

The concept of control is very important in share takeover transactions, because the purpose of a takeover is to gain control over the management of the target company. There are several levels of control that can be achieved in a company:

a. Absolute control, the company holds all of shares of another company; The latter company is a wholly-owned subsidiary of the company. This relationship exempts both companies from certain obligations, e.g. filing of consolidated accounts.

b. Special control, the company holds 75% or more of shares with voting rights in another; The company has the ability to push through ordinary and special resolutions.
c. Majority control, the company holds more than 50% of shares with voting rights in another; The company has the ability to push through only ordinary resolutions but may be blocked where special resolutions are required.
d. Effective control, the company holds significant blocks of shares (eg 30%) to permit it to exercise voting control generally; The company is able to block the passing of special resolutions. The company may also be able to influence voting outcome at general meetings because of the apathy of the other shareholders [13].

In contrast to the definition of control according to the Financial Services Authority Regulation, it states that "control over a public company based on the ability to determine, either directly or indirectly, in any way the management and/or policy of a public company can be proven by documents and/or information showing a party exercises control over a public company". The documents or information referred to include:

a. agreements with other shareholders, so that they have more than 50% voting rights;
b. the authority to regulate the financial and operational policies of a public company based on the articles of association/agreement;
c. the authority to appoint or replace most of the members of the board of directors and members of the board of commissioners who control a public company through the board of directors and board of commissioners;
d. the ability to control the majority of votes at board of directors' meetings and board of commissioners' meetings so that they can control a public company; and/or
e. other capabilities that may indicate control of a public company.

The provisions regarding this controlling share are further explained in KPPU's Regulation No. 3 of 2019 which states that "affiliate relationship is a controlling relationship that occurs due to share ownership of more than 50%, or less than 50% but can influence and/or determine policies on the management of business entities and/or influence and determine the management of business entities". In practice, the determination of control over companies that have shares of less than 50% but can determine policies for managing business entities often creates debate between KPPU and companies that are obliged to notify their corporate actions.

The emergence of this debate is seen in the handling of cases of fines for late reporting on the takeover of company shares which in the company's opinion are not required to report because they are categorized as affiliated companies, but on the other hand KPPU states that there is no affiliated relationship between the acquiring party and the target company (acquired party). The three cases below are cases that arise from these differences of opinion.

3.2 Application of the term Relationship Between Affiliated Companies in the Decisions of the KPPU concerning Delay in Reporting on the Acquisition of Shares

During the last five years, there have been at least 3 cases of delays that dispute the notion of affiliated shares between companies.

3.2.1 Decision on Case No. 09/KPPU-M/2017

This case is related to the alleged violation of Article 29 of Law no. 5/1999 Jo. Article 5 PP No. 57/2010 concerning the Delay in Notification of the Takeover (Acquisition) of the

Company's Shares of PT Cipta Multi Prima by PT Darma Henwa, Tbk. The composition of shareholders of PT Darma Henwa, Tbk are:

a. Zurich Assets International Ltd. of Rp. 4,002,178,390 or 18.33%;
b. Goldwave Capital Limited of Rp. 3,863,217,000 or 17.69%;
c. Community Rp. 13,968,338,402 or 63.98% [14].

Meanwhile, the composition of the initial shares of PT Cipta Multi Prima before the acquisition was:

a. Aldi Wijaya as many as 105,000 shares or 50% share ownership;
b. Agung Iman of 105,000 shares or 50% share ownership.

The composition of shareholders of PT Cipta Multi Prima after the share acquisition is as follows:

a. PT Darma Henwa, Tbk owns 99% of PT Cipta Multi Prima;
b. PT DH Services owns 1% shares of PT Cipta Multi Prima.

Based on the composition of shareholders, PT Darma Henwa, Tbk is the majority shareholder with 99% share ownership. Thus, the Commission Council assessed that based on the composition of share ownership prior to the acquisition of the shares, there was no affiliation between PT Darma Henwa, Tbk and PT Cipta Multi Prima.

