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Kana Kurnia

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Komisi Pengawas Persaingan Usaha

Komisi Pengawas Persaingan Usaha
Jl. Ir. H. Juanda No.36
Jakarta Pusat 10120
INDONESIA

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Jurnal Persaingan Usaha semakin meningkatkan kualitas tulisan yang disuguhkan kepada dunia akademisi. Mulai volume ini, Jurnal Persaingan Usaha melebarkan sayapnya, dengan menerima naskah berbahasa Inggris, dalam upaya bersinergi meningkatkan kualitasnya pada proses akreditasi. Ke depannya, Jurnal Perasingan Usaha akan menerima naskah dalam dua bahasa, yang diharapkan dapat semakin meningkatkan keilmuan hukum dan ekonomi persaingan usaha di Indonesia.

Di edisi kali ini, Jurnal Persaingan Usaha membawa beragam tema mulai dari kompetisi di dunia kesehatan yang kompleks dan global, hubungan antara kecerdasan buatan dengan hukum persaingan usaha yang dapat menjadi solusi atau malah menjadi ancaman tersendiri untuk dunia bisnis, analisis potensi korupsi dalam tender pengadaan barang dan jasa Pemerintah yang tentunya tidak sesuai dengan aturan persaingan usaha yang sehat, ada juga tema soal dugaan persaingan usaha tidak sehat terkait distribusi aplikasi digital yang ditengarai dilakukan oleh Google juga dugaan dominasi pembayaran Google Pay Billing di mana saat ini masih dalam tahap persidangan majelis di KPPU, adanya dugaan pada posisi dominan di market digital yang dalam hal ini mengambil studi pada Shopee dan Tokopedia, serta persaingan transportasi *online* pada merk dagang GoCar dan Blue Bird.

Tema yang diangkat pada edisi ini bervarasi dan beragam, dengan inti pada dunia digital di mana menjadi salah satu fokus utama pada periode saat ini. Mengingat, Presiden Joko Widodo baru saja melantik sembilan orang Anggota KPPU baru untuk memimpin lembaga ini lima tahun ke depan. Semoga tulisan-tulisan di edisi ini dapat membuka cakrawala baru, sehingga pembaca mampu meningkatkan minatnya pada dunia persaingan usaha. Selamat membaca!

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Kana Kurnia
kana.kurnia@universitasmulia.ac.id

Fakultas Hukum Universitas Mulia

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ABSTRACT

Komisi Pengawas Persaingan Usaha (KPPU) suspects that Google has abused its dominant position, conditional sales, and discriminatory practices in digital application distribution in Indonesia by requiring the use of the Google Pay Billing (GPB) system for certain applications and charging an application service fee of 15- 30% of purchases to application developers and users are prohibited from using alternative payment options, and application developers who refuse the obligations set by Google will be subject to sanctions in the form of removing applications from Google Play. This research is intended to examine the Forms of Closed Agreements and the Abuse of Dominant Position Carried Out by Google LLC, Causing Unfair Business Competition According to the European Union and Indonesian Business Competition Laws and the efforts that can be made by the Government of Indonesia to improve regulation and supervision of unfair business competition practices. healthy in the distribution of digital applications. The research method used is normative juridical. Based on this research, it is known that Google's policy of making distribution agreements, anti-fragmentation agreements and profit sharing agreements is contrary to competition laws in force in the European Union, while the violations that Google has committed in Indonesia are establishing the Google Pay Billing payment system unilaterally. so that application developers and users in Indonesia do not have the same opportunity to negotiate or use payment alternatives. Then according to the UNCTAD guidelines, the Indonesian government must at least revise the existing law and develop guidelines to keep up with digital economy developments.

Keywords: *Google LLC, Exclusive Agreement, Dominant Position, Google Pay Billing.*

ABSTRAK

Komisi Pengawas Persaingan Usaha (KPPU) menduga Google menyalahgunakan posisi dominan, penjualan bersyarat, dan praktik diskriminatif dalam distribusi aplikasi *digital* di Indonesia dengan memaksa penggunaan sistem *Google Pay Billing* (GPB) pada aplikasi tertentu dan mengenakan tarif layanan aplikasi 15-30% dari pembelian kepada aplikasi pengembang dan pengguna dilarang menggunakan opsi pembayaran alternatif, dan pengembang app yang menolak akan mendapatkan penolakan aplikasi dari Google Play. Penelitian ini di maksudkan untuk mengkaji Bentuk Perjanjian Tertutup dan Penyalahgunaan Posisi Dominan yang Dilakukan oleh Google LLC Sehingga Menyebabkan Persaingan Usaha Tidak Sehat Menurut Hukum Persaingan Usaha Uni Eropa dan Indonesia dan upaya yang dapat dilakukan oleh Pemerintah Indonesia untuk meningkatkan regulasi dan pengawasan terhadap praktik persaingan usaha tidak sehat dalam distribusi aplikasi *digital*. Metode penelitian yang digunakan adalah yuridis normatif. Menurut penelitian tersebut, kebijakan Google untuk membuat perjanjian distribusi, anti-fragmentasi, dan kesepakatan hasil telah bertentangan dengan hukum persaingan yang berlaku di Uni Eropa, dan tindakan pelanggaran yang diambil Google di Indonesia adalah untuk secara unilateral membangun sistem pembayaran Google Pay Billing sehingga pengembang aplikasi dan pengguna di Indonesia tidak memiliki kesempatan yang sama untuk bernegosiasi atau menggunakan alternatif

pembayaran. Pemerintah Indonesia kemudian harus menyesuaikan dengan standard yang ditetapkan oleh UNCTAD, yakni mengubah Undang-Undang saat ini dan menghasilkan panduan untuk mengikuti perkembangan ekonomi *digital*.

Kata Kunci: Google LLC, Perjanjian Tertutup, Posisi Dominan, *Goole Pay Billing.*

PENDAHULUAN

Masalah pada dunia bisnis bersifat kompleks serta lintas industri. Kompleksitas tersebut menimbulkan berbagai macam masalah, dari sekian banyak permasalahan, salah satu yang paling berbahaya adalah persaingan usaha yang tidak sehat. Apabila mengacu pada histori pembentukan Undang-Undang Nomor 5 Tahun 1999 tentang Larangan Praktik Monopoli dan Persaingan Usaha Tidak Sehat (UU Antimonopoli) maka tujuan awal pembentukan Undang-Undang ini adalah agar dunia usaha khususnya pelaku usaha dapat melakukan persaingan secara sehat.

Pengusaha harus memastikan bahwa semua lini proses bisnis yang ada sesuai dengan peraturan perundang-undangan yang berlaku, dan harus berusaha mencegah melakukan perjanjian yang dilarang, perilaku yang dilarang, dan penyalahgunaan posisi dominan yang mengarah pada praktik monopoli dan persaingan usaha tidak sehat. Dalam beberapa keadaan, organisasi memiliki keunggulan kompetitif seperti ukuran, *branding* atau nama besar serta sumber daya yang mumpuni.[1]

Dalam hukum persaingan, penguasaan posisi dominan sebenarnya tidak dilarang hingga pengusaha atau perusahaan mencapai posisi dominan berdasarkan prestasinya di pasar asal bermain secara sehat dan adil. [2] Apabila pengusaha menggunakan cara yang baik dan tepat untuk mencapai posisi dominannya, maka capaian tersebut tentu akan membuat pengusaha lain bersaing dengan cara yang benar di pasar bersangkutan. Adapun sebaliknya, pengusahaan atau perusahaan yang tidak efisien dan tidak kompetitif serta tidak dapat memenuhi kebutuhan konsumen maka akan tersingkir dari pasar dan tidak dapat bersaing. [3] Prinsip dasarnya adalah bahwa hukum persaingan tidak boleh menghukum perusahaan yang mendominasi pasar atau menciptakan posisi dominan di pasar dengan mengungguli pesaingnya.[4]

Adapun kasus yang diduga melanggar posisi dominan adalah kasus monopoli yang melibatkan perusahaan teknologi raksasa, yakni Google. Google adalah perusahaan multinasional Amerika Serikat yang bisnisnya berfokus pada menyediakan layanan dan produk internet. Produk tersebut termasuk mesin pencari, komputasi web, perangkat lunak dan iklan *online*. Diperkirakan Google memiliki lebih dari 1 (satu) juta server di beberapa pusat data di seluruh dunia. [5]

Pada tanggal 14 September 2022, pengadilan umum Uni Eropa Luksemburg menguatkan putusan dari Komisi Eropa tanggal 18 Juli 2018 yang mengonfirmasi temuan Komisi Eropa bahwa Google LLC dan induk perusahaannya yaitu Alphabet Inc telah menyalahgunakan posisi dominan mereka di beberapa pasar selama lebih dari 7 (tujuh) tahun.[6] Inti dari sengketa antara Google LLC dengan Uni Eropa tersebut adalah menyangkut beberapa perjanjian yang melanggar aturan antimonopoli Uni Eropa, khususnya aturan tentang perjanjian dan ekslusivitas. Google membuat perjanjian tersebut dengan produsen perangkat dan operator jaringan seluler sebagai bagian dari pemberian lisensi Android (OS) untuk *smartphone*. Melalui perjanjian Distribusi Aplikasi Seluler (MADA), Google telah memaksa perusahaan pembuat ponsel pintar untuk: 1) mewajibkan produsen mengunduh aplikasi Google lainnya ke ponsel cerdas, 2) pencarian Google harus ditampilkan dengan jelas, 3) Pencarian Google harus dijadikan *default* untuk pencarian web, 4) mengharuskan layanan lokasi Google menjadi *default*. Perjanjian antara Google dengan perusahaan pembuat ponsel pintar tersebut telah dilakukan sejak lama. Menurut temuan Komisi Eropa, praktik yang dilakukan oleh Google tersebut bertujuan untuk melindungi dan memperkuat posisi dominan Google. [6]

Tindakan yang dilakukan oleh Google melanggar Pasal 102 Perjanjian Fungsi Uni Eropa (TFEU) yang berbunyi: "*any abuse of a dominant position by one or more undertaking within the internal market or in a substantial part of it shall be prohibited as incompatible with the inner market insofar as it may affect trade between member states*." Di mana secara menyeluruh arti dari pasal 102 TFEU tersebut adalah dilarangnya penyalahgunaan posisi dominan. Sebelum menentukan terjadinya dominasi, Komisi Uni Eropa mendefinisikan pasar produk dan pasar geografis yang di mana pasar produk merupakan pasar yang relevan yang terdiri dari semua produk/jasa yang oleh konsumen dianggap sebagai pengganti satu sama lain karena karakteristik, harga dan tujuan penggunaannya, adapun pasar geografis yang relevan adalah

area di mana kondisi persaingan untuk produk tertentu bersifat homogen.[7]

Pangsa pasar merupakan indikasi pertama yang berguna tentang pentingnya masing-masing perusahaan di pasar di bandingkan dengan yang lain. Menurut pandangan Komisi Eropa, semakin tinggi pangsa pasar, dan semakin lama jangka waktunya, maka semakin besar kemungkinan hal itu menjadi indikasi awal dominasi. Apabila sebuah perusahaan memiliki pangsa pasar kurang dari 40% maka tidak mungkin menjadi dominan.[7]

Tingkah laku Google di Indonesia membuat Komisi Pengawas Persaingan Usaha (KPPU) menilai Google telah menyalahgunakan posisi dominan, penjualan bersyarat dan taktik diskriminatif dalam mendistribusikan aplikasi *digital* di Indonesia.

Berdasarkan siaran pers dari KPPU, Google mewajibkan penggunaan sistem *Google Pay Billing* (GPB) pada aplikasi tertentu. GPB adalah sistem pembelian produk atau layanan di dalam aplikasi atau *in-app purchase*. Sistem GPB membebankan tarif layanan pada aplikasi sebesar 15-30% dari pembelian kepada pengembang aplikasi, dan Google juga membuat aturan bahwa sistem GPB diwajibkan serta pengguna dilarang memanfaatkan opsi pembayaran alternatif adapun bagi pengembang aplikasi yang menolak kewajiban ini akan dikenakan sanksi oleh Google berupa penghapusan aplikasi tersebut dari Google Play, kebijakan tersebut terhitung efektif mulai 1 Juni 2022. Selain itu, KPPU juga menduga Google terlibat dalam penjualan bersyarat (*tying*) layanan dalam 2 (dua) model bisnis yang berbeda, yaitu mewajibkan pengembang aplikasi untuk membeli *bundled application* dari Google Play Store dan menggunakan *billing* dari Google Play, dan berdasarkan temuan KPPU, untuk pembelian dalam aplikasi, Google bekerja sama hanya dengan satu sistem *gateway* pembayaran, sementara itu beberapa penyedia layanan lain di Indonesia tidak dapat bernegosiasi metode pembiayaan yang telah ditetapkan Google secara sepihak tersebut. [8]

Pada akhirnya, banyak indikasi-indikasi yang menunjukkan bahwa Google dalam berbagai kesempatan cenderung mengabaikan prinsip-prinsip persaingan usaha yang sehat, yang selanjutnya akan penulis teliti dalam tulisan ini.

Berdasarkan latar belakang di atas, permasalahan yang akan dikaji dalam artikel ini adalah Bagaimana Bentuk Perjanjian Tertutup dan Penyalahgunaan Posisi Dominan yang Dilakukan oleh Google LLC Sehingga Menyebabkan Persaingan Usaha Tidak Sehat Menurut Hukum Persaingan Usaha Uni Eropa dan Indonesia? dan Apa Upaya yang dapat dilakukan oleh Pemerintah Indonesia untuk meningkatkan regulasi dan pengawasan terhadap praktik persaingan usaha tidak sehat dalam distribusi aplikasi *digital*?

Penelitian ini menggunakan metode hukum yuridis normatif. Penelitian dilakukan dengan melihat data sekunder, berupa teks hukum primer, sekunder, dan tersier. Bahan hukum primer seperti Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, Undang-Undang Nomor 5 Tahun 1999 tentang Larangan Praktik Monopoli dan Persaingan Usaha Tidak Sehat, Peraturan Komisi Pengawas Persaingan Usaha Nomor 6 Tahun 2010 tentang Pedoman Pelaksanaan Pasal 25 tentang Penyalahgunaan Posisi Dominan, Peraturan Komisi Pengawas Persaingan Usaha Nomor 11 Tahun 2011 tentang Pedoman Pasal 17 (Praktik Monopoli), dan putusan pengadilan Komisi Eropa tentang praktik persaingan usaha tidak sehat Google LLC. Buku-buku yang ditulis oleh ahli hukum merupakan bahan hukum sekunder, termasuk karya ilmiah para sarjana, baik yang diterbitkan maupun yang dapat diperoleh melalui media elektronik seperti internet. Bahan hukum tersier seperti kamus, artikel, makalah, dan seminar. Setelah data diperoleh, kemudian dilakukan metode analisis data dengan cara analisis normatif kualitatif.

Tujuan daripada penelitian ini adalah agar dapat memberikan pemahaman tentang persaingan usaha tidak sehat berupa perjanjian tertutup dan posisi dominan yang dilakukan oleh Google LLC menurut hukum persaingan Uni Eropa dan Indonesia.

Konsep dan Definisi Perjanjian Tertutup

Perjanjian tertutup merupakan perjanjian di antara pihak pembeli dan pihak penjual dalam bisnis yang memungkinkan mereka untuk mencapai kesepakatan yang hanya berlaku bagi mereka sendiri, yang pada gilirannya dapat mencegah atau menghalangi pelaku usaha lain untuk mencapai kesepakatan yang serupa atau sama. Selain harga yang ditetapkan, terdapat juga hambatan vertikal lainnya yang tidak berkaitan dengan harga yang termasuk dalam perjanjian tertutup, seperti pembatasan akses penjualan atau pasokan, pembatasan wilayah. Hambatan-hambatan ini juga dapat digolongkan sebagai bagian dari perjanjian tertutup [9]

Perjanjian tertutup diatur dalam Pasal 15 Undang-Undang Nomor 5 Tahun 1999 tentang Larangan Praktik Monopoli dan Persaingan Usaha Tidak Sehat, sedangkan beberapa praktik yang dilarang antara lain:

a. Kontrak distribusi ekslusif
b. Perjanjian kontrak untuk penjualan/pembelian barang dan/atau layanan tertentu (*tying agreement*)

c. Kesepakatan harga dan/atau diskon yang unik dari perjanjian pengikat
d. Pengaturan harga dan/atau diskon khusus yang terkait dengan larangan membeli produk dan/atau layanan dari pesaing (*exclusive dealing*)

Exclusive Dealing

Adalah kesepakatan yang dicapai antara orang-orang pada berbagai tahap produksi atau distribusi barang atau jasa. Transaksi ekslusif atau perjanjian tertutup ini terdiri dari unsur-unsur berikut:

i) *Exclusive Distribution Agreement,* di mana pengusaha membuat perjanjian dengan pengusaha lain dengan syarat penerima produk tidak akan mengalihkannya ke pihak tertentu atau ke lokasi tertentu. Dengan kata lain, sesuai kesepakatan dalam kontrak, reseller wajib mengirimkan produk hanya kepada pihak tertentu dan ke lokasi tertentu saja tertentu dan di tempat tertentu saja.
ii) Tying Agreement
iii) Vertical Agreement on Discount

Tying Agreement

Distributor dapat membeli produk yang merupakan produk terikat sepanjang harus membeli produk lain atau perjanjian di mana penjual menjual produknya kepada pembeli dan pembeli membeli produk lain dari penjual.

Kewajiban untuk membeli produk ini dikenakan secara sepihak dan pembeli tidak dapat menghindarinya karena pembeli tidak mempunyai pilihan lain, penjual di sini memiliki daya tawar yang tinggi (*dominant bargaining power*) dan melakukan perjanjian sepihak untuk itu.

Vertical Agreement on Discount

Jika suatu bisnis ingin menerima potongan harga atas produk yang dibeli dari bisnis lain, maka bisnis tersebut harus bersiap untuk membeli produk lain dari bisnis tersebut atau tidak membeli produk yang sama atau serupa dari pesaing bisnis lain.

Konsep Dasar Posisi Dominan

Undang-Undang anti monopoli di Indonesia mengikuti European Competition Law Article 102 *Treaty on the Functioning of the European Union* yang menggunakan istilah *dominant position* dengan bunyi: "*any abuse by one or more undertakings of a dominant position within the internal market or in a substantial part of it shall be prohibited as incompatible with the internal market in so far as it may affect trade between member states, consisting in: a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions; b) limiting production, markets, or technological development to detriment of consumers; c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby putting them at a competitive disadvantage; and (d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations that, by their nature or according to commercial usage, have no connection with the subject of such contracts."*

Di Uni Eropa, Komisi Eropa menyatakan dalam kasus Continental Can, [10] Bahwa seorang pengusaha memiliki posisi dominan ketika ia memiliki kemampuan untuk beroperasi secara independen dari pesaing, pelanggan atau pemasok. Posisi dominan dicapai ketika seorang pengusaha dapat menetapkan harga, mengendalikan produksi, atau mendistribusikan sejumlah besar produk karena ia atau dia memiliki pangsa pasar tertentu atau karena ia memiliki bagian pasar di samping kemampuan ilmiah dan teknologi bahan baku atau modal.[10]

Contoh lain yang dapat digunakan untuk menyoroti posisi dominan Eropa adalah keputusan Mahkamah Eropa (ECJ) di Hoffman La Roche V. Posisi dominan yang disebutkan di sini adalah posisi kekuatan ekonomi perusahaan, yang memungkinkan perusahaan untuk mencegah persaingan yang efektif di pasar yang relevan dengan memberikan kemampuan untuk bertindak secara signifikan independen dari pesaingnya, pelanggan, dan pada akhirnya konsumen.[11]

Pengadilan Eropa menjelaskan dalam perkara Hoffman-La Roche bahwa penyalahgunaan posisi dominan berdasarkan Pasal 102 dari Perjanjian Komunitas Eropa adalah istilah objektif yang mengacu pada tindakan pemegang posisi dominasi yang mempengaruhi struktur pasar, menyebabkan persaingan di pasar tertentu berkurang. [11]

Komisi Eropa harus mempertimbangkan 2 hal ketika menerapkan pasal 102. Pertama, harus ditunjukkan bahwa seorang pengusaha memiliki posisi dominan di pasar yang di maksud, dan kemudian perilaku perusahaan harus diperiksa untuk melihat apakah tindakan itu menyalahgunakan. [12]

Dalam hal penyalahgunaan, 3 (tiga) jenis yang berbeda telah diidentifikasi dan diakui oleh Komisi dan Pengadilan Uni Eropa. Tindakan pertama adalah eksploitasi, di mana perusahaan yang dominan menggunakan posisi pasarnya untuk mengeksploitasi konsumen, seperti dengan membatasi output dan menaikkan harga

barang atau jasa. [13] Kedua, ada penyalahgunaan ekslusif, yang didefinisikan sebagai perilaku oleh perusahaan yang dominan yang bertujuan atau mempengaruhi pencegahan perkembangan kompetitif dengan mengecualikan pesaing. [14] Ketiga, ada penyalahgunaan yang melibatkan kegiatan yang bertentangan dengan cita-cita yang lebih luas dari pasar tunggal, seperti menghalangi impor parallel atau membatasi persaingan dalam merek. [15]

Perusahaan yang mendominasi adalah perusahaan dengan pangsa pasar terbesar dalam industri. Sebuah korporasi dapat dianggap dominan jika mendominasi pasar di mana ia beroperasi dan memiliki sedikit pesaing. Pesaing perusahaan yang mendominasi terutama adalah perusahaan kecil yang bersaing untuk merebut pangsa pasar yang tersisa. [16]

Tidak ada salahnya menjadi perusahaan dominan dengan pangsa pasar terbesar, Apabila pangsa pasar dicapai melalui proses persaingan di mana perusahaan berhasil menerapkan efisiensi, inovasi dan strategi bersaing lainnya sehingga perusahaan berada pada posisi yang lebih baik dibandingkan dengan perusahaan lain yang beroperasi di pasar tersebut. Posisi dominan ini juga digunakan untuk mencegah perusahaan baru memasuki pasar atau untuk mencegah ekspansi pesaing yang sudah ada di pasar.

Keadaan Posisi dominan diatur dalam Pasal 25 ayat (2) Undang-Undang No. 5/1999 sebagai berikut:

a. Seorang pengusaha tunggal atau sekelompok pengusaha mengendalikan 50% atau lebih dari pangsa pasar dari jenis barang atau jasa tertentu;
b. dua atau tiga perusahaan atau kelompok perusahaan mengendalikan 75% atau lebih dari pangsa pasar dari jenis barang atau jasa tertentu.

PEMBAHASAN

Bentuk Perjanjian Tertutup dan Penyalahgunaan Posisi Dominan yang Dilakukan oleh Google LLC Sehingga Menyebabkan Persaingan Usaha Tidak Sehat Menurut Hukum Persaingan Usaha Uni Eropa dan Indonesia

Ketika sebuah perusahaan dapat bertindak secara independen dari pesaingnya, pelanggan, pemasok, dan akhirnya konsumen akhir, [17] ia berada dalam posisi dominan. Perusahaan dapat mereplikasi kegiatan monopoli yang merugikan kesejahteraan dengan berjalan secara independen dengan perilaku ini, yang merupakan aspek penting dari konsep ini. Di pasar yang kompetitif, perusahaan dominan dengan dominasi pasar seperti itu dapat menetapkan harga yang lebih tinggi daripada pesaing mereka, menawarkan barang-barang dengan harga lebih rendah atau mengurangi tingkat inovasi mereka. [17]

Menjadi korporasi yang mendominasi tidak dilarang menurut Undang-Undang Persaingan Uni Eropa karena posisi dominan dapat diperoleh melalui persaingan sejati, seperti menciptakan dan menjual produk yang lebih baik. Pedoman persaingan, di sisi lain, melarang perusahaan menyalahgunakan posisi dominan mereka. [17] Sesuai dengan peraturan persaingan usaha di Uni Eropa, keunggulan pasar dapat dicapai melalui persaingan yang adil antara pesaing bisnis, seperti menciptakan atau memasarkan produk yang lebih unggul, sehingga tidak melanggar peraturan persaingan usaha.

Uni Eropa mempunyai hukum persaingan usaha tersendiri yang bernama *Treaty on the Functioning of the European Union* (TFEU), pasal 102 TFEU mengatur bahwa: "*any abuse by one more undertaking of dominant position within the internal market or in a substansial part of it shall be prohibited as incompatible with the internal market in so far as it may affect trade between member states.*"

Umumnya, di pengadilan Eropa diterapkan metode presentasi yang berfokus pada pangsa pasar. Apabila suatu perusahaan memiliki pangsa pasar di atas 70% maka dapat dipastikan bahwa perusahaan tersebut memiliki posisi dominan. Jika pangsa pasarnya berada di kisaran 50-70%, maka bisa diasumsikan bahwa perusahaan tersebut memiliki dominasi. Jika pangsa pasarnya berada di kisaran 40-50%, maka hal tersebut dapat mendukung kesimpulan bahwa perusahaan tersebut memiliki dominasi. Namun, jika pangsa pasarnya di bawah 40%, kemungkinan besar tidak akan ditemukan dominasi kecuali ada bukti lain yang mendukung. [18] Definisi posisi dominan termuat dalam putusan European Court of Justice (ECJ) yang melibatkan Hoffman La Roche V. Commission of The European Communities, yang mana termuat di dalam paragraph 38 "*The dominant position here refers to an undertaking's position of economic strength, which enables it to prevent effective competition from being maintained on the relevant market by granting it the ability to act significantly independently of its competitors, customers, and, ultimately, consumers.*[11] Menurut Pasal 1 ayat 4 Undang-Undang Nomor 5 Tahun 1999 tentang Larangan Praktik Monopoli dan Persaingan Usaha Tidak Sehat, dominasi merujuk pada situasi di mana pelaku usaha menguasai pangsa pasar tertentu tanpa adanya pesaing yang signifikan, atau di mana pelaku usaha memiliki

posisi teratas di antara pesaingnya dalam hal keuangan, akses pasokan atau penjualan, serta kemampuan untuk menyesuaikan penawaran dan permintaan barang atau jasa tertentu.

Berikutnya, penguasa dianggap memegang kekuasaan dominan berdasarkan Pasal 25 ayat (2) Undang-Undang Nomor 5/1999 jika memenuhi: a) satu pengusaha atau satu kumpulan pengusaha mengendalikan 50% atau lebih pangsa pasar satu jenis produk atau layanan tertentu, b) dua atau tiga pengusaha atau kumpulan pengusaha menguasai 75% atau lebih pangsa pasar satu jenis produk atau layanan tertentu.

Perusahaan dilarang menggunakan posisi dominan mereka, secara langsung atau tidak langsung untuk: a) menetapkan kondisi perdagangan dengan tujuan mencegah atau mencegah konsumen mendapatkan barang dan jasa yang kompetitif dalam hal harga dan kualitas; b) membatasi pasar dan pengembangan teknologi; c) mencegah pesaing potensial memasuki pasar yang sama.

Google sebagai perusahaan teknologi informasi dan komunikasi yang berspesialisasi dalam produk dan layanan terkait internet memperoleh sebagian besar pendapatannya dari produk unggulannya, yaitu mesin pencarian Google Search. Model bisnis Google didasarkan pada interaksi, di satu sisi, sejumlah produk dan layanan yang ditawarkan kepada pengguna sebagian besar gratis, dan di sisi lain, layanan periklanan *online* menggunakan data yang dikumpulkan dari pengguna tersebut. Google juga menawarkan sistem operasi (OS) Android yang di mana di pasang di sekitar 80% perangkat smartphone yang digunakan di Eropa pada 2018. [19]

Posisi dominan Google dalam layanan *digital* modern kerap menuai persoalan, utamanya ketika menyangkut monopoli pasar dan penyalahgunaan posisi dominan. Sebagai mesin pencari yang paling banyak digunakan oleh masyarakat di dunia, Google harus selalu menemukan jalan yang efektif kepada konsumen agar selalu berhasil, seperti mendistribusikan Google Search ke berbagai perangkat seluler seperti *smartphone* dan tablet dan komputer desktop serta laptop. Cara yang paling efektif adalah dengan menjadikan *Google Search* sebagai mesin pencari Default Standard di perangkat smartphone dan komputer. [20]

Selama bertahun-tahun, Google telah mengadakan perjanjian ekslusivitas dan terlibat dalam tindakan anti persaingan untuk menutup saluran distribusi dengan cara membayar miliaran dollar setiap tahunnya untuk produsen *smartphone* seperti Apple, LG, Motorola dan Samsung serta perusahaan operator AT&T, T-Mobile dan Verizon dan perusahaan pengembang browser seperti Mozilla, Opera dan UC Web untuk mengamankan status *default* mesin pencari Google. Beberapa perjanjian juga mewajibkan distributor untuk mengambil paket *bundling* aplikasi Google termasuk aplikasi Google Search. [20] Melalui perjanjian Distribusi Aplikasi Seluler (MADA), Google telah memaksa perusahaan pembuat ponsel pintar untuk: [21] 1) mewajibkan produsen mengunduh aplikasi Google lainnya ke ponsel cerdas, 2) pencarian Google harus ditampilkan dengan jelas, 3) Pencarian Google harus dijadikan *default* untuk pencarian web, 4) mengharuskan layanan lokasi Google menjadi *default*.

Selain itu, Google juga melakukan 3 jenis pembatasan yang diidentifikasi sebagai berikut:

1. Perjanjian distribusi, yang di mana mewajibkan produsen perangkat seluler untuk memasang terlebih dahulu aplikasi aplikasi Google Search dan browser Google chrome agar dapat memperoleh lisensi dari Google untuk menggunakan Google Play Store.
2. Perjanjian anti fragmentasi, di mana lisensi pengoperasian yang diperlukan untuk pemasangan aplikasi Google Search dan Google Play Store dapat diperoleh oleh produsen *smartphone* hanya jika produsen tersebut berjanji untuk tidak menjual perangkat yang menjalankan versi sistem operasi android yang tidak tidak disetujui oleh Google.
3. Perjanjian bagi hasil, di mana pemberian bagian dari pendapatan iklan Google kepada produsen *smartphone* dan operator jaringan seluler apabila perusahaan tersebut tunduk dan tidak memasang layanan pencarian umum milik pesaing Google.

Akibat dari tindakan yang dilakukan oleh Google tersebut, pada tanggal 18 Juli 2018 Komisi Eropa mendenda Google sebesar 4,34 miliar euro atau 69 triliun rupiah karena telah menyalahgunakan posisi dominannya dan mengklasifikasikannya sebagai pelanggaran tunggal dan terus menerus melanggar Pasal 102 TFEU. Pasal 102 traktat tentang Fungsi Uni Eropa melarang tindakan kasar oleh perusahaan yang memiliki pasar dominan di pasar tertentu.

