



## ***Material Adverse Change (Mac) Clause as Cancellation of Corporate Transactions due to Changes in Global Economic Conditions in Company Acquisition Agreements***

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### **Abstract**

This study aims to analyze the provisions of the Material Adverse Change (MAC) clause as a legal basis for exiting an acquisition agreement and to examine the legal consequences arising from the application of the clause. This study uses normative legal research with a conceptual approach, a statutory approach, and a comparative approach. The results of the study indicate that the basis for its philosophical application refers to the principles of justice and balance, while the basis for its written legal application refers to international agreements such as the Unidroit Principles of International Commercial Contracts (UPICC) and the International Chamber of Commerce (ICC). In Indonesia, the validity of the MAC clause in Indonesia comes from the principle of freedom of contract as stated in Article 1338 paragraph (1) of the Civil Code and the principle of good faith as regulated in Article 1338 paragraph (3). In addition, the MAC clause can be linked to the principle of risk allocation in business contract law. Cancellation of an acquisition transaction based on the MAC clause has legal consequences such as legal status with third parties, reversion to the original state, and administrative company establishment. Therefore, it is necessary to formulate a more specific and proportional MAC clause in order to guarantee legal certainty, justice and protection for the parties in the acquisition transaction.

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### **1. Introduction**

In the era of globalization and intense business competition, businesses are required to innovate, develop, and increase their competitiveness. Large businesses, such as corporations, have developed various strategies to compete and maximize profits. One common strategy employed by corporations to expand market share, strengthen capital structures, and improve operational efficiency is through company acquisition agreements.

A company acquisition agreement is one of the steps taken by a company, namely by creating a document containing the takeover of all or part of the ownership of shares or assets of a company by another company. An acquisition is a merger of two companies where the acquiring company buys a portion of the shares of the acquired company so that management control of the acquired company is transferred to the acquiring company, while both companies each continue to operate as a separate legal entity<sup>[1]</sup>. The goal is to strengthen market position, expand business networks, improve operational efficiency, and achieve mutually beneficial business synergies.

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<sup>1</sup>Sudana, *Corporate Financial Management; Theory and Practice*, Erlangga, Surabaya, 2011, p. 6

However, in practice, various legal issues often arise related to acquisition agreements. These issues can include imbalanced bargaining power between the parties, clauses that disadvantage one party, and even disputes arising from violations of the agreement's terms. Furthermore, the acquisition process can also impact employees, creditors, and minority shareholders, who are often not adequately involved in the decision-making process.

This phenomenon demonstrates the strategic role and significant legal risks inherent in modern business practices. These issues also demonstrate that acquisition agreements are not merely a legal tool for transferring company ownership, but also a crucial instrument for ensuring legal certainty, fairness, and protection for the parties involved in the business transaction. Furthermore, there are challenges in implementing corporate transactions during the acquisition process, such as unpredictable risks beyond the capabilities of the parties. These risks can include sudden changes in the economic, financial, or operational conditions of one of the parties involved in the company acquisition process. To anticipate these risks, the parties to the acquisition agreement include a <sup>[2]</sup> *Material Adverse Change* (MAC) clause.

*Material Adverse Change* (MAC) clause, also known as a *Material Adverse Effect*, is a provision in a contract that allows one party to withdraw from a transaction or renegotiate the agreement if an event occurs that is materially detrimental to the target company's business, finances, operations, or assets before the deal is finalized <sup>[3]</sup>. The purpose of including this clause is to provide protection against unforeseen events that could change the economic value of a transaction. A *Material Adverse Change* clause, hereinafter referred to as a MAC, is typically found in contracts for mergers and acquisitions. In this case, the MAC clause will protect the acquiring party from circumstances that impact the value of its acquisition between the time of signing and the closing of the transaction.

