

# INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

---

Volume 6 | Issue 3

---

2023

© 2023 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

---

This article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestions or complaints**, kindly contact [Gyan@vidhiaagaz.com](mailto:Gyan@vidhiaagaz.com).

---

**To submit your Manuscript** for Publication in the **International Journal of Law Management & Humanities**, kindly email your Manuscript to [submission@ijlmh.com](mailto:submission@ijlmh.com).

---

# Vertical Integration in Competition Law and The Reality of Manufacturing Industry in Indonesia

---

YAYAN HERNAYANTO<sup>1</sup>, KURNIA TOHA<sup>2</sup> AND YETTY KOMALASARI DEWI<sup>3</sup>

## ABSTRACT

*The manufacturing industry is one of the pillars of the national economy. This sector is a part that is fostered and regulated by the Ministry of Industry. The government as a policy maker makes a roadmap for national industrial development. On the other hand, business actors struggle for the continuity of the company's business that can operate in a long run. The sustainability of the production process in the manufacturing industry is highly dependent on the company's business model and production system. Scarcity of supply and efficiency are the 2 (two) main things that support it. Vertical integration is one of the business strategy models that can be implemented by Business Actor. Whatever the strategy is chosen, at the end it aims to get maximum profit for the company. Competition law in Indonesia regulates vertical integration, both upstream and downstream level, and this will be closely related to the choice of business model strategy for business actors. Competitive goods are the target of manufacturing companies to get a good market share as a sign of acceptance of these products in the market. Pro and anti-competitive impacts become the straight line that limits vertical integration for the manufacturing industry. This paper will describe the entire package related to business actors in the manufacturing industry and their suppliers, especially at the upstream stage. Because between backward vertical integration and industrial reality cannot be separated. This research was also conducted on the implementation of vertical integration in the manufacturing industry, the motivation, and the methods used and to see whether the vertical integration is included in the category of vertical integration that is prohibited or allowed under the provisions of the Business Competition Law.*

**Keywords:** *Efficiency, Industry Realities, Vertical Integration.*

---

<sup>1</sup> Author is a student at Law Faculty University of Indonesia, Jakarta, Indonesia.

<sup>2</sup> Author is a Professor at Law Faculty University of Indonesia, Jakarta, Indonesia.

<sup>3</sup> Author is an Associate Professor at Law Faculty University of Indonesia, Jakarta, Indonesia

## I. INTRODUCTION

### (A) Significance of Manufacturing Industry in Indonesia

The change from a pandemic outbreak of virus Covid-19 to endemic has encouraged the recovery of various economic sectors. The expansion of the manufacturing sector continues to increase; manufacturing industry is one of the pillars supporting the economy. This can be seen in several performances in the manufacturing sector, such as Gross Domestic Product (GDP), investment realization, export achievements, employment, and the Manufacturing Purchasing Manager's Index (PMI).<sup>4</sup>

The contribution of the manufacturing industry sector to GDP shows a significant increase from year to year. The biggest contribution to the national GDP, even when the pandemic reached its peak in 2020-2021. At that time, the industrial sector recorded a GDP of Rp2,946.9 trillion, an increase from 2020 which reached Rp2,760.43 trillion.<sup>5</sup>

In the manufacturing<sup>6</sup> industry,<sup>7</sup> involves big amount capital and high technology. The manufacturing industry based on Ministry of Industry is grouped into 5 (five) major categories, namely: the automotive, food and beverage, chemical, textile, and electronic industries. Therefore, the existence of companies that aim to invest and operate in Indonesia must be regulated by clearer and more conducive rules.

The Government of Indonesia has a National Industrial Development Master Plan 2015-2035 (RIPIN) as outlined in Government Regulation No. 14 of 2015. This Master Plan is expected to be a guidance, therefore for both the central government and local governments in making policies related to industrial development.

The Annex of the RIPIN mentioned that the national Industrial Development targets with

---

<sup>4</sup> Ministry of Industry (MoI) of Republic of Indonesia, *Industri Manufaktur Indonesia Semakin Ekspansif*, (2022), <https://www.kemenperin.go.id/artikel/23125/Industri-Manufaktur-Indonesia-Semakin-Ekspansif> (last visited Feb 10, 2022).

<sup>5</sup> *Id.* Febri Hendri Antoni Arif, Press Secretary of MoI, stated that in 2020, the contribution of the industrial sector in Indonesia which reached 19.8% also exceeded the world average of 16.5%. Throughout 2021, investment in the manufacturing sector reached IDR 325.4 trillion. This figure exceeds the manufacturing investment achievement target projected by the Ministry of Industry of IDR 280 trillion to IDR 290 trillion, and an increase of 19% from 2020 (Rp 272.9 trillion). As a comparison, in 2019, the realization of investment in this sector was Rp. 215.9 Trillion.

<sup>6</sup> Dictionary Kamus Besar Bahasa Indonesia (KBBI), *Industri*, <https://kbbi.web.id/industri> (last visited May 27, 2022). In the Dictionary, KBBI Daring, Ministry of Education of Republic of Indonesia, Manufacturing is the process of converting raw materials into goods to be used or consumed by humans, <https://kbbi.web.id/industri>, accessed on 27 May 2022.

<sup>7</sup> Central Government of Republic of Indonesia, *Indonesia, Law No. 3 of 2014 concerning Industry*, (2014). The definition of Article 1 point 2 provides an understanding that industry is all forms of economic activity that processes raw materials and/or utilizes industrial resources so as to produce goods that have added value or higher benefits, including industrial services.

several indicators of improvement as follows:<sup>8</sup>

- a) Industrial growth that can reach 2 (two) digit growth in 2035 so that the contribution of Industry in GDP reaches 30% (thirty percent);
- b) Market control both domestic and exports by reducing dependence on imports of raw materials, auxiliary materials, and capital goods, as well as increasing exports of industrial products;
- c) Acceleration of distribution and even distribution of industry throughout Indonesia;
- d) Contribution of small industry to the growth of national industry;
- e) Development of innovation and technology;
- f) Absorption of manpower in the industrial sector; and
- g) Strengthening the industrial structure with the growth of upstream and intermediate industries based on natural resources.