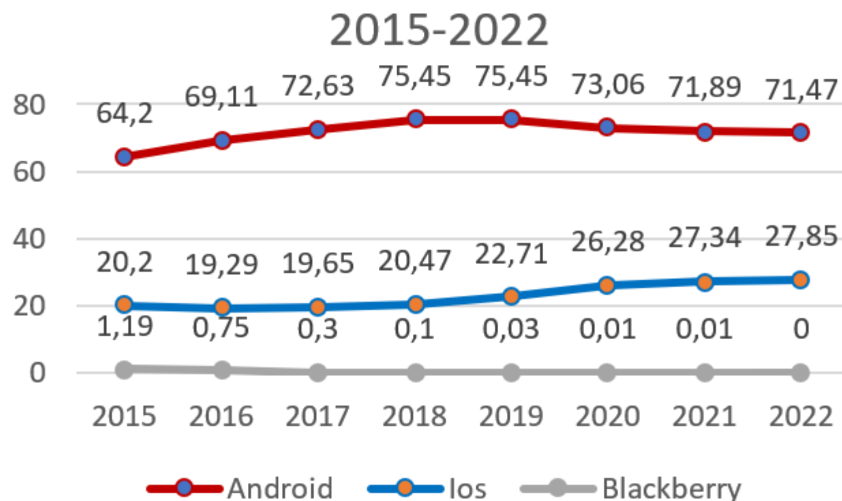
Langkah pertama Komisi Eropa dalam penyeledikan Pasal 102 adalah menilai apakah usaha yang bersangkutan dominan di pasar tertentu atau tidak. Sebelum menentukan adanya dominasi, Komisi Eropa mendefinisikan pasar produk dan pasar geografis, untuk pasar produk adalah pasar produk yang relevan terdiri dari semua produk/jasa yang oleh

konsumen dianggap sebagai pengganti satu sama lain karena karakteristik, harga dan tujuan penggunaannya, adapun pasar geografis adalah area di mana kondisi persaingan untuk produk tertentu bersifat homogen. [7]

Pangsa pasar merupakan indikasi pertama yang berguna tentang pentingnya masing-masing perusahaan di pasar di bandingkan dengan yang lain. Komisi Eropa berpandangan bahwa semakin tinggi pangsa pasar, dan semakin lama jangka waktunya, maka semakin besar kemungkinan hal itu menjadi indikasi awal dominasi. Apabila sebuah perusahaan memiliki pangsa pasar kurang dari 40% maka tidak mungkin menjadi dominan. Pada kasus Komisi Eropa melawan Google LLC, Komisi Eropa mengidentifikasi 4 (empat) jenis pasar yang relevan yang berkaitan dengan Google yang menyalahgunakan posisi dominannya, pertama, pasar dunia (tidak termasuk China) untuk lisensi sistem operasi android di perangkat smartphone. Kedua, pasar dunia (tidak termasuk China) untuk Google Play Store android. Ketiga, berbagai pasar nasional khususnya di dalam wilayah ekonomi eropa untuk penyediaan layanan pencarian umum. Keempat, pasar dunia untuk peramban *web* seluler non-OS.

Di Amerika Serikat atau Uni Eropa, regulasi mengenai penyalahgunaan posisi dominan berkaitan dengan praktik ekslusif seperti hambatan vertikal (contohnya perjanjian ekslusif pembelian atau pemasokan) dan penetapan harga yang merugikan. 3 (tiga) jenis perilaku penyalahgunaan tersebut dapat diidentifikasi sebagai berikut:

1. *Foreclosure Behaviour*, di mana perusahaan dominan menghalangi pesaing baru memasuki pasar (misalnya, melalui perjanjian ekslusif), hal ini telah dilakukan oleh Google dengan membuat perjanjian MADA, perjanjian distribusi, perjanjian anti fragmentasi dan perjanjian bagi hasil kepada produsen *smartphone* seperti Motorola, LG, Apple dan Samsung serta operator jaringan seluler.
2. *Predatory Practies*, di mana korporasi dominan berusaha mengusir pesaing dari pasar. Hal ini pun juga telah dilakukan oleh Google, karena berdasarkan data yang penulis dapatkan pada *paragraph* 383, menurut *statement* Pengadilan Komisi Eropa dijelaskan bahwa "pemasangan awal aplikasi Google pencarian dan chrome di bawah ketentuan yang ditetapkan oleh MADA memungkinkan untuk membekukan situasi dan mencegah pengguna beralih ke aplikasi pesaing".[6]
3. *Exclusionary Conduct*, ketika perusahaan dominan memanfaatkan dan/atau menyalahgunakan kekuatan pasar mereka untuk mendiskriminasi antara pemasok atau pembeli untuk memperoleh keuntungan yang tidak adil dan mendapatkan sewa yang tidak adil.



Gambar 1. Pangsa Pasar Google Android 2015-2022
Sumber: https://gs.statcounter.com/os-market-share/mobile/worldwide/#yearly-2009-2022

Di Indonesia itu sendiri, apabila melihat jumlah pangsa pasar Google Android dari tahun 2015-2022 maka sudah memenuhi berdasarkan Pasal 25 ayat (2) Undang-Undang Nomor 5/1999 di mana: a) satu pengusaha atau satu kumpulan pengusaha mengendalikan 50% atau lebih pangsa pasar satu jenis produk atau layanan tertentu, b) dua atau tiga pengusaha atau kumpulan pengusaha menguasai 75% atau lebih pangsa pasar satu jenis produk

atau layanan tertentu. Menurut opini penulis, fenomena itu terjadi karena Google Android berhasil mendominasi lebih dari setengah dari pasar. Bahkan dominasinya semakin meningkat, terbukti pada tahun 2015 Google berhasil mendominasi pasar sebesar 64,2%, adapun IOS dan Blackberry di tahun yang sama hanya menguasai pasar sebesar 20,2% dan 1,19%, hingga puncaknya adalah pada tahun 2018 dan 2019 Google Android berhasil menguasai pasar sebesar 75,45% yang diikuti oleh IOS 22,71% dan Blackberry 0,03%. berdasarkan data tersebut menunjukkan bahwa Google Android berhasil menjadi penguasa pasar *operating system* untuk smartphone di dunia selama 8 tahun terakhir ini.

Android adalah sebuah *platform* pengoperasian yang terbuka untuk diubah sesuai kehendak penggunanya, tetapi apabila memilih untuk mengubah *platform* ini, ponsel pintar tidak akan mendapatkan pembaharuan terkini untuk sistem operasinya. Selain itu, pengubahsuaian ini tidak akan membolehkan akses ke Google Maps, YouTube, dan Google Play Store yang di mana pada akhirnya membuat produsen *smartphone* cenderung menginginkan pembelian Google Android beserta dengan akses penuhnya. Pembelian akses tersebut dapat digolongkan sebagai *upgrade* premium. Hal ini di karenakan pembelian tidak hanya meliputi Android, tetapi juga melibatkan produsen *smartphone* yang harus menandatangani kesepakatan MADA untuk menyertakan 12 aplikasi lainnya. Kesepakatan MADA dibuat agar aplikasi-aplikasi Google dapat dengan mudah dipasarkan dan selalu berada pada posisi yang dominan di pasar. Android digunakan sebagai *platform* untuk kesepakatan ini. Kesepakatan MADA menentukan bahwa produsen smartphone tidak hanya akan memperoleh layanan android yang lengkap, tetapi juga harus menyertakan 12 aplikasi lainnya. Oleh karena itu, tidak mungkin untuk membeli Google Android secara terpisah tanpa kesepakatan untuk mendistribusikan 12 aplikasi pra-instalasi tersebut.[21] Perjanjian tersebut tentu saja dapat merugikan potensi kerjasama competitor aplikasi dengan produsen smartphone dan mengakibatkan *developer* aplikasi lainnya tidak dapat bersaing secara sehat dengan aplikasi milik Google.

Selain melakukan perjanjian tertutup dengan produsen *smartphone* di dunia, Google LLC juga diduga melalukan praktik monopoli dan persaingan usaha tidak sehat berupa penyalahgunaan posisi dominan serta praktik diskriminasi dalam distribusi aplikasi *digital* dengan cara mewajibkan penggunaan sistem *Google Pay Billing* (GPB) pada aplikasi tertentu di dalam Google Play Store. GPB berlaku untuk jenis aplikasi berikut: 1) aplikasi yang menawarkan langganan seperti pendidikan, kesehatan, musik, atau video, 2) aplikasi hal yang menyediakan hal-hal *digital* untuk digunakan dalam permainan atau *game*, 3) Aplikasi yang memberikan konten atau utilitas seperti versi gratis aplikasi atau fitur baru yang tidak tersedia dalam versi gratis, 4) aplikasi yang menawarkan layanan dan perangkat lunak awan seperti jasa penyimpanan data, aplikasi produktivitas, dan lain-lain. Ketentuan penggunaan GPB menuntut bahwa aplikasi yang diunduh dari Google Play Store harus menggunakan GPB sebagai prosedur transaksi, dan aplikasi harus memenuhi persyaratan yang terdapat di dalam GPB tersebut. Google juga menegaskan bahwa aplikasi dilarang mengalihkan pengguna ke prosedur pembayaran lainnya selain GPB. [22]

Menurut kebijakan Google, aplikasi yang terkena kewajiban tersebut tidak dapat menolak. Hal ini disebabkan karena Google berhak memberikan sanksi berupa penghapusan aplikasi dari Google Play Store atau tidak memperbolehkan dilakukannya pembaruan pada aplikasi tersebut. Oleh karena itu, secara perlahan aplikasi itu pasti akan kehilangan konsumennya. Di Samping itu, Google juga menerapkan kebijakan dengan cara membebankan biaya yang cukup besar, yakni sebesar 15-30% dari harga konten *digital* yang dijual. Sebelum penggunaan Google Pay Billing (GPB) menjadi wajib, pengembang aplikasi dapat menggunakan metode pembayaran lain dengan biaya di bawah 5%. Selain berdampak pada kenaikan biaya produksi dan harga, kebijakan ini juga tentu saja mengganggu pengalaman pengguna aplikasi.

Kebijakan yang diterapkan oleh Google tersebut tidak berlaku untuk seluruh pasar global Google, pengecualian yang dilakukan oleh Google adalah pada negara Korea Selatan dan India. Korea Selatan membuat aturan khusus di bidang anti monopoli sehingga membuat Google menawarkan penawaran unik kepada pelanggan aplikasi Korea Selatan yang melakukan pembelian dalam aplikasi, pengembang masih dikenakan biaya layanan untuk transaksi yang menggunakan sistem penagihan alternatif, namun biayanya di kurangi 4%. Misalnya dengan service charge sebesar 15% untuk transaksi melalui melalui billing system Google Play, maka cukup membayar 11% untuk transaksi melalui sistem biling alternatif.

Sebagai akibat dari instruksi Komisi Persaingan India, Google telah memberikan kesempatan bagi semua pengembang di India untuk menyediakan sistem penagihan alternatif selain dari sistem penagihan Google Play. Penawaran ini hanya berlaku untuk pengguna

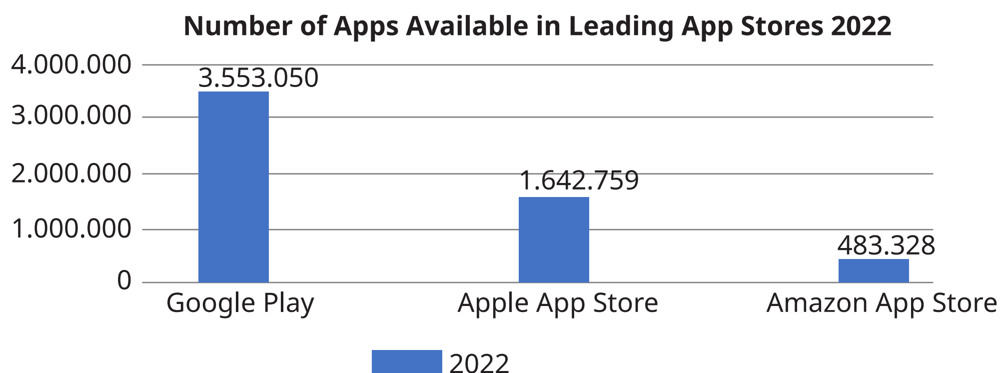
smartphone di India yang melakukan pembelian di dalam aplikasi. Namun, pengembang tetap akan dikenakan biaya layanan untuk transaksi yang menggunakan sistem penagihan alternatif, namun biaya tersebut akan dikurangi sebesar 4%. Sebagai contoh, jika biaya layanan untuk transaksi melalui sistem GPB adalah 15% maka pengembang aplikasi cukup membayar 11% untuk transaksi yang dilakukan melalui sistem penagihan alternatif.

Kegiatan monopoli didefinisikan sebagai konsolidasi kekuatan ekonomi oleh satu atau beberapa perusahaan, yang mengakibatkan domintasi atas produksi dan/atau pemasaran barang atau jasa tertentu, yang dapat mengganggu persaingan yang sehat dan merugikan kepentingan umum. Beberapa aspek praktik monopoli antara lain: 1) adanya konsentrasi ekonomi pada satu atau lebih pelaku perusahaan, 2) kendali atas produksi atau pemasaran barang atau jasa tertentu, 3) adanya persaingan usaha tidak sehat, 4) kegiatan tersebut merugikan kepentingan umum. [2]

Konsentrasi kekuatan ekonomi merujuk pada pengendalian sepenuhnya atas pasar tertentu untuk produk atau layanan oleh satu atau beberapa perusahaan, sehingga mereka dapat menetapkan harga (*price fixing*) untuk produk atau layanan tersebut. Unsur praktik monopoli ini terpenuhi ketika Google berhasil memusatkan penguasaan ekonomi atas distribusi aplikasi *digital* dan menetapkan secara sepihak tarif layanan sebesar 15% dengan konsekuensi penghapusan aplikasi dari Google Play Store apabila tidak sepakat dengan kebijakan yang ditetapkan oleh Google. Padahal apabila mengacu pada Undnag-Undang No. 5 Tahun 1999 Pasal 2, kegiatan ekonomi di dasarkan pada asas demokrasi ekonomi yang mempertimbangkan keseimbangan kepentingan pelaku usaha dan kepentingan umum.

Berdasarkan Peraturan Komisi Pengawas Persaingan Usaha Nomor 11 Tahun 2011 tentang Pedoman Pasal 17 (Praktik Monopoli) Undang-Undang Nomor 5 Tahun 1999 KPPU membedakan antara posisi monopoli dan praktik monopoli, Pasal 17 ayat (2) membagi 3 (tiga) bentuk dari posisi monopoli, yaitu:

1. Barang dan/atau jasa tersebut tidak memiliki subtitusi, yang berarti bahwa monopoli adalah kondisi di mana perusahaan memproduksi/menjual produk yang tidak memiliki pengganti terdekat. Kurangnya pengganti terdekat menunjukkan bahwa produk belum di beri subtitusi. Bahwa berdasarkan laporan dari Statista, pada tahun 2022, Google Play Store menempati urutan teratas sebagai app store dengan jumlah aplikasi sebanyak 3,55 juta aplikasi, adapun Apple App Store menempati urutan kedua dengan jumlah aplikasi sebanyak 1,6 juta aplikasi dan Amazon App Store di urutan ketiga dengan jumlah aplikasi sebanyak 476.000. [23] Selama bertahun-tahun Google selalu menempati urutan pertama dalam hal distribusi aplikasi *digital*, penulis berpendapat bahwa Google Play Store merupakan produk yang belum ada pengganti atau subtitusinya, sehingga Google dapat dengan mudah memaksa developer aplikasi dan konsumen untuk mengikuti kebijakan yang telah dibuat sepihak oleh Google, dan sangat kecil kemungkinan developer aplikasi dan konsumen Google Play Store beralih ke Apple App Store mengingat ekosistem Apple yang berbeda dengan Google Play Store.



Gambar 2. Jumlah Aplikasi Tahun 2022
Sumber: Biggest app stores in the world 2022 | Statista

2. Karena bisnis lain tidak dapat bersaing untuk barang dan/atau layanan yang sama, kekuatan monopoli tidak hanya terbatas pada kemampuannya untuk menetapkan harga, tetapi juga memiliki potensi untuk mengurangi/melakukan tekanan kompetitif. Google di sini berusaha mencegah masuknya pesaing baru ke dalam pasar dengan dengan cara membuat perjanjian MADA, perjanjian distribusi, perjanjian anti fragmentasi dan perjanjian bagi hasil kepada produsen smartphone seperti Motorola, LG, Apple dan Samsung serta operator jaringan seluler.
3. Satu pelaku usaha atau sekelompok pelaku usaha menguasai lebih dari separuh pangsa pasar untuk kategori barang atau jasa tertentu, hal ini dapat dilihat dari tahun 2015 hingga 2022 Google selalu menguasai pangsa pasar lebih dari 50% yang kemudian diikuti olehl Apple dan Blackberry. Oleh karena itu Google telah memenuhi unsur menguasai lebih dari 50% pangsa pasar.

Google juga diduga terlibat dalam taktik administratif. Karena Google memiliki posisi yang kuat, ia dapat mengeksploitasi posisi tersebut melalui prasangka. Diskriminasi didefinisikan dalam bahasa inggris sebagai tindakan memperlakukan pihak tertentu secara berbeda.

Berdasarkan Peraturan Komisi Pengawas Persaingan Usaha Nomor 3 Tahun 2011 mengenai Pelaksanaan Pasal 19 huruf d tentang Praktik Diskriminasi, praktik diskriminasi merujuk pada tindakan atau perlakuan yang berbeda yang dilakukan oleh satu pelaku usaha terhadap pelaku usaha lainnya. Sejatinya, setiap pelaku usaha berpotensi melakukan tindakan diskriminasi yang biasa terjadi antara lain: 1) perbedaan harga jual dan persyaratan dalam kontrak jual beli, 2) perbedaan harga sewa dan persyaratan fasilitas produksi, 3) perbedaan dalam persyaratan dan pelakuan saat kontrak diakhiri, 4) perbedaan dalam persyaratan dan perlakuan pada kontrak yang tidak memerlukan perpanjangan.

Di Uni Eropa, tindakan administratif yang bertujuan untuk menghilangkan persaingan secara keseluruhan di tingkat pasar sekunder dan tidak memiliki alasan yang dapat dibenarkan secara obyektif, merupakan pelanggaran terhadap Pasal 102 TFEU. Tindakan semacam itu akan membuat para pesaing sulit untuk melakukan kegiatan utama dalam bisnis mereka dan berdampak negatif pada persaingan. Oleh karena itu, penting untuk memastikan bahwa tindakan administratif memiliki alasan yang dapat dibenarkan secara obyektif sebelum dilakukan. [24]

Kebijakan GPB yang diterapkan oleh Google Indonesia tersebut berlaku tanpa pengecualian, bahwa pengembang aplikasi tidak diperkenankan untuk menyediakan sistem pembayaran alternatif selain Google Pay Billing, hal itu sebagaimana di jelaskan pada laman support.google.com mengenai payment pada angka 1 dan 2 yang berbunyi: "*Developers who charge for app downloads on Google Play must use Google Play's billing system to complete those transactions*.." adapun angka 2 nya berbunyi: "*Play-distributed apps that need or accept money for access to in-app features or services (including any app functioning, digital material, or products) must use Google Play's billing system for those transactions*."

Kebijakan Google yang diterapkan di Indonesia berbeda dengan yang Google terapkan di India dan Korea Selatan, sebagai hasil dari perkembangan peraturan di India dan Korea Selatan, Google mendorong semua pengembang aplikasi untuk menyediakan sistem pembayaran alternatif selain sistem penagihan Google Play untuk konsumen di India dan Korea Selatan yang melakukan pembelian menggunakan aplikasi Google Play. *Developer* akan tetap dikenakan biaya layanan untuk transaksi yang menggunakan sistem *billing* di *billing* alternatif, namun biaya tersebut akan diturunkan sebesar 4%. Misalnya, sistem penagihan Google membebankan biaya layanan sebesar 15%, konsumen hanya membayar 11% untuk transaksi yang dilakukan melalui sistem penagihan alternatif. [25]

Berdasarkan penjelasan di atas terlihat bahwa Google di Indonesia hanya bersedia menerima penagihan melalui Google *Pay Billing system*, *developer* dan pengguna lain di Indonesia tidak memperoleh kesempatan yang sama dalam menegosiasikan metode pembiayaan tersebut, berbeda dengan perlakuan yang ditujukan di India dan Korea Selatan, di mana Google memberikan kesempatan kepada *developer* dan pengguna di India dan Korea Selatan untuk menggunakan sistem penagihan alternatif selain Google *Pay Billing*. Oleh karena itu Google dalam menjalankan bisnisnya di Indonesia telah melakukan praktik diskriminasi sehingga menyebabkan persaingan usaha tidak sehat.

Upaya yang Dapat Dilakukan oleh Pemerintah Indonesia untuk Meningkatkan Regulasi dan Pengawasan terhadap Praktik Persaingan Usaha Tidak Sehat dalam Distribusi Aplikasi *Digital*

Saat ini, Indonesia sedang dalam perjalanan untuk menjadi salah satu pasar terbesar di Asia

Tenggara. Menurut riset ekonomi SEA 2020 Google dan Temasek, nilai ekonomi *digital* Indonesia akan menjadi USD 44 miliar pada 2020, naik 11% dari tahun sebelumnya. Valuasi ekonomi *digital* Indonesia diperkirakan mencapai USD 124 miliar pada tahun 2025, menjadikannya dengan negara dengan valuasi ekonomi *digital* tertinggi di Asia Tenggara. Namun, perkiraan ini lebih rendah dari riset Google dan Temasek pada 2019 yang memproyeksikan nilai ekonomi *digital* Indonesia pada 2025 sebesar USD 133 miliar. Pergeseran ini disebabkan oleh Pandemi Covid-19 yang menyentuh hampir semua negara dan industri, termasuk ekonomi *digital*. [26]

Meningkatnya penggunaan layanan *online* selama pandemi covid-19 memungkinkan *platform digital* tumbuh lebih besar dan lebih kuat. *Platform digital* yang menjadi besar dan kuat tersebut terbagi ke dalam beberapa segmen, misalnya pasar dikuasai oleh Amazon, toko aplikasi oleh Apple, situs jejaring sosial oleh Facebook dan mesin pencari oleh Google. Perusahaan yang menjalankan bisnis pada *platform online* pada umumnya melakukan kegiatan usaha yang beroperasi di dua atau multi sisi pasar. Perusahaan itu memanfaatkan jaringan internet untuk memfasilitasi interaksi antara dua atau lebih kelompok pengguna yang berbeda namun saling bergantung satu sama lain sehingga menghasilkan nilai bagi setidaknya satu anggota kelompok. *Platform* tersebut melibatkan berbagai layanan dan aktivitas seperti toko *online*, jejaring sosial, mesin pencari, sistem pembayaran, dan berbagi *video*. [26]

Perusahaan teknologi raksasa telah mengubah peta bisnis secara global. Sepuluh perusahaan global teratas pada tahun 2009 lebih banyak dikuasai oleh perusahaan pada sektor perminyakan dan hanya ada satu perusahaan teknologi. Akan tetapi di tahun 2023 sekarang perusahaan teknologi memegang peranan yang sangat besar secara global dan terus bertumbuh setiap tahunnya.

Tabel 1. Top 10 Perusahaan Global (31 Maret 2023)

Rank	Company	Industry	Market Capitalization (Milyar Dollar)
1	Apple	Technology	2.609
2	Microsoft Corporation	Technology	2.146
3	Saudi Arabian Oil Company	Energy	1.893
4	Alphabet Inc (Google)	Communication Services	1.330
5	Amazon Inc	Consumer Discretionary	1.058
6	Nvidia Corporation	Information Technology	685
7	Barkshire Hathaway Inc	Financials	676
8	Tesla Inc	Consumer Discretionary	659
9	Meta *Platform*s	Communication Services	550
10	Visa Inc	Financials	464

Sumber: Price Water House Coopers, 2023, Global Top 100 Companies by Market Capitalization, 31 May 2023 Update

Laju perkembangan teknologi yang cepat telah mengubah sifat pasar dan model bisnis. Hal ini tentu saja menimbulkan beberapa tantangan bagi Undang-Undang dan kebijakan persaingan usaha yang perlu disesuaikan dengan realitas pasar dan model bisnis yang baru. Hal ini penting untuk memastikan pasar tetap kompetitif dan sehat. [27] Ada kekhawatiran yang berkembang tentang penyalahgunaan kekuatan oleh perusahaan teknologi, sejauh mana kontrol perusahaan atas data *digital* tentu saja berimplikasi kerugian yang tidak hanya menimpa konsumen akan tetapi juga ke masyarakat. Beberapa perusahaan tersebut ini telah menjadi sangat dominan dan hampir tidak tergantikan menurut beberapa konsumen, yang memiliki sedikit pilihan dan cenderung menggunakan *platform* yang sama serta tidak ingin untuk beralih. [27]

Menurut laporan UNCTAD (2021), negara-negara berkembang cenderung menghadapi kesulitan dalam mengawasi praktik persaingan usaha yang tidak sehat di era ekonomi *digital*, karena kurangnya hubungan institusi dan regulasi yang sesuai dengan karakteristik ekonomi *digital*. Fakta bahwa data dan pengendalian jaringan merupakan elemen integral dari ekonomi *digital* tidak sepenuhnya relevan dengan kerangka

hukum persaingan usaha yang masih mengikuti pola konvensional. Oleh karena itu, sangat penting bagi lembaga pengawas persaingan usaha, baik di tingkat nasional maupun regional, untuk mengklarifikasi peraturan yang berlaku, cakupan pasar *digital*, dan kebijakan terkait pengendalian data dan jaringan *digital*. [28] Banyak otoritas persaingan usaha telah melakukan penyelidikan pasar ke dalam ekonomi *digital*, dan berusaha untuk memahami bagaimana pasar ini berfungsi. Laporan awal penyelidikan Komisi Persaingan dan Konsumen Australia terhadap *platform digital* menguraikan kekhawatiran komisi tentang tentang kekuatan pasar *platform* besar seperti Facebook dan Google dan dampaknya terhadap bisnis di Australia, hasil laporannya adalah komisi mengusulkan mengatasi kekuatan pasar *platform* utama dengan mengambil langkah seperti membatasi browser internet Google di install sebagai *browser default* di perangkat seluler, komputer dan tablet serta memperkuat Undang-Undang merger. [29]

Di Indonesia, otoritas persaingan usaha menyatakan bahwa tantangan dalam menghadapi perusahaan teknologi adalah penyelidikan persaingan yang melibatkan pasar *digital* terkait dengan akses data yang akurat untuk melakukan analisis yang komprehensif dan baik serta menghubungi pihak-pihak yang terlibat dan mengumpulkan data yang berkualitas. Kemudian, terdapat prinsip ekstrateritorial yang di mana guna kepentingan penyelidikan tentu membutuhkan data dari perusahaan yang berbasis di luar negeri, pemberitahuan kepada perusahaan tersebut dan permintaan informasi dan dokumen dikirim melalui misi diplomatik. Pada beberapa situasi, permintaan tersebut termasuk dalam aturan surat *rogatory* (dokumen yang membuat permintaan melalui pengadilan asing untuk memperoleh informasi atau bukti dari orang tertentu dalam yurisdiksi pengadilan tersebut) perusahaan teknologi mungkin tidak ingin memberikan informasi yang diminta kepada otoritas persaingan usaha karena ketidakhadiran mereka secara fisik di yurisdiksi tersebut. [30]

Tantangan lainnya adalah mengenai keterampilan khusus yang belum memadai untuk menangani masalah persaingan terkait dengan *platform online* dan kesulitan dalam menganalisis data pasar *digital*, serta alat yang tidak memadai untuk mengidentifikasi praktik anti persaingan, seperti yang dilaporkan oleh otoritas persaingan Brazil, Kolombia, Indonesia, dan Kenya. Misalnya, Pengawas Industri dan Perdagangan Kolombia berinvestasi teknologi untuk memfasilitasi pengumpulan dan analisis data, untuk melengkapi penanganan kasus persaingan dengan alat modern untuk analisis data dan untuk meningkatkan efisiensi investigasi. [30]

Salah satu tantangan yang muncul akibat pertumbuhan industri ekonomi *digital* adalah potensi munculnya praktik monopoli dan persaingan usaha yang tidak sehat, mirip dengan apa yang terjadi dalam industri konvensional. Contoh-contoh dari konstruksi praktik monopoli dan persaingan usaha yang tidak sehat di sektor ekonomi *digital* adalah:

Pertama, salah satu isu utama adalah adanya potensi terbentuknya monopoli *digital*, di mana perusahaan besar dengan kekuatan pasar yang dominan dapat mengendalikan pasar dan menciptakan hambatan masuk bagi pesaing lainnya. Monopoli *digital* juga dapat mempengaruhi pasar yang terkait, di mana perusahaan menggabungkan beberapa *platform* untuk mengembangkan bisnis mereka. Akibatnya, perusahaan tersebut menjadi dominan dan memiliki kontrol atas pesaing lainnya. Keadaan ini jelas akan menghambat persaingan dan inovasi di antara *platform-platform digital* terkait. [31]

Kedua, ada potensi terjadinya praktik *predatory pricing* oleh perusahaan dalam menawarkan produk atau layanan ke pasar. Potensi ini muncul karena perusahaan memiliki akses yang kaya akan data pengguna, yang memungkinkannya untuk mengendalikan pasar. Keadaan ini menjadi ancaman bagi kelangsungan ekonomi perusahaan konvensional [32] Ketiga, terdapat potensi timbulnya kebijakan atau kekuatan *lock-in* yang diterapkan oleh *platform* e-commerce yang besar. Ada dinamika dalam situasi ini yang memungkinkan kontrol atas pasar dan konsumen, yang memiliki kemampuan untuk menciptakan rintangan bagi *platform e-commerce* lain untuk memasuki pasar dan membatasi pilihan pengguna untuk memilih *platform* berdasarkan kebutuhan mereka. Lebih khusus lagi, lock-in adalah kebijakan *platform* yang menetapkan biaya pengalihan kepada pengguna yang beralih *platform*. [32]

Keempat, Perusahaan memiliki kemampuan untuk berfungsi ganda sebagai penyedia *platform* dan pengguna *platform*, yang dapat menyebabkan terjadinya integrasi vertikal. Selain itu, Komisi Eropa telah mengidentifikasi beberapa perilaku potensial yang bertentangan dengan persaingan usaha di sektor *e-commerce* termasuk praktik pengaturan harga, pembatasan penjualan *online* dan iklan, pembatasan wilayah, serta pengendalian hak eksklusif. [32] Selain risiko kegiatan monopolistik dan perilaku anti-persaingan bisnis, perusahaan e-commerce menghadapi hambatan lebih lanjut di bawah Undang-Undang persaingan usaha.

Salah satu tantangan tersebut adalah belum diadopsinya prinsip ekstrateritorialitas dalam ketentuan Undang-Undang No. 5/1999. Istilah “ekstrateritorial” dalam Black’s Law Dictionary mengacu pada sesuatu yang ada di luar batas wilayah atau wilayah suatu negara. Prinsip ini berkaitan dengan kemampuan suatu negara untuk melaksanakan yurisdiksi atas pelaku dan kegiatan penegak hukum di luar wilayahnya sendiri melalui lembaga penegakan hukum dan lembaga-lembaga peradilan. [33]

Guna mengatasi tantangan tersebut, otoritas persaingan usaha di dunia telah merubah atau merencanakan untuk membuat Undang-Undang persaingan usaha guna bisa menjerat *platform online* di pasar *digital* yang terlibat persaingan usaha tidak sehat, dengan cara memperkenalkan dan mendefinisikan konsep-konsep baru yang relevan. Di Eropa misalnya, revisi Undang-Undang persaingan usaha tidak sehat pertama yang menangani masalah persaingan yang melibatkan *platform digital* di Jerman, Jerman telah setuju untuk meninjau Undang-Undang persaingan perusahaan kesepuluh, yang menetapkan kerangka kerja baru untuk menangani perekonomian *digital* dan kompetisi lintas pasar dalam peraturan terbaru [30] Kemudian, untuk meningkatkan pengawasan *platform online*, China mengubah aturan persaingan. Komisi Eropa juga memperbarui beberapa peraturan untuk mempromosikan keadilan dan transparansi bagi pengguna perusahaan dari layanan perantara *online* dan mengeluarkan aturan pasar *digital* yang mulai berlaku pada 12 Mei 2023 dan Jepang memberikan Undang-Undang tentang meningkatkan transparansi dan keadilan *platform digital* untuk meningkatkan transparansi dan keadilan dalam transaksi.

Di Indonesia, di sisi lain, perumus dan pembuat kebijakan, serta Komisi Pengawas Persaingan Usaha, dapat merujuk pada peraturan perundang-undangan negara yang telah memiliki peraturan tentang pasar *digital* dalam hal ini Uni Eropa mengingat Uni Eropa telah memberlakukan serta mengundangkan *Digital Market Acts* per 12 Mei 2023. Perekonomian yang terkendali secara demokratis, pasar yang lebih efisien, keberhasilan ekonomi nasional, dan kejelasan hukum dalam persaingan hukum persaingan bisnis baik di pasar tradisional maupun *digital* di Indonesia. [34]

Dalam praktiknya, Undang-Undang No. 5 Tahun 1999 tentang Anti Monopoli dan Persaingan Usaha Tidak Sehat tidak berlaku untuk perdagangan di pasar *digital*, sebaliknya dapat dipahami dalam arti pengusaha seperti yang dinyatakan dalam Pasal 1 huruf e yang masih terbatas pada mereka yang melakukan kegiatan bisnis di dalam negeri Indonesia, selain itu badan hukum ekonomi *digital* yang beroperasi di Indonesia belum dapat dijangkau oleh KPPU.

Meskipun Undang-Undang Nomor 5 Tahun 1999 tidak menganut prinsip ekstrateritorialitas, akan tetapi penerapan prinsip ini sendirinya pernah terjadi dalam beberapa kasus persaingan yang ditangani KPPU, seperti perkara Very Large Crude Carrier (VLCC) lewat putusan No. 07/KPPU-L/2004 dan perkara Temasek Holding Pte. Ltd lewat putusan No. 7/KPPU-L/2007. [35]

Menurut pedoman UNCTAD (2021), Pemerintah dapat melakukan setidaknya empat langkah penting untuk memperkuat otoritas persaingan dan mengatur perusahaan yang aktif dalam ekonomi *digital*. Keempat inovasi tersebut adalah merevisi Undang-Undang saat ini, memberlakukan Undang-Undang yang sama sekali baru, mengembangkan pedoman atau aturan permainan, dan terakhir melakukan riset pasar. Berdasarkan kerangka kerja saat ini, KPPU harus segera menyusun peraturan baru, atau paling tidak memperbarui peraturan persaingan usaha tradisional. Karena monopoli *digital* dan penyalahgunaan posisi dominasi di sektor *digital* tidak hanya sangat merugikan perekonomian, tetapi juga dapat menyebar ke industri lain. [28] Sementara itu, berkaitan dengan prinsip ekstrateritorialitas dalam penegakan hukum persaingan usaha, dalam rangka menjangkau pelaku *e-commerce* yang melakukan kegiatan anti persaingan di luar daerah territorial Indonesia, maka KPPU membutuhkan adanya pengadopsian prinsip ekstrateritorialitas dalam hukum persaingan usaha Indonesia. [36]

KESIMPULAN

Berdasarkan pembahasan di atas, maka kesimpulan yang didapatkan adalah bentuk perjanjian tertutup yang dilakukan oleh Google adalah pertama Perjanjian distribusi, di mana Google mewajibkan produsen perangkat seluler untuk memasang terlebih dahulu aplikasi Google Search dan browser Google Chrome agar dapat memperoleh lisensi dari Google untuk menggunakan Google Play Store. Kemudian berikutnya, Perjanjian anti fragmentasi, di mana lisensi pengoprasian yang diperlukan untuk pemasangan aplikasi Google Search dan Google Play Store dapat diperoleh oleh produsen *smartphone* hanya jika produsen tersebut berjanji untuk tidak menjual perangkat yang menjalankan versi sistem operasi Android yang tidak tidak disetujui oleh Google dan terakhir adalah Perjanjian bagi hasil, di mana pemberian bagian dari pendapatan iklan Google kepada produsen *smartphone* dan operator jaringan seluler apabila perusahaan tersebut tunduk dan

tidak memasang layanan pencarian umum milik pesaing Google.

Adapun tindakan pelanggaran yang Google lakukan di Indonesia adalah menetapkan sistem pembayaran Google Pay Billing secara sepihak sehingga pengembang aplikasi dan pengguna di Indonesia tidak memiliki kesempatan yang sama untuk merundingkan atau menggunakan alternatif pembayaran.

Adapun upaya yang dapat dilakukan oleh Pemerintah menurut penulis adalah dengan mengacu kepada pedoman UNCTAD (2021), di mana Pemerintah dapat melakukan setidaknya 4 (empat) langkah penting untuk memperkuat otoritas persaingan dan mengatur perusahaan yang aktif dalam ekonomi *digital*. Keempat inovasi tersebut adalah merevisi Undang-Undang saat ini, memberlakukan Undang-Undang yang sama sekali baru, mengembangkan pedoman atau aturan permainan, dan terakhir melakukan riset pasar. Berdasarkan kerangka kerja saat ini, KPPU harus segera menyusun peraturan baru, atau paling tidak memperbarui peraturan persaingan usaha tradisional. Karena monopoli *digital* dan penyalahgunaan posisi dominan di sektor *digital* tidak hanya sangat merugikan perekonomian, tetapi juga dapat menyebar ke industri lain. Sementara itu, berkaitan dengan prinsip ekstrateritorialitas dalam penegakan hukum persaingan usaha, dalam rangka menjangkau pelaku *e-commerce* yang melakukan kegiatan anti persaingan di luar daerah territorial Indonesia, maka KPPU membutuhkan adanya pengadopsian prinsip ekstrateritorialitas dalam hukum persaingan usaha Indonesia.

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Dominasi Aplikasi Pembayaran dalam Monopoli Persaingan Usaha: Studi Kasus Google Pay Billing

Rosa Indithohiroh[1]
rosaindithohiroh@gmail.com
Abel Parvez[2]
abelparvezjustice@gmail.com
Hafsah Aryandini[3]
hafsaharyandini21@gmail.com

Fakultas Syariah dan Hukum Universitas Islam Negeri Syarif Hidayatullah Jakarta[1,2,3]

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ABSTRACT

This research focuses on examining a comparative study of Google's handling of monopoly cases with its dominant position that controls the digital industry so that it becomes one of the Big Tech that imposes its payment application, Google Pay Billing, on all applications in the Google Play Store so as to violate healthy business competition. The case comparison was conducted in India and the United States and compared with South Korea, which responded to Google's monopoly efforts by revising its telecommunications laws. The purpose of this study is to provide a comparison in handling monopolies through the use of dominant positions by Big Tech companies, especially Google which has now been initiated an investigation by the Business Competition Supervisory Commission (KPPU). The research method used is normative juridical with a comparative approach and a case approach. The result of this study is that Big Tech has different dominance characteristics in other markets because its role is too important in innovation and meeting people's digital needs so that it requires more explicit regulation of the monopoly of downloader and payment applications and progressive sanctions.

Keywords: *Domination, Monopoly, Google Pay Billing, Business Competition*.

ABSTRAK

Penelitian ini berfokuskan pada mengkaji studi komparasi penanganan kasus monopoli oleh Google dengan posisi dominannya yang menguasai industri *digital* sehingga menjadi salah satu dari *Big Tech* yang memaksakan aplikasi pembayarannya yaitu *Google Pay Billing* terhadap seluruh aplikasi yang ada pada *Google Play Store* sehingga melanggar persaingan usaha yang sehat. Komparasi kasus dilakukan di India dan Amerika Serikat serta melakukan komparasi dengan Korea Selatan yang merespon upaya monopoli Google dengan merevisi Undang-Undang telekomunikasinya. Tujuan dari penelitian ini adalah memberikan komparasi dalam menangani monopoli melalui pemanfaatan posisi dominan oleh perusahaan *Big Tech* khususnya Google yang sekarang ini telah dilakukan inisiatif penyelidikan oleh Komisi Pengawas Persaingan Usaha (KPPU). Metode penelitian yang digunakan adalah yuridis normatif dengan pendekatan komparasi dan pendekatan kasus. Hasil dari penelitian ini adalah *Big Tech* memiliki karakteristik dominasi yang berbeda pada pasar lain dikarenakan perannya yang terlalu penting dalam inovasi dan pemenuhan kebutuhan *digital* masyarakat sehingga memerlukan pengaturan yang lebih eksplisit terhadap monopoli aplikasi pengunduh dan aplikasi pembayaran serta sanksi progresif.

Kata Kunci: Dominasi, Monopoli, Google Pay Billing, Persaingan Usaha.

PENDAHULUAN

Kehidupan manusia yang dinamis menghantarkan kepada kebutuhan yang semakin kompleks sehingga membutuhkan suatu kemajuan berpikir untuk memudahkan kehidupan manusia. Satu hal yang dapat dirasakan secara nyata adalah pada hampir semua sisi kehidupan manusia modern telah banyak disentuh oleh perkembangan ilmu pengetahuan dan teknologi.[1] Salah satunya yaitu aspek ekonomi yang paling banyak menunjukkan perubahan signifikan di era modern ini. Bukti konkrit perkembangan teknologi ditunjukkan adanya inovasi alat pembayaran secara *digital* yang dapat memenuhi kecepatan, ketepatan dan keamanan dalam transaksi bisnis terutama dalam menjaga kesinambungan hubungan bisnis para pihak.[2] Sistem pembayaran yang menopang stabilitas sistem keuangan yang semula hanya dapat dilakukan secara tunai, kini merambah melalui media *digital* atau secara umum disebut sebagai electronic money *(e-money*) yang lebih efisien dan ekonomis.[3]

Kemajuan teknologi dalam sistem pembayaran telah menggeser peranan uang tunai dengan memberikan manfaat yang besar untuk mengakses fitur demi memudahkan *customer* bertransaksi sehingga diciptakan beberapa aplikasi seperti *Gopay, Dana, Shopeepay, Linkaja, Ovo,* maupun pembayaran melalui transfer antar Bank. Pembayaran non tunai biasanya dilakukan dengan cara transfer antar bank ataupun transfer antar bank melalui *smartphone*.

Sebagai konsekuensi ekosistem *digital* banyak yang berlomba-lomba untuk mengenalkan aplikasi pembayarannya sebagai metode yang dapat dipakai dengan mudah dalam bertransaksi sehari-hari. Kondisi ini memberikan tantangan baru bagi para pelaku bisnis dan negara untuk mengantisipasi perbuatan menyalahgunakan posisi dan kekuasaan oleh salah satu pihak pemilik *digital* pembayaran yang berusaha menekan dan menghalangi kemajuan pesaing lain.

Mengingat pada hakikatnya persaingan usaha di pasar *digital* memiliki karakteristik berbeda yang di antaranya: 1) *Multi-sided markets* di mana produk *digital* dapat berperan sebagai *platform* yang membawa beragam kelompok konsumen; 2) *Strong network effects* berarti jumlah pengguna terus bertambah dan nilai produknya semakin berharga sehingga dapat berujung pada monopoli; 3) Skala dan ruang lingkup ekonomi substansial yangmana banyak pasar *digital* menunjukan adanya biaya tetap yang tinggi dan biaya variabel rendah; 4) Mengandalkan pada jumlah pengguna data yang begitu banyak dengan implikasinya ialah sulit diduplikasi dan mahal untuk dianalisa; 5) *Switching costs* yaitu biaya pindah *platform digital* yang begitu mahal karena telah menghabiskan banyak jaringan atau reputasi; 6) Terdapat banyak hak kekayaan intelektual; 7) Adanya produk dan layanan pasar *digital* yang rendah atau tidak memungut biaya sama sekali dalam penggunaannya, biasanya hanya dari penggunaan data penggunanya untuk kepentingan promosi/periklanan; 8) Inovasi yang disruptif yang dapat membatasi persaingan usaha oleh persusahaan dominan; 9) model bisnis konglomerat dan terintegrasi secara vertikal di mana suatu *platform digital* dapat bertindak sebagai "penjaga pintu" antara perusahaan hilir dengan konsumen. Perusahaan yang memiliki *platform digital* berperan sebagai penjaga pintu secara bersamaan dapat memiliki produk yang bersaing dengan produk milik perusahaan hilir juga sehingga dapat menyalahgunakan posisi dominannya untuk menguntungkan produknya sendiri. Contohnya adalah *tying and bundling* yang mematikan persaingan usaha guna menciptakan ekosistem *digital* dari produk-produknya.[4]

Potensi terjadinya pelanggaran persaingan usaha tidak sehat selalu ada dalam struktur pasar, termasuk pasar *digital*.[5] Kondisi persaingan yang tidak sehat mencerminkan kecenderungan penguasaan pasar dan calon pesaing yang akan masuk ke dalam pasar tersebut akan terhambat atau adanya *barrier to entry*[6] sehingga kegiatan tersebut pada akhirnya berdampak kepada konsumen, di mana konsumen akan terpaksa menerima kebijakan harga yang ditentukan oleh pelaku usaha tersebut.

Sebagaimana menghindari persaingan yang dijelaskan di atas pernah dilakukan oleh Google dengan menunggalkan metode pembayarannya pada aplikasi *Play Store*.[7] Penunggalan sistem pembayaran tersebut dikhawatirkan akan menciptakan monopoli pasar, sehingga di India dan Amerika Serikat telah mengenakan denda terhadap pelanggaran yang dilakukan, bahkan Korea Selatan memberlakukan "Undang-Undang Anti Google".

KPPU sebagai komisi pengawas persaingan usaha di Indonesia pun mengambil inisiatif untuk melakukan penyelidikan terhadap Google. KPPU memulai penyelidikannya berdasarkan atas dugaan pelanggaran terhadap Undang-Undang Nomor 5 Tahun 1999 tentang Larangan Praktik Monopoli dan Persaingan Usaha Tidak Sehat. KPPU menduga bahwa Google telah melakukan penyalahgunaan posisi dominan di antaranya yaitu penjualan bersyarat serta praktik diskriminasi dalam distribusi aplikasi secara *digital* di Indonesia. Maka dari itu, penyelidikan dilakukan berdasarkan dengan hasil Rapat Komisi untuk menindaklanjuti penelitian inisiatif

Sekretaris KPPU. Penyelidikan tersebut diproses untuk memperoleh bukti yang cukup, jelas dan lengkap mengenai dugaan pelanggaran oleh Google terhadap Undang-Undang tersebut.[8]

Berdasarkan paparan tersebut, penulis menilai adanya urgensi untuk diadakannya penelitian yang mengkomparasikan pendekatan kasus pada perusahaan *Big Tech* atau *Big Data* seperti Google oleh otoritas persaingan usaha serta melihat solusi legislasi dalam menangani perubahan persaingan usaha *digital* guna memberikan landasan hukum yang lebih kuat bagi otoritas persaingan usaha. Sehingga permasalahan yang akan dibahas pada penelitian kali ini adalah tentang bagaimana respon India dan Amerika Serikat terhadap kasus persaingan usaha Google Pay Billing dan bagaimana respon yang ideal untuk merespon kasus tersebut.

Teori Persaingan usaha

Kegiatan berusaha tidak hanya dilakukan oleh satu orang atau satu badan saja melainkan terdapat banyak pelaku usaha lainnya dan dapat dikatakan sebagai pesaing bagi satu sama lain. Pesaing merupakan perusahaan atau kegiatan usaha yang menghasilkan atau menjual barang atau jasa yang sama atau mirip dengan produk yang ditawarkan sehingga harus diperhatikan secara mendalam juga disiasati untuk tetap memperoleh dan tidak kehilangan loyalitas pelanggan.[9]

Kondisi ini melahirkan sebuah proses sosial di mana para pelaku usaha berlomba-lomba mencapai keuntungan dan kemenangan dalam dunia usaha yang disebut dengan persaingan usaha. Pengertian persaingan usaha dalam konteks yuridis seringkali dikaitkan dengan persaingan ekonomi yang berbasiskan pada pasar, di mana pelaku usaha menjual secara bebas untuk mendapatkan tujuan usahanya.[10] Faktor persaingan usahadapat terjadi di antaranya sebagai berikut:

a. Produk yang diperjual belikan sama
b. Kesamaan saluran distribusi
c. Dinamika harga
d. Pemasok produksi sama

Persaingan yang tidak terkendali akan menimbulkan perpecahan, kontraproduktif terhadap inovasi, dan pemeratan ekonomi sehingga menimbulkan kerugian sangat besar pada pihak yang lemah. Oleh sebab itu, perlu dihadirkannya regulasi demi mengatur jalannya persaingan usaha yang sehat. Dikutip dalam buku Hermansyah, menurut Christopher Pass dan Bryan Lowes, *competition laws* (hukum persaingan usaha) dimaksudkan sebagai bagian dari perundang-undangan yang mengatur tentang monopoli, penggabungan dan pengambilalihan, perjanjian perdagangan yang membatasi dan praktik anti persaingan.[11]

Sederhananya dapat diartikan bahwa hukum persaingan usaha berisi ketentuan-ketentuan mengenai interaksi perusahaan atau pelaku usaha di pasar, untuk menghindari kerugian bagi kepentingan pihak lain sebagaimana yang dicita-citakan Undang-Undang.

Indonesia telah membentuk regulasi persaingan usaha yaitu Undang–Undang Nomor 5 tahun 1999 tentang Larangan Praktik Monopoli dan Persaingan Usaha Tidak Sehat yang sering pula disebut Undang–Undang Antimonopoli. Undang–Undang Antimonopoli sendiri di Indonesia merupakan sebuah upaya dalam mereformasi hukum agar berjalannya perekonomian yang berasaskan pada demokrasi ekonomi yang meneyeimbangkan antara kepentingan pelaku usaha dengan kepentingan umum.

Lebih luas regulasi dibentuk bertujuan untuk menjaga dan melindungi konsumen, menumbuhkan iklim usaha yang kondusif dengan terciptanya persaingan usaha yang sehat, menjamin kepastian kesempatan berusaha yang sama bagi setiap orang, mencegah praktik-praktik monopoli serta menciptakan efektifitas dan efisiensi dalam rangka meningkatkan ekonomi nasional.[12]

Selain daripada itu hukum persaingan usaha juga bertujuan mencegah penyalahgunaan kekuatan ekonomi *(prevention of abuse of economic power*) dengan menjamin persaingan terjadi secara proporsional, dalam arti pihak yang kuat secara ekonomi tidak merugikan pelaku usaha yang lain dalam persaingan usaha.[13]

Teori Dominasi Pasar *Digital*

Pelaku usaha tentu memiliki keinginan dalam mengembangkan usahanya atau menjadi yang terbaik di bidang usahanya. Strategi ideal yang dilakukan adalah dengan bersaing dalam upaya meningkatkan kinerja dan mendorong atas menghadirkan inovasi dan efisiensi sehingga menjadikan usahanya unggul dari yang lain. Tentu keuntungan dari posisi yang unggul tersebut, pelaku usaha akan memperoleh kedudukan yang kuat (posisi dominan) dan atau memiliki kekuatan pasar (*market power*) yang signifikan. Posisi dominan sendiri sebagaimana UU Antimonopoli pada huruf d Pasal 1 yang pada pokonya menjelaskan bahwa posisi dominan merujuk pada keadaan di mana pelaku usaha tidak mempunyai pesaing yang berarti di pasar bersangkutan dalam kaitan dengan pangsa pasar yang dikuasai, atau pelaku usaha mempunyai posisi tertinggi di antara pesaingnya di pasar bersangkutan dalam kaitan dengan

kemampuan keuangan, kemampuan akses pada pasokan atau penjualan, serta kemampuan untuk menyesuaikan pasokan atau permintaan barang atau jasa tertentu. Namun pada faktanya, dalam usaha dominasi pasar tersebut kerap terjadi dilakukan melalui persaingan usaha yang tidak sehat. Sebagai salah satu upaya tersebut di antaranya yaitu dengan menciptakan hambatan terhadap pesaing (*competition restraint*) di antaranya membatasi produksi, menghambat perkembangan pasar serta teknologi dan berbagai macam perilaku *unfair* lainnya. Pada akhirnya perilaku yang tidak sehat ini akan merugikan konsumen dan tentunya akan merugikan pelaku usaha kecil.[14]

Pada tataran teoritis, terdapat beberapa teori yang dapat digunakan untuk mengidentifikasi suatu dominasi disalahgunakan (*abuse of dominance*). Beberata teori tersebut yaitu "*refusal to deal"* dan "*tying or bundling". Refusal to deal* pada hakikatnya ialah penyalahgunaan posisi dominan dengan memastikan para kompetitor tidak dapat mengakses fasilitas yang esensial untuk sektor usaha tersebut mulai dari persediaan, teknologi, atau pembagian jaringan perusahaan di mana dapat berujung pada perusahaan yang tidak dominan sulit menjual produknya pada konsumen (*customer foreclosure*). Klasifikasi *refusal to deal* terbagi menjadi 3 (tiga) yaitu "*an unconditional"* (menolak memberikan persediaan dalam keadaan apapun), "*a conditional refusal"* (menolak menyediakan kecuali pembeli tersebut bersedia menyetujui beberapa pesyaratan seperti ekslusifitas),[15] dan "*a constructive refusal"* (penyedia memberikan persediaan hanya dalam keadaan yang menyulitkan pihak pembeli tersebut).[16]

Adapun pendekatan teori *tying or bundling* adalah menilai penyalahgunaan dominasi dari pemanfaatan keterkaitan atau modular dari produk-produk di mana implementasi dalam pasar *digital* dapat berupa pelayanan berbasiskan *web* atau *software.* Perusahaan yang dominan dapat melakukan *tying or bundling* ketika menguasai salah satu pangsa pasar dari produk yang saling berkaitan nilai fungsionalitasnya sehingga perusahaan yang dominan dapat mempengaruhi pangsa pasar dari produk lain yang berkaitan dengan produk dimonopolinya.[15] Beberapa skenario terjadinya *tying or bundling* dapat berupa: 1) ketika adanya persaingan usaha yang tidak sempurna dalam pasar non-monopoli;[17] 2) ketika produk yang digantungkan pada produk yang dimonopoli hanyalah pelengkap dari penggunaan luar seperti *software* yang dirancang hanya bisa digunakan untuk *hardware* tertentu saja sehingga mencegah lahirnya produk *hardware* lain;[18] 3) ketika adanya adanya dampak jaringan perusahaan yang begitu kuat.[19]

Terlepas adanya pendekatan teori penyalahgunaan posisi dominan yang dapat digunakan dalam konteks pasar *digital*, karakteristik dari persaingan usaha dalam pasar *digital* yang begitu berbeda dengan persaingan usaha pada umumnya tetap mendorong lahirnya pendekatan teori khusus. Teori tersebut merupakan pengembangan dari kedua teori sebelumnya yaitu "*abusive leveraging or self preferencing"*. Teori tersebut menilai suatu perusahaan menyalahgunakan posisi dominannya dengan cara mengutamakan produknya sendiri dari pasar yang dimonopolinya yang mempengaruhi pasar terkait lain sehingga merugikan produk kompetitor. Implementasinya berupa *self-preferencing* di mana perusahaan dominan membuat konsumen lebih mudah mengakses produknya daripada produk kompetitor di mana hal ini dapat terjadi ketika perusahaan dominan memiliki ekosistem *digital*nya sendiri. [20] Ekosistem *digital* adalah suatu pangsa pasar *digital* yang beragam sektor pelayanannya, tetapi saling terkait satu sama lain dan tidak terpisahkan.[21] Hal ini dapat diciptakan oleh perusahaan dominan seperti Google yang memiliki Google Search Engine, Google Play Store, Google Pay Billing, Google Play Games, Google Ad Service, dan Google Shopping.

Namun pada faktanya, dalam usaha dominasi pasar tersebut kerap terjadi dilakukan melalui persaingan usaha yang tidak sehat. Sebagai salah satu upaya tersebut di antaranya yaitu dengan menciptakan hambatan terhadap pesaing (*competition restraint*) di antaranya membatasi produksi, menghambat perkembangan pasar serta teknologi dan berbagai macam perilaku *unfair* lainnya. Pada akhirnya perilaku yang tidak sehat ini akan merugikan konsumen dan tentunya akan merugikan pelaku usaha kecil.[14]

Suatu perusahaan dapat dikatakan dominan bilamana memenuhi beberapa indikator yang di antaranya: 1) Sedikit atau bahkan tidak ada alternatif penggantinya di pasar (*substitutability*); 2) Posisinya menghalangi hadirnya kompetitor baru (*entry barriers*) secara tidak langsung melalui penetapan harga tidak kompetitif, pemotongan persediaan (*supply*), atau jaringan perusahaan (*network*);[22] 3) Memiliki keuntungan yang besar dan stabil dari waktu ke waktu (*profitability*);[15] 4) Menguasai pangsa pasar (*market shares*).[23] Posisi dominan suatu perusahaan di pasar *digital* dianggap telah disalahgunakan ketika memiliki efek jaringan perusahaan yang sangat kuat hingga membuat konsumen tidak memiliki alternatif lain dan membuat kompetitor baru sulit untuk masuk dan berdiri dalam pasar tersebut.

Selain itu, produk *digital* tersebut juga memiliki skala dan ruang lingkup ekonomi yang begitu besar dan luas di mana dari sisi permintaan sangat tinggi dan dikuasai oleh perusahaan dominan. Hal ini dapat mentransisikan pasar menjadi monopoli yang begitu kokoh.[4] Terjadinya penyalahgunaan posisi dominan oleh Google sendiri sebagai contoh terjadi di dua negara yaitu India dan Amerika Serikat.

PEMBAHASAN

Penyelesaian Kasus Persaingan Usaha Google Pay Billing di India dan AS

Penyalahgunaan posisi dominan di antaranya pernah dilakukan oleh sebuah perusahaan besar Amerika Serikat yaitu Google. Penyalahgunaan ini diindikasi pada ketentuan yang mewajibkan pengguna Google menggunakan *Google Pay Billing* pada metode pembayaran. *Google Pay Billing* (GPB) sendiri adalah metode pembayaran untuk pembelian produk dan layanan *digital* yang didistribusikan oleh *Google Play Store*. Google sendiri tidak memperbolehkan alternatif lain dari metode pembayarannya.[8] Kasus GPB sejauh ini pernah terjadi pada India dan Amerika Serikat dengan pangsa pasar yang sangat besar.

Merujuk pada regulasi yang ada di Amerika, berdasarkan bagian 2 dari Sherman Antitrust Act, Undang-Undang monopoli AS mengandung dua persyaratan, *pertama* adalah menunjukkan kekuatan monopoli, atau dominasi di pasar, yang biasanya membutuhkan pangsa pasar 60 persen atau lebih. Selain itu, perusahaan harus telah melakukan setidaknya satu tindakan anti persaingan yang berfungsi untuk menciptakan, melanggengkan, atau memperkuat monopolinya. Pasal 2 Sherman Antitrust Act terdapat larangan penyalahgunaan kekuasaan monopoli untuk merugikan persaingan. Meskipun pasal ini tidak secara khusus mengatur posisi dominan, ia mencakup praktik-praktik yang dilakukan oleh perusahaan yang memiliki posisi dominan atau monopoli di pasar. Pasal ini melarang penyalahgunaan kekuasaan monopoli seperti penetapan harga yang tidak adil, pembatasan akses pesaing ke sumber daya atau pasokan, atau praktik eksklusif yang mempersulit pesaing masuk ke pasar.

Posisi dominan atau monopoli terjadi ketika suatu perusahaan memiliki kendali yang substansial atas pasar tertentu, sehingga dapat mengontrol harga, produksi, distribusi, atau persyaratan lainnya dalam pasar tersebut tanpa banyak persaingan dari pesaing. Posisi dominan dapat dicapai melalui berbagai cara, termasuk penggabungan perusahaan, akuisisi, inovasi teknologi, atau praktik bisnis lainnya.

Beberapa contoh penyalahgunaan posisi dominan yang melanggar Undang-Undang ini termasuk:

a. Penetapan harga yang tidak adil atau diskriminatif dengan tujuan untuk menghambat persaingan.
b. Penolakan untuk menjual kepada pihak-pihak tertentu atau membatasi akses pesaing ke sumber daya atau pasokan yang penting.
c. Praktik-praktik eksklusif yang mempersulit pesaing masuk ke pasar.
d. Penggunaan kekuasaan monopoli untuk merugikan pesaing atau mencegah inovasi dan perkembangan pasar.

Hal serupa diatur pula dalam hukum persaingan usaha di India. Posisi dominan diatur di dalam The Competition Act, 2002. Undang-Undang ini bertujuan untuk mempromosikan dan menjaga persaingan yang sehat di pasar. The Competition Act, 2002 mengacu pada konsep "Penyalahgunaan Dominasi" dalam Bagian III Undang-Undang tersebut. Penyalahgunaan Dominasi terjadi ketika satu atau beberapa perusahaan memiliki posisi dominan di pasar yang signifikan dan mereka menyalahgunakan posisi tersebut untuk merugikan persaingan. Undang-Undang tidak memberikan definisi yang spesifik tentang posisi dominan, tetapi mengindikasikan bahwa posisi dominan terkait dengan kekuatan pasar yang signifikan. Faktor-faktor seperti pangsa pasar, kekuatan ekonomi, akses ke sumber daya, pengaruh di pasar, dan daya tawar yang lebih besar dapat digunakan untuk menilai posisi dominan.

Beranjak kepada kasus GPB di India, di antaranya yaitu Google menyalahgunakan posisi dominannya pada aplikasi android seperti:

a. Google menggunakan dominasinya untuk memaksa *gadget* dengan perangkat lunak (*software*) *Mobile OS* dan *Mobile Android OS* hanya menjadikan *Play Store Payment System* dan *Google Play In-App Billing*, dengan mengamanatkan setiap aplikasi untuk menggunakan sistem pembayaran melalui *Google Pay* (memberikan hak istimewa *Google Pay* dibandingkan dengan metode pembayaran lain) jika mereka ingin memiliki lisensi di *Play Store*.
b. Memberikan hak istimewa kepada *Google Pay* dengan melakukan pra-pemasangan dan secara mencolok menempatkan *Google Pay* di Android pada saat pengaturan awal sehingga menghasilkan "*status-quo bias*" yang merugikan aplikasi lain yang memfasilitasi pembayaran melalui metode lain.[24]

The Competition Commission of India (CCI), atau Komisi Persaingan India mengatakan bahwa Google menggunakan posisi dominannya untuk memaksa pengembang aplikasi menggunakan sistem pembayaran tunggal. CCI mengambil langkah untuk memberikan denda sebesar $162 juta terhadap Google terkait tentang praktik anti persaingan dengan sistem Android. Google juga diminta untuk menerapkan 8 solusi penyesuaian operasi dalam tiga bulan, termasuk tidak membatasi pengembang aplikasi untuk menggunakan layanan penagihan/pembayaran lainnya dalam suatu pembelian pada aplikasi. Selain itu, CCI juga menambahkan bahwa Google wajib menjamin kelengkapan dan detail transparansi dalam berkomunikasi dengan pengembang aplikasi mengenai tanggungan biaya layanan.

Cara monopoli yang digunakan oleh Google di India sesungguhnya merupakan ciri khas dominasi yang dimiliki oleh perusahaan *Big Tech* atau *Big Data* di mana terus menciptakan ekosistem *digital* yang eksklusif sehingga tidak ada persaingan usaha *digital* yang hidup dan mengakibatkan tidak akan pernah diketahui apakah akan ada pihak lain yang bisa melakukan lebih baik daripada yang memonopoli. Praktik yang dilakukan oleh Google dengan memanfaatkan *Google Advertising*, *Google Play Store,* dan *Google Pay Billing* sering disebut juga dengan praktik kontemporer dari *self-preferencing* di mana perusahaan lebih mendahulukan produknya sendiri dalam *platform*-nya sendiri.[25] Dominasi berlebih yang dimiliki oleh perusahaan *big tech* bersumberkan pada kemampuan unik akan wawasan yang dapat diperoleh dari *platform* mereka dan memberikan kualitas yang lebih berbobot melalui efek jaringannya.[26] *Big tech* pun menciptakan suatu persaingan usaha yang tidak sehat di mana dalam *platform* ekonomi *digital*nya dapat menciptakan perilaku periklanan serta menentukan insentif aplikasi dan websites sehingga membuat konsumen kecanduan atau memanipulasi pola perilaku transaksi.[27] Secara bersamaan, otoritas persaingan usaha juga sulit untuk ditindak karena sering dianggap sebagai inovator utama dalam pengembangan teknologi yang mana bila ditindak akan lebih banyak merugikan masyarakat.[28]

Posisi dominan yang dimiliki oleh *Big Tech* dalam hal ini *Google Pay Billing* bisa dikatakan menekan pihak-pihak lain melalui pengaruh aplikasi dan penguasaan pasarnya sehingga memiliki posisi dominasi ekonomi yang menjadi *bargaining power* ataupun tekanan dalam kontrak.

Hal ini terlihat dari kebijakan Google yang membebankan komisi 30% dari pengembang aplikasi dan harus melakukan pembayaran hanya melalui *gateway* pembayaran.[7] Selain itu, Google juga membebankan biaya layanan berlebihan yaitu 0-3% pada para pengembang aplikasi untuk pelayanan yang sama yang diberikan pada agregator pembayaran di mana Google juga tidak memberikan tambahan layanan apapun untuk aplikasi berbayar dan aplikasi penjual konten. Adapun aplikasi Google yang memperjualkan konten tidak membayar 15-30% biaya jasa. Para pengembang aplikasi yang menggunakan pelayanan Google tidak diberikan ruang untuk melakukan negosiasi sama sekali perihal biaya layanan sehingga menjebaknya pada situasi *take it or leave it*.[24]

Menurut Arie Siswanto, dominasi dalam persaingan usaha memiliki praktik yang luas di mana posisi dominasi ekonomi mensyaratkan agar konsumennya tidak memiliki akses dengan pesaingnya, hal ini sudah bisa dianggap penyalahgunaan dominasi. Bahkan penggunaan perjanjian baku berbasiskan "*take it or leave it*" sehingga memanipulasi harga juga dapat dikategorikan sebagai penyalahgunaan posisi dominan.[13] Google juga menghambat atau bahkan menghalang-halangi pesaing-pesaingnya menciptakan aplikasinya serta memaksa harus menggunakan metode pembayarannya yaitu *Google Pay Billing*. Sebagai contoh kasus yang dialami oleh *Alliance of Digital India Foundation* (ADIF) mengangkat masalah pembelian dalam aplikasi yang dilakukan oleh Google. ADIF mengajukan petisi kepada Pemerintah untuk mewajibkan raksasa teknologi seperti Google untuk mengizinkan pembelian dalam aplikasi menggunakan metode pembayaran selain yang disediakan oleh mereka. Hal serupa juga dirasakan oleh *Epic Games* yang melayangkan gugatan terkait Fortnite terhadap Google, menantang kebijakan pembelian dalam aplikasi Google Play Store setelah Google menghapus Fortnite dari toko saat *Epic Games* menyertakan sistem pembayaran selain dari Google. Epic Games menuntut untuk memungkinkan persaingan yang adil di pasar dan memperbolehkan pembayaran dari aplikasi lain.[7]

Tindakan yang dilakukan oleh Google juga telah menghambat perkembangan teknologi itu sendiri, padahal hak monopoli teknologi hanya ada pada pemilik Hak Paten atau Desain Tata Letak Sirkuit Terpadu untuk pencipta perangkat keras dan hak cipta untuk pencipta perangkat lunak. Aksioma tersebut telah mematahkan bahwa *big tech* tidak selalu menjadi penggerak utama perkembangan teknologi, sehingga dalam kasus India, sebenarnya menjadi hal yang amat tepat bilamana diberikan suatu sanksi denda untuk *deterrence effect* dan penerapan solusi-

solusi perbaikan dalam penciptaan lingkungan ekonomi *digital* khususnya tidak adanya upaya pembatasan pengembangan aplikasi oleh pihak lain.

Negara lain yang telah memberantas perkara monopoli oleh perusahaan *big data* atau *big tech* seperti Google adalah Amerika Serikat (AS). Di AS terjadi gugatan yang diajukan oleh 26 (negara bagian) terhadap *Google LLC, Google Ireland Limited, Google Commerce Limited, Google Asia Pacific PTE. Limited, Google Payment Corp*, dan *Alphabet Inc* selaku tergugat. Penggugat yaitu para negara bagian (*states*) mempermasalahkan Google yang telah berjanji akan menciptakan ekosistem industri *digital* yang terbuka bersama dengan *Android mobile operating system* yang justru diingkari olehnya dengan menempatkan dirinya sebagai *middleman* (perantara) antara para *app developers* dan konsumen. Tanpa sepengetahuan konsumen pengguna Android, setiap terjadinya transaksi dalam membeli aplikasi dari *Google Play Store* maupun aplikasi lain di dalamnya, sekitar 30% penghasilan tersebut dibayarkan pada Google. Hal ini dilakukan oleh Google dengan cara yang bertentangan dengan persaingan usaha sehat seperti berusaha menggunakan dominasinya untuk menekan *Android App* maupun aplikasi lainnya agar tidak memiliki pilihan lain selain menggunakan *Google Play Store* dan pembayarannya yaitu *Google Pay Billing.* [29]

Selain itu, pada kasus monopoli dengan memanfaatkan dominasi di AS atas pengambilan keuntungan yang berlebihan sebesar 30%, Google memasangkan komisi pada setiap pembelanjaan *digital* yang dilakukan oleh konsumen dalam dalam aplikasinya yaitu *Google Pay Billing* atas aplikasi yang diperoleh dari *Google Play Store.* Mengingat dalam kasus ini Android menjadi pihak yang didominasi oleh Google yang telah menguasai pasar hingga 99% sehingga memiliki pengaruh kuat termasuk pada Android dan meng intervensinya dengan memaksanya untuk mengubah sistem operasionalnya yang semula mengunduh langsung aplikasi tersebut dan/ atau aplikasi yang sudah ada sebagai set awal produksi *gadget* tersebut menjadi semuanya hanya boleh dengan aplikasi Google dengan cara memberikan ancaman membatalkan kontrak dan disinsentif semua pesaing potensial. Google juga turut menyerang Samsung selaku produsen *gadget* Android dengan menjadikan *Galaxy Store* hanya sebatas "*white label*" alias sebatas tampang saja, tetapi basis pelayanan dan sistem yang digunakan tetaplah milik Google.

Berdasarkan tindakan penyalahgunaan posisi dominan tersebut, Google dijatuhkan sanksi dipecah berdasarkan 8 alasan besar.

Pertama, perihal pelanggaran menurut *Sherman Act § 2* mempertahankan monopoli distribusi pasar aplikasi Android. Google secara melawan hukum telah menjaga monopolinya melalui keadaan yang menempatkan lisensi merek Android, *Google Play Store, Google Pay Billing,* pelayanan Google lainnya, *Mobile Application Distribution Agreements* dengan OEMs, *Developer Distribution Agreements* dengan pengembang aplikasi, dan perjanjian pembagian hasil dengan OEMs dan MNOs di mana semua keadaan ini membuat *Google Play Store* menjadi tempat *download* aplikasi tunggal dan menghalangi OEMs dan pengembang aplikasi.

Kedua, Alasan dari tindakan menurut *Sherman Act Act § 1* pengekangan perdagangan tidak beralasan perihal distribusi pasar aplikasi Android pada OEMs di mana Google membuat perjanjian dengan OEMs yang tanpa adanya alasan kuat membatasi persaingan usaha dalam distribusi pasar aplikasi Android yang di dalamnya termasuk *anti-forking agreements*, MADAs dan perjanjian lain di mana adanya klausul pemaksaan akan adanya pelayanan yang disediakan Google bila ingin bisa mengakses *Google Play Store* sehingga akibat perbuatannya ialah efek anti-persaingan usaha termasuk meningkatkan harga untuk konsumen dan biaya bagi pengembang, mengurangi inovasi dan kualitas pelayanan, serta mengurangi hasil dari aplikasi-aplikasi.

Ketiga, pengekangan perdagangan tidak beralasan perihal distribusi pasar aplikasi Android pada para pengembang aplikasi dengan pola yang sama seperti alasan sebelumnya.

Keempat, Secara Melawan hukum mengikat *Google Pay Billing* dengan penggunaan *Google Play Store* sehingga memaksa adanya aplikasi pembayaran milik Google di mana hal ini dituangkan dalam *Developer Program Policies* dan DDAs dengan para pengembang. Perbuatan tersebut merugikan para warga dari negara bagian yang menjadi penggugat juga di mana mereka harus membayar lebih mahal dan tidak memiliki kebebasan memilih produk. Perbuatan Google dapat diklasifikasikan sebagai *Per se Illegal*.

Kelima, Monopoli perihal aplikasi pembayaran di mana Google memonopoli IAP *Processing Market* melalui *Google Pay Billing*.

Keenam, pengekangan tidak beralasan atas perdagangan dalam aplikasi pembayaran yang mengakibatkan efek anti-persaingan usaha.

Ketujuh, kesepakatan eksklusif yang melawan hukum perihal aplikasi pembayaran di mana dalam DDA-nya Google bahkan memberikan klausul wajib adanya *Google Pay Billing* untuk pembayaran di mana berlaku untuk setiap

permainan video yang diunduh di *Google Play* dan terhadap semua konten permainan tersebut.

Kedelapan, Setiap negara-negara bagian yang menjadi penggugat telah menerima kerugian sehingga meminta klaimnya.

Pada pokoknya, putusan hakim di berbagai negara bagian Amerika Serikat seperti di Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, New York, Florida, dan negara bagian lainnya, di antaranya sebagai berikut:

a. Mengganti kerugian perseorangan di bawah otoritas.
b. Menerapkan d*isgorgement, disgorgement* sendiri berdasarkan *Black's Law Dictionary* adalah "*[t]he act of giving up something (such as profits illegally obtained) on demand or by legal compulsion*",[30] yang memiliki arti menyerahkan keuntungan berdasarkan dengan perintah atau hukum yang didapatkan secara ilegal.[31]
c. Restitusi, yaitu ganti kerugian kepada korban.[32]
d. *Injunctive* (tuntutan).
e. Sanksi perdata.
f. Biaya peradilan.
g. Pemulihan lainnya yang dianggap tepat sesuai dengan fakta dan keadaan kasus.[29]

Gugatan terhadap praktik monopoli bukanlah suatu hal yang pertama kali dialami oleh Google. Pada tahun 2020 dan 2023 ini Google Kembali digugat oleh Departemen Kehakiman (*Department of Justice*/DOJ) Amerika Serikat bersama dengan Jaksa Agung California, Colorado, Connecticut, New Jersey, New York, Rhode Island, Tennessee, dan Virginia. Gugatan tersebut menuduh Google memonopoli beberapa produk teknologi iklan *digital* selama bertahun-tahun. Praktik ini dinilai menyudutkan kompetitor karena berada di posisi yang sangat tidak menguntungkan. Menurut Departemen Kehakiman Amerika, praktik Google sudah melanggar bagian 1 dan 2 dari Undang-Undang Sherman.

The Sherman Act mewujudkan komitmen abadi Amerika terhadap proses kompetitif dan kebebasan ekonomi. Selama lebih dari satu abad, Departemen telah memberlakukan Undang-Undang antimonopoli melawan perusahaan monopoli yang melanggar hukum untuk membebaskan pasar dan memulihkan persaingan. Untuk memperbaiki perilaku anti persaingan Google, Departemen mencari bantuan yang adil atas nama publik Amerika serta ganti rugi tiga kali lipat atas kerugian yang diderita oleh lembaga Pemerintah federal yang membayar lebih untuk iklan tampilan *web*. Tindakan penegakan hukum ini menandai kasus monopoli pertama dalam kira-kira setengah abad di mana Departemen menuntut ganti rugi atas pelanggaran antimonopoli sipil.

Tuduhan tersebut memperinci bahwa Google terlibat dalam perilaku berkelanjutan selama 15 tahun yang telah –dan terus memiliki– efek mengusir saingan, mengurangi persaingan, menaikkan biaya iklan, mengurangi pendapatan penerbit berita dan pembuat konten, memadamkan inovasi, dan merusak pertukaran informasi dan gagasan di ruang publik.

Google mengontrol alat *digital* yang digunakan hampir setiap penerbit situs *web* utama untuk menjual iklan di situs web mereka (*server* iklan penerbit); itu mengontrol alat pengiklan dominan yang membantu jutaan pengiklan besar dan kecil membeli inventaris iklan (jaringan iklan pengiklan); dan mengontrol pertukaran iklan terbesar (*ad exchange*), sebuah teknologi yang menjalankan lelang waktu nyata untuk mencocokkan pembeli dan penjual iklan *online*.

Begitupun dengan di Indonesia, Google memberikan kebijakan untuk menggunakan metode pembayaran melalui GPB. *Google Play Store* sendiri merupakan *platform* distribusi aplikasi terbesar di Indonesia yang memiliki pangsa pasar mencapai 93%. Kebijakannya yang mewajibkan penggunaan GPB tentunya menciptakan persaingan usaha yang tidak sehat. Karena apabila kewajiban tersebut tidak dilakukan oleh aplikasi yang diwajibkan Google, aplikasi tersebut akan dihapus dari aplikasi *Google Play Store* atau tidak diperbolehkan *update* atas aplikasinya, tentu akan mengakibatkan aplikasi tersebut kehilangan konsumen.

Selain itu terdapat ketentuan pengenaan tarif yang tinggi yang dilakukan Google atas penggunaan GPB-nya yaitu sebesar 15-30% dari harga yang dijual. Sebelumnya ketika menggunakan metode pembayaran lain dengan tarif dibawah dari 5%. Akibatnya yaitu akan memberikan kenaikan atas biaya produksi dan harga. Namun tidak hanya sampai sana, kewajiban ini tentunya akan berdampak pada terganggunya *user experience* konsumen atau pengguna akhir aplikasi.[8] KPPU pun juga telah menganalisis bahwa Google telah melakukan praktik penjualan bersyarat atau yang sering disebut dengan *tying* di mana terdapat dua model bisnis yang dijadikan sarana pencari keuntungan dengan monopoli. Google mewajibkan para pengembang aplikasi untuk membeli beberapa produknya hanya dalam satu unit atau dikenal dengan *Bundling* dalam *Google Play Store* dan GPB.[33]

Respon Negara yang Ideal dalam Menyelesaikan Kasus Persaingan Usaha Google Pay Billing

Posisi dominan berdasarkan dengan ayat (2) Pasal 25 Undang-Undang Nomor 5 Tahun 1999 di antaranya:

a. Suatu pelaku usaha atau satu kelompok pelaku usaha menguasai 50% atau lebih pangsa pasar satu jenis barang atau jasa tertentu; atau
b. Dua atau tiga pelaku usaha atau kelompok pelaku usaha menguasai 75% atau lebih pangsa pasar satu jenis barang atau jasa tertentu.

Ketua Umum *Indonesian Competition Lawyers Association (ICLA)*, Asep Ridwan menggambarkan bahwa dalam kondisi dominan, pelaku usaha diasumsikan memiliki market power yang cukup signifikan. Akses dan penguasaan terhadap data konsumen memiliki peranan besar dalam memberikan *market power* kepada *Platform Digital*. *Market power* yang dimiliki *Platform Digital* semakin besar dengan adanya pengembangan bisnis secara vertikal ke pasar hulu dan hilir. Pengembangan bisnis ini meningkatkan kapasitas *Platform Digital* untuk mengumpulkan lebih banyak data, meningkatkan daya saing, serta menjadi pemilik toko *online* sekaligus pengguna aplikasi.

Posisi dominan seperti itu berpotensi disalahgunakan misalnya melalui diskriminasi terhadap pesaing ditingkat *retail*, perjanjian eksklusif dengan konsumen, kebijakan jual rugi yang dapat mengakibatkan pesaing di pasar hulu/hilir tidak dapat bersaing sehingga keluar dari pasar.

Beberapa bentuk penyalahgunaan posisi dominan dalam *platform digital* adalah *refusal to deal, predatory pricing, exclusived Dealing & loyalty discount, Tying and Bundling.*

Selain itu juga terdapat potensi kartel atau kesepakatan. Munculnya *Digital Platform* mengakibatkan harga antar pesaing di pasar menjadi transparan. Data dan algoritma memungkinkan pelaku usaha untuk memprediksi tren pasar, memetakan konsumen, dan menyesuaikan strategi harganya.

Pengendalian merger, akuisisi, dan konsolidasi (merger) juga dapat terjadi apabila posisi dominan disalahgunakan. Merger yang memenuhi kriteria tertentu saja yang wajib dilaporkan kepada otoritas persaingan. Namun umumnya kriterianya tidak mencakup nilai data yang dikendalikan oleh para pihak yang melakukan Merger.

Akibatnya, beberapa transaksi merger menjadi tidak wajib notifikasi karena tidak memenuhi kriteria, meskipun data yang dikuasai para pihak yang melakukan Merger memiliki nilai yang tinggi. Di sisi lain, terdapat istilah *"killer acquisition*" di mana banyak perusahaan *digital* besar berinvestasi/mengambil alih perusahaan kecil/baru karena menilai perusahaan tersebut berpotensi menjadi pesaing ke depan.[34]

Adapun tindakan yang dilarang atas penyalahgunaan posisi dominan sebagaimana ayat 1 Pasal 25 UU tersebut di antaranya:

a. Menetapkan syarat-syarat perdagangan yang bertujuan untuk mencegah dan atau menghalangi konsumen memperoleh barang dan atau jasa yang bersaing, baik dari segi harga maupun kualitas; atau
b. Membatasi pasar dan pengembangan teknologi; atau
c. Menghambat pelaku usaha lain yang berpotensi menjadi pesaing untuk memasuki pasar bersangkutan.

Tentu KPPU memiliki tugas untuk mengatasi segala hal yang berkaitan dengan persaingan usaha tidak sehat dan sebagai salah satunya adalah posisi dominan ini. Sebagaimana huruf c Pasal 35 Undang-Undang ini menegaskan bahwa KPPU berhak melakukan penilaian atas ada atau tidaknya penyalahgunaan posisi dominan yang dapat mengakibatkan terjadinya praktik monopoli dan atau persaingan usaha tidak sehat.

Selanjutnya mengenai ketentuan sanksi, UU Antimonopoli diubah Undang-Undang Nomor 2 Tahun 2022 tentang Cipta Kerja menjadi Undang-Undang atau dikenal dengan Undang-Undang Cipta Kerja pada ketentuan Pasal 47 di antaranya sebagai berikut:

a. Perintah kepada Pelaku Usaha untuk menghentikan penyalahgunaan Posisi Dominan sebagaimana dimaksud dalam Pasal 25.
b. Penetapan pembayaran ganti rugi dan/atau
c. Pengenaan denda minimal Rp. 1.000.000.000 (satu miliar rupiah).

Selama Google melakukan aktivitas bisnis di wilayah hukum Indonesia, KPPU akan berwenang melakukan penegakkan Undang-Undang Antimonopoli jo. UU Cipta Kerja terhadap Google. Komisi Pengawas Persaingan Usaha (KPPU) menduga Google telah melakukan posisi dominan, penjualan bersyarat dan praktik diskriminasi dalam distribusi aplikasi secara *digital* di Indonesia. Berdasarkan indikasi tersebut, KPPU melakukan penyidikan atas pelanggaran Undang-Undang Antimonopol jo. Undang-Undang Cipta Kerja yang dilakukan Google dan anak usahanya. Penyidikan ini difokuskan pada hasil penelitian KPPU yang menemukan bahwa Google mewajibkan penggunaan *Google Pay Billing* (GPB) di berbagai aplikasi tertentu. GBP

ialah metode pembelian produk dan layanan dalam aplikasi yang didistribusikan oleh *Google Play Store.*

Berdasarkan analisis terhadap kebijakan Google tersebut dan aduan dari banyak pihak nyatanya berimplikasi kepada terhambatnya pengembang aplikasi di Indonesia akibat dari naiknya tarif hingga 15 sampai dengan 30% dari harga konten *digital* yang dijual. Sangat jauh berbeda dengan sebelum adanya kewajiban GPB ini pengembang aplikasi dapat menggunakan metode pembayaran lain dengan tarif yang rendah di bawah 5%. Sudah tentu kewajiban ini akan mengganggu pengguna aplikasi pula karena dipaksa untuk menggunakan metode pembayaran tunggal.

Pada akhirnya, berdasarkan hasil kajian KPPU yang memberikan kesimpulan bahwa kebijakan Google telah jelas merupakan bentuk persaingan usaha tidak sehat di pasar distribusi aplikasi secara *digital*.[8] Menindaklanjuti dugaan monopoli, KPPU menyatakan melakukan koordinasi dengan Kementerian Luar Negeri (Kemenlu) untuk memanggil Google dengan melayangkan surat pemanggilan ke kantor Pusat Google di California dan Google Asia Pasifik di Singapura.

Terdapat negara yang memberikan respon lebih dari sekedar penegakan hukum, yaitu Korea Selatan di mana telah mengambil langkah khusus untuk menangani fenomena persaingan usaha baru di era industri *digital*. Korea Selatan setelah memperbarui *Telecommunications Business Act No. 18451, 2021* dengan melarang pasar aplikasi (*app markets*) memaksakan metode pembayaran tertentu pada penyedia konten atau aplikasi atau secara tidak adil melarang atau menghambat evaluasi dari konten *mobile*.[35] Regulasi ini dibentuk sebagai respon atas upaya monopoli yang dilakukan oleh Google terhadap Android. Regulasi ini dibentuk secara eksplisit untuk merespon monopoli oleh *Big Tech* seperti kasus Google, Undang-Undang ini mendapatkan julukan informal yaitu "*Anti-Google Law*".[7] Lebih lanjut, *Telecommunications Business Act No. 18451, 2021* mengatur beberapa ketentuan seperti larangan keterlambatan meninjau konten seluler dalam kasus di mana penyedia konten menggunakan *platform* atau sistem pembayaran yang berbeda. Undang-Undang ini juga turut mengatur perihal persyaratan untuk pasar aplikasi atau *app marketplaces* menyediakan sarana *refund* dan pembayaran secara detail dalam syarat dan ketentuannya (*terms and reference*). Perlindungan secara lebih juga diberikan pada penyedia konten di mana dapat dilakukannya penyelidikan oleh *Korea Communications Commission* (KCC) atas operasional dari *app marketplaces.* Bilamana ditemukan adanya pelanggaran hukum yang terjadi, maka akan dikenakan sanksi denda progresif sebesar 3% dari penghasilan *app marketplaces* tersebut.[36] Secara sederhana, perbedaan respon yang diberikan ketiga negara yang dikaji dalam menangani kasus penyalahgunaan posisi dominan Google Pay Billing dapat dijabarkan sebagai berikut:

Tabel 1. Komparasi Pelanggaran Posisi Dominan Google di Tiga Negara

Ketentuan	Korea	USA	India
Tindakan Dominasi	1. Pemaksaan metode pembayaran dengan Google Pay Billing. 2. Melakukan penghambatan evaluasi dari konten mobile.	1. Google terlibat selama 15 tahun berkelanjutan yang telah dan terus memiliki efek mengusir saingan. 2. Mengurangi persaingan. 3. Menaikkan biaya iklan. 4. Mengurangi pendapatan penerbit berita dan membuat konten. 5. Memadamkan inovasi. 6. Merusak pertukaran informasi dan gagasan di ruang publik.	1. Google menggunakan dominasinya untuk memaksa *gadget* dengan perangkat lunak (*software*) *Mobile OS* dan *Mobile Android OS* hanya menjadikan *Play Store Payment System* dan *Google Play In-App Billing*, dengan mengamanatkan setiap aplikasi untuk menggunakan sistem pembayaran melalui *Google Pay* (memberikan hak istimewa *Google Pay* dibandingkan dengan metode pembayaran lain) jika mereka ingin memiliki lisensi di *Play Store*. 2. Memberikan hak istimewa kepada *Google Pay* dengan melakukan pra-pemasangan dan secara mencolok menempatkan *Google Pay* di Android pada saat pengaturan awal sehingga menghasilkan "*status-quo bias*" yang merugikan aplikasi lain yang memfasilitasi pembayaran melalui metode lain.

Sanksi	Denda progresif sebesar 3% dari penghasilan app marketplaces.	1. Denda sebesar $162 juta. 2. Google juga diminta untuk menerapkan 8 solusi penyesuaian operasi dalam tiga bulan, termasuk tidak membatasi pengembang aplikasi untuk menggunakan layanan penagihan/ pembayaran lainnya dalam suatu pembelian pada aplikasi. 3. Google wajib menjamin kelengkapan dan detail transparansi dalam berkomunikasi dengan pengembang aplikasi mengenai tanggungan biaya layanan.	1. Mengganti kerugian perseorangan di bawah otoritas. 2. Menerapkan disgorgement. 3. Restitusi. 4. Tuntutan. 5. Sanksi perdata. 6. Biaya peradilan. 7. Pemulihan lainnya yang dianggap tepat sesuai dengan fakta dan keadaan kasus.

Sumber: diolah berdasarkan United States District Court Northern District of California San Francisco Division Case 3:21-cv-05227, Competition Commission of India Case No. 07 of 2020, 14 of 2021 and 35 of 2021 dan Jurnal Anti-Google Law: An Analysis

Belajar dari respon yang diberikan oleh Korea Selatan terhadap kasus monopoli GPB tentu saja menunjukan bahwa guna memberikan landasan hukum yang kuat bagi KPPU selaku otoritas persaingan usaha di Indonesia, maka diperlukannya legislasi baru juga. Aturan yang saat ini berlaku yaitu Pasal 25 Undang-Undang No. 5 Tahun 1999 tidak cukup untuk menjangkau mengenai posisi dominan dan penyalahgunaannya di pasar *digital* mengingat pendekatan yang dilakukan untuk posisi dominan pasar *digital* perlu dilakukan secara khusus, sedangkan pasal ini memuat atas posisi dominan yang masih umum.

Pada hakikatnya sebagaimana pakar Hukum Persaingan Usaha, Ningrum Natasya Sirait pernah menegaskan bahwa Undang-Undang Nomor 5 Tahun 1999 tentang Larangan Praktik Monopoli dan Persaingan Usaha Tidak Sehat hadir untuk mewujudkan persaingan usaha yang kondusif. Hal tersebut disampaikannya dalam sidang perkara di ruang sidang MK. Begitupun selaras dengan yang dikatakan oleh Jaksa Agung Merrick Garland menyatakan bahwa monopoli sendiri mengancam keadilan pada aspek ekonomi. Lebih ironisnya dalam jangka Panjang akan menghambat inovasi, merugikan produsen dan pekerja, serta meningkatkan biaya bagi konsumen. Namun, hal ini sayangnya belum tercermin dalam Pasal 25 Undang-Undang Nomor 5 Tahun 1999 tentang Larangan Praktik Monopoli dan Persaingan Usaha Tidak Sehat belum mampu menjangkau persaingan usaha dalam pasar *digital* yang begitu dinamis dan memiliki karakteristik berbeda khususnya eksistensi *big tech* yang memiliki banyak jaringan perusahaannya sendiri sehingga dapat menciptakan ekosistem *digital*nya sendiri sehingga rentan terjadinya penyalahgunaan posisi dominan berupa *tying and bundling* ataupun *self preference*. Pasal 25 Undang-Undang Nomor 5 Tahun 1999 juga tidak bisa memberikan definisi normatif yang meliputi perusahaan dominan di persaingan usaha pasar *digital* karena hanya melihat dari *market share*, di mana seharusnya turut menilai dari *profitability*, *entry barriers,* dan terutama *substitutability*.

Salah satu upayanya ialah dengan melakukan perubahan terhadap Undang-Undang Nomor 5 Tahun 1999 di mana perlu diberikannya bagian baru yaitu bagian kelima yang mengatur tentang

aplikasi pengunduh, aplikasi pembayaran *digital*, dan aplikasi *digital* lain dalam Bab V tentang Posisi Dominan. Gagasan ini diperlukan mengingat pengaturan secara eksplisit terhadap dominasi dari upaya pembuatan ekosistem ekonomi *digital* yang dikuasai oleh satu pihak saja dari hulu hingga hilir memerlukan pendekatan khusus. Mekanisme transparansi, kewajiban memberikan opsi lebih dari satu bagi konsumen dalam aplikasi pemberian jasa tertentu, serta larangan memanfaatkan dominasi dalam aplikasi *digital* untuk menekan pihak lain. Selain itu, perlu adanya mekanisme sanksi denda secara progresif sesuai dengan penghasilan dari perusahaan tersebut di mana dapat meniru Korea Selatan yaitu 3% dari penghasilannya atas setiap pelanggaran atas ketentuan Bab V Bagian kelima. *Ratio legis* dibalik sanksi denda progresif tersebut adalah pelaku dari dominasi industri *digital* biasanya *Big Tech* yang sangat kuat posisinya baik secara finansial maupun sosial sehingga memberikan sanksi yang bersifat *fix rated* tidak akan memberikan efek jera apapun.

KESIMPULAN

Kasus *Google Pay Billing* terjadi di beberapa negara, sebagai contohnya adalah India dan Amerika Serikat. Penanganan kedua negara tersebut di antaranya:

a. Mengganti kerugian perseorangan di bawah otoritas.
b. Menerapkan disgorgement, restitusi dan tuntutan.
c. Sanksi perdata.
d. Biaya peradilan.
e. Pemulihan lainnya yang dianggap tepat sesuai dengan fakta dan keadaan kasus.

Pola kasus monopoli dilakukan oleh Google dengan *Google Play Store* dan GPB di India dan AS sesungguhnya sama sehingga perlu adanya penyelidikan juga pada penyalahgunaan posisi dominasi *Google* pada para pengembang *gadget* serta *pre-set software*-nya yang dapat menjadi target dihambat atau dihalangi eksistensinya.

Tentunya penjatuhan sanksi tersebut disesuaikan dengan kerugian yang ditimbulkan oleh pelaku usaha. Pembentukan regulasi eksplisit terhadap dominasi *big tech* yang mengarah pada monopoli juga diperlukan mengingat dominasi yang dilakukannya berbeda dengan pasar lainnya. Selain itu pendekatan sanksi progresif untuk *Big tech* dapat memberikan efek jera yang lebih tepat tanpa mengganggu bisnisnya yang vital untuk masyarakat.

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Self-preferencing: Practices and Characteristics of Abuse of Dominant Position in Digital Markets

Fajar Bima Alfian[1]
fajarbalfian33@gmail.com
Rilda Murniati[2]
rilda_murniati@ymail.com

Faculty of Law Universitas Lampung[1,2]

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ABSTRACT

Self-preferencing is a new form of anti-competitive practice used to maintain a dominant position in the digital market. Platforms are suspected of playing a dual role as service providers while competing with third parties. This is manifested through preferential treatment towards their goods and services, potentially erecting entry barriers and impeding consumer substitution rights. The research method used is normative research with a statutory and case approach. The results show that the practices and characteristics of self-preferencing in several countries have certain behavioural similarities with those in Indonesia: providing discounts, market coverage, or limited facilities. This practice forms an entry barrier while eliminating consumers' rights to choose and compare with substitute products. The regulation that is used as a reference for the existence of prohibited behaviour as an abuse of dominant position is regulated in Article 25. The absence of explicit regulations addressing these behaviours creates challenges for competition authorities, particularly in AI-driven markets. Advanced economies have already begun enacting specialized laws and enforcement actions against platforms engaging in self-preferencing and other digital market transgressions. Indonesia's regulatory landscape must evolve to encompass these developments and technological advancements in the digital sphere.

Keywords: *Artificial-Intelligence, Digital, Self-Preferencing, Platforms.*

ABSTRAK

Self-preferencing merupakan praktik anti persaingan bentuk baru yang digunakan untuk mempertahankan posisi dominan di pasar digital. *Platforms* diduga memainkan peran ganda sebagai penyedia layanan sekaligus bersaing dengan pihak ketiga. Hal ini dilakukan dengan memberikan perlakuan istimewa terhadap produk dan/atau layanan sendiri, berpotensi menciptakan *entry barrier* dan menghilangkan hak substitusi konsumen. Metode penelitian yang digunakan adalah penelitian normatif dengan pendekatan perundang-undangan dan pendekatan kasus. Hasil penelitian menunjukkan bahwa praktik dan karakteristik *self-preferencing* yang terjadi di beberapa negara memiliki kesamaan perilaku tertentu dengan yang terjadi di Indonesia: pemberian diskon, jangkauan pasar, atau fasilitas terbatas. Praktik ini membentuk *entry barrier* sekaligus menghilangkan hak konsumen untuk memilih dan membandingkan dengan produk substitusi. Pengaturan yang dijadikan rujukan atas adanya perilaku yang dilarang sebagai penyalahgunaan posisi dominan diatur dalam Pasal 25, kekosongan hukum ini membatasi gerak otoritas persaingan dalam menjangkau bentuk anti persaingan baru di pasar digital yang menggunakan kecerdasan buatan. Beberapa negara maju telah mengantisipasi dengan mengesahkan Undang-Undang khsusus dan melakukan penindakan terhadap *platforms* yang terbukti melakukan *self-preferencing* atau pelanggaran lain di pasar digital. Hal ini tentunya di masa mendatang Indonesia dapat melakukan penyesuaian pengaturan yang lebih luas yang mencakup perkembangan teknologi *digital.*

Kata Kunci: *Artificial-Intelligence, Digital, Self-Preferencing, Platforms.*

INTRODUCTION

Digitalization, new technologies, and scientific breakthroughs occur in various sectors, including the economy and business competition.[1] This progress has a positive impact that can encourage economic growth, but on the other side, it can also raise concerns about competition and create the requirement for new regulations.[2] Thanks to its impact on society extending beyond digital technology, it is increasingly relevant to policymakers and stakeholders.[1] The impact of digitalization and data-driven innovation on competition has been recognized by the Organisation for Economic Co-operation and Development (OECD) as conveyed in the forum G7 Joint Competition Policy Makers and Enforcers Summit, which covers a wide range of policy issues, including big data, algorithms, and collusion.[3] From 2016 to 2017, The OECD chose the digital economy as the focal point for its Going Digital project, which seeks to formulate a comprehensive competition policy strategy addressing the effects of digital transformation and open markets.[4]

The ability of digital service providers (platforms) to reach or collect data on consumers and their competitors is a fundamental distinction between platforms and business actors with traditional business models.[5] For example, in today's digital age, international consumers find it challenging to move away from reliance on Amazon due to its position as a cross-border selling (e-commerce) platform capable of maintaining an extensive international delivery network.[6] Using new anti-competitive practices, platforms can maintain a dominant position in the relevant market. The dominant position owned is not necessarily used to create business innovations for consumers through low prices and quality goods but can be misused to create entry barriers while increasing market sharing.[7]

How the implementation of business models by platforms and similar technology companies, to the emergence of the concept of business competition in the digital market (winner takes all, competition for the market, and others) also brings the position of competition authorities to rebuild the concept of thought and substance of competition law in order to precisely redefine the relevant market, dominant position, vertical or horizontal restrictions, and others.[8] An exciting issue currently developing is the practice of preferential treatment (self-preferencing), which is positioned as a symbol of anti-competition in the digital market.[9] From a competition law perspective, the issue has the potential to trigger unfair competition because it is feared that large platforms may abuse their dominant position to exclude competitors by providing preferential treatment to consumers for the goods and or services offered.[10]

Self-preferencing refers to the behaviour of a platform that gives preferential treatment of their goods and or services (first-party goods/1P) to consumers. This occurs when a platform analyzes the market using data collected from sales of third-party goods (third-party goods/3P) to design and prepare 1P to fulfil and customize consumer needs.[11] Such self-preferencing is done when the platform plays a dual role, a condition when the platform as a digital marketplace service provider company (e-commerce) competes with third parties.[12] This practice is supported by the role of artificial intelligence and algorithmic systems in analyzing consumer habits and interests in certain goods and or services.[4] Intuitively, algorithms are associated with the sequence of steps a computer or system must perform to accomplish a task.[13] The definition adopted by the UK competition authorities states that '*an algorithm is any well-defined computational procedure that takes some value, or set of values, as input and produces some value, or set of values as output.*' [14] The critical point is that self-preferencing occurs without being followed by an agreement or concerted action and without a direct relationship between them.[15] The concern that self-preferencing using an algorithmic system may facilitate tacit collusion is essential and novel in competition law enforcement.[16] This challenges competition authorities as self-preferencing is conducted in a digital market with artificial intelligence capabilities and cutting-edge technology. With this, finding indirect evidence through direct or indirect communication becomes challenging.[16] From a competition law perspective, one central question arises: Does self-preferencing trigger abuse of dominant position to monopolize the relevant market, or is it merely a form of business innovation amidst technological development?

To answer this question, this study will refer to previous studies that describe the practices and characteristics of self-preferencing carried out by technology giant companies in the European Union (EU) and the United States (US), including how the relevant competition authorities have responded. Some self-preferencing characteristics ranged from eliminating competitors' goods to deliberately putting their goods at the top. It can be viewed from several cases, including:[17] The Google platform was sanctioned by the EU Competition Authority or the European Commission for abuse of dominant position in the market concerned search engines. In this case, Google displays

search results with a high-order position for its product, namely Google Shopping. For this violation, Google was sanctioned with 2.42 billion Euros. Secondly, Google forced manufacturers of mobile devices, such as Androids, to install Google's browser application, Google Chrome, by default. It has brought Google into a dominant position in the relevant market. Third, the company Apple, Inc. sets rules on its proprietary application, the Appstore, which is designed in such a way as to prioritize its applications. Apple requires third-party developers to use payment methods through Apple's apps. Lastly, the Italian Competition Authority (AGCM) dealt with Amazon's infringement in November 2021, which fined Amazon.[18]

Based on the reference of several cases, this paper will analyze issues related to self-preferencing in Indonesia from 2023 to 2024. First, Shopee's single delivery service is through PT Nusantara Ekspres Kilat (SPX Xpress). This occurs when Shopee applies a single delivery service policy to consumers so that consumers can no longer choose a service provider or compare different prices. This differs from its closest competitor, Tokopedia, which still provides price comparisons and options for consumers when determining the shipping service used.[19] Second, about the social media platform TikTok. This problem was initially triggered by the number of Micro, Small, and Medium Enterprises (MSMEs/UMKM) traders who experienced a drastic decrease in turnover caused by their inability to compete with imported products that were sold very cheaply and how TikTok ran its flagship feature, TikTok Shop, which was proven to be incompatible with related licenses as well as allegedly leading to anti-competitive practices in the digital market.[18]

In view of these issues, there are several reasons for researching the practices and characteristics of self-preferencing in the digital market. First, people often use the services of several companies suspected of engaging in this practice. For this reason, this paper is expected to provide a description of the study to readers in order to know and provide an understanding of the perspective of competition law on problems that occur in the digital market; Second, abuse of dominant position or monopolistic practices is the most controversial form of violation in competition policy, with very different enforcement standardds in EU and the US including different views among practitioners regarding the rationale behind the prohibition of self-preferencing practices in digital markets, which are characterized by specific features (which tend to benefit consumers and a significant level of innovation), making some parties skeptical about the possibility of harm to consumers; Third, the EU has implemented a particular regulation, namely the Digital Market Act (DMA) which was substantially born from several cases of abuse of dominant position in the digital market, so it can be a policy reference for Indonesia to take a stance on the practice of self-preferencing.[20]

Based on the background that has been described, it is appropriate and attractive to conduct research with the formulation of the problem of how the practice and characteristics of self-preferencing that occurs in the digital market and how the substance of the regulation of self-preferencing as an act that is considered to violate Law Number 5 of 1999. This study aims to obtain a complete, detailed, clear, and systematic description of the practices and characteristics of self-preferencing in the digital market and the regulation of self-preferencing as an act considered to violate Law Number 5 of 1999. This paper uses a normative research method with a statutory approach to a judicial case study. The analysis used is descriptive qualitative analysis. Namely, qualitative data collected related to the problem will be analyzed deductively and presented descriptively.

DISCUSSION

Practices and Characteristics of Self-Preferencing in the Digital Market

This article will focus on self-preferencing by digital market service providers or e-commerce platforms. This behaviour occurs when the platform is in a dual-role position, i.e., conducting self-preferencing practices when the platform provider provides sales services while competing with third parties.[12] Based on the substance of the arrangements in the DMA, what is meant by self-preferencing is the more favourable treatment of first-party goods or services (first-party goods/1P), such as pricing policies. Article 6 (5) DMA stipulates that "*The gatekeeper shall not treat more favourably, in ranking and related indexing and crawling, services and products offered by the gatekeeper itself than similar services or products of a third party. The gatekeeper shall apply transparent, fair, and non-discriminatory conditions to such ranking and related indexing and crawling".* This happens when platforms identified as gatekeepers impose varying charges or employ non-price tactics to differentiate their treatment of third-party goods and or services (third-party goods/3Ps). Even though the exact charges are applied, it still creates an unequal position in the relevant market owing to 1P being part of the same company. Hence, a company's policy of charging lower fees for 1P's products or

services can, in principle, be viewed as directing consumers to choose 1P's offerings.[17]

According to previous studies, self-preferencing has various impacts depending on anti-competitive impacts.[12] This behaviour impacts competition in the digital market and can give birth to unfair competition concerns because the platform has a vertically integrated dominant position in its goods and or services, so it can trigger conflicts of interest in the future, directly harming consumers.[9] From a business perspective, there is an opinion that self-preferencing is part of innovation that benefits consumers.[21] Accordingly, the debate then arises as to how to distinguish between self-preferencing, which is considered an abuse of dominant position, and business innovation, which is considered reasonable, and it is necessary to discuss in depth the dividing line between both of them.

a. Self-preferencing reviewed from the point of view of abuse of the dominant position

This article will refer to the practices and characteristics of self-preferencing stipulated in the DMA as the new regulatory standardd of competition law in the digital economy sector in the EU and present some of the responses of each jurisdiction to it. This paper will also summarise several cases of self-preferencing from several countries to compare their behaviour in Indonesia. From the cases, self-preferencing by platform can be recognized by several characteristics: First, manipulation of search orders and rankings; Second, exploitative use of third-party data.[12] The EU Competition Commission against Google case in 2017 addressed self-preferencing similarly. Google's search engine conducts self-preferencing towards its service (Google Shopping) over competitors offering similar services (such as Amazon and eBay). The search results of search engines can direct consumers to one of the provider companies after observing their preferences through algorithms.[12]

This case began in the EU in 2004 when Google entered the relevant market through a price comparison service called 'Froogle' with several competitors in the relevant market. The EU Competition Commission alleged that in 2008, Google had made significant changes to its business strategy and began manipulating search results, thereby lowering the rating or ranking of its competitors. Google was fined 2.42 million Euros for violating the provisions of Article 102 in the Treaty on the Functioning of the European Union (TFEU) on the prohibition of abuse of a dominant position. Google appealed the decision to the General Court of the EU, but in November 2021, the court upheld the previous decision. The second case is about Google's app market. Since 2011, Google has forced Android mobile device manufacturers to default to Google's browser application, Google Chrome. This has successfully brought Google into a dominant position in the relevant market.[22]

The third case is the company Apple, Inc. Several third-party developers of mobile applications, including Spotify, complained to the EU Commission for alleged violations committed by Apple in terms of implementing policies in its application, namely the Appstore, which is designed in such a way as to prioritize its applications. This happens when Apple asks third-party developers to use payment methods through Apple's apps.[12]

The most recent case and the primary reference to existing behaviour in Indonesia were handled by the Italian Competition Authority (AGCM) in November 2021, which imposed a fine on Amazon. This practice, in particular, is alleged to Amazon for abusing its dominant position to support the application of the Fulfillment by Amazon feature (Amazon's delivery or logistics service) to sellers. In this case, AGCM considers that Amazon's strategy harms third-party companies or parties that provide the same logistics services and puts them at a disadvantage because Amazon incentivizes sellers to use their features.[9]

Although Amazon gives 3P sellers the freedom to choose a third-party logistics service provider or Merchant Fulfillment Network (MFN) to manage the delivery of their goods, Amazon is considered to be indirectly coercive because it provides the advantage of getting limited facilities (Prime Label). Prime Label can increase sales for sellers who use Fulfillment by Amazon because they can automatically participate in Amazon's event promotions, such as Black Friday,

Cyber Monday, and Prime Day. The Prime Label program enhances the chances for sellers to be chosen as featured offers in search recommendation listings. This becomes very important for sellers because it can affect sales figures. Search recommendations clearly show one seller's offer for a selected product on Amazon and make up a large portion of all sales, while Amazon also provides free and fast shipping benefits to sellers.[9]

Based on the case conducted by Amazon and the actions taken by AGCM, this paper will next present the behaviour of platforms in Indonesia that leads to the abuse of dominant position in the form of self-preferencing by implementing a single delivery service. This is done by eliminating the option of choosing an expedition service and price to consumers by PT Nusantara Ekspres Kilat (SPX Xpress). SPX Express is a subsidiary of Shopee International Indonesia, which is engaged in specialized logistics services that serve product shipments from Shopee e-commerce.[23] Data taken directly from Shopee's website and its closest competitor, Tokopedia, shows differences in the selection of package delivery expeditions. From the data below, Shopee only provides two shipping categories that consumers can choose from: regular and economical. These two categories automatically prevent consumers from choosing third-party expedition services. Shopee automatically determines which expedition company will send consumer packages and tends to prioritize Shopee's expedition, SPX Xpress. In contrast to Tokopedia, which also provides two shipping categories, namely economy and saving, Tokopedia provides sub-categories in the form of expedition company preferences that consumers can choose from, for example, JNE, JNT, Wahana, and others.

Previously, consumers could choose different shipping providers from Shopee's platform. However, starting in 2021, Shopee slowly began implementing a policy restricting consumers from choosing third-party shipping providers or knowing different shipping prices.[19] Shopee also has an intensive program that is being carried out, namely expansion by opening new warehouses throughout Indonesia.[24] Looking further into the design of Shopee's single delivery service, we see that it has been vertically integrated since sellers were directed to choose Shopee's expedition service. This happens when Shopee has a particular program called Shopee Gratis Ongkir, which allows sellers to offer free shipping specifically for their buyers with terms and conditions that Shopee have determined. This program indirectly directs sellers to choose the program because other features or facilities can only be obtained if sellers agree to join the Shoppe Gratis Ongkir program. Some facilities obtained if participating in this program are tags or free shipping labels and search result filters on displayed products to increase consumer reach (exposure), attract buyers, and free shipping search filters on Shopee's platform.[25] From the sellers' side, this program is certainly not always beneficial or a win-win solution because Shopee indirectly forces sellers to join this program. At the same time, sellers are still subject to fees (service and administration), and there is even a provision that Shopee can change the terms and conditions without prior notice.[26] Moreover, this can be detrimental to both consumers and sellers because in addition to consumers not being able to choose and compare other expedition services, also if there are complaints or poor service, consumers are limited by the limitation of liability/exoneration clause applied by Shopee (Shopee is not responsible for products damage or complaints, but consumers are directed to contact the sellers directly). This should be the responsibility of SPX Xpress as the expedition and Shopee as the platform.[27]

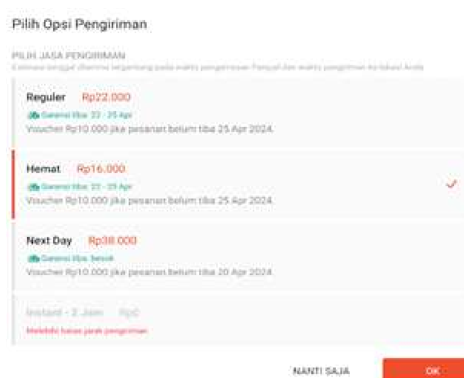

Figure 1. Shipping Providers from Shopee's Platform

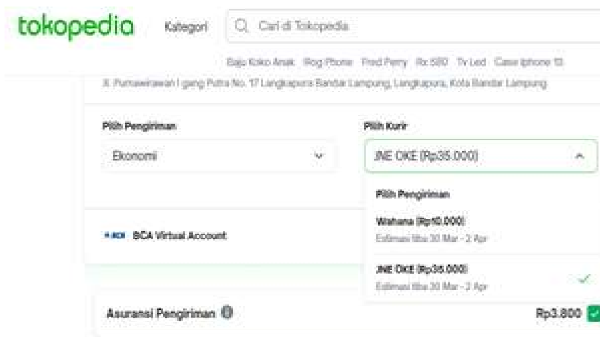

Figure 2. Shipping Providers from Tokopedia's Platform

In this regard, these market conditions make consumers think they will not be disadvantaged because they do not pay. After all, there are subsidized shipping costs close to zero or free shipping services. Interestingly, having low or no fees does not necessarily mean it is always good for consumers. As existing research has shown, this statement is false:[28] Firstly, there is nothing special about a free program or the like, as the company is thriving and dominant today. Secondly, such a platform is referred to as a 'two-sided' platform that sets lower prices on one side and higher prices on the other side (on the buyer's side, it may feel cheap and affordable, but on the seller's side, high tariffs or deductions are charged). Consumers are not paying in nominal money but will pay in reduced goods and or services quality, poor complaint handling, or even misuse of their data.

Furthermore, this paper will describe the behaviour of the platform TikTok. TikTok is a digital social media platform with 113 million users as of April 2023.[29] TikTok, a social media application, also provides a shopping feature, 'Tiktok Shop', which sellers can use to sell live-streaming products and check out products directly in the same application. Through this feature, sellers quickly increase their exposure as consumers recognize them as having great discounts and an affiliate business model.[30] The problem is that TikTok should not run social media business activities simultaneously with e-commerce. Absolutely, it will also create an unequal position in the relevant market besides not fulfilling the relevant licenses. Because TikTok efficiently utilizes algorithms and directs consumers (social media users) to buy certain products offered. TikTok was also previously known to sell products at low prices. Teten Masduki conveyed this to the Minister of Cooperatives and SMEs, who revealed that many sellers in TikTok Shop have reached millions of Followers. Some have even reached 2.8 million followers and are forced to sell products from China. If they refuse and still sell local products, they will experience shadow banning, which results in their products not appearing in the display and recommendations.[31]

The Government issued Regulation of the Minister of Trade (Permendag) Number 31 of 2023 on Business Licensing, Advertising, Guidance, and Supervision of Business Actors in E-Commerce to address this issue. This regulation stipulates that social media platforms such as TikTok can no longer run e-commerce and social media business activities simultaneously in one application. In addition, TikTok is not allowed to sell its products or imported products below a minimum price of US$100 to prevent predatory pricing.[32] Its regulations may temporarily secure the situation, as it only focuses on one form of monopolistic practice and is limited to one industry in the digital economy.

To formulate a comprehensive long-term solution, it is necessary to understand the core of the problem. Admittedly, digital platforms that carry new services and technologies can indeed, under certain conditions, provide consumers with more product choices with lower prices and better quality. We also have higher shopping convenience due to reduced search costs. Another point is that businesses benefit significantly as digital platforms provide a broad consumer reach. However, there is no guarantee that all these positive impacts will last forever, especially if business competition in the digital economy is unfair. Conversely, technological innovation and goods quality will decline while prices will soar if our digital economy is monopolized.[28] Based on previous research, there are certain characteristics in the market structure of digital platforms that tend to lead to a form of monopoly by one large company, namely:

1. Potent network effects;

2. Robust economies of scale and scope;
3. Minimal marginal costs close to zero;
4. Heightened and escalating returns from data utilization; and
5. Minimal distribution expenses facilitating global outreach.

Such market characteristics are prone to a form of 'tipping', which is when a relevant market reaches a point of tending towards one platform or player called 'winner-takes-all.' [28] New competitors are less likely to be able to enter the relevant market because it is difficult to cross the high entry barrier in a fast and cost-effective manner.[28] Such a platform's capabilities can be used to invest more and acquire existing and potential competitors. Platforms with hugely dominant positions have the opportunity to obstruct innovation competitors that can disrupt, and they are even able to control according to the innovation path or business plan that has been prepared in advance. For instance, it is also believed that this is why Facebook acquired Instagram and WhatsApp.[33]

The winner-takes-all dynamic is one of the central problems in the context of e-commerce. Digital platforms have various ways to monopolize the market. One is done by eliminating competitors through self-preferencing behaviour. In addition, platforms can also monopolize the market by binding sellers through exclusivity clauses, which prohibit sellers from selling their products on other platforms. Once competitors have been eliminated, consumers and sellers become dependent on the platform, and the dominant platform can charge a high 'service fee' for sellers and automatically increase the price of products or services for consumers.

b. Self-preferencing from a business innovation point of view

Digital platforms facilitate existing transactions between business users (sellers or third-party companies) and end users/consumers and enable new interactions without platforms. These interactions are related to the production of new types of data that further contribute to the innovation of the platform ecosystem.[34] In agreement with the article titled "*Digital Platforms Regulation: An Innovation-Centric View of The EU's Digital Marketing Act*," the practice of self-preferencing, if viewed from the perspective of DMA, will be connoted as a dangerous behaviour because the platform provider is considered to have a dual role.[34] From this perspective, self-preferencing can potentially lead to abuse of a dominant position when it leads to market dominance and prevents competitors from developing and giving birth to business innovation. For instance, Amazon's platform prioritizes its products (which are shipped directly by Amazon) with minimum quality over products sold by sellers on Amazon. This practice can have a negative impact on competition and consumer welfare. When analyzed from different perspectives of business and consumers, self-preferencing some circumstances may provide a direct benefit, e.g., if a vertically integrated product offering (such as Amazon direct delivery) can provide fast delivery, better packaging, or the product delivered matches what is offered online, consumers may prefer such an integrated service for convenience and quality.[21] These two conditions show that self-preferencing can have both positive and negative impacts, and to determine this, it is necessary to consider consumer interests, competition, and evolving market dynamics. Self-preferencing from the side of the platform provider or first party can have a negative or positive impact, depending on whether the practice replaces (replacement effect), maintains (sustaining effect), or generates new interactions (trigger effect).[34]

1. Replacement Effect: This condition is where the platform provider replaces the current commercial relationship between business users and end-users, which involves exploring alternative transactions between the platform provider and end-users. An instance of this occurs when e-commerce entities like Amazon offer alternative products to business users.[35]
2. Sustaining effect: The sustaining effect involves enhancing current interactions by amplifying benefits for end-users or reducing costs

for business users involved in transactions. This could occur, for instance, when the platform provider introduces supplementary 'ancillary services' such as payment processing, delivery options, communication tools, and other digital features that are optional additions to transactions. An example is Amazon Prime, where existing interactions are bolstered by reducing costs for "Prime" business users who utilize the Fulfillment by Amazon Service. Additionally, it heightens benefits for end-users, who may enjoy reduced transaction costs when dealing with Amazon Prime business users compared to those outside the program. Consequently, promoting offers from Amazon Prime business users in search rankings can spark positive innovation effects by amplifying the value of current interactions through these supplementary services. This, in turn, makes new combinations more cost-effective to produce (by lowering production costs and technological barriers to entry) or more valuable as they are consumed within a broader ecosystem (increasing returns on investments in innovation).[36]

3. Trigger Effect: Self-preferencing creates entirely new interactions. This happens when the platform provider invests in new market domains that provide new products and services and open new market categories. For example, in the case of social media (the integration of Facebook with Instagram into Meta).[37] Such cases can open up new interaction opportunities such as: a) Innovation Spillovers, i.e., the resulting business innovation attracts developers to be able to create similar applications or other innovations;[38] b) Attention Spillovers, i.e., the creation of a new trend that will attract the attention of users to be able to engage and experience the resulting innovation directly (for example Threads generated by Instagram to compete with Twitter).[37] The result of such integration is that consumers get added value from Instagram after its closer integration with Facebook, leading to drastically higher demand for Instagram.[37]

Self-preferencing As an Act Deemed to Violate Law Number 5 of 1999

This article will critically discuss how big data, algorithms, and artificial intelligence can change market dynamics and provide challenges to competition authorities, business actors, and consumers. The competition procedural law used by the Indonesia Competition Commission (ICC) has undergone several improvements in response to the increase and complexity of cases.[39] However, until now, the renewal of competition law has not been able to fully touch the development of technology, including artificial intelligence and digital markets. Digital market or digital trade can be understood as a business process carried out through web pages or applications, starting from buying, selling, paying, product information, and internet services.[40] The digital market has a business structure that is different from that of conventional markets. Namely, the digital market can bring together two or more groups in one digital platform, which occurs not only in competition between platform users but also in the digital platform provider itself.[2] The ongoing debate on the enforcement and policy of competition law in the digital market raises a fundamental question that needs to be answered: whether current laws or regulations are sufficient to handle competition cases involving technology giant companies, including digital platforms in the e-commerce sector.[8]

To answer this question, it is necessary to conduct a comprehensive analysis and study of the substance of the existing arrangements and how the competition authority enforces the law related to violations in the digital market. The practice of self-preferencing that occurs in the digital market is not explicitly regulated in Law Number 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Competition (Law Number 5 of 1999) and ICC Regulation Number 2 of 2023 on Procedures for Handling Cases of Monopolistic Practices and Unfair Business Competition (PerKPPU Number 2 of 2023). From a normative perspective, self-preferencing is part of the behaviour of abuse of dominant position, then referring to the provisions of Law Number 5 of 1999 stipulated in Article 25:

(1) Business actors shall be prohibited from using dominant position either directly or indirectly to:
- *a. determine the conditions of trading with the aim of preventing and or impeding consumers from obtaining competitive goods and or services, both in terms of price as well as quality; or*
- *b. restrain the market and technology*

development; or

c. *hamper other potential business actors from entering the relevant market.*

(2) *Business actors shall have a dominant position as intended in paragraph (1) in the following events:*

a. *one business actor or a group of business actors controls more than 50% (fifty percent) of the market share of a certain type of goods or services; or*

b. *two or three business actors or a group of business actors control more than 75% (seventy-five percent) of the market share of a certain type of goods or services.*

ICC has handled several cases, especially in this context, involving business actors in the digital sector. ICC uses a dominant position analysis of the reported parties using Article 25 of Law Number 5 of 1999. In every case handled by ICC, the main concern is the dominant position of a business actor in the relevant market. The dominant position allows a company to carry out actions or strategies business without being influenced by its competitors.[41] For example, in case Number 13/KPPU-I/2019, ICC used a dominant position analysis on the 1st Respondent PT Solusi Transportasi Indonesia (Grab) and PT Teknologi Pengangkutan Indonesia.[31] Furthermore, Case Number 08/KPPU-I/2020 ICC assessed the dominant position of the Reported Parties, PT Telekomunikasi Indonesia and PT Telekomunikasi Seluler, which allegedly discriminated against Netflix.

Self-preferencing is commonly practised in digital markets due to the presence of witnesses or evidence.[11] Because the behaviour differs from conventional practices, it needs to be supported by regulations that adjust these developments. The starting point to enhance competition law enforcement in the digital market is that Indonesia needs to catch up in the supervision and enforcement of competition law in the digital economy sector and at least prepare mitigation measures to anticipate monopolistic practices in the digital economy sector. This aligns with Indonesia's position, which technology giant companies dominate.[42] Adequate regulations do not match the rapid development of business actors and existing technology, and changing policies are an obstacle faced. Moreover, in the context of the digital economy, Law Number 5 of 1999 and PerKPPU Number 2 of 2023 have limitations and scope of anti-competitive practices in the digital market that are different from conventional business models.[2] The complexity of business competition in the digital economy sector directly forces the government and competition authorities to respond to this change because the complexity of competition in the digital sector is very different from what has happened traditionally.[43]

In the previous discussion, this article discussed specific regulations passed by the EU authorities as comparison material on the importance of digital market laws in a country. In order to build the proper rules, plans, and strategies to face the digital market era, policymakers and the ICC should be able to look at the laws and regulations of countries that already have regulations related to digital markets. If referring to several cases that have been handled, the following are some practices and policies that can be categorized as prohibitions of self-preferencing. Certain anti-competitive practices by platforms often stop due to public or regulatory scrutiny.[22] Before causing more harm or examining these practices on a case-by-case basis, below are some examples of regulatory schemes that can be referenced based on what has been addressed in the EU and the US.[1]

1. Manipulated search results

   Search platforms competing with the 3Ps are prohibited from overriding the search engine results by abusing the algorithm to place their products at the top. If the platform wants to position its product at the top, it must provide a tag or label in the search results with the following description: 'sponsored' or 'advertised content.'

2. Non-compete and Copycat Policies

   As we know, Copycat is a term used to describe someone or something that intentionally imitates another person or another person's work. Digital social media platforms, such as Threads (Meta group), have been seriously accused by Twitter. Meta's recently launched Threads app is considered an infringement for using Twitter's trade secrets and intellectual property. According to Twitter, many former workers still have access to Twitter's trade secrets and other confidential information. Twitter alleges that Meta took advantage of this and assigned these employees to develop copycat applications violating US and federal laws. These non-compete and Copycat Policies could stop innovation for new or existing potential competitors to benefit consumers.[44]

   Furthermore, in Article 3 (2) of the DMA, a company providing a platform is categorized as a gatekeeper. It must comply with stricter regulations when it meets the criteria of 45 million monthly active users and a market value of 75 billion Euros. As

of September 6, 2023, the EU Commission has, for the first time, designated six companies as gatekeepers and under DMA supervision, including Alphabet, Amazon, Apple, ByteDance, Meta, and Microsoft, which covers the scope of the platform provided by each gatekeeper namely social network, intermediation, ads, N-IICS, video sharing, browser, operating system, and search.[45] After being categorized as a gatekeeper, the platform will be closely monitored and must comply with DMA rules, including the prohibition of practising self-preferencing.[17] Although some existing studies have criticized how bias may arise regarding the setting of self-preferencing in DMA, it can still be corrected by economic analysis to determine the extent to which self-preferencing harms consumers.[6] It is a central question when consumers feel that the self-preferencing practices of platform providers are superior to those of third parties for goods and or services offered.[17] To evaluate whether a specific offer from a gatekeeper falls under Article 6 (5), the following specific questions may help:[17] 1) Does the offer have a specific platform it is directed towards, like an app? 2) Are other providers offering similar services independently (either currently or historically, or possibly in the future)? To determine if an alternative offer is similar, evaluating whether its user experience can be comparable to that of alternative offerings is essential. Therefore, Indonesia can take the concept or substance of the existing arrangements in the DMA and how competition authorities and relevant policymakers address the shortcomings, which can be applied in specific regulations in Indonesia to regulate anti-competitive behaviour in the digital market.

CONCLUSION

Based on the results of the research and discussion, several conclusions can be given regarding the practice and characteristics of self-preferencing that occurs in the digital market and the regulation of self-preferencing as an act that is considered to violate Law Number 5 of 1999 as follows:

a. The relevant competition authorities have prosecuted the practices and characteristics of self-preferencing that occur in several countries concerning self-preferencing behaviour, which is a symbol of anti-competition in the digital market and shows certain similarities in behaviour and patterns. In Indonesia, platform e-commerce shows the existence of self-preferencing behaviour, similar to that in Italy, namely that carried out by the Amazon platform by abusing its dominant position to prioritize its logistics delivery services. Self-preferencing impacts consumers through loss of choice of substitute products or services and price increases. This is influenced and depends on the behaviour and conditions of market concentration, so the competition authority needs to analyze casuistically and be carried out economically.
b. The regulation of self-preferencing based on Law Number 5 of 1999 has not explicitly regulated the form of violations in the digital market, thus limiting the movement of competition authorities to take action. This differs from some countries with particular regulations regarding business competition in the digital market, such as the DMA, which has been implemented in the EU. Indonesia should be able to make case-by-case cases handled by other countries as a reference to form special regulations, considering that technological developments are increasingly developing and it is urgent to reform the competition law to respond to existing developments.

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Kinerja Transportasi *Online* pada Saat dan Setelah Pandemi Covid-19: Kajian pada GoCar dan Blue Bird

Reza Galih Renaldi[1]
reza18008@mail.unpad.ac.id
Maman Setiawan[2]
maman.setiawan@unpad.ac.id
Berliana Anggun Septiani[3]
berliana21001@unpad.ac.id

Fakultas Ekonomi dan Bisnis Universitas Padjadjaran[1,2,3]

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ABSTRACT

This study examines the performance of car-hailing services and the behavior of driver partners in the post-Covid-19 pandemic period in the Jabodetabek region. This study also compares it with the performance during the Covid-19 pandemic. This research uses a field survey method with face-to-face interviews to collect data, which is then analyzed using descriptive statistics. A non-variance stratification sampling method was employed to determine the minimum sample size of GoCar drivers and Blue Bird partners. This research uses 339 samples for GoCar drivers and 65 for Blue Bird partners. Additionally, Analysis of Variance (ANOVA) is used for verificatory analysis. This study finds a significant increase in the frequency of orders and daily income of GoCar partners in the period after the Covid-19 pandemic compared to the pandemic period. This research also finds that there was an increase in passengers received by Blue Bird during the post-pandemic period, both through street hailing and GoBlue Bird.

Keywords: *Online Transportation Performance, Covid-19 Pandemic, Post-Covid-19.*

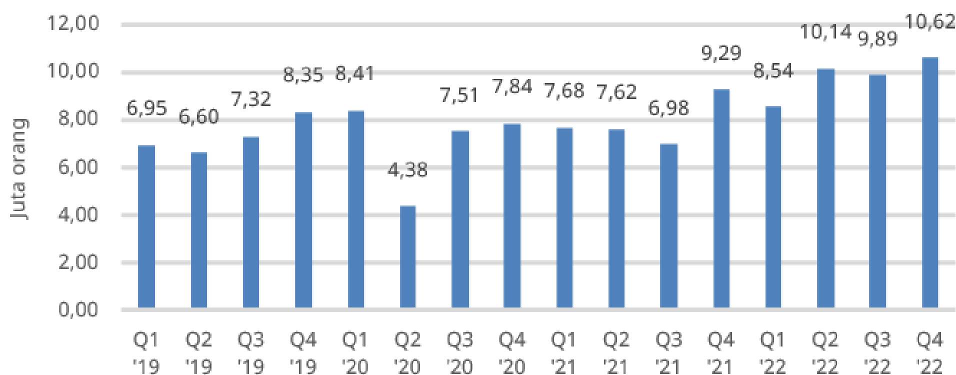
ABSTRAK

Penelitian ini mengkaji kinerja transportasi daring roda empat dan perilaku para mitra driver pada masa setelah pandemi Covid-19 di wilayah Jabodetabek. Kajian ini juga membandingkan dengan kinerja pada saat pandemi Covid-19. Kajian ini menggunakan pendekatan survei lapangan dengan metode wawancara tatap muka (*face to face interview*) untuk mendapatkan data yang kemudian dilakukan analisis statistik deskriptif. Metode *sampling* yang digunakan adalah stratifikasi non varians untuk mendapatkan jumlah sampel minimum responden driver GoCar dan mitra (Blue Bird). Jumlah sampel yang digunakan dalam studi ini adalah 339 untuk responden driver GoCar dan 65 untuk responden mitra Blue Bird. Penelitian ini juga menggunakan Metode analysis of variance (ANOVA) untuk analisis verifikatif. Penelitian ini menemukan bahwa terdapat peningkatan secara signifikan pada frekuensi *order* dan pendapatan harian mitra GoCar pada periode setelah pandemi Covid-19 dibandingkan saat periode pandemi. Penelitian ini juga menemukan bahwa terdapat peningkatan kembali penumpang yang diterima Blue Bird di masa setelah pandemi, baik melalui *street hailing* maupun GoBlue Bird.

Kata Kunci: Kinerja Transportasi *Online*, Pandemi Covid-19, Setelah Pandemi Covid-19.

PENDAHULUAN

Transportasi daring atau berbasis aplikasi merupakan salah satu inovasi terkemuka di sektor transportasi yang menjadi pilihan utama bagi konsumen atau pengguna dalam memilih moda transportasi. Transportasi daring memberikan kemudahan akses, kenyamanan, keamanan, dan ketepatan waktu yang dapat menarik minat penggunanya. Kinerja transportasi daring di Indonesia terus berkembang dengan pesat. Berdasarkan Statista tahun 2023, aplikasi transportasi daring yang diunduh di Indonesia terus meningkat, hal ini ditunjukkan pada Gambar 1. Gambar tersebut menunjukkan bahwa pada tahun 2019 kuartal 1, aplikasi transportasi daring diunduh oleh 6,95 juta orang dan jumlahnya terus meningkat hingga mencapai 10,62 juta orang pada tahun 2022 kuartal 4.[1]



Gambar 1. Jumlah Aplikasi Transportasi Daring yang Diunduh (Juta)

Sumber: Statista, 2023

Berdasarkan Peraturan Menteri Perhubungan No. 118 Tahun 2018, transportasi daring disebut sebagai angkutan sewa khusus. Hingga saat ini, persaingan usaha pada transportasi daring di wilayah Asia Tenggara cukup tinggi, yang juga mengakibatkan salah satu penyedia transportasi daring yang telah lebih dahulu beroperasi di beberapa negara yaitu Uber, memutuskan untuk keluar dari pasar Asia Tenggara, termasuk di Indonesia sejak tahun 2018. Persaingan diantara layanan transportasi daring juga ditandai dengan tren "*investment racing*" di antara penyedia layanan tersebut, yang mengakibatkan setiap penyedia harus terus mencari pasokan dana untuk meningkatkan nilai perusahaannya. Meskipun demikian, penelitian yang dilakukan KPPU mengklasifikasikan industri transportasi daring sebagai struktur oligopoli ketat. Berbagai data tersebut menunjukkan bahwa terdapat kondisi *contestable market* dalam pasar transportasi daring yang menyebabkan adanya persaingan yang tinggi dalam struktur pasar yang terkonsentrasi tersebut. [2]

Pada tahun 2020, permintaan moda transportasi menurun secara signifikan dikarenakan adanya pandemi Covid-19. Selama tahun 2020, kondisi permintaan untuk moda transportasi sebenarnya masih relatif turun, namun jika dibandingkan dengan pada saat pandemi dalam definisi waktu pandemi Covid-19 yang panjang setelah tahun 2020, permintaan dari berbagai moda transportasi mengalami peningkatan, termasuk pada moda transportasi daring.

Setelah beberapa tahun berjalan dan pada tanggal 21 Juni 2023 Pemerintah resmi mengumumkan perubahan pandemi Covid-19 menjadi endemi, secara bertahap mobilisasi masyarakat kembali menjadi normal.

Selain terjadi peningkatan permintaan pada moda transportasi daring, nilai pendapatan transportasi daring setelah pandemik Covid-19 juga terus mengalami peningkatan dan diproyeksi akan terus meningkat setiap tahunnya hingga mencapai 11,53 miliar dollar Amerika Serikat pada tahun 2027 [1].

Persaingan di industri transportasi cukup ketat, meskipun kuantitas pelaku usahanya tidak terlalu banyak. Hal ini dikarenakan informasi yang diterima konsumen cukup sempurna. Dalam konsep persaingan, terdapat dua bentuk jenis persaingan. Pertama, persaingan antar penyedia layanan transportasi daring termasuk persaingan antar mitra *driver* antar penyedia (*between*). Kedua, persaingan antar mitra *driver* transportasi daring dalam satu penyedia layanan transportasi daring yang sama (*within*).

Terkait dengan hal tersebut, penelitian tentang perilaku pelaku usaha dan persaingannya di antara mitra *driver* penyedia transportasi daring cukup relevan. Berdasarkan KPPU, pangsa pasar transportasi daring didominasi oleh Gojek, Grab, Uber dan Blue Bird. Di mana berdasarkan transaksi, pangsa pasar terbesarnya

didominasi oleh Gojek dan Grab. Data tersebut juga terkonfirmasi berdasarkan data yang dipublikasikan oleh Statista, di mana Gojek, Grab, Maxim, InDriver dan My Blue Bird memiliki pangsa pasar terbesar dan sebagai perusahaan Ride Hailing dengan jumlah unduhan terbanyak di tahun 2022 yaitu sebanyak 18,99 juta orang, 13,58 juta orang, 11,94 juta orang, 4,03 juta orang, dan 0,72 juta orang mengunduh aplikasi tersebut, secara berurutan [2].

Oleh karena itu, perilaku mitra *driver* dan pengguna Gojek dapat merepresentasikan bagaimana respon dari mitra *driver* dan pengguna transportasi daring terhadap berbagai kebijakan internal dan eksternal perusahaan yang ada dalam transportasi berbasis aplikasi.

Lebih lanjut, meskipun penelitian yang mengkaji pengaruh pandemi Covid-19 terhadap layanan transportasi di Indonesia pernah dilakukan, namun penelitian-penelitian tersebut tidak mengkaji secara spesifik terkait dengan kinerja transportasi daring dan juga tidak membandingkanya antara pada masa dan setelah pandemi Covid-19.

Misalnya, penelitian lain hanya meneliti pendapatan pengemudi taksi *online* pada masa pandemi Covid-19 di DKI Jakarta [3]. Penelitian lainnya juga hanya meneliti bagaimana strategi bertahan sebagai pengemudi ojek *online* setelah pandemi Covid-19 di Kecamatan Medan Selayang, Kota Medan, dan Sumatera Utara [4]. Kemudian, penelitian dari Hamrullah hanya meneliti pendapatan pengemudi angkutan antara wilayah Sinjai-Makassar pada masa pandemi Covid-19 [5].

Lebih jauh, penelitian terkait dampak pandemi terhadap dinamika pasar di industri transportasi, terutama yang berbasis aplikasi juga masih belum banyak dilakukan. Penelitian tentang kinerja transportasi daring roda empat sebenarnya pernah dilakukan pada tahun 2020, namun kajian tersebut hanya membandingkan kinerja transportasi daring roda empat antara saat terjadi pandemi Covid-19 dengan sebelum terjadi pandemi Covid-19. Oleh karena itu, diperlukan penelitian yang mengkaji bagaimana kondisi permintaan terhadap transportasi di masa setelah pandemi berakhir untuk melengkapi penelitian sebelumnya yang mengkaji dampak pandemi terhadap pasar transportasi di saat pandemi. Hal ini penting untuk mengetahui perubahan perilaku konsumen akibat guncangan eksternal seperti pandemi yang berpengaruh terhadap dinamika persaingan usaha di pasar transportasi.

Berdasarkan latar belakang yang telah disampaikan dan perlunya melihat kembali kinerja transportasi daring setelah masa pandemi Covid-19, sebagai bagian dari peta jalan (*roadmap*) kajian, penelitian ini bertujuan untuk melihat kondisi atau perkembangan kinerja transportasi daring roda empat dan perilaku/ persaingan usaha didalamnya setelah pandemi Covid-19. Kajian ini juga membandingkan dengan kinerja pada saat pandemi Covid-19. Kemudian, penelitian ini hanya mengambil studi kasus GoCar dan mitranya sebagai penyedia transportasi dengan pangsa pasar terbesar di Indonesia.

Untuk menjawab rumusan masalah tersebut, penelitian ini menggunakan metode deskriptif dan verifikatif. Dalam kajian ini yang menjadi unit analisis ialah mitra *driver* transportasi daring GoCar termasuk mitra GoCar lainnya yaitu Blue Bird di daerah Jabodetabek. Unit analisis atau sampel yang digunakan ialah daerah Jabodetabek karena jumlah mitra *driver* paling besar berada di daerah tersebut. Metode pengumpulan data dilakukan melalui survey lapangan dengan metode wawancara tatap muka (*face to face interview*) pada tahun 2023.

Penentuan jumlah sampel minimum untuk GoCar dan Blue Bird menggunakan Metode stratifikasi non varians. Metode ini digunakan karena dalam penelitian ini informasi terkait jumlah populasi mitra *driver* GoCar dan Blue Bird sudah diketahui sebelumnya. Cakupan wilayah mitra *driver* GoCar dan Blue Bird yang digunakan dalam perhitungan penelitian ini adalah para mitra *driver* GoCar yang memberikan pelayanan di daerah Jabodetabek. Total mitra driver GoCar yang memberikan pelayanan di daerah Jabodetabek berjumlah 140,000 – 180,000 mitra[1]. Sedangkan untuk *diver* Blue Bird yang beroperasi di wilayah jabodetabek adalah sebanyak 20,000 – 26,000 *driver*[2]. Formula yang digunakan adalah sebagai berikut:

$$n = \frac{\sum_{i=1}^{L} \frac{N_i^2 \pi_i (1-\pi_i)}{w_i}}{\left(\frac{\delta}{Z_{(1-\alpha/2)}}\right)^2 N^2 + \sum_{i=1}^{L} N_i \pi_i (1-\pi_i)}$$

Di mana n merupakan jumlah sample, N adalah total populasi, w_i diperoleh dari formula $\frac{n_i}{n}$, δ adalah bound of error, dan nilai $\pi_i (1 - \pi_i)$ adalah 0.25.

Dengan formula diatas maka dihasilkan minimal sampel untuk mewakili populasi GoCar dan Blue Bird adalah sebesar 384 sample. Kemudian, untuk mengetahui detail sampel

[1] Jumlah populasi untuk sampel menggunakan titik tengah rentang populasi.

[2] Jumlah populasi untuk sampel menggunakan titik tengah rentang populasi.

dari *driver* GoCar dan *driver* Blue bird dapat menggunakan formula:

$$n_i = n \times w_i$$

Berdasarkan formulasi diatas maka didapatkan detail sampel minimal untuk setiap kategori. Di mana minimal sampel untuk *driver* GoCar yaitu 335 dan *driver* Blue Bird yaitu 48, maka total sampel ialah 383. Dari jumlah sampel minimal tersebut, dalam pelaksanaan survey jumlah sampel ditetapkan yaitu sebanyak 339 untuk kategori driver GoCar, dan 65 *driver* Blue Bird, maka total sampel pelaksanaan survey ialah sebanyak 404. Kemudian, terkait dengan distribusi sampel pada wilayah Jabodetabek, perhitungan distribusi sampel dilakukan dengan mempertimbangkan proporsi populasi satu wilayah terhadap total populasi yang digunakan sebagai bobot. Dengan demikian, jumlah sampel untuk setiap wilayah adalah total sampel dari setiap kategori dikalikan dengan bobot proporsi.

Terkait dengan metode analisis, studi ini menggunakan pendekatan deskriptif dengan melihat frekuensi data dari hasil jawaban responden, kemudian melakukan analisis dari perubahan distribusi frekuensi tersebut. Untuk analisis verifikatif, kajian ini menggunakan Metode *Analysis of Variance* (ANOVA). Uji ANOVA digunakan untuk memudahkan analisa dalam kelompok sampel yang berbeda, yaitu memudahkan analisa terkait perbedaan kinerja antara sebelum dan setelah pandemi Covid-19. Dalam hal lain, uji ANOVA digunakan untuk melihat signifikansi perbedaan kinerja antara sebelum dan setelah pandemi Covid-19, serta digunakan untuk melakukan verifikasi apakah secara statistik kenaikan atau penurunan kinerja pada periode saat-setelah pandemi signifikan atau tidak[3].

PEMBAHASAN

Bagian ini akan membahas perilaku dan kinerja mitra umum GoCar dan mitra taksi GoBlue Bird sebagai penyedia transportasi daring roda empat dengan pangsa pasar terbesar di Indonesia pada masa setelah pandemi Covid-19, serta membandingkannya dengan pada masa pandemi Covid-19.

Frekuensi *Order* dan Pendapatan Driver GoCar Setelah Pandemi Covid-19

Pandemi Covid-19 telah memberikan dampak yang besar terhadap sektor transportasi, termasuk para pengemudinya. Pandemi Covid-19 memicu beberapa dampak, seperti risiko tertular virus saat bekerja dan terdapat perubahan permintaan terhadap layanan transportasi. Hal ini juga dikonfirmasi oleh Mitra GoCar, bahwa secara umum terjadi penurunan jumlah penumpang pada saat pandemi Covid-19.

Namun demikian, setelah beberapa tahun berjalan, dan kemudian Pemerintah resmi mengumumkan perubahan pandemi Covid-19 menjadi endemi, secara bertahap mobilisasi masyarakat kembali menjadi normal. Pemulihan aktivitas tersebut juga dirasakan oleh mitra GoCar, di mana jumlah *order* yang diterima mitra GoCar meningkat setelah pandemi dibanding saat pandemi, yang ditampilkan pada Tabel 1.

Tabel 1. Frekuensi *Order* Harian Mitra GoCar Saat dan Setelah Pandemi

Interval (*Order* Harian)	Saat Pandemi		Setelah Pandemi		%Setelah-%Saat
	Frekuensi	Persentase	Frekuensi	Persentase	
0 – 5	173	51,03%	28	8,26%	-42,77%
6 – 10	97	28,61%	126	37,17%	6,55%
11 – 15	40	11,80%	118	34,81%	23,01%
16 – 20	19	5,60%	50	14,75%	9,14%
21 – 25	5	1,47%	12	3,54%	2,06%
> 25	5	1,47%	5	1,47%	0,00%
Total	**339**	100%	339	100%	

Sumber: perhitungan penulis

3 Untuk mengetahui bahwa terdapat perbedaan yang signifikan pada kinerja antara saat dan setelah pandemi, yaitu dengan membandingkan nilai F-statistik dan F-Table. Jika F-statistik lebih besar dari F-table (atau p-value dari F-statistik lebih kecil dari dari nilai kritis (α)) maka terdapat perbedaan signifikan antara sebelum dengan masa pandemik Covid-19. Kelebihan dari uji Anova dibandingkan dengan uji beda lainnya seperti uji-t yaitu uji Anova dapat digunakan pada kondisi di mana terdapat lebih dari dua kelompok berbeda.

Tabel 1 menujukkan bahwa peningkatan frekuensi *order* harian *driver* GoCar terjadi pada berbagai rentang interval frekuensi permintaan/ *order* layanan, kecuali pada *order* dengan rentang interval 0-5 kali *order* dan >25 kali *order* untuk setiap harinya. Di mana tidak terdapat perubahan jumlah responden yang mendapatkan *order* sebanyak > 25 kali per hari. Sementara itu, frekuensi mitra GoCar yang menjawab menerima 0-5 *order* per hari turun drastis, yakni dari 51,03 % saat pandemi menjadi 8,26% setelah pandemi. Sedangkan peningkatan terbesar yaitu pada *order* dengan rentang interval 11-15 kali, di mana terjadi peningkatan sebesar 23,01% antara periode sebelum dan setelah pandemi Covid-19. Dengan rincian, pada periode setelah pandemi, terdapat 34.81% responden, dibandingkan pada saat periode pandemi yang hanya 11,80% responden yang mendapatkan *order* pada rentang tersebut. Kemudian, peningkatan tersebut diikuti oleh frekuensi *order* pada rentang interval 16-20, 6-10 dan 21-25 kali per hari yaitu dengan persentase peningkatan sebesar 9,14%, 6,55%, dan 2,06%, secara berurutan.

Untuk melihat signifikansi perbedaan kinerja *driver* Gocar pada saat dan setelah pandemi Covid-19 ditunjukkan pada hasil uji ANOVA yang disajikan pada Tabel 2. Tabel tersebut menunjukkan bahwa nilai probabilitas dari F-statistik < nilai kritis (α=5%). Hasilnya menunjukkan bahwa terdapat perbedaan yang signifikan antara kinerja driver GoCar pada saat dan setelah pandemi. Hasil tersebut juga mengkonfirmasi bahwa terdapat peningkatan yang signifikan dalam frekuensi *order* antara periode saat dan setelah pandemi.

Tabel 2. Uji ANOVA Frekuensi *Order* Mitra GoCar Antara Saat dan Setelah Masa Pandemi Covid-19

Analysis of variance					
Source	SS	df	MS	F	Prob > F
Between groups	1472.9250	27	54.5528	2.24	0.0006
Within groups	7566.3317	311	24.3290		
Total	9039.2566	338	26.74336		

Bartlett's equal-variances test: chi2(19) = 28.6032 Prob>chi2= 0.072

Sumber: perhitungan penulis

Lebih lanjut, peningkatan frekuensi *order* harian *driver* GoCar, juga diiringi dengan peningkatan pendapatan *order* harian driver GoCar pada berbagai rentang interval pendapatan *order*, kecuali rentang Rp0 - Rp100.000; Rp101.000 – Rp200.000 dan Rp801.000 – Rp900.000 per hari.

Pada rentang pendapatan *order* Rp0 - Rp100.000, terjadi penurunan pendapatan *order* pada periode setelah pandemi dibandingkan pada saat pandemi. Secara lebih detil, pada saat pandemi, sebanyak 47,20% responden hanya mendapatkan pendapatan *order* Rp0 - Rp100.000 per hari. Namun pada periode setelah pandemi, jumlah tersebut hanya tersisa menjadi 3,24% responden. Lebih jauh, peningkatan terbesar yaitu pada rentang Rp201.000 – Rp300.000 di mana meningkat 17,11%, dari 12,68% responden mendapatkan pendapatan *order* pada rentang tersebut pada saat periode pandemi, menjadi 12,68% pada periode setelah pandemi. Kemudian, diikuti dengan peningkatan pendapatan *order* pada rentang Rp401.000 – 500.000; Rp301.000 – 400.000 dan Rp501.000 – 600.000 per hari. Bahkan, ada responden yang mendapatkan pendapatan *order* sebanyak dalam rentang Rp901.000 – 1.000.000 per hari.

Lebih lanjut, berdasarkan uji ANOVA yang ditampilkan pada Tabel 3, dapat terlihat bahwa terdapat perbedaan yang signifikan antara pendapatan *order* pada saat dan setelah pandemi. Hasil tersebut mengkonfirmasi bahwa terdapat peningkatan yang signifikan dalam pendapatan *order* per hari.

Tabel 3. Pendapatan Harian Mitra GoCar Saat dan Setelah Pandemi Covid-19

```
                        Analysis of variance
    Source              SS         df       MS            F     Prob > F
------------------------------------------------------------------------
Between groups      1.5428e+12     40   3.8570e+10      1.82     0.0028
 Within groups      6.3132e+12    298   2.1185e+10
------------------------------------------------------------------------

    Total           7.8560e+12    338   2.3243e+10

Bartlett's equal-variances test: chi2(20) =  51.5402    Prob>chi2 = 0.000
```

Sumber: perhitungan penulis

Frekuensi *Order* dan Pendapatan *Order* Mitra Blue Bird Setelah Pandemi Covid-19 Melalui *Street hailing*

Tabel 4. Frekuensi *Order* Mitra Blue Bird Setelah Pandemi Covid-19 Melalui *Street hailing* di Wilayah Jabodetabek, Wilayah Jakarta, dan wilayah Bogor, Depok, Tangerang, dan Bekasi

Interval (*Order* Harian)	Wilayah Jabodetabek		Wilayah Jakarta		Wilayah Bogor, Depok, Tangerang, Bekasi	
	Frekuensi	Persentase	Frekuensi	Persentase	Frekuensi	Persentase
0-5	38	58,46	11	47,83	27	64,29
6-10	20	30,77	6	26,09	14	33,33
11-15	7	10,77	6	26,09	1	2,38
16-20	0	0,00	0	0,00	0	0,00
Total	65	100,00	23	100,00	42	100,00

Sumber: perhitungan penulis

Berdasarkan Tabel 4, frekuensi *order* mitra Blue Bird setelah pandemi Covid-19 melalui *street hailing* di wilayah Jabodetabek; Jakarta; Bogor, Depok, Tangerang, dan Bekasi didominasi oleh frekuensi *order* dalam interval 0 – 5 kali per hari. Di mana terdapat 58,46% responden di wilayah Jabodetabek; 47,83% responden untuk wilayah Jakarta; dan 64,29% responden untuk wilayah Bogor, Depok, Tangerang dan Bekasi mendapatkan *order* dalam interval 0 – 5 kali per hari, yaitu persentase tertinggi dibandingkan dengan interval yang lain. Sementara, tidak terdapat satupun responden yang mendapatkan frekuensi *order* dalam interval 16 – 20 kali per hari di seluruh wilayah tersebut. Dari hasil tersebut juga diketahui bahwa secara umum frekuensi *order* setelah pandemi meningkat sebanyak 4, 5, dan 3 kali di wilayah Jabodetabek; Jakarta; Bogor, Depok, Tangerang, dan Bekasi, secara berurutan.

Lebih lanjut, terkait dengan pendapatan *order* mitra Blue Bird setelah pandemi Covid-19 melalui *street hailing*, sebagian besar responden di wilayah Jabodetabek (67,69%); Bogor, Depok, Tangerang dan Bekasi (73,81%), mendapatkan pendapatan dalam interval Rp0 – 300.000 per hari. Sedangkan, di wilayah Jakarta, sebagian besar responden (34,78%) mendapatkan pendapatan dalam interval lebih dari Rp500.000 per hari. Dari hasil penelitian ini, diketahui bahwa secara umum pendapatan *order* setelah pandemi di seluruh wilayah tersebut meningkat, yaitu dengan peningkatan sebesar Rp196.769 per hari di wilayah Jabodetabek; Rp252.174 per hari di wilayah Jakarta; dan meningkat sebesar Rp162.857 per hari di wilayah Bogor, Depok, Tangerang dan Bekasi.

1.2.2 Frekuensi *Order* Mitra Blue Bird Setelah Pandemi Covid-19 Melalui GoBlue Bird

Tabel 5. Frekuensi *Order* Mitra Blue Bird Setelah Pandemi Covid-19 Melalui GoBlue Bird Wilayah Jabodetabek, Wilayah Jakarta, dan wilayah Bogor, Depok, Tangerang, dan Bekasi

Interval (*Order* Harian)	Wilayah Jabodetabek		Wilayah Jakarta		Wilayah Bogor, Depok, Tangerang, Bekasi	
	Frekuensi	Persentase	Frekuensi	Persentase	Frekuensi	Persentase
0-5	35	53,85	8	34,78	27	64,29
6-10	18	27,69	10	43,48	8	19,05
11-15	12	18,46	5	21,74	7	16,67
16-20	0	0,00	0	0,00	0	0,00
Total	65	100,00	23	100,00	42	100,00

Sumber: perhitungan penulis

Frekuensi *order* melalui GoBlueBird di Jabodetabek dan wilayah Bogor, Depok, Tangerang dan Bekasi, didominasi oleh frekuensi *order* dengan interval 0 – 5 kali per hari, yaitu dengan persentase sebesar 53,85% di Jabodetabek dan 64,29% di wilayah Bogor, Depok, Tangerang dan Bekasi. Sedangkan untuk wilayah Jakarta, frekuensi *order* melalui GoBlue Bird, didominasi (43,48%) oleh frekuensi *order* dalam interval 6 – 10 kali per hari. Sementara di Seluruh wilayah tersebut, tidak ada (0,00%) responden yang mendapatkan *order* dalam interval 16-20.

Dari hasil tersebut juga diketahui bahwa secara umum frekuensi *order* setelah pandemi meningkat sebanyak 3 kali di Jabodetabek dan di wilayah Bogor, Depok, Tangerang dan Bekasi. Sedangkan di wilayah Jakarta, secara umum frekuensi *order* setelah pandemi meningkat sebanyak 4 kali. Kemudian, di wilayah Jabodetabek; Jakarta; dan di wilayah Bogor, Depok, Tangerang dan Bekasi, sebagian besar responden mendapatkan pendapatan dalam interval Rp0 – 300,000 per hari yaitu dengan persentase 56,91%, 52,17% dan 59,52%, secara berurutan.

Meski demikian, terdapat responden yang mendapatkan pendapatan lebih dari Rp500.000 di berbagai wilayah tersebut, yaitu dengan persentase 33,85% di wilayah Jabodetabek, 30,43% di wilayah Jakarta, dan 35,71% di wilayah Bogor, Depok, Tangerang dan Bekasi. Dari hasil tersebut juga diketahui bahwa secara umum pendapatan *order* setelah pandemi meningkat sebesar Rp219.077; Rp245.652; dan Rp204.524 per hari di seluruh wilayah tersebut, secara berurutan.

Frekuensi *Order* Mitra Blue Bird Setelah Pandemi Covid-19 Melalui *Street hailing* dan GoBlue Bird (Total *Order*)

Tabel 6. Frekuensi *Order* Mitra Blue Bird Setelah Pandemi Covid-19 Melalui *Street hailing* dan GoBlue Bird (Total *Order*) Wilayah Jabodetabek, Jakarta, Bogor, Depok, Tangerang, dan Bekasi

Interval (*Order* Harian)	Wilayah Jabodetabek		Wilayah Jakarta		Wilayah Bogor, Depok, Tangerang, Bekasi	
	Frekuensi	Persentase	Frekuensi	Persentase	Frekuensi	Persentase
0-5	6	7,06	3	13,04	3	7,14
6-10	36	42,35	12	52,17	14	33,33
11-15	20	23,53	6	26,09	1	2,38
16-20	23	27,06	2	8,70	24	57,14
Total	85	100,00	23	100,00	42	100,00

Sumber: perhitungan penulis

Frekuensi *order* melalui *Street hailing* dan GoBlue Bird di wilayah Jabodetabek dan di Wilayah Jakarta didominasi dengan frekuensi *order* dalam interval 6-10 kali per hari, yaitu dengan persentase 42,35% di wilayah Jabodetabek dan 52,17% di Wilayah Jakarta. Sedangkan di wilayah Bogor, Depok, Tangerang, dan Bekasi, frekuensi *order* didominasi dengan interval 16-20 kali per hari dengan persentase 57,14%. Berdasarkan hasil penelitian ini juga diketahui bahwa secara umum frekuensi *order* di wilayah Jabodetabek dan wilayah Jakarta setelah pandemi meningkat sebanyak 6 kali. Sementara di wilayah Bogor, Depok, Tangerang, dan Bekasi setelah pandemi hanya meningkat sebanyak 5 kali.

Lebih lanjut, pendapatan dari total *order* melalui *street hailing* dan GoBlue Bird di wilayah Jabodetabek dan di wilayah Jakarta, sebagian besar responden mendapatkan pendapatan dalam interval lebih dari Rp500.000 per hari, dengan persentase 73,85% untuk wilayah Jabodetabek dan 60,87% untuk wilayah Jakarta. Bahkan tidak terdapat satupun responden yang mendapatkan pendapatan dalam interval Rp0 – 100.000 per hari di seluruh wilayah tersebut. Dari hasil penelitian juga dapat diketahui bahwa secara umum pendapatan *order* setelah pandemi meningkat sebanyak Rp286.462 per hari di wilayah Jabodetabek dan meningkat sebanyak Rp282.609 per hari di wilayah Jakarta. Dengan ini, dapat disimpulkan bahwa adanya kerja sama antara Gojek dan Blue Bird melalui layanan GoBlue Bird pada aplikasi Gojek dapat meningkatkan frekuensi *order* dan pendapatan driver Blue Bird per hari.

Terkait dengan alasan kenaikan pendapatan yang dirasakan responden pada masa setelah pandemi Covid-19 dibandingkan saat pandemi Covid-19. Sebagian besar responden 72,31% menyatakan bahwa alasan kenaikan pendapatan terjadi karena jumlah permintaan terhadap kendaraan layanan transportasi *online* semakin banyak.

Perbedaan dan Perubahan Pendapatan Mitra Blue Bird Saat dan Setelah Pandemi Covid-19 Melalui *Street hailing*

Tabel 7. Perbedaan dan Perubahan Pendapataan Melalui *Street hailing* Mitra Blue Bird Setelah Pandemi Covid-19 di Wilayah Jabodetabek, Wilayah Jakarta, dan Wilayah Bogor, Depok, Tangerang, Bekasi

		Wilayah Jabodetabek	Wilayah Jakarta	Wilayah Bogor, Depok, Tangerang, dan Bekasi
Terdapat Perbedaan Pendapatan Saat dan Setelah Covid-*Street hailing* (%)	Ya	86,15	91,30	83,33
	Tidak	13,85	8,70	16,67
Perubahan Pendapatan-*Street hailing* (%)	Meningkat	81,54	86,96	78,57
	Menurun	4,62	13,04	7,14
	Tetap	13,85	0,00	14,29
Kesulitan Mencari Penumpang-*Street hailing* (%)	Ya	47,69	39,13	52,38
	Tidak	52,31	60,87	47,62

Sumber: perhitungan penulis

Tabel 7 menunjukkan bahwa apabila pendapatan hanya dilihat dari *order* melalui *street hailing*, sebagian besar responden menyatakan bahwa terdapat perbedaan pendapatan antara saat dan setelah Covid-19 di wilayah Jabodetabek, wilayah Jakarta, dan di Wilayah Bogor, Depok, Tangerang, dan Bekasi. Bagi responden yang menyatakan terdapat perbedaan pendapatan, diketahui bahwa sebagian besar menyatakan bahwa mereka mengalami peningkatan pendapatan setelah Covid-19, yaitu dengan persentase 81,54, 86,96, dan 78,57 persen di Wilayah Jabodetabek, wilayah Jakarta, dan di Wilayah Bogor, Depok, Tangerang, dan Bekasi, secara berurutan. Meski demikian, masih terdapat responden yang menyatakan bahwa masih terdapat kesulitan mencari penumpang melalui *street hailing* pada masa setelah Covid-19, terutama di Wilayah Bogor, Depok, Tangerang, dan Bekasi, di mana terdapat 52,38 persen responden menyatakan kesulitan dalam mencari Penumpang melalui *Street hailing*.

Perbedaan dan Perubahan Pendapatan Mitra Blue Bird Saat dan Setelah Pandemi Melalui GoBlue Bird

Tabel 8. Perbedaan dan Perubahan Pendapataan Melalui GoBlue Bird Mitra Blue Bird Setelah Pandemi Covid-19 di Wilayah Jabodetabek, Wilayah Jakarta, dan Wilayah Bogor, Depok, Tangerang, Bekasi

		Wilayah Jabodetabek	Wilayah Jakarta	Wilayah Bogor, Depok, Tangerang, dan Bekasi
Terdapat Perbedaan Pendapatan Saat dan Setelah Covid-GoBlue Bird (%)	Ya	70,77	56,52	56,52
	Tidak	29,23	43,48	43,48
Perubahan Pendapatan-GoBlue Bird (%)	Meningkat	73,85	69,57	69,57
	Menurun	10,77	4,35	4,35
	Tetap	15,38	26,09	26,09

Sumber: perhitungan penulis

Berdasarkan Table 8 dapat diketahui bahwa apabila pendapatan hanya dilihat dari *order* melalui Go Blue Bird di wilayah Jabodetabek, Wilayah Jakarta, dan Wilayah Bogor, Depok, Tangerang, Bekasi, maka sebagian besar responden menyatakan bahwa terdapat perbedaan pendapatan antara saat dan setelah Covid-19 melalui GoBlue Bird. Bagi responden yang menyatakan terdapat perbedaan pendapatan, diketahui bahwa sebagian besar responden menyatakan bahwa terjadi peningkatan pendapatan yang terjadi setelah Covid-19 melalui GoBlue Bird diseluruh wilayah tersebut, yaitu dengan persentase 73,85 untuk wilayah Jabodetabek, 69,57 untuk Wilayah Jakarta, dan 69,57 untuk wilayah Bogor, Depok, Tangerang, dan Bekasi. Sedangkan sebagian kecil mengalami penurunan pendapatan di seluruh wilayah tersebut.

Perbedaan dan Perubahan Pendapatan Mitra Blue Bird Saat dan Setelah Pandemi Melalui *Street hailing* dan GoBlue Bird (Total *Order*)

Tabel 9. Perbedaan dan Perubahan Pendapatan Melalui *Street hailing* dan GoBlue Bird (Total *Order*) Mitra Blue Bird Setelah Pandemi Covid-19 di Wilayah Jabodetabek, Wilayah Jakarta, dan Wilayah Bogor, Depok, Tangerang, Bekasi

		Wilayah Jabodetabek	Wilayah Jakarta	Wilayah Bogor, Depok, Tangerang, dan Bekasi
Terdapat Perbedaan Pendapatan Saat dan Setelah Covid-*Street hailing* dan GoBlue Bird (Total *Order*) (%)	Ya	93,85	91,30	91,30
	Tidak	6,15	8,70	8,70
Perubahan Pendapatan-*Street hailing* dan GoBlue Bird (Total *Order*) (%)	Meningkat	86,15	86,96	86,96
	Menurun	7,69	4,35	4,35
	Tetap	6,15	8,70	8,70

Sumber: perhitungan penulis

Apabila pendapatan dilihat dari *order* melalui *Street hailing* dan GoBlue Bird (Total *Order*) di wilayah Jabodetabek, Wilayah Jakarta, dan Wilayah Bogor, Depok, Tangerang, Bekasi, maka sebagian besar responden menyatakan bahwa terdapat perbedaan pendapatan antara saat dan setelah Covid-19 melalui *street hailing* dan GoBlue Bird. Bagi responden yang menyatakan terdapat perbedaan pendapatan, diketahui bahwa sebagian besar responden yaitu dengan persentase 86,15%, 86,96%, dan 86,96% responden di Wilayah Jabodetabek, Wilayah Jakarta, dan Wilayah Bogor, Depok, Tangerang, dan Bekasi menyatakan bahwa terjadi peningkatan pendapatan yang terjadi setelah Covid-19 melalui *street hailing* dan GoBlue Bird.

Alasan Adanya Kenaikan Pendapatan

Alasan Mitra Gocar

Kenaikan pendapatan mitra GoCar setelah pandemi Covid-19 dapat disebabkan oleh beberapa faktor. Menurut responden, faktor utamanya yaitu jumlah permintaan terhadap kendaraan layanan transportasi *online* semakin banyak seiring dengan meningkatnya masyarakat yang berpergian atau beraktivitas diluar, misalnya berkantor, bersekolah atau berlibur, yaitu dengan persentase 66,08% responden. Kemudian faktor berikutnya yaitu penilaian yang baik dari pengguna (customer) terhadap layanan yang sudah diberikan, dengan persentase sebanyak 17,70% responden, lalu faktor lainnya yaitu melakukan inovasi layanan, contohnya yaitu memberikan kualitas mengemudi yang lebih nyaman, yaitu dengan persentase 12,68% responden. Sedangkan sebagian kecil responden yaitu dengan persentase 10,62% responden menyatakan bahwa pengguna/konsumen yang dilayani tidak terpengaruh saat dan setelah pandemi Covid-19.

Adanya kenaikan pendapatan setelah Covid-19 yang utamanya disebabkan oleh jumlah permintaan terhadap kendaraan layanan transportasi *online* semakin banyak seiring dengan meningkatnya masyarakat yang berpergian atau beraktivitas di luar untuk misalnya berkantor, bersekolah atau berlibur. Hal ini tentu sangat wajar karena pada saat Covid-19 mayoritas pengguna layanan GoCar cukup berkurang karena adanya pembatasan aktivitas diluar, seperti *work from home*, pembelajaran secara daring dan ditutupnya lokasi-lokasi rekreasi.

Alasan Mitra Blue Bird

Tabel 10 menunjukkan alasan kenaikan pendapatan yang dirasakan responden pada masa setelah pandemi Covid-19 dibandingkan saat pandemi Covid-19. Sebagian besar responden (72,31%) menyatakan bahwa alasan kenaikan pendapatan terjadi karena jumlah permintaan terhadap kendaraan layanan transportasi *online* semakin banyak. Sedangkan sebagian kecil (10,77%) responden menyatakan bahwa pengguna/konsumen yang dilayani tidak terpengaruh saat dan setelah pandemi Covid-19.

Tabel 10. Alasan Adanya Kenaikan Pendapatan Setelah Pandemi Covid-19

Alasan Adanya Kenaikan Pendapatan	Persentase
Jumlah permintaan terhadap kendaraan layanan transportasi *online* semakin banyak	72,31
Penilaian yang baik dari pengguna (customer) terhadap layanan yang sudah diberikan	27,69
Mengambil lebih banyak *order* transportasi daring dibandingkan mengambil *order* langsung *street hailing*	33,85
Pengguna/konsumen yang dilayani tidak terpengaruh saat dan setelah pandemi Covid-19	10,77
Melakukan inovasi layanan (contoh: adanya mitra pengemudi taxi ikut mengambil *order*)	12,31

Sumber: perhitungan penulis

Pemahaman Terhadap Sistem Pembagian/ Distribusi *Order* Pemahaman Mitra GoCar Terhadap Sistem Pembagian *Order*

Terkait dengan pemahaman sistem pembagian *order*, sebagian besar responden (72.57%) menyatakan memahami sistem pembagiannya. Hasil ini mengalami peningkatan dari penelitian yang telah dilakukan sebelumnya pada saat pandemi Covid-19 di mana responden yang memahami sistem pembagian *order* hanya sekitar 65,82%. Hasil ini juga memberikan informasi bahwa setelah pandemi Covid-19 mitra GoCar semakin memahami sistem pembagian *order*.

Lebih lanjut, sebanyak 78,47% responden yang memahami sistem pembagian *order* menilai bahwa distribusi layanan yang didapatkan sudah sesuai dengan kriteria yang ditetapkan, sebagian besar responden menilai bahwa distribusi *order* ditentukan berdasarkan performa mitra.

Oleh karena itu, mitra perlu menjaga performanya seperti menjaga layanan baik, kesopanan, kebersihan dan lebih aktif mencari *order*.

Pemahaman Distribusi *Order* Mitra Blue Bird

Sebagian besar responden (76,92%) mitra Blue Bird menyatakan bahwa mereka memahami sistem distribusi *order*. Bagi responden yang memahami sistem distribusi *order*, menyatakan bahwa sebesar (61,54%) responden menyatakan bahwa kriteria jarak antara mitra dan pengguna merupakan kriteria distribusi *order* yang mereka ketahui, sedangkan sebanyak 41,54 % dan 52,31% responden menyatakan bahwa riwayat penyelesaian *order* dan kriteria performa mitra merupakan kriteria distribusi *order* yang mereka ketahui, secara berurutan. Kemudian, 72,31% responden menyatakan bahwa distribusi *order* layanan sudah sesuai dengan kriteria yang ditentukan.

Penilaian Jumlah Armada, Peningkatan Pendapatan dan Manfaat Ekosistem Gojek Responden mitra GoCar

Sebagian besar responden mitra GoCar (68,14%) menyatakan bahwa jumlah armada transportasi *online* GoCar dan GoBlueBird terkategori sangat banyak dengan memberikan penilaian di angka 7 (tujuh)[4]. Hasil ini memberikan arti bahwa ketersediaan armada dari mitra GoCar dan GoBlueBird sangat mudah didapatkan.

Kemudian, sebanyak 18,58%, 27,43%, 20,35% dan 14,16% atau total sebanyak 80,52% responden menyatakan bahwa pendapatan mitra GoCar terkategori moderat, sedikit meningkat, cukup meningkat dan sangat meningkat dengan memberikan penilaian diangka 4 (empat) hingga 7 (tujuh)[5].

Lebih jauh, terkait dengan persepsi responden mitra gocar terkait manfaat semakin baiknya ekosistem gojek, sebanyak 21,53%, 11,5%, 16,22% dan 23,01% atau total 72,26% responden menyatakan masing-masing sedikit bermafaat (skor 4), cukup bermanfaat (skor 5), bermanfaat (skor 6) dan sangat bermanfaat (skor 7) dengan semakin baiknya ekosistem GoCar. Ekosistem GoCar yang dimaksud di antaranya semakin banyaknya mitra GoCar yang ikut dalam transportasi daring. Kebermanfaatan ini akan terkait dengan proyeksi semakin banyaknya pengguna transportasi daring jika ekosistem GoCar semakin berkembang karena adanya indikasi berpindahnya transportasi konvensional ke transportasi daring.

Responden Mitra BlueBird

Dapat diketahui bahwa sebagian responden mitra BlueBird (66,15%) menyatakan bahwa jumlah armada transportasi *online* GoCar dan GoBlue Bird terkategori sangat banyak dengan memberikan penilaian diangka 7 (tujuh)[6]. Hasil ini memberikan arti bahwa ketersediaan armada dari mitra GoCar dan GoBlueBird sangat mudah didapatkan.

Kemudian, mengenai persepsi responden mitra Blue Bird terkait pendapatan menggunakan aplikasi GoCar, dapat diketahui bahwa 24,62%, 20%, 26,15% dan 20% atau total 90,77% responden menyatakan bahwa pendapatan mitra GoCar terkategori cukup meningkat, sedikit meningkat, meningkat dan sangat meningkat dengan memberikan penilaian di angka 4 (empat) hingga 7 (tujuh).

[4] Pengelompokan ini berdasarkan pada pengelompokan Kajian Indeks Persaingan Usaha KPPU Tahun 2023 dengan pengelompokan sebagai berikut:
1= sangat sedikit, 2= cukup sedikit, 3= sedikit rendah, 4= moderat, 5= sedikit banyak, 6= cukup banyak dan 7= sangat banyak

[5] Pengelompokan ini berdasarkan pada pengelompokan Kajian Indeks Persaingan Usaha KPPU Tahun 2023 dengan pengelompokan sebagai berikut:
1= sangat menurun, 2= cukup menurun, 3= sedikit menurun, 4= moderat, 5= sedikit meningkat, 6= cukup meningkat dan 7= sangat meningat

[6] Pengelompokan ini berdasarkan pada pengelompokan Kajian Indeks Persaingan Usaha KPPU Tahun 2023 dengan pengelompokan sebagai berikut:
1= sangat sedikit, 2= cukup sedikit, 3= sedikit rendah, 4= moderat, 5= sedikit banyak, 6= cukup banyak dan 7= sangat banyak.

Lebih jauh, mengenai persepsi responden mitra Blue Bird terkait manfaat semakin baiknya ekosistem Gojek, sebesar 15,38%, 13,85%, 30,77% dan 27,69% atau total 87,69% responden Mitra BlueBird menyatakan bahwa semakin baiknya ekosistem GoCar secara umum (termasuk bisa masuknya Blue Bird menjadi Mitra GoCar) memberikan manfaat masing-masing moderat (skor 4), sedikit manfaat (skor 5), cukup manfaat (skor 6) dan sangat manfaat (skor 7)[7]. Semakin baiknya ekosistem GoCar terkait juga dengan semakin banyaknya mitra GoCar yang diproyeksi akan memberikan manfaat dalam konteks semakin berpindahnya transportasi konvensional kepada transportasi daring.

Persaingan Antar Mitra Driver dengan Adanya Kerja sama GoCar dengan Mitra Blue Bird

Sebanyak 53,39% responden Mitra Gocar menyatakan bahwa kerja sama Gojek dengan Mitra Blue Bird tidak menciptakan persaingan usaha. Hasil ini menunjukkan bahwa menurut responden tersebut keberadaan mitra Blue Bird dianggap bukan menjadi pesaing dalam menjalankan aktivitas pemberian layanan transportasi *online*. Meski demikian, terdapat 46,61% yang menyatakan bahwa keberadaan kerjasama Gojek dengan mitra Blur Bird menciptakan persaingan usaha, artinya sebagian responden memandang bahwa keberadaan mitra Blue Bird tersebut menambah persaingan.

Bagi responden yang menyatakan bahwa kerja sama dengan mitra menambah tingkat persaingan, dapat diketahui bahwa dalam menghadapi peningkatan persaingan usaha tersebut, mereka berusaha untuk meningkatkan rating performa (menjaga layanan baik, kesopanan dan kebersihan) (27,14%); lebih aktif mencari penumpang (26,55%); tidak menolak *order* (23,30%); dan alasan lainnya (3,54%).

Dampak Kerja sama Gojek dengan Mitra Blue Bird

Tengan dampak kerja sama gojek dengan mitra Blue Bird, bagi 66,67% mitra GoCar, adanya kerja sama yang dilakukan tersebut tidak mempermudah driver GoCar dalam memperoleh pengguna layanan. Bahkan terdapat sebagian responden (27,73%) yang menyatakan bahwa kerja sama tersebut justru mempersulit driver Gocar dalam mendapatkan *order*. Sementara itu, hanya sebagian kecil responden (5,6%) yang menyatakan bahwa kerja sama tersebut mempermudah dalam mendapatkan *order*.

Tabel 11 menunjukkan bahwa bagi responden yang menyatakan kerja sama justru mempersulit, sebagian besar dari mereka menyatakan bahwa terdapat penurunan persentase jumlah penumpang pada kisaran 0-10%. Penurunan penumpang yang terjadi sebagian besar dialami oleh responden saat pandemi Covid-19 terjadi. Kondisi ini disebabkan dengan adanya semakin banyak opsi transportasi yang dapat dipilih penumpang, serta adanya Covid-19 yang menyebabkan beberapa penumpang berdiam diri dirumah karena sistem kerja *work from home*.

Tabel 11. Persentase Penurunan Penumpang, Jika Kerja sama Menimbulkan Lebih Sulit Mendapatkan Penumpang

Persentase Penurunan Penumpang, jika kerja sama menimbulkan lebih sulit mendapatkan penumpang	
0 – 10	75,22
11 – 20	3,82
21 – 30	8,25
31 – 40	2,95
41 – 50	6,19
51 – 60	1,47
61 - 70	2,06
71 - 80	0,29
81 - 90	0
> 90	0

moderat, 5= sedikit bermanfaat, 6= cukup bermanfaat dan 7= sangat bermanfaat.

Sumber: perhitungan penulis

[7] Pengelompokan ini berdasarkan pada pengelompokan Kajian Indeks Persaingan Usaha KPPU Tahun 2023 dengan pengelompokan sebagai berikut:
1= sangat tidak bermanfaat, 2= cukup tidak bermanfaat, 3= sedikit tidak bermanfaat, 4= moderat, 5= sedikit bermanfaat, 6= cukup bermanfaat dan 7= sangat bermanfaat.

Lebih jauh, terkait dengan persentase perbedaan distribusi *order* Gojek dengan mitra Blue Bird, sebanyak 53,69% responden menyatakan bahwa tidak terdapat perbedaan distribusi *order* antara Gojek dengan Mitra Blue Bird, seperti Blue Bird. Temuan menariknya adalah, terdapat 46,31% responden yang menyatakan terdapat perbedaan distribusi di mana angka tersebut juga relatif sama dengan mereka yang menyatakan bahwa keberadaan mitra menambah/meningkatkan persaingan.

KESIMPULAN

Penelitian ini mengkaji kondisi atau perkembangan kinerja transportasi daring roda empat dan perilaku/persaingan usaha didalamnya setelah pandemi Covid-19. Kajian ini juga membandingkan dengan kinerja pada saat pandemi Covid-19. Kajian difokuskan kepada layanan transportasi daring roda empat GoCar dan mitranya di wilayah Jabodetabek. Kajian ini juga merupakan lanjutan dari kajian yang sebelumnya pernah dilakukan pada tahun 2020, di mana pada saat itu kajian dilakukan untuk melihat bagaimana kinerja transportasi daring roda empat dan perilaku mitra *driver* pada masa pandemi Covid-19 dibandingkan dengan kondisi sebelum pandemi Covid-19. Penelitian ini menggunakan uji ANOVA untuk melakukan verifikasi apakah secara statistik kenaikan atau penurunan kinerja pada periode saat-setelah pandemi signifikan atau tidak.

Penelitian ini menemukan bahwa terdapat peningkatan secara signifikan frekuensi *order* dan pendapatan harian mitra GoCar pada periode setelah pandemi Covid-19 dibandingkan saat periode pandemi. Hal tersebut terlihat dari penurunan yang signifikan pada persentase responden yang mendapatkan frekuensi *order* dan pendapatan pada rentang terendah.

Terkait dengan mitra Blue Bird, penelitian ini menemukan bahwa terdapat peningkatan kembali penumpang yang diterima Blue Bird di masa setelah pandemi, baik melalui *street hailing* maupun GoBlue Bird. Walaupun demikian, mitra Blue Bird mengalami kenaikan pendapatan melalui GoBlue Bird yang lebih besar dibandingkan melalui *street hailing* hanya di Wilayah Bogor, Depok, Tangerang, dan Bekasi. Peningkatan tersebut juga dikonfirmasi oleh persepsi mitra Blue Bird yang menyatakan bahwa peningkatan terjadi karena jumlah permintaan terhadap kendaraan layanan transportasi daring semakin banyak pada masa setelah pandemi Covid-19. Hal ini juga terjadi karena adanya perubahan perilaku, seperti masyarakat yang hanya beraktivitas di rumah karena pandemi Covid-19, saat ini sudah bisa beraktivitas kembali diluar rumah sehingga meningkatkan jumlah permintaan terhadap kendaraan transportasi *online*. Terkait dengan mitra Blue Bird, penelitian ini juga menghasilkan temuan di mana rata-rata peningkatan *order street hailing* di masa setelah pandemi Covid-19 lebih tinggi (rata-rata 4 *order*an per-hari) dibandingkan dengan peningkatan *order* melalui GoBlueBird di masa pandemi Covid-19 (rata-rata 3 *order*an per-hari).

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Healthy Competition Policy Dynamics: the Influence of Domestic-Specific Factors in a Globalized Landscape

Rita Komalasari[1]
rita.komalasari161@gmail.com
Cecep Mustafa[2]
cecepmustafa161@gmail.com

Yarsi University[1]
Ibnu Chaldun University[2]

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ABSTRACT

The primary purpose of this essay is to unravel the multifaceted dynamics of competition policy and offer insights into the factors driving policy variations worldwide. It aims to contribute to the ongoing discourse on competition policy by bridging the gap between theory and practice, offering empirical support for observed trends, and providing practical implications for policymakers and practitioners. This research employs the literature study. The analysis reveals that, while there is a discernible global convergence toward economic-based competition policy and independent competition authorities, domestic-specific factors such as levels of privatization, democracy, political ideology, legal origin, and types of capitalism continue to exert significant influence, shaping competition policies in distinctive ways. This nuanced understanding challenges the notion of complete global convergence and underscores the importance of context-sensitive policy design. The findings have practical implications for policymakers and practitioners, emphasizing the need to tailor competition policy frameworks to the unique circumstances of each country. In a rapidly changing global landscape, recognizing and accommodating these factors is crucial for the continued relevance and adaptability of competition policy.

Keywords: *Competition, Policy, Domestic, Specific, Convergence.*

ABSTRAK

Tujuan utama dari esai ini adalah untuk mengungkap dinamika yang kompleks dari kebijakan persaingan usaha dan memberikan wawasan tentang faktor-faktor yang mendorong variasi kebijakan di seluruh dunia. Tujuannya adalah untuk berkontribusi dalam diskursus yang berkelanjutan tentang kebijakan persaingan dengan menjembatani kesenjangan antara teori dan praktik, menawarkan dukungan empiris untuk tren yang diamati, dan memberikan implikasi praktis bagi pembuat kebijakan dan praktisi. Penelitian ini menggunakan studi literatur. Analisisnya mengungkapkan bahwa, sementara terdapat konvergensi global yang dapat dikenali menuju kebijakan persaingan usaha berbasis ekonomi dan otoritas persaingan independen, faktor-faktor khusus dalam negeri seperti tingkat privatisasi, demokrasi, ideologi politik, asal hukum, dan jenis kapitalisme terus mempengaruhi secara signifikan, membentuk kebijakan persaingan usaha dengan cara yang khas. Pemahaman yang lebih mendalam ini menantang gagasan tentang konvergensi global yang lengkap dan menekankan pentingnya desain kebijakan yang sensitif terhadap konteks. Temuan ini memiliki implikasi praktis bagi pembuat kebijakan dan praktisi, dengan menekankan perlunya menyesuaikan kerangka kebijakan persaingan usaha dengan keadaan unik masing-masing negara. Di tengah perubahan cepat dalam lanskap global, mengenali dan mengakomodasi faktor-faktor ini sangat penting untuk menjaga relevansi dan adaptabilitas yang berkelanjutan dari kebijakan persaingan usaha.

Kata Kunci: Kebijakan, Persaingan, Spesifik, Domestik, Konvergensi.

INTRODUCTION

Competition policy, the framework governing the regulation of market competition and the prevention of anti-competitive practices, is a vital component of modern economic governance.[1] It is a field that intersects the realms of economics, politics, and institutions, making it a rich subject of study within the broader discipline of political economy. In recent years, the discourse surrounding competition policy has evolved significantly, reflecting a global trend toward economic-based assessments and the detachment of competition policy enforcement from broader political and social objectives. This essay delves into the intricate web of factors that shape the development and enforcement of competition policies worldwide, shedding light on the convergence and divergence of approaches across different countries. The central argument of this essay is that while there is a prevailing trend toward economic-driven competition policy and the empowerment of independent competition authorities, a multitude of domestic-institutional and political factors continue to exert a substantial influence on the shape and trajectory of competition policies in various nations. This contention challenges the notion of complete global convergence in competition policy and underscores the importance of understanding the nuanced differences that persist among countries. In the subsequent sections, we will explore the key factors that influence the varieties of competition policies observed worldwide. These factors include the extent of privatization, the level of democracy, the prevailing political ideology of governments, legal origins, and the nature of capitalism in each country. [2] Furthermore, we will delve into the enforcement dynamics of competition policies, uncovering the continued relevance of political factors and business cycles in shaping the actions of competition authorities. Through this comprehensive analysis, we aim to provide a nuanced understanding of the political economy of competition policy. While global convergence is a notable trend, it is essential to recognize the persistence of domestic-specific factors that mold competition policy in distinctive ways. This recognition is crucial for policymakers, scholars, and practitioners engaged in the field of competition policy, as it informs the design and implementation of effective and context-sensitive regulatory frameworks. Ultimately, our exploration aims to contribute to the ongoing discourse on competition policy by highlighting the enduring relevance of political economy considerations in a rapidly changing global landscape.

This research contributes several novel insights and perspectives to the field of the political economy of competition policy: While the trend towards economic-based assessments and independent competition authorities is well-documented, this study delves deeper to reveal the persistence of domestic-specific factors that continue to shape competition policies in distinctive ways. It emphasizes that the process of convergence is not uniform, and recognizing these nuances is essential. This nuanced understanding challenges the simplistic notion of complete global convergence and highlights the importance of context-specific analysis. By employing the Competition Law Index and time-series cross-sectional regression models, this research provides empirical evidence to support the contention that variations in competition policy are driven by a range of factors, including privatization, democracy, political ideology, legal origins, and types of capitalism. This literature approach strengthens the basis for understanding the dynamics of competition policy across diverse contexts.[3] The study underscores the policy relevance of recognizing domestic-specific factors. Policymakers can benefit from a more sophisticated understanding of how these factors shape competition policy within their respective countries. This recognition informs the design and implementation of effective and context-sensitive regulatory frameworks that align with the unique circumstances of each nation. This research bridges the gap between academic scholarship and practical policy implementation. It offers insights that are valuable not only to scholars in the field but also to practitioners engaged in the development and enforcement of competition policy. By highlighting the enduring relevance of political economy considerations, it encourages a more holistic and pragmatic approach to competition policy design and execution. The study contributes to the ongoing discourse on competition policy by emphasizing the need for a balanced approach that acknowledges both global trends and domestic-specific factors. It adds depth and nuance to the conversation, ensuring that competition policy discussions remain relevant and adaptable in a rapidly changing global landscape. This research goes beyond the surface-level observations of competition policy convergence and provides a deeper, supported understanding of the factors driving policy variations across countries. It serves as a valuable resource for those interested

in the political economy of competition policy, offering a more comprehensive and context-aware perspective that enhances our ability to craft effective competition policy frameworks in an ever-evolving global environment.[4]

The existing literature on the political economy of competition policy has made significant strides in understanding the evolution and dynamics of competition policies worldwide.[5] However, several gaps and limitations persist, which this essay seeks to address: Much of the existing literature relies on theoretical frameworks and case studies, often lacking comprehensive empirical analyses across a broad spectrum of countries and time periods. This essay contributes by employing the Competition Law Index and rigorous regression models to provide empirical evidence of the factors driving competition policy variations.[6] By doing so, it bridges the gap between theory and practice, offering robust empirical support for the observed trends and differences. While previous research has highlighted the trend toward global convergence in competition policy, it has sometimes overemphasized this aspect to the detriment of recognizing the enduring relevance of domestic-specific factors. [7] This essay rebalances the narrative by demonstrating that competition policies are not uniformly converging and that a myriad of political, institutional, and economic factors continue to influence policy design and implementation. While some literature discusses the drivers of competition policy variations, it often falls short in translating these insights into actionable policy recommendations. This essay fills this gap by explicitly linking its findings to policy relevance. It emphasizes the need for policymakers to consider domestic-specific factors when designing competition policy frameworks and provides a more nuanced perspective on the implications of global convergence for practitioners. The political economy of competition policy is a multifaceted field that bridges economics, politics, and institutions. Previous research sometimes focuses too narrowly on one of these aspects, [8] missing the comprehensive interplay between them. This essay addresses this gap by integrating political economy considerations into the analysis, showcasing how political ideology, legal origins, and types of capitalism interact to shape competition policies. [9] The rapidly changing global economic landscape demands up-to-date insights into competition policy dynamics. This essay endeavors to enrich the existing literature on the political economy of competition policy by providing a comprehensive, empirically-supported analysis that addresses these gaps. It offers not only a nuanced understanding of competition policy convergence but also practical insights for policymakers and practitioners, ensuring that the study of competition policy remains relevant and adaptable in our ever-evolving global environment.

DISCUSSION

Competition Policy Convergence Trends

The landscape of competition policy has undergone a notable evolution in recent years, with a conspicuous trend towards convergence among nations.[10] The concept of convergence is elucidated in what is commonly referred to as the "convergence paper." According to this perspective, competition policies across the globe have increasingly gravitated towards economic-centric evaluations of anti-competitive practices. This shift reflects a collective recognition that the foremost considerations in competition policy ought to be the promotion of efficient market outcomes and the safeguarding of consumer welfare. The move towards economic-based assessments is a notable feature of the convergence trend. It reflects a shift away from the historically intricate and sometimes subjective assessments of anti-competitive practices, toward a more rational and objective evaluation of their economic impact. This approach has gained traction due to its potential to foster competition that benefits consumers, encourages innovation, and bolsters economic growth. The convergence towards economic-focused competition policies is not merely an academic observation but has practical implications. As countries harmonize their competition policies around these principles, businesses operating across borders find it easier to navigate regulatory landscapes. This trend encourages a more level playing field for international trade and investment, ultimately promoting global economic integration. The prevailing trend in competition policy convergence emphasizes a shift towards economic-based assessments as a means to achieve efficient market outcomes and safeguard consumer welfare. The empirical evidence from the Competition Law Index underscores the widespread adoption of these principles across nations, reflecting a global recognition of the importance of competition policy in the modern economic landscape. [11] This shift has significant implications for both businesses and policymakers, as they seek to navigate and shape the evolving dynamics of competition policy in an increasingly interconnected world.

Competition policy has experienced a significant transformation in recent years, marked by a prevailing trend toward convergence. The "convergence paper" highlights that most competition policies worldwide have shifted their focus toward economic-based assessments of anti-competitive practices. This shift involves a recognition that efficient market outcomes and consumer welfare should be at the forefront of competition policy considerations. Governments and regulatory bodies have increasingly acknowledged that fostering competitive markets is instrumental in achieving economic growth and prosperity. The literature evidence underscores the commitment of nations to deter anti-competitive practices.[12] Competition authorities across the globe have become more assertive in investigating and penalizing anti-competitive behavior, signaling a collective resolve to maintain fair and competitive markets. Another notable aspect of the convergence trend is the emphasis on consumer protection. The data demonstrates that countries are increasingly cognizant of the need to safeguard consumer interests by promoting competition that benefits end-users.The Competition Law Index provides a detailed snapshot of how various countries have strengthened their competition policies to align with these principles. [13] It showcases the adoption of modern legal frameworks, the establishment of independent competition authorities, and the implementation of effective enforcement mechanisms. The index further highlights that this convergence is not limited to a select group of nations but extends across a substantial majority of countries, encompassing diverse economic systems and political ideologies. This broad-based convergence underscores the global recognition of the pivotal role competition policy plays in shaping economic outcomes and ensuring consumer well-being. This convergence, as evidenced by the data, reflects a shared understanding among nations that competition policy is a vital tool for achieving economic growth, innovation, and equitable outcomes in an increasingly interconnected world.

The Role of Indonesian Competition Commission (KPPU)

One of the pivotal aspects of the convergence trend in competition policy is the empowerment of independent competition authorities.[14] Governments worldwide have increasingly recognized the importance of entrusting enforcement powers to these agencies, thereby insulating them from political interference and bolstering their capacity to effectively enforce competition laws. A striking feature of the convergence toward competition policy is the elevation of independent competition authorities to a central role in its implementation. These authorities, often established as dedicated bodies, have been granted substantial autonomy and insulation from political influences. This empowerment is underpinned by the understanding that impartial and expert-driven enforcement of competition laws is essential for ensuring competitive markets. The global recognition of the significance of independent competition authorities is evident in the establishment of such bodies across countries. The European Commission, as an example of a supranational competition authority, exemplifies this trend. These entities are entrusted with significant enforcement powers, including the investigation of anti-competitive practices, imposition of fines, and the ability to challenge anti-competitive mergers and acquisitions. The rationale behind the independence of competition authorities is to shield them from political pressures and vested interests, ensuring that enforcement decisions are made on the basis of sound economic principles and the law. This separation from politics is regarded as instrumental in maintaining fair competition and protecting consumer welfare. Another salient aspect of empowering independent authorities is the enhancement of their capacity to enforce competition laws effectively. These agencies are staffed with experts in economics, law, and other relevant disciplines, enabling them to conduct thorough investigations and make informed decisions. Furthermore, they often have the resources and legal tools necessary to tackle anti-competitive behavior comprehensively. The trend toward empowering independent competition authorities is not confined to a specific group of countries but spans a diverse range of nations. This global convergence underscores the collective understanding that impartial and expert enforcement is vital for fostering competitive markets, encouraging innovation, and safeguarding the interests of consumers. The empowerment of independent competition authorities is a pivotal component of the convergence trend in competition policy. Governments worldwide recognize the importance of impartial enforcement of competition laws and are increasingly establishing and strengthening these bodies. The global convergence toward independent authorities reinforces the notion that effective competition policy requires a separation from political influences and an emphasis on expert-driven enforcement to ensure fair competition and protect the welfare of consumers.

A key aspect of the convergence trend in competition policy is the empowerment

of independent competition authorities.[5] Governments worldwide have increasingly recognized the importance of entrusting enforcement powers to these agencies, thereby insulating them from political interference and bolstering their capacity to effectively enforce competition laws. A comprehensive analysis of competition policy enforcement globally reveals a conspicuous recognition of the importance of independent competition authorities. A prime illustration of this trend can be found in the European Commission, which serves as a supranational authority entrusted with significant competition policy enforcement powers. The European Commission's role in overseeing and regulating competition within the European Union underscores the commitment to impartial and expert-driven enforcement on a regional scale. The establishment and empowerment of independent competition authorities within individual nations further exemplify this convergence. These authorities are granted substantial autonomy and equipped with enforcement powers, including the authority to investigate anti-competitive practices, impose fines, and scrutinize mergers and acquisitions for potential anti-competitive effects. Their independence from political pressures and vested interests is a deliberate step to ensure that enforcement decisions are grounded in rigorous economic analysis and legal expertise, rather than political considerations.This trend aligns seamlessly with the broader view of global convergence in competition policy. It underscores the emphasis on professionalization and harmonization of competition policies across borders. By entrusting independent competition authorities with the responsibility of enforcing competition laws, countries are not only strengthening their domestic competition frameworks but also contributing to the broader goal of creating a level playing field for international trade and investment. The recognition of independent competition authorities as guardians of fair competition and consumer welfare represents a shared understanding among nations that effective competition policy requires insulation from political influences. It also reflects the commitment to promoting market competition, encouraging innovation, and safeguarding the interests of consumers on a global scale. The evidence gleaned from the establishment and empowerment of independent competition authorities, both at the national and supranational levels, underscores the significance of impartial and expert-driven enforcement in the context of competition policy. This Commission decisions trend reinforces the concept of global convergence, emphasizing the professionalization and harmonization of competition policies across borders to ensure fair competition, economic growth, and consumer protection on an international scale.[15]

While competition policy convergence is a significant global trend, it is crucial to acknowledge the enduring influence of domestic-specific factors that continue to shape competition policies in distinctive ways. These factors encompass a multifaceted landscape of economic, political, and institutional considerations. One essential dimension is the extent of privatization within a country, [16] which significantly impacts the formulation and execution of its competition policy. Privatization, the process of transferring state-owned enterprises and assets to the private sector, is a pivotal domestic-specific factor that shapes competition policy. The degree of privatization within a country's economy can vary significantly, from full state control in some sectors to extensive privatization in others. These variations introduce unique dynamics into competition policy design and implementation. Empirical analysis of competition policy across countries reveals that the extent of privatization plays a decisive role in competition policy approaches. In nations with extensive privatization, competition policy often focuses on fostering competition among private enterprises, which may have different objectives and challenges compared to state-owned entities. Privatization often leads to the emergence of new market players. As state-owned enterprises transition to the private sector or new private firms enter previously controlled sectors, competition authorities must adapt to address new market dynamics, potential monopolistic behaviors, and the need for regulatory oversight.[17] In sectors characterized by extensive privatization, competition authorities may face challenges related to market concentration and abuse of market power. Ensuring that competition thrives in these contexts requires vigilant monitoring and enforcement, often with a focus on preventing anti-competitive agreements and practices. Competition policy responses may vary according to the level of privatization in specific sectors. For example, highly privatized industries like telecommunications or utilities may require sector-specific regulatory measures to ensure competition and protect consumers. Competition policies in countries with varying levels of privatization are often shaped by broader economic objectives. In countries with a strong commitment to privatization, competition policy may be oriented toward promoting privatization-related goals, such as increasing efficiency and

attracting investment. The extent of privatization within a country's economy is a salient domestic-specific factor that exerts a substantial influence on competition policy. It introduces unique considerations and challenges, necessitating tailored approaches to promote competition, prevent anti-competitive practices, and protect consumer interests. Recognizing these distinctions is vital for policymakers and practitioners seeking to craft effective competition policy frameworks that align with their nation's specific economic landscape and goals. This recognition further underscores the enduring relevance of domestic-specific factors in the rapidly evolving field of competition policy. Democracy represents a pivotal domestic-specific factor that plays a defining role in shaping competition policy. Democratic systems prioritize public welfare and participation in policy-making, leading to distinctive expectations and considerations in competition policy outcomes. Empirical analysis of competition policy across countries reveals that the level of democracy within a nation profoundly influences competition policy approaches. [18] In democracies, competition policy often places a strong emphasis on promoting competition as a means of enhancing consumer welfare, economic growth, and innovation. The transparency and accountability inherent in democratic systems provide opportunities for public input and influence on competition policy decisions. Democratic institutions facilitate public participation in the competition policy-making process. This involvement may take the form of public consultations, open hearings, or advocacy by consumer protection groups. As a result, competition policy in democracies may be more responsive to the preferences and concerns of the general populace. Democracies tend to prioritize consumer protection as a central tenet of competition policy. Ensuring that markets remain competitive and that consumers have access to a variety of choices aligns with democratic principles of fairness and equity. In democratic systems, policymakers and competition authorities are often subject to political accountability. [19] This accountability can manifest in regular elections and oversight by elected representatives, influencing competition policy decisions to align with public interest and expectations. Democracies are adept at balancing competing interests, such as promoting market competition while preventing the abuse of market power. Competition policies in democratic nations often reflect a nuanced approach to finding the equilibrium that maximizes economic welfare and consumer well-being. The rule of law is a cornerstone of democracies, ensuring that competition laws are applied consistently and fairly.[8] Independent judiciaries uphold competition policy decisions, providing legal remedies for anti-competitive behavior. The level of democracy within a country's political system is a significant domestic-specific factor that exerts substantial influence on competition policy. Democratic institutions prioritize public welfare, encourage public participation, and emphasize consumer protection. This influence underscores the responsiveness of competition policies in democracies to the preferences and concerns of citizens. Recognizing these distinctions is crucial for policymakers and practitioners seeking to craft effective competition policy frameworks that align with their nation's democratic values and expectations. It further highlights the enduring relevance of domestic-specific factors in the evolving landscape of competition policy. Another crucial dimension is the political ideology of a government, which significantly shapes the formulation and execution of its competition policy. The prevailing political ideology of a government is a central domestic-specific factor that profoundly influences competition policy. Political ideology determines the government's stance on issues such as market regulation, social welfare, and consumer protection, leading to distinctive priorities and approaches in competition policy. Empirical analysis of competition policy across countries reveals the profound influence of political ideology on competition policy approaches. Left-wing governments tend to emphasize social welfare, income redistribution, and consumer protection as key components of their competition policies. In contrast, right-wing governments often prioritize market efficiency, deregulation, and minimal government intervention in markets. In countries led by left-wing governments, competition policy often assumes a broader role beyond promoting market competition. These governments view competition policy as a tool for achieving social objectives, such as reducing income inequality and protecting vulnerable consumers. Competition authorities may scrutinize mergers and acquisitions with a focus on their potential impact on employment and income distribution. Left-leaning governments are inclined to emphasize consumer protection within competition policy. They may be more vigilant in addressing deceptive advertising, unfair business practices, and price gouging to safeguard the interests of consumers, especially vulnerable groups. Governments with left-leaning ideologies are more likely to adopt regulatory

measures to address market power and ensure equitable access to essential goods and services. They may impose price controls or intervene in industries perceived as crucial for social welfare, such as healthcare or utilities. Right-wing governments generally adopt a more market-oriented approach to competition policy. They prioritize economic efficiency and competition as mechanisms for generating growth, innovation, and job creation.[9] These governments may be more lenient towards mergers and acquisitions, emphasizing the role of market forces in determining outcomes. Right-leaning governments tend to favor deregulation and reducing government intervention in markets. Their competition policies may focus on removing barriers to entry, streamlining regulations, and minimizing state involvement in economic affairs. In practice, many governments, irrespective of their political ideology, often strike a balance between market competition and social objectives. This balance reflects the complex nature of competition policy and the need to accommodate diverse economic and societal goals. The prevailing political ideology of a government is a potent domestic-specific factor that significantly influences competition policy. [20] Left-wing governments prioritize social welfare and consumer protection, while right-wing governments emphasize market efficiency and minimal regulation. Understanding the impact of political ideology on competition policy is essential for policymakers and practitioners, as it shapes the direction and objectives of competition policies in a given country. This recognition underscores the enduring relevance of domestic-specific factors in the evolving landscape of competition policy. The legal system in a country, whether common law or civil law, is a fundamental domestic-specific factor that exerts a significant impact on competition policy. [21] Legal origin shapes the legal principles, procedures, and judicial interpretations that underpin competition laws, thereby affecting the effectiveness and enforcement of competition policy. Empirical analysis of competition policy across countries reveals that the legal origin of a nation's legal system plays a vital role in shaping competition policy approaches. Countries with common law systems and those with civil law systems exhibit distinct approaches to competition law enforcement, reflecting the influence of their legal origins. Nations with common law systems, such as the United States and the United Kingdom, tend to rely on judicial decisions and precedent in the interpretation and enforcement of competition laws. This reliance on case law results in a more flexible and evolving body of competition law. Common law countries often have extensive legal precedents and court decisions that inform the application of competition laws. Courts play a central role in shaping competition policy through their rulings on anti-competitive practices and mergers. Civil law countries typically have comprehensive competition statutes that outline prohibited practices and enforcement procedures. Administrative agencies, such as competition authorities, are central to the implementation and enforcement of competition policy. The legal origin of a country's legal system can influence the enforcement practices of competition authorities. Common law countries may prioritize litigation and judicial remedies, while civil law countries may emphasize administrative measures and regulatory interventions. The legal origin also affects the adaptability of competition policy to changing market dynamics. Common law systems, with their reliance on judicial decisions, may adapt more flexibly to emerging competition issues, while civil law systems may require legislative amendments to accommodate new challenges. The differing approaches of common law and civil law countries can pose challenges for global convergence efforts in competition policy. Harmonizing competition policies across legal origins may require bridging gaps in enforcement practices and legal interpretations. The legal origin of a country's legal system is a crucial domestic-specific factor that significantly influences competition policy. Common law and civil law systems exhibit distinct approaches to competition law enforcement, impacting the interpretation, enforcement, and adaptability of competition laws. Recognizing the influence of legal origin is vital for policymakers and practitioners seeking to craft effective competition policy frameworks that align with their nation's legal traditions and institutional arrangements. This recognition highlights the enduring relevance of domestic-specific factors in the evolving landscape of competition policy.

The Persistence of Domestic-Specific Factors

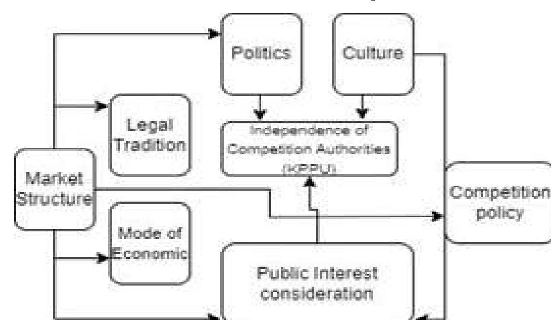

Figure 1. Factor Influencing Enforcement of Competition Policy

While competition policy convergence is a notable trend, this essay argues that domestic-specific factors continue to exert substantial influence, challenging the idea of complete global uniformity as illustrated in Figure 1.[22] Variations in economic systems, such as coordinated market economies (CMEs) and liberal market economies (LMEs), are domestic-specific factors that exert a profound influence on competition policy. These distinct economic models result in different approaches to competition policy, reflecting their unique priorities and mechanisms. Empirical analysis of competition policy across countries reveals that the type of capitalism, whether CME or LME, plays a pivotal role in shaping competition policy approaches. These approaches reflect the broader economic philosophies and structures associated with each system. CMEs, characterized by close cooperation between businesses, labor unions, and governments, tend to emphasize social partnerships and consensus-driven decision-making. This approach extends to competition policy, where the focus is on balancing the interests of various stakeholders, including labor and industry. In CMEs like Germany and Japan, competition policy often seeks to harmonize competition objectives with social stability. It may involve negotiations and agreements between industry and labor to address competition-related issues, such as mergers that affect employment. LMEs, characterized by free-market principles, competitive individualism, and limited government intervention, prioritize market competition as a means of achieving economic efficiency and innovation. Competition policy in LMEs reflects these priorities. In LMEs like the United States and the United Kingdom, competition policy places a strong emphasis on preventing anti-competitive behavior, dismantling barriers to entry, and promoting competitive markets.[23] Regulatory intervention is typically minimized, and enforcement actions prioritize market efficiency. The type of capitalism prevalent in a country influences the regulatory approaches adopted in competition policy. CMEs may opt for sector-specific regulations to balance competition with social and economic stability, while LMEs may rely on general competition laws to address market competition. Competition policy in CMEs often involves consultations and negotiations with various stakeholders, including industry representatives and labor unions. In contrast, competition policy in LMEs typically places a greater emphasis on the role of competition authorities and market forces. The differences in competition policy approaches stemming from the type of capitalism can have global implications. Harmonizing competition policies across CMEs and LMEs can be challenging due to divergent priorities and regulatory philosophies. The type of capitalism prevalent in a country's economic system is a significant domestic-specific factor that profoundly influences competition policy. CMEs emphasize social partnerships and consensus-driven decision-making, while LMEs prioritize market competition and limited government intervention. Recognizing the impact of these economic models is vital for policymakers and practitioners seeking to craft effective competition policy frameworks that align with their nation's economic structure and objectives. This recognition underscores the enduring relevance of domestic-specific factors in the evolving landscape of competition policy. The prevailing political ideology of a government is a central domestic-specific factor that profoundly influences competition policy. Political ideology determines the government's stance on issues such as market regulation, social welfare, and consumer protection, leading to distinctive priorities and approaches in competition policy. Empirical analysis of competition policy across countries reveals the profound influence of political ideology on competition policy approaches. Left-wing governments tend to emphasize social welfare, income redistribution, and consumer protection as key components of their competition policies. In contrast, right-wing governments often prioritize market efficiency, deregulation, and minimal government intervention in markets. In countries led by left-wing governments, competition policy often assumes a broader role beyond promoting market competition. These governments view competition policy as a tool for achieving social objectives, such as reducing income inequality and protecting vulnerable consumers. Competition authorities may scrutinize mergers and acquisitions with a focus on their potential impact on employment and income distribution. Left-leaning governments are inclined to emphasize consumer protection within competition policy. They may be more vigilant in addressing deceptive advertising, unfair business practices, and price gouging to safeguard the interests of consumers, especially vulnerable groups. Governments with left-leaning ideologies are more likely to adopt regulatory measures to address market power and ensure equitable access to essential goods and services.[24] They may impose price controls or intervene in industries perceived as crucial for social welfare, such as healthcare or utilities. Right-wing governments generally adopt a more market-oriented approach to competition policy. They

prioritize economic efficiency and competition as mechanisms for generating growth, innovation, and job creation. These governments may be more lenient towards mergers and acquisitions, emphasizing the role of market forces in determining outcomes. Right-leaning governments tend to favor deregulation and reducing government intervention in markets. Their competition policies may focus on removing barriers to entry, streamlining regulations, and minimizing state involvement in economic affairs. In practice, many governments, irrespective of their political ideology, often strike a balance between market competition and social objectives. This balance reflects the complex nature of competition policy and the need to accommodate diverse economic and societal goals. The prevailing political ideology of a government is a potent domestic-specific factor that significantly influences competition policy. Left-wing governments prioritize social welfare and consumer protection, while right-wing governments emphasize market efficiency and minimal regulation. Understanding the impact of political ideology on competition policy is essential for policymakers and practitioners, as it shapes the direction and objectives of competition policies in a given country. This recognition underscores the enduring relevance of domestic-specific factors in the evolving landscape of competition policy. The legal system in a country, whether common law or civil law, is a fundamental domestic-specific factor that exerts a significant impact on competition policy. Legal origin shapes the legal principles, procedures, and judicial interpretations that underpin competition laws, thereby affecting the effectiveness and enforcement of competition policy. Empirical analysis of competition policy across countries reveals that the legal origin of a nation's legal system plays a vital role in shaping competition policy approaches. Countries with common law systems and those with civil law systems exhibit distinct approaches to competition law enforcement, reflecting the influence of their legal origins. Nations with common law systems, such as the United States and the United Kingdom, tend to rely on judicial decisions and precedent in the interpretation and enforcement of competition laws. This reliance on case law results in a more flexible and evolving body of competition law. Common law countries often have extensive legal precedents and court decisions that inform the application of competition laws. Courts play a central role in shaping competition policy through their rulings on anti-competitive practices and mergers. In contrast, countries with civil law systems, such as France and Germany, rely more on statutory law and administrative agencies in enforcing competition laws. These systems emphasize codified rules and regulations, providing a more structured and regulatory approach to competition policy as illustrated in Figure 2.

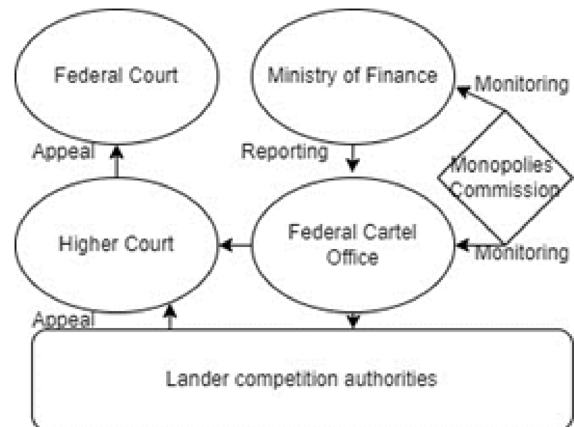

Figure 2. Enforcing competition laws in German

Civil law countries typically have comprehensive competition statutes that outline prohibited practices and enforcement procedures. Administrative agencies, such as competition authorities, are central to the implementation and enforcement of competition policy.[25] The legal origin of a country's legal system can influence the enforcement practices of competition authorities. Common law countries may prioritize litigation and judicial remedies, while civil law countries may emphasize administrative measures and regulatory interventions. The legal origin also affects the adaptability of competition policy to changing market dynamics. Common law systems, with their reliance on judicial decisions, may adapt more flexibly to emerging competition issues, while civil law systems may require legislative amendments to accommodate new challenges. The differing approaches of common law and civil law countries can pose challenges for global convergence efforts in competition policy. Harmonizing competition policies across legal origins may require bridging gaps in enforcement practices and legal interpretations. The legal origin of a country's legal system is a crucial domestic-specific factor that significantly influences competition policy. Common law and civil law systems exhibit distinct approaches to competition law enforcement, impacting the interpretation, enforcement, and adaptability of competition laws. Recognizing the influence of legal origin is vital for policymakers and practitioners seeking to craft effective competition policy frameworks that align with their nation's legal traditions and institutional arrangements. This recognition

highlights the enduring relevance of domestic-specific factors in the evolving landscape of competition policy. Variations in economic systems, such as coordinated market economies (CMEs) and liberal market economies (LMEs), are domestic-specific factors that exert a profound influence on competition policy. These distinct economic models result in different approaches to competition policy, reflecting their unique priorities and mechanisms. