

# CHAPTER I

## INTRODUCTION

### 1.1 Background

Merger and acquisition are common phrases seen in headlines of business newspaper or business news web page in any part of the world. Oftentimes, names of giant companies merging or acquiring another company are held as headlines by the media, stressing on the enormous sums of money of the transactions. Take an example of Vodafone's takeover of Mannesman back in the 2000, which was recorded as the largest deal of all time according to Thompson Financial per January 7, 2010, with transaction value of USD202,785.13 (two hundred two thousand seven hundred eighty five point one three United States Dollar).<sup>1</sup> At a glance, such news leaves an impression and indicates that merger and acquisition are big businesses activities. However, behind what is publicly exposed in the news, turns out the practice of merger and acquisition also take place in relation to much smaller transactions.<sup>2</sup> Instead, merger and acquisition is known as a business strategy to restructuring a company conducted by varying levels of company, be it a major corporation or smaller and more focused firms.<sup>3</sup> Merger and acquisition is one

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<sup>1</sup> Patrick A. Gaughan, *Mergers, Acquisitions, and Corporate Restructuring*, 5<sup>th</sup> ed., (New Jersey: John Wiley & Sons, Inc., 2011), p.6.

<sup>2</sup> Alexander Roberts, William Wallace, Peter Moles, *Mergers and Acquisitions*, (Edinburgh: Edinburgh Business School, Heriot-Watt University, 2010), p. ix.

<sup>3</sup> Michael A. Hitt, R. Duane Ireland, Robert E. Hoskisson, *The Management of Strategy: Concept and Cases*, 8<sup>th</sup> ed., (Australia: South Western Educational Publishing, 2013), p.182.

phenomenon of the modern business era that has been increasingly occurring and taking place all the time.

In Indonesia, acquisition is subject to several laws and regulations. Laws and regulations governing acquisition that shall be taken into account are as follow: (i) limited liability company law; (ii) regulations on the implementation of the limited liability company law; (iii) specific regulations by the type of company involved in the merger and acquisition process; and (iv) any other regulations related to acquisition.<sup>4</sup> Referring to the first point, the prevailing limited liability company law of Indonesia is Law Number 40 of 2007 on Limited Liability Companies (“**Law No. 40/2007**”). Secondly, the current regulation on implementation of the limited liability company law, particularly on acquisition, is the Government Regulation Number 27 of 1998 on Merger, Consolidation and Acquisition of Limited Liability Company (“**GR 27/1998**”). Regarding the applicable laws and regulations on the third point will be determined accordingly to the classification and type of the company, which will be based on its business activities, capital origin, etc. For instance, Law Number 25 of 2007 on Investment Law should also be taken into account for acquisition in which foreign investment or domestic investment companies are the parties, or Law No. 8 of 1995 on Capital Market and Regulation Number IX.H.1 – Decision of the Chairman of Bapepam-LK Number KEP-264/BL/2011 on Acquisition of Public Company in the case where acquisition is executed to takeover a public listed

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<sup>4</sup> Munir Fuady, *Hukum Tentang Akuisisi, Take Over dan LBO*, (Bandung: PT Citra Aditya Bakti, 2001), p. 73.

company. Lastly, other laws and regulations that shall be considered but have not been classified under the previous points, shall be but not limited to the laws regulating consequences of acquisition including labor and land law.<sup>5</sup> Acquisition is also a subject to Law Number 5 year 1999 concerning The Prohibition of Monopoly Practices and Unfair Business Competition (“**Law No. 5/1999**”) and its implementing regulation.

Article 1 verse (11) of the Law No. 40/2007 defines acquisition as legal actions conducted by a legal entity or individual to acquire shares of a company resulting in the transfer of control over such company. More explicitly, the definition of acquisition shall be the takeover of a company by another company or individual.<sup>6</sup> Thus, acquisition can also be viewed as a sale and purchase transaction to acquire a company, in which such transaction is in form of a purchase of shares.