The Ministry of Industry has also made a road-map in establishing and developing Industry in Indonesia with the title "Making Indonesia 4.0". The President of Indonesia has positioned the road-map as part of the national agenda.<sup>9</sup> This road-map is expected to be a big proposal/idea in making Indonesia part of the ranks of the 10 countries with the largest economies in the world by 2030. The main program in the road-map that has been made is to improve the ability of workers engaged in industry. This is very important, as Indonesia will enter a new era in 2030 where the majority of the population being of productive age.<sup>10</sup>

### **(B) Business and Efficiency**

Determining the line of business by Business actor, business model/scheme, and planning for competitive product development are challenges for management or business actors. Efficiency is the basis of increased profits by reducing or saving unnecessary costs. Efficiency for the company is also a basis in determining the existence and position in the market,<sup>11</sup> because it does not cause price increases to consumers, and/or also does not harm suppliers. In principle, in the business, there must be both profit for all parties, so no one feels disadvantaged.

---

<sup>8</sup> Central Government of Republic of Indonesia, *Indonesia, Government Regulation No. 14 of 2015 concerning the 2015-2035 National Industrial Development Master Plan*, (2015). State Gazette No. 46 of 2015, p. 19.

<sup>9</sup> Bey Machmudin, *Presiden Jadikan Making Indonesia 4.0 Sebagai Agenda Nasional*, MINISTRY OF COMMUNICATION REPUBLIC OF INDONESIA (2018), <https://www.kominfo.go.id/content/detail/12847/presiden-jadikan-making-indonesia-40-sebagaiagenda-nasional/0/berita> (last visited Feb 27, 2020).

<sup>10</sup> Ministry of Industry (MoI) of Republic of Indonesia, *Making Indonesia 4.0: Strategi RI Masuki Revolusi Industri Ke-4*, (2018), <https://kemenperin.go.id/artikel/18967/Making-Indonesia-4.0:-Strategi-RI-Masuki-Revolusi-Industri-Ke-4> (last visited Feb 25, 2020).

<sup>11</sup> *Id.*

In the business sector, there is one alternative way that can be taken to support efficiency, namely Vertical Integration.<sup>12</sup> This method is the ultimate method used by the company to make the process more efficient. In its implementation, Vertical Integration at least must consider 2 (two) points of view, namely: internal benefits (including costs/costs), and the consequences for the competition scheme.<sup>13</sup>

One example of a company that implements Vertical Integration is PT. PLN (Persero).<sup>14</sup> PLN has several subsidiaries and even “grandchildren” which are the business expansions of PLN.<sup>15</sup> The business expansion in this case have correlation or are in the same field regarding electricity, but some are in the upstream and downstream areas.

### **(C) Vertical Integration Regulation in Indonesia**

Vertical Integration is carried out by companies to generate profits with savings or efficiency. But apart from the benefits that can be achieved, there is another side to vertical integration that can be categorized as one of the agreements that are prohibited under the Indonesian Competition Law, especially Law no. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition.

This Vertical Integration regulation basically prohibits Business Actors from entering into agreements with other business actors with the aim of controlling the production of a number of products, whether they are a series of production of certain goods and/or services. In this case, the resulting product is the result of processing or further processing either in a direct or indirect series which can result in unfair business competition and or harm the community.<sup>16</sup>

---

<sup>12</sup> Kathryn Rudie Harrigan, *A Framework for Looking at Vertical Integration*, J. BUS. STRATEGY, 30 (1983).

<sup>13</sup> *Id.* at 31.

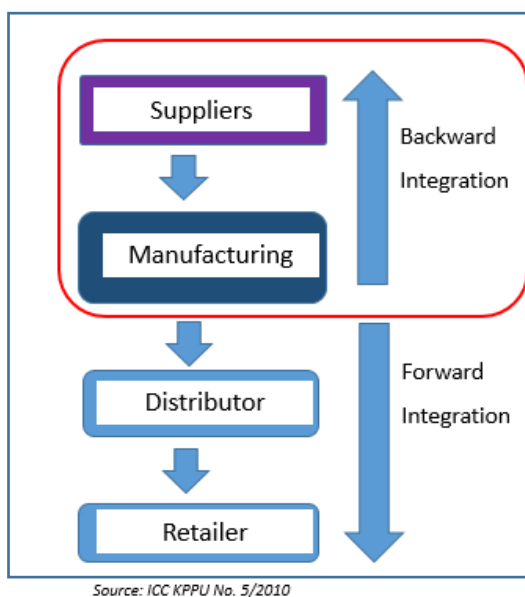
<sup>14</sup> National Electricity Company of Republic of Indonesia, *PROFIL PERUSAHAAN*, <https://web.pln.co.id/tentang-kami/profil-perusahaan> (last visited May 25, 2020). PLN is the only state-owned electricity company (BUMN), which was born in the late 19th century, the Dutch East Indies era. Then between the years 1942-1945 there was a shift in the management of these Dutch companies by the Japanese. When Japan surrendered to the Allies, this was then used by young people and electricity workers through a delegation of Electricity and Gas workers who together with the Head of the Central Indonesian National Committee took the initiative to meet President Soekarno at that time to hand over these companies to the Government of the Republic of Indonesia. Then on October 27, 1945, President Soekarno formed an institution namely the Electricity and Gas Bureau under the Ministry of Public Works and Energy with a power generation capacity of 157.5 MW. In line with the Government's policy of providing opportunities for the private sector to do business in the electricity supply business, since 1994 the status of the State Electricity Company (PLN) changed its status from a Public Company to a Limited Liability Company (Persero).

<sup>15</sup> M. Fathra Nazrul Islam, *Punya Banyak Anak Perusahaan, Adakah Bisnis PLN Yang Menyimpang?*, (2019), <https://www.jpnn.com/news/punya-banyak-anak-perusahaan-adakah-bisnis-pln-yang-menyimpang> (last visited May 20, 2020). Total subsidiaries of PLN are 11 companies, which then have further subsidiaries. So that in total there are 50 companies. Most of them are IPPs (Independent Power Producer), because each company has their own electricity generating location. The President Director of PLN stated that the existence of the subsidiary will be evaluated to what extent the health of all these business units will be.