However, in its implementation, there are several aspects of this clause that are prone to debate. One of these is the ambiguity of the meaning of *Material Adverse Change* itself. The ambiguity of material loss refers to the extent to which the parties are materially disadvantaged during the implementation of the agreement until the closing of the transaction. Furthermore, the ambiguity in this MAC clause concerns the benchmark or limits for changes in economic or financial conditions that can cause losses. Furthermore, the broad nature of the MAC clause is often debated because it can create legal uncertainty. This uncertainty arises because it provides significant room for one party (in this case, the acquiring party) to cancel the transaction for potentially subjective reasons. Therefore, in the MAC clause, the parties often dispute or debate the ambiguity created, such as an event that meets the threshold for material loss and its short-term or long-term impact. Furthermore, what is debated is its overlap with *the force majeure* clause. For example, if the acquisition transaction process occurs simultaneously with a pandemic such as COVID-19, a debate arises whether a global event that affects all industries should be interpreted as a MAC or should be categorized as *Force Majeure*.

In practice, MAC clauses are often included in preliminary

agreements in financing agreements, such as those involving company acquisitions, before the preliminary agreement is formally drafted and ratified. This serves as a valid exit instrument. Without a MAC clause in the preliminary agreement, which subsequently becomes the main agreement, it would be difficult for a party harmed by changing circumstances to withdraw from the financing transaction without risking a lawsuit for breach of contract. With this MAC clause, a party's withdrawal due to a material change in circumstances is considered part of the exercise of contractual rights, not a breach of the agreement. This is because, in drafting the preliminary agreement, the parties are deemed to have interpreted the principles of the agreement. This can be seen in the case of the acquisition of PT. Bank Pan Indonesia Tbk or commonly known as Bank Panin by Japanese banks such as Mitsubishi Financial Group Inc (MUFG) and Sumitomo Mitsui Financial Group Inc (SMFG). The failure occurred because the acquirer considered that the Panin Bank to be acquired gave too high a price amidst changes in uncertain market conditions (market volatility) triggered by the collapse of Silicon Valley Bank (SVB) in the United States and the Credit Suisse crisis in Europe in March 2023. This had an impact on Bank Panin which experienced a decline in its finances and stock price. The Acquisition Transaction was canceled because the Acquirer believed that providing large capital to Bank Panin and being too risky would result in material losses due to changes amid market volatility at that time <sup>[4]</sup>.

Therefore, a more in-depth study is needed to understand how the *Material Adverse Change* clause serves as the legal basis for filing a transaction cancellation motion in an acquisition agreement, as well as the potential legal consequences. This study is also crucial for assessing the extent to which existing regulations provide legal certainty and fairness in the implementation of company acquisitions in Indonesia.

The problem formulation discussed in this research is how to regulate *Material Adverse Change* (MAC) as a legal basis for exiting an acquisition agreement and what are the legal consequences of canceling an acquisition agreement caused by a *Material Adverse Change* (MAC) clause.

## 2. Research Methods

This type of research uses normative legal research with conceptual, statutory, and comparative approaches. The sources and types of legal materials used consist of primary, secondary, and tertiary legal materials. The legal materials are analyzed using descriptive and prescriptive analysis. Argumentation is conducted to provide prescriptions or provide judgments regarding right or wrong or what should be according to law (legal norms, principles, doctrines, and legal theories) regarding the facts or legal events being studied. The nature of prescriptive research analysis is to predict potential future events <sup>[5]</sup>.

## 3. Discussion

### 3.1. *Material Adverse Change* (MAC) Arrangement as a Legal Basis for Exiting the Acquisition Agreement

*Material Adverse Change* (MAC) clause, also known as a *Material Adverse Effect*, is a provision in a contract that

<sup>2</sup>Barnea Jaffa Lande, *Material Adverse Change (MAC) Clauses in M&A Transactions*, Global, (July 2, 2023), p. 3

<sup>3</sup><https://www.lexologi.com>. *A Brief Overview of Material Adverse Change Clauses in Credit Documents*

<sup>4</sup>Katadata.co.id., *Panin Bank Reportedly Canceled Acquisition by Japanese Financial Giant*, April 26, 2023, accessed November 20, 2025.