Regarding the similarity of the Board of Directors, namely Ivi Sumarna Suryana who is the Director of PT Darma Henwa, Tbk and the Director of PT Cipta Multi Prima, it is not an affiliated relationship as referred to in PP no. 57/2010 because:

a. Ivi Sumarna Suryana is not a shareholder in either company;
b. PT Darma Henwa, Tbk placed Ivi Sumarna Suryana as a Director at PT Cipta Multi Prima and he did not own any shares in PT Cipta Multi Prima prior to the acquisition process;
c. Placement of Ivi Sumarna Suryana as a Director at PT Cipta Multi Prima by the General Meeting of Shareholders (GMS) in conjunction with the agreement to transfer the majority shares to PT Darma Henwa, Tbk on March 31, 2015, although the share sale and purchase transaction was finally carried out on 21 September 2015 for regulatory reasons;
d. The placement of Ivi Sumarna Suryana as a member of the Board of Directors at PT Cipta Multi Prima is an inseparable part of the acquisition of PT Cipta Multi Prima shares by PT Darma Henwa, Tbk to further ensure the due diligence process that has been carried out since 2014.

Thus, the obligation to submit written notification to KPPU applies to the takeover business entity (PT Darma Henwa, Tbk). In his defense, the reported party, PT Darma Henwa as a public company (Tbk), as referred to in Article 1 point 7 of Law no. 40/2007 concerning Limited Liability Companies (UUPT) which defines that a Public Company is a public company or a company conducting a public offering of shares, in accordance with the provisions of the laws and regulations in the capital market sector. Meanwhile, according to Article 1 point 8 of the Company Law, a Public Company is a Company that meets the criteria for the number of shareholders and paid-in capital in accordance with the provisions of the laws and regulations in the capital market sector.

The defense of the reported party is due to the fact that the reported party must also comply with the provisions in Article 1 paragraph (1) letter d of Law no. 8 of 1995 concerning the Capital Market (UUPM) jo. Rule IX.E.1 point 1 letter d which states that "affiliate" is a relationship between 2 (two) companies in which there are one or more members of the same board of directors or commissioners.

The Reported Party also based on Regulation IX.E.1 number 2 letter c point 5), namely affiliated transactions which support the Company's main business activities are excluded from the obligation to announce information disclosure and Regulation IX.E.2 number 3 letter

a point 6) point b) namely material transactions carried out by the Company on assets used to directly support the production process of the main business activities.

The provisions in the Capital Market Law are considered irrelevant to the provisions in PP. 57/2010, because the main consideration of the term affiliated between companies according to the provisions for supervision of mergers is solely assessed based on the existence of "linkage of company share ownership" between the acquiring party (acquiring party) and the target company (acquiror party). The difference in understanding between the two legal regimes of capital market and competition law was anticipated by KPPU with the issuance of Commission Regulation No. 3 of 2019, especially Article 6 paragraph (4). Basically, this provision states that "affiliation between two companies is excluded from the placement of directors and/or commissioners or company employees who are part of the process of merger, consolidation and acquisition of company shares/assets transactions".

Thus, it can be said that the notion of affiliated also includes "the relationship between two companies and/or companies with individuals who occupy the positions of directors or commissioners who own shares in both companies (acquisition and target companies), both with more than 50% share ownership or less than 50% but can determine company policy".

3.2.2 Decision on Case No. 18/KPPU-M/2019

This case concerns the alleged violation of Article 29 of Law Number 5 of 1999 jo. Article 5 Government Regulation Number 57 Year 2010 in the delay of notification of the takeover (acquisition) of shares of the company PT Mitra Barito Gemilang (MBG) by PT Astra Agro Lestari (AAL), Tbk. The reported party in this case is PT AAL, which is suspected of being late in reporting the takeover of PT MBG's shares. In its defense PT AAL stated that in the Share Purchase Agreement (PPJBS) PT MBG gave the right of authority and power (with substitution rights) which would not expire for any reason to the reported party to, among others, carry out management control/management of business, finance, operations, employment in the company and other activities related to plantation business development that can be carried out through the company. Thus, the Reported Party is of the opinion that the legal relationship between PT AAL and PT MBG based on PPJBS has given the Reported Party the right to indirectly control PT MBG as stipulated in the Elucidation of Article 7 letter a of PP No. 57/2010.

