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# JURIDICAL REVIEW OF THE MERGER PLAN BETWEEN BANK MANDIRI AND BNI IN ANTICIPATION OF GLOBAL COMPETITION IN THE PERSPECTIVE OF CONGLOMERATION AND UNFAIR BUSINESS COMPETITION

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**ABSTRACT**
Banking is one of the increasingly important economic sectors in Indonesia's economic development, especially in facing the era of free trade and globalization, both as an intermediary between the deficit sector and the supply sector as an agent of development. The planned merger of PT Bank Negara Indonesia Tbk and PT Bank Mandiri Tbk was also put forward by the then Minister of Finance with the aim of enlarging the scale of national banking so that it could be aligned with regional banks so that the Indonesian economy could grow the largest in the Association of South East Asia Nations (ASEAN). Although mergers are generally intended for business development based on increasing efficiency, it cannot be denied that mergers can also have consequences that can affect business competition. Other risks that can arise from the merger plan are financial conglomerates against adverse selection and moral hazard, given the excessive risk taking behavior. Judging from the data, in terms of regulations there is indeed no prohibition for banks in Indonesia to have a subsidiary. However, the practice of financial conglomeration has the potential to give birth to an unfair business competition.

**Keywords**:
Banks,
Mergers,
Conglomerates,
Unfair Business Competition.

## INTRODUCTION

Banks have an important function and role in the national economy. If it is seen from the current condition of society, it is rare for people who do not know and are not related to banks. Almost everyone is associated with these financial institutions. In the beginning, banking activities started from money exchange services, so that in banking history the meaning of a bank was known as a table where money was exchanged, where the activity of exchanging money is now known as foreign exchange trading (money changer). In subsequent developments, bank activities developed again into a depository for money which is now known as savings activity. Banking activities have increased again as a place to borrow money. Banking activities continue to develop along with the development of society, in which banks are no longer just a place to exchange money or a place to store and borrow money.

Banking is one of the economic sectors which play an increasingly important role in Indonesia's economic development, especially in facing the era of free trade and globalization, both as an intermediary for the deficit sector with the supplement sector and as an agent of development. Overall and in terms of quantity, it can be said that since the New Order era, or exactly from the mid-1980s to the mid-1990s (before the rupiah crisis occurred) the Indonesian banking sector experienced quite rapid development and changes.

The large number of banks in Indonesia makes the level of competition between banks increased. Offering products and services is an essential factor in attracting customers to become loyal customers. In addition, the era of globalization and free trade (free trade) has forced the business world including banks to be able to do business independently, to be able to compete more closely, not only with national but also international players. In the world of trade in this globalization era, the geographical boundaries and sovereignty of a country become increasingly blurred, so that the competition becomes more and more free. Therefore, companies are required to always work with good performance. Thus, with the banking industry, banks must be managed professionally, be able to work efficiently, safely and pay attention to the principles of banking prudence, and implement correct business ethics. Moreover, management must always find a way so that its bank can compete with other banks in various situations and conditions which are always changing rapidly, following global changes whose information can be immediately accepted throughout the world as a result of advances in information technology, banks must also be able to face both internal and external shocks. The plan to merge PT Bank Negara Indonesia Tbk (referred to BNI) and PT Bank Mandiri Tbk (referred to Bank Mandiri) was stated by the Minister of Finance Bambang Brodjonegoro. He stated that having a large bank in the middle of regional competition is very important. Bambang Brodjonegoro hopes that with the merger between BNI and Bank Mandiri, the state-owned bank's capital will be adequate so that the Indonesian economy can grow as the largest in the Association of South East Asia Nation (hereinafter referred to as ASEAN). In fact, the discourse on merging state-owned banks is not the first time it has emerged. The former Minister of State-Owned Enterprises (hereinafter referred to as BUMN) Dahlan Iskan when he was still in office also often made the plan. At that time, Bank Mandiri was planning to merge with Bank Tabungan Negara. The reason for the plan was the same; it was to enlarge the scale of the national banking system so that it is equal to regional banking. However, until he resigned from his position, His plan had not been realized. In this regard, how is the plan for the merger between Bank Mandiri and BNI from the perspective of unfair business competition law? As a bank that has large assets, is the planned merger between Bank Mandiri and BNI included in the category of merger prohibited by Regulations Number 5 Year 1999 concerning about The Prohibition of Monopolistic Practices and Unfair Business Competition?