<sup>5</sup>Wiwik Sri Widiarty, *Textbook: Legal Research Methods*, First Edition, Publika Global Media, Yogyakarta, 2024, p. 136

allows one party to withdraw from a transaction or renegotiate the agreement if an event occurs that is materially detrimental to the business, finances, operations, or assets of the target company before the agreement is completed<sup>[6]</sup>. *Material Adverse Change* (MAC) is also a contractual instrument that plays an important role in financing transactions, especially in mergers and acquisitions as a risk transfer mechanism for changes in material conditions that can affect the value or sustainability of a target company. In the context of international business law, the MAC clause is a tool to provide legal protection and commercial certainty for the buyer *against* various uncertainties that arise between the time of signing the agreement and the completion of the transaction (*closing*). With this MAC clause, the buyer has the right to postpone, renegotiate, or even cancel the transaction if there is a material change that is detrimental to the value of the target company<sup>[7]</sup>.

Concepts concerning changes in circumstances, such as MAC and *Hardship*, have been adopted in a number of national legal systems, including France and the Netherlands. Furthermore, provisions related to changes in circumstances are also found in various international legal instruments. In its application in various countries that adopt the *civil law system*, the philosophical basis of its application refers to the principles of justice and balance, while the written legal basis of its application refers to international agreements such as the *Unidroit Principles of International Commercial Contracts* (UPICC) and the *International Chamber of Commerce* (ICC).

The position of the provisions on change of circumstances clauses, such as *hardship* and MAC, as regulated in the ICC and UPICC in Indonesia, is as a provision that applies based on the agreement of the parties. Indonesia is part of an international organization in which the ICC and UPICC are included. Therefore, in its application, the provisions regarding change of circumstances clauses, such as MAC and *hardship* according to the ICC and UPICC, can be used as a reference or guideline in the creation or implementation of agreements, both nationally and internationally. In Indonesia, the validity of both is based on the principle of freedom of contract as stipulated in Article 1338 of the Civil Code. In making an agreement, the parties have the freedom to make a *choice of law* and a *choice of forum*. Therefore, if the parties adopt the ICC and UPICC such as *Hardship* and MAC Clauses into the agreement, then these clauses have binding force and can be used as a basis for renegotiating, adjusting, or submitting a request to terminate the agreement when extraordinary and unexpected changes in circumstances occur.

The principle of freedom of contract provides autonomy to the *buyer* (acquiror) and *seller* (the company to be acquired) to design and determine the content and form of the agreement, risk protection clauses and make the MAC clause a valid condition for submitting an application for cancellation or redesign of the agreement in a Merger and Acquisition agreement, as long as it fulfills the conditions for

the validity of the agreement contained in Article 1320 of the Civil Code. MAC is recognized as a valid requirement as long as it meets the objective requirements of the agreement and especially for halal reasons<sup>[8]</sup>.

However, this freedom is not absolute, as it remains within the bounds of statutory provisions, moral norms, and public order as recognized in the Indonesian legal system. This is stated in Article 1337 of the Civil Code, which explains that an agreement is considered void if its object or content is contrary to law, morality, or public order. With this provision, the state, through legal instruments, continues to exercise its supervisory and control function over the contents of contracts to prevent losses that conflict with the public interest or prevailing norms in society. Therefore, the principle of freedom of contract must always be in harmony with the legal values that exist in society<sup>[9]</sup>.

Although the *Material Adverse Change clause* has a strong contractual basis, its implementation and interpretation face obstacles due to the lack of binding precedent in the Indonesian *Civil Law system*, thus giving rise to legal uncertainty. In this context, the principle of good faith as stipulated in Article 1338 paragraph (3) of the Civil Code becomes a very important normative framework. This principle requires the parties to execute the agreement honestly and properly and not to use it for unilateral interests. Theoretically, the protective function of a *Material Adverse Change clause* can be linked to the principle of *risk allocation* in contemporary business contract law. This principle emphasizes that each party bears the rights and obligations to bear risks in accordance with their position and interests in a transaction. In this context, the buyer seeks to transfer some of the risk of material changes to the seller by including a MAC clause. If an event subsequently occurs that significantly reduces the value of the target company, the buyer has a legal basis to review the agreement. The MAC clause also serves to promote transparency and accountability in the *due diligence process*, as the seller is required to disclose all material conditions that could potentially affect the transaction's continuity<sup>[10]</sup>.