From the side of the reported party, PT AAL stated that this company has been controlling PT MBG since 2011 by placing its employees including directors, financing PT MBG's operational activities, creating and managing the financial reporting system. Referring to this fact, it can be concluded that although the acquirer company does not own shares, it has previously been able to control the acquired company, then the transaction is included as a transaction between affiliated companies. Thus, the consequence is that for this fact the provisions of Article 7 PP No. 57/2010 which in principle states that the takeover does not have to be notified to KPPU or includes an excluded transaction, because it is considered a transaction between affiliated companies.

In addition, the acquisition of PT MBG shares by PT AAL is not required to be reported because it does not meet the provisions of Article 1 point 3 PP 57/2010 which states that a takeover is a legal act carried out by a business actor to take over shares of a business entity which results in the transfer of control over the business entity. the. This means that the takeover of shares which does not result in a change of control does not need to be reported to the KPPU.

The KPPU's decision has further consequences, regarding the criteria for controlling an acquiring party (acquirer party) which owns less than 50% shares or even has no shares at all in the target company (acquired party), but is still considered as a "controller" on the grounds of that the acquirer party can control the operations of the target company from a managerial perspective (the decision maker of company policies) and/or can influence the financial statements of the target company.

The matter related to controlling the company even though it only owns less than 50% shares also occurred in the Temasek case. The panel in the consideration of the case stated that the percentage of share ownership is not a benchmark, but the distribution of share ownership composition is important in determining who controls the company. Furthermore, it was stated that share ownership of more than 25% is important because it can exercise a veto over decision-making in the GMS. The same thing is also regulated in OJK (Financial Services Authority) Regulation No. 9/2018, Article 1 point 4 states, among other things, that "controllers are parties who either directly or indirectly have the ability to determine, directly or indirectly, in any way the management and/or company policies".

Unlike the case with the European Union, where the percentage of shares acquired is irrelevant because the focus of attention in merger analysis is the birth of concentration. Concentration appears (born) as a result of the takeover of control, so that control is defined as the possibility of exercising decisive influence in a company. Concentration can occur in two ways: de jure and de facto. De jure concentration usually occurs when a company takes over the majority of the voting rights of a company (positive control). In the event that only minority voting rights are taken over, but if a proposal requires the approval of a super majority shareholder, the minority shareholder can prevent the approval of the proposal, so that the minority share taker also has control over the company being taken over (negative control) [14].

De facto concentration arises when a minority shareholder, based on the pattern of shareholder attendance at shareholder meetings in previous years, has a majority vote in shareholder meetings. In the European Union, share acquisitions that do not result in passive investments in competing companies are also regulated under competition law because they have the potential to create unfair business competition in the market [15].

Unlike the case in the UK, a merger is considered to occur when two companies become one as a result of the same ownership or control [16]. Control is identified as the ability to: (i) directly or indirectly control (ii) materially influence the policies of a company (without having a controlling interest in the company) so that based on this definition there are three levels of control, namely:

a. Controlling interest (de jure control);
b. Ability to control policies (de facto control);
c. Ability to influence policy materially (material influence).

As in the European Union, controls in UK mergers also do not require proof that such controls have been exercised or even shown to be exercised. Controlling interest (de jure control) is generally defined as ownership of shares of more than 50% of the voting rights of a company, thereby giving the shareholder the ability to make decisions based on an ordinary majority. The controlling interest held by one shareholder does not prevent other shareholders from also having control of the company in terms of vetoing decisions that require special majority approval.

The description above shows that in share acquisition the most important thing is the transfer of control, not merely the amount of shares controlled reaches more than 50% of the voting rights, even though share ownership is less than 50% but can be a determinant of

company policy (either directly or indirectly), mainly controls the financial statements, or becomes a decisive influence, or as a controlling interest.

3.2.3 Decision on Case No. 27/KPPU-M/2019

This case is related to the alleged violation of Article 29 of Law Number 5 of 1999 Jo. Article 5 Government Regulation Number 57 Year 2010 in the Late Notification of the Takeover of PT Gita Adhitya Graha (GAG) Shares by PT Matahari Pontianak Indah Mall (MPIM). The Reported Party denies delaying reporting on the acquisition of GAG (acquired company) shares, because MPIM (acquirer company) refers to Article 1 paragraph (1) of Law No. 8/1995 concerning the Capital Market jo. Elucidation of Article 34 paragraph (2) of Law no. 40/2007 concerning Limited Liability Companies. Basically, it states that the notion of affiliation includes family relations due to marriage and descent to the second degree (both horizontally and vertically), the relationship between a party and an employee, director or commissioner and that party, the existence of concurrent positions in two companies at the level of a director or commissioner. In line with the Capital Market Law, the Elucidation of Article 34 paragraph (2) of the Company Law states the definition of "unaffiliated expert" is an expert who has no family relationship, has concurrent positions at the level of directors or commissioners, or has a share ownership of at least 20%.

The KPPU stated that the notion of affiliated is a relationship between two economic entities that have a share ownership relationship between the parent and the subsidiary, where the subsidiary does not have the independence to determine the direction of the company's policies [17]. The definition of affiliation in Article 7 of PP 57/2010 refers to stock control, which emphasizes the single economic entity doctrine.

The single economic entity was first applied in the European Union in the case of deystuff in 1972 and continues to grow in the world of business competition, especially in the European Union. A company can be said as a single economic entity or Single Economic Entity not only seen from the ownership of shares owned must exceed 50% and become the majority share. However, if a company has shares below 50% but can control a subsidiary which results in the subsidiary not having the freedom to run the company, it can be said to be a single economic entity [18].

The criteria for a company to be said to be a single economic entity with other companies is the presence of share ownership of a business actor in another company. The development of a company can be through the establishment of subsidiaries so that a business group is formed between the parent company and its subsidiaries or through the acquisition of shares of other companies either horizontally, vertically or diagonally. Control of shares by one company in several companies results in control over these companies. However, when the group companies grow uncontrollably, it can lead to monopolistic practices in existing business competition [19].

In addition to the considerations related to the SEE doctrine above, based on the principle of *lex specialis derogate legi generali*, merger activities specifically refer to Articles 28 and 29 of Law no. 5/1999 in conjunction with PP 57/2010, and neither the Capital Market Law nor the Limited Liability Company Law, because mergers in competition law prioritize aspects of company control which ultimately led to market control.

The three cases above show that the basic things that need to be paid attention to by the competition authority in the acquisition of shares are, First, the definition of affiliated between affiliated companies. The third case is based on the single economic doctrine principle, the term affiliated is only limited to the existence of a share ownership relationship, and is not

determined by family relations or concurrent positions at the level of directors or commissioners. Second, what is important in the takeover of shares in competition law is the transfer of control of the company from the target company to the acquiring company. The transfer of control is not solely measured by the number of majority shareholdings, but is determined by how much the acquirer can determine the company's policies. The limits for determining company policies are determined by the extent to which the acquirer controls the financial statements, or becomes a decisive influence, or as a controlling interest.

4 Conclusions

The description above results in the following conclusions:

a. The definition of the relationship between affiliated companies in the acquisition of shares is when two of the acquirer parties (acquirer party) own shares in the target company (acquired party). The percentage of shares becomes insignificant, even though the share ownership is less than 50%, they can control the company.
b. In its application or practice, KPPU has found that the transfer of control is not only measured by the number of majority shareholdings, but is determined by how much the acquirer can determine the company's policies. The limits for determining company policies are determined by the extent to which the acquirer controls the financial statements, or becomes a decisive influence, or as a controlling interest.

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