The purchase of a company is one of the most complex transactions one can undertake.<sup>7</sup> There is more to it than about selling and purchasing. Besides, the process to close a sale and purchase of shares agreement takes time and shall pass through many steps. Acquisition process of transaction shall begin with planning and finding a target company. Once the planning and target company has been set and found, up ahead are structuring, due diligence, negotiating, closing and post closing.<sup>8</sup> Further,

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<sup>5</sup> Munir Fuady, *Pengantar Hukum Bisnis Menata Bisnis Modern di Era Global*, (Bandung: PT Citra Aditya Bakti, 2002), p. 103.

<sup>6</sup> Christopher Pass and Bryan Lowes, *Kamus Lengkap Bisnis*, (Jakarta: Erlangga, 1999), p. 578.

<sup>7</sup> Stanley Foster Reed, Alexandra Reed Lajoux, H. Peter Nesvold, *The Art of M&A: A Merger Acquisition Buyout Guide*, (McGraw-Hill, 2007), p. 1.

<sup>8</sup> *Ibid.* p. 61.

completing the aforementioned steps must be done in varying areas like labor, compensation and many others. Not to mention the number of documents that needs to be checked during due diligence, such as: (i) the amendments of articles of association and the share transfers since the establishment of the target company up to the last; (ii) licenses in regards to its business activities; (iii) obligation or liabilities; (iv) ownership of assets; (v) negative covenant in all credit agreements with third parties; and (vi) dispute proceeding in any judiciary in Indonesia. The fact that many specific areas of knowledge is involved, the amount of documents needed, the long period, and the numerous process of acquisition enhances the complexity of an acquisition transaction.

A company may seem stable and fine from the outside, but that is not all the case once a due diligence is conducted to a target company. Due diligence is one important step that shall not be missed in an acquisition process. Illustration on the real situations and conditions of the company can be seen on the results of a proper due diligence. This is the step where potential buyer alongside with its appointed experts conduct investigation on the target company by going through company's document including their financial book and legal papers. It requires the buyer and/or its representative to be sensitive to certain key areas of potential concern. Due diligence is conducted driven by the needs of the potential buyer to be aware of the object in purchase and not to buy carelessly without knowing what it is that he buys, as the famous idioms saying, *to buy a pig in the poke* or *cat in the sack* meaning to buy something without verifying its content or value first. By looking through and

investigating such documents, a potential buyer may find, consider and calculate risks and consequences that he may confront after acquiring such company. If the risks and consequences following the acquisition are deemed manageable to some limit, the potential buyer may decide to continue and prepare plans for the next strategy on the acquisition. In contrast, if the risks and consequences of acquiring the target company are considered to bring harm, the potential buyer usually decides to retreat from the acquisition plan. Hence, the results of due diligence may enlighten the process of acquisition.

Issues from different areas will arise and give the potential buyer awareness of such matter. Considering that an acquisition covers variety of areas, the potential buyer shall need the help of professionals or experts to help them in conducting due diligence, in fact during the whole acquisition process. Professionals play an important role to take care of the potential buyer during and after the acquisition, which includes preventing the potential buyer from present and upcoming damages and risks. Lawyers are among those professionals aside from banker, accountant and appraiser that will be helping potential buyer in an acquisition process.<sup>9</sup> In this case, lawyers from Ivan Almada Baely & Firmansyah Law Firm (“**IABF**”) is appointed by PT X, a company act as a sub-holding company of the subsidiaries of Group X which engaged in terminal and port services, to help PT X acquiring a stevedoring company named PT ABC and performed necessary legal services. The legal service performed includes providing legal advice, conducting legal due diligence, price negotiating,

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<sup>9</sup> Munir Fuady, *Hukum Tentang Akuisisi*, *Op.cit.*, p. 41.

preparing conditional shares sale and purchase agreement, and taking care of other legal issues.

Lawyers took part in an acquisition process starting from the restructuring stage up to the end. The author has been given an opportunity to be directly involved in the acquisition project of PT X, to which the result of due diligence process drew the attention of the author due to its role in affecting and guiding the relevant parties to take further strategies and decisions. Thus, the author raises this topic to be elaborated in this Internship Report with the title, **“Internship Report at Ivan Almaida Baely & Firmansyah Law Firm On The Importance Of Legal Due Diligence In A Shares Acquisition Transaction of PT ABC”**.

## **1.2 Formulation of Issues**

The issues to be discussed in this Internship Report are limited to the following:

1. How was the execution of legal due diligence during shares acquisition transaction by PT X over the shares in PT ABC?
2. How did the execution of legal due diligence affect the shares acquisition transaction by PT X over the shares in PT ABC?

## **1.3 Internship Objectives**

This internship is conducted with several objectives, among others to produce this Internship Report that constitutes a 6 (six) credits academic thesis as a

requirements to graduate from Universitas Pelita Harapan Faculty of Law. In addition, the objectives of this internship are as follows:

1. to explore the practice of law in all aspects, such as various areas of law, application of such law, different kinds of clients, analytical skills and problem solving;
2. to understand the way law, lawyers and legal practice works under the supervision and guidance of senior lawyers;
3. to enhance lawyering skills also under the supervision and guidance of senior lawyers;
4. to gain both educational and work experience;
5. to directly learn observing and applying theories to practice while carrying responsibilities; and
6. to get experience and learn about professional responsibilities including responsibilities to clients and superiors at the firm.

#### **1.4 Internship Benefits**

The results of this internship are expected to be beneficial to some parties. Firstly, for the University, this report can be used as a reference for other research with related topics and materials or other internship report. Secondly, for the entities, this report is expected to provide awareness and alternative solutions regarding legal issues and difficulties in an acquisition transaction and how they affect the transactions. For other legal students, this report is expected to be useful in

understanding the legal procedure and application of acquisition in the real world. Lastly, for the author, this report can be used as a reference and media on the application of theoretical knowledge into the real legal practice, which is a highly effective method for the author to develop the author's understanding of law, legal knowledge and legal competence.

### **1.5 Time and Location of Internship**

This internship took place at IABF, a law firm having its office address in Intiland Tower 9<sup>th</sup> floor, Jalan Jenderal Sudirman No.Kav.32, RT 003/RW 002, Karet Tengsin, Tanah Abang, Central Jakarta, DKI Jakarta, 10220, for 5 (five) months starting from August 1<sup>st</sup> 2017 up to December 22<sup>nd</sup> 2017.

### **1.6 Systematic of Writing**

The structure of this Internship Report is made systematically and orderly to provide the reader with clearer and easier format in understanding the discussion of this report. For the purpose of this Internship Report, the author has divided this report into 5 (five) interconnected chapters, which comprise:

## **CHAPTER I: INTRODUCTION**

This chapter gives a general picture of the Internship Report, including: background, formulation of issues, objectives or purposes of internship, benefits, time and location of the internship and systematic of writing. Firstly, the background explains the



author's reason behind the selection of the topic and title for this Internship Report. Secondly, the author asserts on the issues to be discussed deriving from the background. Further, the author provides information on the internship activities itself, specifically concerning the objectives, benefits, as well as the time and location of the internship. Lastly, the author provides a systematic of writing to ease the reader in keeping up with this report.

## CHAPTER II: THEORETICAL FRAMEWORK

This chapter elaborates and provides thorough explanations on the theoretical and conceptual framework of the selected topics being used to support the results of analysis in this Internship Report starting from the definition of Merger and Acquisition. As the report will mainly discuss on acquisition, the author specifically provides the theoretical framework, kinds, purposes, and procedure of acquisition, as well as acquisition seen from the perspective of business competition.

## CHAPTER III: COMPANY PROFILE OF IABF LAW FIRM

This chapter explains the information on IABF, including its description, scope of legal services, its members, profile of each senior partners and the author's scope of work during the internship.

## CHAPTER IV: ANALYSIS AND DISCUSSION

This chapter explains more on the acquisition case including its analysis. Starting from the chronology of the matter, elaborative explanation on the legal team preparation prior to the acquisition, implementation of legal due diligence, narrowing down to the impact of legal due diligence in listing the condition precedent and indemnities for the conditional share purchase agreement.

#### CHAPTER V: CONCLUSION AND SUGGESTIONS

This chapter provides conclusions in the form of answers to the formulated issues stated in Chapter I, also the author's suggestions towards the case and relevant parties in order to prevent such problem to arise in the future.