*Material Adverse Change clause* is not only limited to contractual aspects but also reflects the paradigm of justice in business relations. In situations where one party experiences losses due to material changes beyond its control, contract law ideally provides a proportional protection mechanism. In this context, the MAC clause functions as a protective instrument that accommodates the principle of contractual fairness, namely creating a balance between the rights and obligations of the parties in a transaction. Thus, although the MAC clause is rooted in international business law practices, its application has universal value that is relevant for adoption in the Indonesian legal system to strengthen the aspects of certainty and fairness in merger and acquisition transactions<sup>[11]</sup>.

Justice, according to Aristotle, in the context of contracts focuses more on equality or equity, which demands that rights and obligations be balanced in value. When this

<sup>6</sup>Lexologi.com., *Loc. Cit.*

<sup>7</sup>Guhan Subramanian, *The Art of M&A Strategy*, Oxford University Press, 2010, p. 205

<sup>8</sup>Arifin M., *Building an Ideal Concept for the Implementation of the Principle of Good Faith in Contract Law*, Jurnal Ius Constituendum, (May 13, 2020); p. 76

<sup>9</sup>Mohammad Novel, *Freedom of Contract and Its Limits: An Analysis from the Perspective of Contract Drafting*, Journal Publicuho, Vol. 8 No. 4, Faculty of Law, Tarumanagara University, West Jakarta, 2025

<sup>10</sup>Palmer Aiman Subandio, *Material Adverse Change Clauses in Mergers and Acquisitions in Indonesia; Business Interest and Legal Void Perspectives*, Academic Campus Publisher, Semarang State University, Vol. 3 No. 6, (December 2025)

<sup>11</sup>NYLS Law Review, *Cyberattacks and Material Adverse Effect Clauses in M&A Transactions; A Proposed Hack*, (January 2022), p. 118

balance is disturbed, commutative justice is needed to restore this equality<sup>[12]</sup>. The purpose of formulating an agreement that includes a MAC clause in an acquisition agreement is that if a change occurs that causes material losses not caused by the acquirer or the Company's unpreparedness to face sudden changes in market conditions, the acquirer can unilaterally propose renegotiation or cancel the transaction during the acquisition process. This condition means that the rights and obligations of each party will be threatened, where the prospective value of the Company to be acquired will decrease from the potential value that existed at the beginning of the agreement. By granting the acquirer the right to renegotiate or file for cancellation of the transaction, this will restore the rights and obligations of the parties to equality. However, the justice achieved is very dependent on the specific formulation of this MAC clause, ensuring that the party harmed by an unexpected material change beyond its control can correct the transaction to restore a fair balance. Furthermore, the theory of legal certainty in the context of contracting aims to create a tool that can be relied upon by the parties in conducting transactions. According to Gustav Radbruch, law aims to safeguard the interests of each individual so that those interests cannot be disturbed, where the law is tasked with ensuring legal certainty in human relations. Essentially, in a contract, what has been agreed upon and signed by the parties will be enforced unless there is a clear legal reason. The agreement made will bind the parties and become a source of law for the parties who made it in accordance with the principle of *pacta sunt servanda*. Therefore, in the process of making the agreement, efforts are made to ensure that the clauses in the agreement do not contain ambiguities in their interpretation<sup>[13]</sup>.