<sup>16</sup> Central Government of Republic of Indonesia, *Indonesia, Law No. 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition*. (1999). See article on Vertical Integration in article 14 and its

In Vertical Integration, what is meant by controlling a number of products in a production chain is to take control of a series of production processes for certain goods from upstream to downstream or continuous processes for certain services by certain business actors. Even though the implementation of Vertical Integration can produce goods and services at competitive prices, it is also possible that it can lead to unfair business competition that damages the foundations of the community's economy. The use of this Vertical Integration is prohibited, as long as it causes unfair business competition and/or harms the community.<sup>17</sup>

The general description of the Vertical Integration relationship is described by the Indonesia Competition Commission (KPPU)<sup>18</sup> as follows:<sup>19</sup>



According to the above scheme, Vertical Integration can occur backwards or forwards. Vertical integration in the forward integration can occur if the manufacturing company enters into a transaction or agreement with its distributors, including retailers. Vertical integration is called backwards if it is carried out between manufacturers and suppliers of raw materials or components to be assembled into finished goods.

In another scheme, we can observe how a manufacturing company and its suppliers transact,

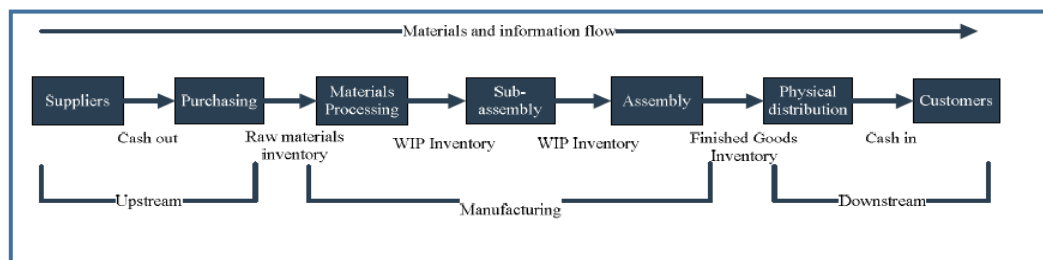
explanation.

<sup>17</sup> *Id.*

<sup>18</sup> Business Competition Supervisory Commission is a commission established to supervise business actors in carrying out their business activities so as not to engage in monopolistic practices and or unfair business competition. Article 1 of Law no. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition. The same thing was conveyed by Hamdan Zulva, in the KPPU's Webinar with the theme Redefining KPPU's institutions, dated July 15, 2020. That KPPU has a strategic function as a business guard, especially as a supervisor for the Market Economy. In addition, KPPU is also an institution established based on the constitution

<sup>19</sup> Commission for the Supervision of Business Competition (KPPU) Republic of Indonesia, *KPPU Law No.5 of 2010*, (2010). Article 14 concerning Vertical Integration.

the flow when raw materials enter the manufacturing industry process to become finished goods as follows:<sup>20</sup>



Source: *SCM in the Manufacturing Industry*

Vertical integration can be understood in two way approaches, namely the positive side and the negative side. Law no. 5 of 1999, regulated in article 14 as well as the KPPU Commission's regulations, were made to provide an overview as well as limits on Vertical Integration from its negative and positive elements. The positive side is that it can reduce the negative impact of a monopolistic market structure at every stage, both in the stages of the production process as well as in the sales and delivery process of production.

Companies can operate more efficiently if they are created in one integrated entity than if they are split into several companies at each stage. In addition, from the consumer side, it is expected that the products and/or services produced will become cheaper/affordable.<sup>21</sup>

One of the cases of Vertical Integration that occurred was a company providing electronic transportation services. The case with Case Number 13/KPPU-I/2019 was decided on June 30, 2020 by the Indonesia Competition Commission (KPPU) and read before in front of the trial on July 2, 2020 by the Commission Council. This is related to the alleged Vertical Integration carried out by an online taxi service provider company, GRAB.<sup>22</sup>

As reported in various media, this case started with Grab who was summoned by KPPU together with PT. TPI (PT. Teknologi Pengangkutan Indonesia), they are suspected of having committed unfair business competition in the online taxi business. KPPU has studied the cases of these 2 (two) companies because they are considered to have given priority to drivers who are members of PT. TPI compared to other drivers in getting passengers.<sup>23</sup>

<sup>20</sup> DUY KIET TRAN, KARDIN EDISTA & SAUMYA KADOI, *Supply Chain Management in the Manufacturing Industry*, 5, <http://hosteddocs.ittoolbox.com/supply-chain-management.pdf>.

<sup>21</sup> *Id.* at 1.

<sup>22</sup> Commission for the Supervision of Business Competition (KPPU) Republic of Indonesia, *Decision No. 13/KPPU-I/2019*, (2019).

<sup>23</sup> Rahma Tri, *Terancam Denda Rp 25 M, Ini Pasal yang Diduga Dilanggar Grab*, TEMPO (2019), <https://bisnis.tempo.co/read/1225946/terancam-denda-rp-25-m-ini-pasal-yang-diduga-dilanggar-grab> (last visited Oct 1, 2020). In this case Tempo reported that KPPU investigators had read a report that PT. TPI cooperated with the driver to use his vehicle from PT. TPI with lease status.

KPPU investigators obtained data on the special relationship between the products of PT. TPI and Grab. Grab gives preferential treatment to drivers who are part PT. TPI. As an application provider, Grab gives priority to them. The allegation was added to the information that Grab and PT. TPI is an affiliated company, one of which has a concurrent position as a Commissioner of each company.<sup>24</sup>

The sample case of Vertical Integration above is carried out between the upstream and downstream parts. In another case, namely the case of Garuda Indonesia, there is a similarity in that there are members of the board of directors who hold double posts. At that time, Garuda as an airline company appointed an affiliated company in terms of purchasing flight tickets. For companies that have existed before and are used to selling Garuda tickets first, they are disrupted and many suffer losses.<sup>25</sup>

In the decision with Case Number 01/KPPU-L/2003, it can be proven that Garuda has concurrent positions, namely Director at Garuda holding the position of commissioner at PT. Abacus Indonesia which is a subsidiary of PT. Garuda Indonesia Airlines. In addition, there is an agreement that is not stated in the Agreement regarding the use of dual access. In this case, Garuda has hindered other system providers (Computer Reservation System) and discriminated against other companies.<sup>26</sup>

As mentioned earlier, from an economic point of view, Vertical Integration have benefits for consumers, but the implementation of this Vertical Integration can lead to business competition and can damage the economic foundations of the community.<sup>27</sup> Therefore, this research takes this opportunity **to examine the relationship between the implementation of Vertical Integration in the manufacturing industry and its regulation on Competition Law in Indonesia. Than, how the industry understand the rules of prohibited vertical integration in the realities of industry activities in maintaining production sustainabili**

---

<sup>24</sup> Dewi Rina Cahyani, *Awal Mula KPPU Seret Grab ke Meja Hijau, Diskriminasi Order Taksi*, TEMPO (2019), <https://bisnis.tempo.co/read/1254583/awal-mula-kppu-seret-grab-ke-meja-hijau-diskriminasi-order-taksi> (last visited Oct 1, 2022). In this news, Tempo said that PT. TPI and Grab have cooperated, in this case PT. TPI is engaged in vehicle rental transportation, while Grab is a company that is engaged in providing application systems. So in this case there is a relationship between the two. Drivers must join a business entity or cooperative. One of them is PT. TPI, which has a special relationship with Grab. PT. TPI is considered to receive special treatment, where they receive calls from passengers first compared to other drivers. In addition, from 2017 to 2018, data obtained that there was an increase in drivers under PT. TPI. The increase occurred in several cities including Jakarta, Bogor, Depok, Bekasi, Makassar, and Surabaya.

<sup>25</sup> Commission for the Supervision of Business Competition (KPPU) Republic of Indonesia, *Case Number 01/KPPU-L/2003*, (2003). Which was decided in the KPPU trial on 30 July 2003 and read before the trial on 4 August 2003.

<sup>26</sup> *Id.* at 32.

<sup>27</sup> RACHMADI USMAN, *HUKUM PERSAINGAN USAHA DI INDONESIA* 60 (2004).



## II. THE THEORIES RELATED TO VERTICAL INTEGRATION

Vertical integration and vertical restraint have been a battle ground of debate some scholars, between economists and lawyers for a long time.<sup>28</sup> Both law and economics scholars claim each other for the theories and data they convey, as is the case with the seizure of the Mekong delta which each army is fighting for.<sup>29</sup>

Stephen Martin said in his book *Industrial Organization in Context* (2010) that in this case the manufacturing industry enters into a Vertical Integration agreement and places tools with its suppliers, which are specifically designed to produce components that are different from other Manufacturing Industries.<sup>30</sup>

The Case that will be studied is the acquisition of Fisher Body by the largest automotive company in its era, General Motors.<sup>31</sup> An example of literature discussing vertical integration is the article submitted on [Roseveltinstitute.org](http://Roseveltinstitute.org), that:

*“Vertical integration describes a circumstance when a single firm seeks to control more than one stage in the supply chain. For example, when a single firm owns the supply of raw materials, the production facilities that turn those materials into the final product, and the store or online platform that sells the final product, that firm is vertically integrated.”*<sup>32</sup>

On the one hand there are benefits with the efficiency gained, but on the other hand there is a risk of prohibited vertical integration. In addition, with this vertical integration, will the public or consumers get a competitive price, or even with this vertical integration, there are business actors who suffer losses, because they are bound by a binding and long-running agreement.<sup>33</sup>

---

<sup>28</sup> ROGER D. BLAIR & DAVID L. KASERMAN, *LAW & ECONOMICS OF VERTICAL INTEGRATION AND CONTROL* 1 (1983).

<sup>29</sup> BLAIR AND KASERMAN, *supra* note 25.

<sup>30</sup> STEPHEN MARTIN, *INDUSTRIAL ORGANIZATION IN CONTEXT* 608 (2010).

<sup>31</sup> R. H. Coase, *The Acquisition of Fisher Body by General Motor*, 43 J. LAW ECON., 15 (2000). This acquisition was made for Fisher Body with consideration of the inefficiency of the cost of making the vehicle body and the demand to make the factory closer to the General Motors factory. See also Guerra Pujol, “Holdups and History: The General Motors-Fisher Body Merger Revisited”, 1 U. Puerto Rico Bus. L.J. 21 University of Puerto Rico Business Law Journal, (2011), p. 2. It is different with Benjamin Klein who views this case as a dispute in the agreement. In principle, in entering into an agreement, the Parties must be bound to one another. Because after all the contractual relationship is reciprocal naturally because in the future (Ex Ante) the Parties ask the other party to fulfill their respective obligations. Another article by Robert F. Freeland, “Creating Hooldup Through Verticla Integration: Fisher Body Revisited”, *The Journal of Law & Economics*, Vol. 43, No. 1 (April 2000), p. 34. In 1926 General Motors acquired Fisher body, a company that manufactures vehicle bodies.

<sup>32</sup> Adil Abdela, Kristina Karlsson & Marshall Steinbaum, *Vertical Integration and the market power analysis*, ROOSEVELT INSTITUTE 26 (2019).

<sup>33</sup> Benjamin Klein, *Fisher-General Motors and the Nature of the Firm*, 43 J. LAW ECON., 108 (2000). In the case of Fisher Body and General Motors there is a risk of a hold-up that could harm either party. In this case, Fisher Body has made a special investment related to the demand for supply of goods to General Motors, so there is a risk that General Motors will reduce the demand for supply from Fisher Body in the future if the demand for lower prices is not met.

Some of the things that motivate Vertical Integration are as follows:<sup>34</sup>

- a. Production Cost Saving;
- b. Transaction Cost Saving;
- c. The problem of market power held by other firms;
- d. Vertical Integration and optimum product distribution.

### III. VERTICAL INTEGRATION IN COMPETITION LAW INDONESIA

#### (A) Article 14 and related rules

Article 14 of the Competition Law stipulates that Business actors shall be prohibited from entering into agreements with other business actors with the aim of controlling the production of several goods constituting products which are included in the production chain of certain related goods and or services whereby each production series is the end product of processing or further processing, either in a direct or indirect series, which may potentially cause unfair business competition and/or may be harmful to society.<sup>35</sup>

The elements of the article are as follows:

1. Business actors: Individuals or legal entities or non-legal entities in Indonesia or outside Indonesia
2. Agreement: An agreement to bind oneself either written or unwritten
3. Other business actors: business actors in a series of production/operations either upstream or downstream
4. Controlling Production: control of raw materials, production/operations and market share carried out by a business actor in a series of productions
5. Goods & Services: Tangible or intangible goods that can be traded or utilized by customers
6. Unfair business competition: competition between business actors in carrying out production and or marketing activities of goods and or services that are dishonest or against the law or hinder business competition
7. Disadvantage to society: a condition in which people overestimate the costs due to unfair business competition such as excessive/unreasonable prices, low quality and limited

---

<sup>34</sup> HERBERT HOVENKAMP, ANTITRUST (BLACK LETTER SERIES) 135–139 (1993).

<sup>35</sup> Central Government of Republic of Indonesia, *supra* note 13.

choices (welfare loss).

Vertical integration in the business competition law regime is occur when of agreements between companies that either cause unfair business competition or not. Often Vertical Integration is associated with common share or group ownership issues because ownership is generally the highest commitment, and in the same way it minimizes flexibility.<sup>36</sup>

Reflecting from some cases, Vertical Integration is not made in the form of a written agreement but mostly occurs on an unwritten basis. Relating to evidence in the Indonesia Competition Commission (KPPU) trial, indirect evidence can be the basis for the occurrence of the case. Even in this case, indirect evidence, both electronic mail and company internal information, can be treated as evidence of a violation.<sup>37</sup>

Indonesia Competition Commission (KPPU), has issued Commissioner Regulation (*Peraturan Komisi*) No. 5 year 2010 Guidance of Article 14 concerning Vertical Integration. This regulation/Perkom explained the interpretation, reasons, and sanctions concerning vertical integration. Sample case are also related articles and some theories related to vertical integration.<sup>38</sup>

### **(B) Bias Regulation of Vertical Integration**

The regulation of the article is biased, and can be said to be prejudiced against the vertical integration of a production chain with an agreement between business actors. However, this provision prohibits the vertical integration agreement only if it aims to control the production of a number of products and or services.<sup>39</sup>

There are also those who compare this Competition Law as a rash regulation or Sweeping legislation.<sup>40</sup> This criticism was conveyed considering that the issuance of this law could not be separated from the "pressure" of the economic crisis and also the conditions imposed by the International Monetary Fund (IMF). In his book, Yudha Prayoga draws from the results of Myrdal's research on Laws made in developing countries about sweeping legislation. Which were made because of the pressure of the situation or from other parties, so it is feared that they

---

<sup>36</sup> ANDI FAHMI LUBIS ET AL., HUKUM PERSAINGAN USAHA ANTARA TEKS & KONTEKS 124 (2009). It was explained that the possibility of business actors carrying out vertical integration in two types, namely by entering into long-term rental agreements, partnership agreements or Joint Ventures. These agreements are called medium-term vertical integration. Meanwhile, long-term Vertical Integration can be carried out by consolidation or acquisition of assets, either partially or completely.

<sup>37</sup> Binoto Nadapdap, *Application of indirect evidence in cartel cases at the Business Competition Supervisory Commission*, 2014.

<sup>38</sup> Commission for the Supervision of Business Competition (KPPU) Republic of Indonesia, *supra* note 16.

<sup>39</sup> ANNA MARIA TRI ANGGRAINI, LARANGAN PRAKTEK MONOPOLI DAN PERSAINGAN TIDAK SEHAT PERSE ILEGAL ATAU RULE OF REASON 262 (2003).

<sup>40</sup> AYUDHA D. PRAYOGA, PERSAINGAN USAHA DAN HUKUM YANG MENGATURNYA DI INDONESIA 56.

can be implemented effectively.<sup>41</sup>

Article 14 only regulates the prohibition for business actors to control (through ownership and or agreement) production/operations in a series of production/operations. Explanation of the series of production/operations which is the result of processing or further processes definitively describes the characteristics of the series of production/operations that are vertical, both at the upstream level (goods production process/service operations) and at the downstream level (distribution and marketing of goods/services). However, the scope of vertical integration under Article 14 is not included in the distribution process from retail to the hands of the final consumer.

In the implementation of the provisions of Article 14, apart from having to fulfill the elements of Article 14, it must also be proven whether the consequences or impacts of the vertical integration agreement have caused unfair business competition and or harmed the community. Considering that the vertical integration agreement can have a detrimental impact, the process of proving unfair business competition and or loss to the public is very important in deciding whether the vertical integration agreement has hampered competition or not.

Backward vertical integration can be implemented if: (1) the number of suppliers is small while the competitors are very large, (2) How to get supplies quickly and competitive while suppliers are unable to do so, (3) prioritize price stability, and (4) have high capital and qualified human resources and suppliers have high profit margins. Forward vertical integration if: (1) the existing distribution channels are very expensive, limited in quality, and slow, (2) have the human resources needed to manage a new business, (3) the distribution business/business has a high profit margin, and (4) prioritizing production stability.<sup>42</sup>

The proof that Vertical Integration has an impact on competition and/or on efficiency is not very clear. Several cases related to vertical integration cannot be carried out separately, but must be related to several articles, namely: Article 15 Closed Agreement<sup>43</sup>, Article 19 Market Control,<sup>44</sup>

---

<sup>41</sup> PRAYOGA, *supra* note 37.

<sup>42</sup> Kasman, *Manajemen Strategik: Analisis Pemilihan Strategi Induk Pengembangan Lembaga Pendidikan Dan Bisnis*, 23 J. MANAJ. PENDIDIK., 489 (2012).

<sup>43</sup> Central Government of Republic of Indonesia, *supra* note 13 Article 15 Closed Agreement. Business actors shall be prohibited from entering into agreements with other business actors, stipulating that the party receiving the goods and or services shall only resupply or not resupply the aforementioned goods and or services to certain parties and or at a certain place.

<sup>44</sup> *Id.* Article 19 Market Control. Business actors shall be prohibited from engaging in one or more activities, either individually or jointly with other business actors, which may result in monopolistic practices and or unfair business competition, in the following forms: a. reject and or impede certain other business actors from conducting the same business activities in the relevant market; or b. bar consumers or customers of their competitors from engaging in a business relationship with such business competitors; or c. limit the distribution and or sales of goods and or services in the relevant market; or d. engage in discriminatory practices towards certain business actors.

Article 26 Multiple Positions,<sup>45</sup> and Article 28 & 29 Mergers, Consolidations, and Acquisitions.<sup>46</sup>

### **(C) Scarcity and Supply ability in the Sustainability of the Manufacturing Industry**

Transaction relationships between manufacturing companies and suppliers are essential for the continuity of the company's production. Even backward vertical integration for manufacturing companies is a necessity. Kumpe and Bolwijn stated that Vertical Integration has been carried out by several industries in the USA in maintaining the continuity of their industry. General Electric, for example, and several companies have identified that vertical integration of their suppliers is important in carrying out manufacturing reform.<sup>47</sup>

The amount of input supply and demand that are relatively unaffected by conditions that may be faced by companies operating independently as suppliers or buyers, including price fluctuations can be ensured by vertical integration. However, it should be noted that transfer prices in internal transactions do not mean that they are not allowed to reflect these fluctuating conditions.

Products that flow from upstream to downstream in a vertically integrated company must be at a transfer price that ensures each unit involved is properly managed. Thus, the certainty of supply and demand cannot be seen as protection against market fluctuations, but only as a reduction in uncertainty that can affect the company.

Manufacturing industry and suppliers are struggling to meet the demand for product amid limited availability of numerous components and/or materials. In the automotive industry, they have a challenge how to fulfill vehicle orders such as semiconductor chips, aluminum, and

---

<sup>45</sup> *Id.* Article 26 Multiple Positions. A person concurrently holding a position as a member of the Board of Directors or as a commissioner of a company, shall be prohibited from simultaneously holding a position as a member of the Board of Directors or a commissioner in other companies, in the event that such companies: a. are in the same relevant market, have a strong bond in the field and or type of business activities; or b. are jointly capable of controlling the market share of certain goods and or services, which may result in monopolistic practices and or unfair business competition.

<sup>46</sup> *Id.* Article 28 & 29 Mergers, Consolidations, and Acquisitions. Article 28 (1) Business actors shall be prohibited from conducting mergers or consolidations of business entities resulting in monopolistic practices and or unfair business competition. (2) Business actors shall be prohibited from conducting the acquisition of shares in other companies if such action may result in monopolistic practices and or unfair business competition. (3) Further provisions regarding the prohibition of mergers or consolidations of business entities as intended in paragraph (1) and provisions concerning the acquisition of shares in companies as intended in paragraph (2) shall be set forth in a Government Regulation. Article 29 (1) The Commission must be notified of mergers or consolidations of business entities, or acquisition of shares as intended in Article 28 resulting in asset value and or sales value thereof exceeding a certain amount, by no later than 30 (thirty) days from the date of such merger, consolidation or acquisition provisions regarding the determination of the asset value and or the selling price as well as the procedure for giving notice as intended in paragraph (1) shall be stipulated in a Government Regulation.

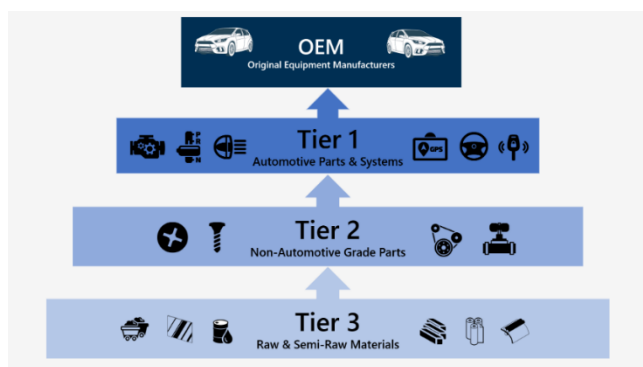
<sup>47</sup> Ted Kumpe & Piet T. Bolwijn, *Manufacturing: The New Case for Vertical Integration*, HARVARD BUSINESS REVIEW 76 (1988), <https://hbr.org/1988/03/manufacturing-the-new-case-for-vertical-integration>.

lithium.<sup>48</sup> Scarcity or limited availability of components and materials will result in delayed production and removal of some features or systems that require excess semiconductors.

In line with this, the current condition for the manufacturing industry is very vulnerable. Which leads to risks that must be mitigated. In the business world, the current condition is called the VUCA (volatility, uncertainty, complexity, and ambiguity) environment. VUCA is identified as an acronym for an environment that is dominated by the fast change of things, in a non-predictable trend or repeatable pattern which is known as Volatility, the situation when major disruptive changes occur frequently which is known as Uncertainty, the existence of numerous causes which are difficult to understand and mitigating factors involved in a problem which is known as Complexity, and when the causes and the different circumstances behind the things that are happening are unclear and hard to ascertain which is known as Ambiguity.<sup>49</sup>

If there is a shutdown and production for several actors, it will lead to a delay in delivery to the customer so that it will result in a decrease in market share and also customer complaints. Even though the relationship between the manufacturing industries is complicated, it must be able to receive adequate input from several suppliers, and also must be able to think about the output that will be marketed outside the company.<sup>50</sup>

As an illustration, the production flow from suppliers to finished goods can be seen as follows:<sup>51</sup>



#### (D) Prohibited and Allowed Vertical Integration for Manufacturing Industry and its Suppliers

Many articles in Competition Law on Indonesia adopt a rule of reason principle.<sup>52</sup> Basically the

<sup>48</sup> Ondrej Burkacky et al., *Will the supply–demand mismatch persist for automotive semiconductors?*, MCKINSEY & COMPANY (2022), <https://www.mckinsey.com/industries/industrials-and-electronics/our-insights/will-the-supply-demand-mismatch-persist-for-automotive-semiconductors> (last visited Oct 14, 2022).