Based on this background, the writer will conduct the research about the Merger Plan between Bank Mandiri and BNI from several perspectives entitled "Juridical Review of the Merger Plan between Bank Mandiri and BNI in Anticipation of Global Competition in the Perspective of Conglomeration and Unfair Business Competition".

## RESEARCH METHOD

### a) Type of Reasearch

This research entitled "Juridical Review of the Merger Plan between Bank BNI and Bank Mandiri in Anticipation of Global Competition in the Perspective of Conglomeration and Unfair Business Competition" uses the type of juridical normative research; it is legal research which refers to the legal norms or law norms contained in statutory regulations. This research uses the statue approach, which is an approach taken to examine all laws and regulations related to the legal issue being handled. This approach is used to examine whether the planned merger between BNI and Bank Mandiri has an impact on the domestic market, especially in terms of conglomeration and unfair business competition. Therefore, this merger plan needs to be reviewed through business competition law instruments. The business competition law instruments in Indonesia are regulated in Regulations Number 5 Year 1999 about The Prohibition of Monopolistic Practices and Unfair Business Competition.

### b) The Nature of Reasearch

The nature of the research that is used in this research is analytical descriptive. It is the research that elaborates and describes the secondary data which the writers obtained in this study.

### c) Data and Data Source

According to the type and the form, the data needed in this study is secondary data which is obtained from available sources, such as official documents, books, research results in the form of reports and so on. The secondary data used comes from three groups of legal materials; they are primary legal materials, secondary legal materials, and tertiary legal materials. The primary legal materials are Regulations Number 5 Year 1999 concerning about Prohibition of Monopolistic Practices and Unfair Business Competition, Regulations Number 10 Year 1998 about Banking, and OJK Regulation No. 17 / POJK.03 / 2014 concerning the Implementation of Integrated Risk Management for Financial Conglomerates and OJK Regulation No. 18 / POJK.03 / 2014 concerning Implementation of Integrated Governance for Financial Conglomerates. Secondary legal materials are legal materials that provide an explanation of primary legal materials. The writers use secondary legal materials in the form of literature or books related to the issues discussed in this research. Tertiary legal materials are materials that provide guidance and explanation for primary and secondary legal materials, for example, dictionaries, encyclopedias, cumulative indexes, and so on. In addition to laws and books, the writers also use tertiary legal materials in the form of data and information from the internet.

### d) Data Collection

Data collection was carried out through literature studies conducted in several places, such as the University of Indonesia library and accessing data through the internet.

### e) Data Analysis

In this legal research, the writers use qualitative analysis of secondary data that has been collected and processed to obtain answers that can be scientifically justified in order to create the formulation of conclusions.

### f) Conclusion Withdrawal

Conclusions are drawn using deductive logic, which means a method of drawing specific conclusions from general statements, including regarding termination of employment to labor unions and compensation due to termination of employment. This general study will be analyzed specifically from statutory regulations and other legal sources.

## RESULTS AND DISCUSSION OF REASEARCH

Merger and acquisition procedures are regulated based on the Letter Decree of the BI Directors No. 32/51 / Kep / DIR dated May 4, 1999. The merger option is important given the regulation on bank ownership in Indonesia. Bank Indonesia Regulation No. 8/16 / PBI / 2006 regarding Single Ownership in Indonesian Banking states that each party can only be the controlling shareholder in one bank or what is commonly referred to as the Single Present Policy. Controlling shareholder is an individual or legal entity owning 25% (twenty five percent) or more of bank shares. If there is controlling share ownership in two banks, the shareholders must merge in one of the banks, either merge with the controlled banks or form a bank holding company. An example of a national private bank merger was first carried out by PT. Bank CIMB Niaga Tbk and PT. Bank Lippo Tbk which was officially merged on November 1, 2008. The merger was initiated by the purchase of 51% (fifty one percent) of Lippo Bank's shares from Santubong Investment BV by CIMB Group Sdn Bhd on October 28, 2008. Then, Lippo Bank shares were exchanged for shares of CIMB Niaga. Another example is DBS Group Holding Ltd on April 2, 2012, which signed a conditional share sale and purchase agreement with Fullerton Financial Holding Pte. Ltd. to acquire all shares owned by Fullerton in its subsidiary, Asia Financial Indonesia (AFI), the owner of 67.37% (sixty seven point thirty seven percent) in PT. Bank Danamon Indonesia, Tbk. This collaboration strengthens and expands the business scope that has been the mainstay of each of them, DBS with the corporate and commercial business segments and Danamon in micro finance and retail consumers.

Vice President of Bank Mandiri Manado Area, Hotman Nainggolan said that his party supports the formation of large banks in Indonesia by conducting a merger between Bank Mandiri and BNI. Hotman said that the merger of Bank Mandiri and BNI would have a positive impact on the government and the two state-owned banks, because apart from creating a large and strong bank, the plan was also to prevent the two banks from competing with each other. Bank Mandiri and BNI are engaged in the same field and are fighting for the same market share. Hence, the merger of the two banks is considered to have a good impact. This merger is able to work well if it is carried out with a strategic study. Banks will be big and strong because they have ample capital to compete in the global market. In addition, he also stated that the merger of the two banks could be an opportunity for state-owned banks to take up the ASEAN market. Hotman said the merger of Bank Mandiri and BNI could make the bank's posture even bigger. If the merger is carried out, the two banks can work together. The positive side when the two banks are combined, they can also increase efficiency, for example BNI and Bank Mandiri ATMs which are located closest to each other, if they are combined, it can lower spending costs.

In contrast to Bank Mandiri which supports the proposed merger between Bank Mandiri and BNI, the President Director of BNI, Gatot Suwondo, stated that BNI rejected the proposed merger between BNI and Bank Mandiri. The reasons for the rejection are: 1) taking into account costs, the planned merger between Bank Mandiri and BNI will require a very large capital; 2) the potential for reduction of employees and directors which will result in an increase in the number of unemployed; 3) potential decline in investor confidence which in turn will have an impact on the decline in share value. The Vice President of the Republic of Indonesia, Jusuf Kalla, also expressed rejection of the proposed merger between Bank Mandiri and BNI. He stated that the merger of state-owned banks were ineffective and inefficient. He also stated that the planned merger of the two banks was not in accordance with the condition of Indonesia, which has a large population and wide area. With a large population, Indonesia actually needs more state banks. Furthermore, he also considered that each state-owned bank (Bank BUMN) that is currently operating should continue with its own business focus.

When compared between Bank Mandiri and BNI in terms of assets owned, Bank Mandiri is the bank that has the largest assets compared to other government banks. Bank Mandiri is the top 6 companies with the largest market capitalization on the Indonesia Stock Exchange as of December 31, 2014, with a market capital of IDR 248.90 trillion. Meanwhile, based on "Forbes Global 2000" in 2014, Bank Mandiri is ranked 478$^{th}$, while Bank BNI is at 965$^{th}$. The performance comparison as per September 2014 is based on information from the Deputy for Financial Services, Construction Services and Other Services, the Ministry of State-Owned Enterprises of the Republic of Indonesia in the proposed additional PMN 2015 : Bank Mandiri's assets were 798 trillion, while BNI's was 408 trillion. Bank Mandiri credit 506 trillion, while BNI 268 trillion. Bank Mandiri DPK 591 trillion, while BNI 308 trillion. Bank Mandiri's NPL was 1.7% while BNI's was 2.2%. Bank Mandiri's LDR averaged 86%, while BNI's was 87%. Bank Mandiri's ROE is 25% while BNI is 23%.

Bank Mandiri and BNI are banks that both have many subsidiaries. Therefore, OJK specifically stated that there were 16 banks that were included in the group of bank conglomerates starting from the third quarter of 2014, 16 of which were Bank Mandiri and BNI. The election of these 16 bank conglomerates was because they controlled 70% of the total assets of the financial industry in Indonesia. From the positive side, bank conglomerates can indeed strengthen the synergy of the financial business to face global competition. Moreover, this bank conglomeration can also strengthen bank defense in Indonesia to withstand the invasion of regional banks during the ASEAN Economic Community (MEA) era in 2015 or 2020 specifically for banking. Nevertheless, from the negative side, this conglomeration in the banking sector has the potential to create unhealthy oligopolies and even monopolies. Financial conglomerates in the banking sector can also create potential for fraud, besides that, if a bank experiences losses due to its subsidiary, and then this inevitably has a negative impact on the parent. If this get worst, it is possible that the bank will lack short-term funds, resulting in a rush and other systemic impacts. OJK revealed that over the past five years, the number of financial institutions originating from the same group has shown an increasing trend. In the case of financial conglomerates in the banking sector, conglomerates in Indonesia have stated that the growth of a number of business lines that they are working on seems unlikely if it is not equipped with bank ownership. So, it is not surprising that in recent years there have been many conglomerations in the financial industry. If we look closely, the most common ownership of banks by the super-rich occurred in 2002, when the Djarum Group became the majority shareholder in Bank Central Asia (BCA) through Faralon Capital Management. In 2009, Michael Sampoerna was interested in Bank Dipo and Mochtar Riady along with Yantoni Nio were eyeing Bank Afindo Sejahtera. The Sampoerna family officially acquired Bank Dipo in 2011 and changed its name to Bank Sahabat Sampoerna which then targeted the micro credit and small and medium enterprises segments (UMKM). Meanwhile, the Lippo family and the Pikko Group also completed the acquisition in 2011, this bank became the National Nobu Bank with 60% ownership owned by Lippo and 40% owned by Yantoni Nio. Cahirul Tanjung, who is the owner of Bank Mega and Bank Syariah, does not want to be outdone. He plans to buy 30% of Central Sulawesi Bank shares after buying 24% of Bank North Sulawesi. Meanwhile, Hary Tanoesoedibjo has also announced the purchase of 30% shares in Bank ICB Bumiputera and ICB Finansial Holding Group. The reason they buy a bank is more because of the very high return on investment in banking, especially because the net interest income is the highest in any country. Not only that, for existing banks, they also continue to develop their business to dominate the market. For example, Bank Mandiri, which currently has 8 subsidiaries, one of which is AXA Mandiri Financial Services which is engaged in life insurance and Mandiri AXA General Insurance which is engaged in general insurance.

As seen from these data, from a regulatory perspective, there is no prohibition for banks in Indonesia to have subsidiaries. However, the practice of this financial conglomerate has the potential to create unfair business competition. The reason is that by having financial products from upstream to downstream, starting from savings, deposits, checking accounts, various payment instruments, various types of credit, insurance products, wealth management, to investment instruments such as mutual funds, bonds and stocks, will resulting in parties outside the bank unable to work on a project because all projects and funding have been given to each subsidiary. Actions like this will shut down the emergence of new similar businesses, meaning that the bank has closed business opportunities for some people. In addition, customers will be lured into just one Conglomerate Company. With increasingly sophisticated products, customers can no longer recognize the risks that are in them, so that it will be detrimental to customers.

Another risk that can arise from the existence of financial conglomerates are adverse selection and moral hazard given the excessive risk taking behavior can cause the collapse of systemic financial institutions that has an impact on society and the condition of the national economy. The other risk is regulatory arbitrage, contagion, lack of transparency, conflict of interest, and abuse of economic power. Referring to the negative risks arising from the existence of financial conglomerates, especially in the banking sector, what if Bank Mandiri and BNI, which are both in the conglomerate category, do a merger? Will the negative impact be greater? Therefore, in this research, the writers will try to analyze the impact that can be generated from the merger between Bank Mandiri and BNI, which is a bank that belongs to the category of conglomerate companies. Although in general, mergers are intended for business development based on increasing efficiency, it cannot be denied that mergers can also have consequences that can affect business competition. For this reason, it is necessary to determine criteria that must be adhered to, so that the merger does not disturb or distort the market, and fair business competition can be maintained. In order to maintain healthy business competition in the practice of the business world in Indonesia, the Government of the Republic of Indonesia and the House of Representatives have enacted Regulations Number 5 Year 1999 concerning about The Prohibition of Monopolistic Practices and Unfair Business Competition. The prohibition on mergers that have non-competitive effects is regulated in Part Four Articles 28 and 29 of Regulations Number 5 Year 1999. Article 28 states that “mergers, consolidations and acquisitions that are prohibited are mergers, consolidations and acquisitions that result in monopolistic practices and unfair competition".

## CONCLUSION

The plan to merge PT Bank Negara Indonesia Tbk and PT Bank Mandiri Tbk was stated by the Minister of Finance at that time with the aim of enlarging the scale of national banking so that it could be equal to regional banking so that the Indonesian economy could grow the largest in the Association of South East Asia Nation (ASEAN). Although in general, mergers are intended for business development based on increasing efficiency, it cannot be denied that mergers can also have consequences that can affect business competition. Other risks that may arise from the planned merger are financial conglomerates against adverse selection and moral hazard given the excessive risk taking behavior. As seen from these data, from a regulatory perspective, there is no prohibition for banks in Indonesia to have subsidiaries. However, the practice of this financial conglomerate has the potential to create unfair business competition.

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