Legal certainty requires that the law be positive, written, clear, consistent, and enforceable with certainty in accordance with *lex dura sed tamen scripta*, which means the law is strict, but that is what is written. This ensures that everyone can predict the legal consequences of their actions or agreements. In the process of making an agreement or contract, the parties must include a specific list of events that are definitely considered material losses. In addition, the parties can explicitly determine the types of changes that will not be considered MAC, for example, changes in market conditions or the industry in general, changes in laws that apply to all. This aims to prevent ambiguity and multiple interpretations and create legal certainty in the implementation of the agreement.

In Indonesian business practice, the use of *Material Adverse Change clauses* as a protection mechanism for buyers (acquirers) has not been optimal. This condition is influenced by the absence of clear regulations and limited judicial precedents that can be used as references in assessing their validity and application. Regulations regarding the application of MAC clauses still refer to the principles contained in the Civil Code. However, conceptually, MAC clauses have high relevance for application in the Indonesian market, which tends to be dynamic and vulnerable to fluctuations due to changes in economic and political policies. Therefore, the existence of MAC clauses has the potential to become a more progressive legal protection instrument that is responsive to market dynamics, while

strengthening the buyer's position to avoid losses due to sudden material changes to the transaction object.

One of the most famous cases related to the application of the MAC clause is the case of *Akorn, Inc. v. Fresenius Kabi AG* (2018) in the Delaware *Court of Chancery*. In this case, Fresenius, as the buyer, canceled the acquisition of Akorn on the grounds of declining business performance and regulatory violations that had a material impact on the target company. The court in this decision for the first time explicitly recognized that the MAC clause can be used as a basis for filing a transaction cancellation, provided that the changes occurred are long-term and not merely temporary fluctuations. The decision emphasized that the MAC cannot be applied arbitrarily, but must meet strict standards of proof, especially regarding the material impact on the company's financial and operational condition.

Thus, in its application in various countries that adopt a *civil law legal system*, the philosophical basis of its application refers to the principles of justice and balance, while the basis for its application in written law refers to international agreements such as *the Unidroit Principles of International Commercial Contracts* (UPICC) and *the International Chamber of Commerce* (ICC). In the Indonesian legal system, there are no explicit regulations regarding the MAC clause. The basis for the validity of the MAC clause comes from the principle of freedom of contract as stated in Article 1338 paragraph (1) of the Civil Code. In addition, the principle of good faith as regulated in Article 1338 paragraph (3) of the Civil Code is a very important normative framework. In addition, theoretically, the MAC clause can be linked to the principle of *risk allocation* in modern business contract law. In several countries that adopt a *common law legal system*, it is believed that MAC is a manifestation of the principle of prudence in large-value business transactions.

### 3.2. Legal Consequences of Cancellation of Acquisition Agreement Due to Material Adverse Change (MAC) Clause

Requests to cancel an acquisition transaction are also based on contractual provisions agreed to by the parties, such as *the Material Adverse Change* (MAC) clause. The MAC clause gives the buyer the right to file for cancellation of the transaction if a material change occurs that impacts the target company's financial condition, operations, or prospects before *closing*. In this case, the cancellation request is not based solely on a legal violation, but rather on the previously agreed risk allocation mechanism.

From a contract law perspective, the cancellation of an acquisition transaction results in the principle of *restitutio in integrum*, which is the return of the parties to their original state before the agreement was made. This principle is in line with the provisions of Articles 1265 and 1266 of the Civil Code, which stipulate that a canceled agreement must be deemed never to have existed, so that all achievements that have been carried out must be returned. In the context of an acquisition, this can include the return of shares, payment of the purchase price, and the cancellation of the transfer of control of the target company.