<sup>49</sup> Khaled G. El-Sakty & Engy Osama, *Improving Supply Chain Performance Using Volatility, Uncertainty, Complexity and Ambiguity (VUCA) Drivers*, 9 J. SUPPLY CHAIN MANAG. 1 (2015).

<sup>50</sup> PRAYOGA, *supra* note 37 at 106.

<sup>51</sup> David Kaporis, *Driving Innovation for Automotive Suppliers*, ENGINEERING: THE DIGITAL TRANSFORMATION COMPANY, <https://www.indx.com/en/posts/driving-innovation-for-automotive-suppliers>.

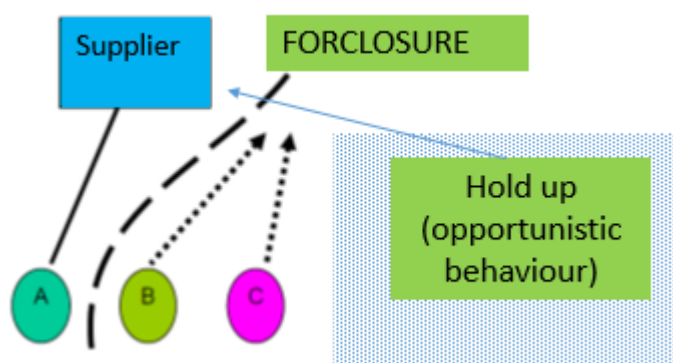
<sup>52</sup> Ningrum Natasya Sirait, *The Development and Progress of Competition Law in Indonesia*, 54 ANTITRUST BULL.

rule of reason principle means competition authorities or courts under which attempt is made to evaluate the pro-competitive features of a restrictive business practice versus its potential anti competitive effect in order to decide whether or not the practice should be prohibited.<sup>53</sup>

Concerning relationship between manufacturing company and suppliers, usually there are transactions within the group or at least there are relations between shareholders. Sometimes they are independent companies or a mix.<sup>54</sup> In the first group, most components supplied from external suppliers are under long-term contract. While in the second group, purchase from external suppliers are closely affiliated with the main automobile manufacturers.<sup>55</sup> These transactions are very essential in attaining a sustainable supply for continuing manufacturing process.

In some cases of Vertical Integration, where the transaction have impacted the ability of competitors to get essential parts or components. The case of GM VS Fisher Body in 1926 can be studied. Chrysler as competitor of GM was closed accessed to supply from Fisher Body, especially when GM requested Fisher Body to move their plant to location of GM Plant.<sup>56</sup> Furthermore, Fisher Body also held a hold up on their technical know-how by adding a cost up to the price of parts supplied to GM.<sup>57</sup>

Based on this case, Chrysler as the victim of GM and Fisher Body (closed access to supplies). Related with exploitative behavior, based on exclusive and long-term of contract GM will control Fisher Body's capacity as well as their pricing. If this exploitative behavior has an impact on competition situation, GM and Fisher Body will get punished by the competition authority (see the figure bellow).



15, 27 (2009), <http://journals.sagepub.com/doi/10.1177/0003603X0905400102>.

<sup>53</sup> Sirait, *supra* note 49.

<sup>54</sup> Naoki Tabeta, *The mechanism of Vertical Integration: A case study of the Japanese automobile manufacturing industry*, 1989.

<sup>55</sup> Tabeta, *supra* note 51.

<sup>56</sup> Didier Chabaud & Olivier Germain, *Theory and History: Remarks from Fisher Body - General Motors case*, in ACADEMY OF MANAGEMENT ANNUAL MEETING, 2 (2008).

<sup>57</sup> *Id.* at 6.

However, if vertical integration does not result in foreclosure, is exploitative, or prevents other parties from obtaining supply components (barrier to entry), then vertical integration is not prohibited. M. Manullang,<sup>58</sup> argued that a vertical integration would be successful if these 3 points are fulfilled:

1. Quality of product is very important, so the quality of raw materials must be good.
2. Finished goods produced by one company are used by other companies as raw materials.
3. The flow of raw materials can be adjusted according to the production process, so the amount of raw materials stored or the final production amount can be adjusted.

#### **IV. CONCLUSION**

1. **Implementing Vertical Integration without ignoring industry realities.** The regulation of vertical integration in the competition law regime has been accommodated by countries that have this rule. However, the regulation of vertical integration and vertical restraint must be regulated more clearly and it is not biased regarding who should be protected.
2. **Vertical integration between manufacturing industry and suppliers does not violate competition law** as long as it is not carried out with foreclosure and barrier to entry. However, we must be aware of the actual impact of vertical integration, if it results in a foreclosure or barrier to entry, then it is a prohibited vertical integration.

##### **(A) Recommendation**

It should be put forward to do **the Impact analysis and the rule of reason principles** in the investigation of vertical integration cases between Manufacturing Industry and supplier by Competition Authorities. If vertical integration due to share ownership relationships in a business structure from upstream to downstream, then vertical integration due to agreements must be seen as having an impact and must be proven whether there is an abuse of dominant position or not. Therefore, it can be seen whether or not there is exploitative and exclusionary behaviour.

\*\*\*\*\*

---

<sup>58</sup> MARIHOT MANULLANG, PENGANTAR BISNIS 122 (2002).



## V. REFERENCES

### *Regulations*

- Indonesia, *Law on the Prohibition of Monopolistic Practices and Unfair Business Competition*, No. 5 of 1999. LN No. 33 of 1999.
- Indonesia, Law No. 3 tahun 2014 concerning Industry, Lembdan Negara No. 4 year 2014, TLN 5492
- Indonesia, *Government Regulation on the 2015-2035 National Industrial Development Master Plan*, Government Regulation No. 14 of 2015. State Gazette No. 46 of 2015
- Commissioner Regulation (Perkom) of KPPU. No. 5 year 2010, *Guidance of Article 14 concerning Vertical Integration*. KPPU, Year 2010
- Copy of decision No. 13/KPPU-I/2019, Komisi Pengawas Persaingan Usaha (KPPU). *A copy of the decision of the Indonesia Competition Commission of the Republic of Indonesia in Case Number 01/KPPU-L/2003* which was decided in the KPPU trial on 30 July 2003 and read before the trial on 4 August 2003.

### *Book & Journal*

- Abdela, Adil *et. al.* “Vertical Integration and the market power analysis”, Roosevelt Institute.org 2019.
- Cabaud, Didhier & Olivier Germain, “Theory & History Remarks from Fisher Body-General Motors Case, Conference paper”, Universite de Paris, August 2008
- Coase, R. H. “The Acquisition of Fisher Body by General Motor”, *The Journal of Law & Economics*, Vol. 43, No. 1, (April 2000),
- D. Blair, Roger dan David L. Kaserman, “Law & Economics of Vertical Integration and Control”, Academic press 1983 Newyork
- D. Prayoga, Ayudha, at all, “Persaingan Usaha dan hukum yang mengaturnya di Indonesia”, Elips, Jakarta 1999.
- F. Freeland, Robert “Creating Hooldup Through Verticla Integration: Fisher Body Revisited”, *The Journal of Law & Economics*, Vol. 43, No. 1 (April 2000)
- Hovenkamp, Herbert, “Antitrust”, Black Letter Series, West Publishing Co. 1993

- Kasman, *Manajemen Strategik: “Analisis Pemilihan Strategi Induk Pengembangan Lembaga Pendidikan Dan Bisnis”*, Jurnal Manajemen Pendidikan, Volume 23, Nomor 6, September 2012
- Kiet Tran, Duy, Kardin Edista, and Saumya Kadoi, “Supply Chain Management in the Manufacturing Industry”. University of Technology Sydney, Australia.
- Klein, Benjamin “Fisher-General Motors and the Nature of the Firm”, *The Journal of Law & Economics*, Vol. 43, No. 1 (April 2000)
- Kumpe, Ted & Piet T. Bolwijn “Manufacturing: The new case for vertical integration”, *Harvard Business review* Marc-April 1988.
- Lubis, *et al*, ‘*Hukum Persaingan Usaha antara Teks dan konteks*’, KPPU, Jakarta, 2009.
- Manullang, M., *Pengantar Bisnis*, (Jogjakarta, Gajah Mada University Press: 2002)
- Maria Tri Anggraini, Ana, *Larangan Praktek Monopoli dan Persaingan Tidak Sehat Perse Ilegal atau Rule of Reason*, Universitas Indonesia, Jakarta 2003
- Martin, Stephen, *Industrial Organization in Context*, (Oxford University Press, Inc. New York, 2010), hlm. 408.
- Natasya Sirait, Ningrum, *The Development and progress of Competition Law in Indonesia*, *The Antitrust Buletin*: Vol. 54, No. 1/Spring 2009
- Nadapdap, Binoto “Application of indirect evidence in cartel cases at the Business Competition Supervisory Commission”, *Doctoral Program Dissertation, Faculty of Law, University of Indonesia 2014*, Disertasi Program Doktor Fakultas Hukum Universitas Indonesia 2014.
- Pujol, Guerra “Holdups and History: The General Motors-Fisher Body Merger Revisited”, 1 U. Puerto Rico Bus. L.J. 21 *University of Puerto Rico Business Law Journal*, (2011)
- Rudie Harrigan, Kathryn “A Framework for Looking at Vertical Integration”, *Journal of Business Strategy* (December 1983)
- Tabeta, Naoki, *The mechanism of Vertical Integration: A case study of the Japanese automobile manufacturing industry*, Washington State University, 1989
- Usman, Rachmadi *Hukum Persaingan Usaha di Indonesia*, (Gramedia Pustaka Utama, Jakarta 2004)

**Internet**

- [https://aast.edu › staffadminview › pdf\\_retreive](https://aast.edu › staffadminview › pdf_retreive), diakses 1 Oktober 2022.
- <https://www.engusa.com/en/posts/driving-innovation-for-automotive-suppliers>, diakses tanggal 1 Agustus 2022.
- <https://bisnis.tempo.co/read/1225946/terancam-denda-rp-25-m-ini-pasal-yang-diduga-dilanggar-grab/full&view=ok>, accessed on October 1, 2022.
- <https://bisnis.tempo.co/read/1254583/>, accessed on October 1, 2022.
- <https://web.pln.co.id/tentang-kami/profil-perusahaan>, accessed on May 25, 2020.
- <https://www.jpnn.com/news/punya-banyak-anak-perusahaan-adakah-bisnis-pln-yang-menyimpang>, accessed on May 20, 2020.
- <https://kemenperin.go.id/artikel/18967/Making-Indonesia-4.0:-Strategi-RI-Masuki-Revolusi-Industri-Ke-4>, accessed on February 25, 2020.
- <https://kominfo.go.id/content/detail/12847/presiden-jadikan-making-indonesia-40-sebagaiagenda-nasional/0/berita>, accesed 27 February 2020.
- <https://www.mckinsey.com/industries/advanced-electronics/our-insights/will-the-supply-demand-mismatch-persist-for-automotive-semiconductors>, accessed on 14 October 2022.
- <https://www.kemenperin.go.id/artikel/23125/Industri-Manufaktur-Indonesia-Semakin-Ekspansif>, 10 Februari 2022.
- KBBIDaring, Ministry of Eductaion of Republic of Indonesia, Manufacturing is the process of converting raw materials into goods to be used or consumed by humans, <https://kbbi.web.id/industri>, accessed on 27 May 2022.

\*\*\*\*\*