In Indonesia, the legal consequences of canceling an acquisition must also be considered within the legal

<sup>12</sup>M. Agus Santoso, *Law, Morals and Justice: A Study of Legal Philosophy*, Second Edition, Kencana, Jakarta, 2014, p. 92

<sup>13</sup>RPC Utomo, *Legal Principles in Contract Making Techniques; Challenges and Solutions*, Multidisciplinary Scientific Journal, Vol. 2 No. 2, (December 31, 2024), p. 98

framework of limited liability companies, specifically Law Number 40 of 2007 concerning Limited Liability Companies. Cancellation of an acquisition can result in the cancellation of amendments to the articles of association, the annulment of GMS decisions, and the potential for disputes between shareholders. Furthermore, if the acquisition has received approval from certain authorities, such as the KPPU (Commission for Public Prosecution), cancellation can also have administrative consequences that require consideration. Furthermore, the cancellation of an acquisition transaction also has implications for a business's reputation and trustworthiness. In modern business practices, transaction failure can impact a company's credibility with investors, creditors, and regulators. Therefore, resolving the legal consequences of cancellation is not limited to normative aspects but also encompasses strategic and economic considerations.

The cancellation of an acquisition transaction not only impacts the primary parties but also has legal implications for third parties with legal relationships with the target company. In the context of civil and corporate law, these third parties can include creditors, employees, contractual partners, or minority investors who have an interest in the continued existence of the acquired company.

Theoretically, the law provides protection through the principle that the rights of a good-faith third party should not be harmed by the cancellation of an agreement. This aligns with the doctrine of third-party protection in modern contract law. *Third-party protection* is a legal principle aimed at protecting the interests of individuals or legal entities who are not direct signatories to a contract but are affected by its implementation or breach<sup>[14]</sup>.

Thus, the legal consequences of canceling an acquisition transaction based on a *Material Adverse Change* (MAC) clause have complex legal consequences, both from a contractual, corporate, and third-party perspective. First, canceling an acquisition results in the legal relationship between the parties being deemed to have never existed, so that all achievements that have been made must be restored to their original state (*restitutio in integrum*). This includes the return of shares, payment of the acquisition price, and the restoration of the company's structure and control as before the transaction was carried out. Second, the legal consequences of canceling an acquisition for third parties are relative and depend on the type of legal relationship that exists. Third, canceling an acquisition can result in the cancellation of changes to the articles of association, the cancellation of GMS decisions, and potential disputes between shareholders. In addition, if the acquisition has received approval from certain authorities such as the KPPU, the cancellation can also have administrative consequences that need to be considered.

#### 4. Conclusion

The application of change of circumstances clauses such as MAC and *Hardship* in various countries that adopt the *civil law legal system*, the philosophical basis of its application refers to the principles of justice and balance, while the basis of its written legal application refers to international agreements such as the *Unidroit Principles of International Commercial Contracts* (UPICC) and the *International*

*Chamber of Commerce* (ICC). In the Indonesian legal system, there are no explicit regulations regarding MAC clauses. The basis for the validity of MAC clauses comes from the principle of freedom of contract as stated in Article 1338 paragraph (1) of the Civil Code. In addition, the principle of good faith as regulated in Article 1338 paragraph (3) of the Civil Code is a very important normative framework. In addition, theoretically, MAC clauses can be linked to the principle of *risk allocation in modern business contract law*. In several countries that adopt the common law legal system, it is believed that MAC is a manifestation of the principle of prudence in large-value business transactions.

Consequences The cancellation of an acquisition transaction based on a *Material Adverse Change* (MAC) clause has complex legal consequences, both from a contractual, corporate, and third-party perspective. First, the cancellation of an acquisition results in the legal relationship between the parties being deemed to have never existed, so that all achievements that have been carried out must be restored to their original state (*restitutio in integrum*). This includes the return of shares, payment of the acquisition price, and the restoration of the company's structure and control as before the transaction was carried out. Second, the legal consequences of the cancellation of an acquisition for third parties are relative and depend on the type of legal relationship that exists. Third, the cancellation of an acquisition can result in the cancellation of changes to the articles of association, the cancellation of GMS decisions, and potential disputes between shareholders.

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<sup>14</sup>Yohana Priscila, *Legal Protection for Third Parties Who Suffer Losses Due to the Dissolution of Operational Cooperation Business Entities*, Brawijaya Knowledge Garden, Brawijaya University, Malang, (26 December 2019), p. 90

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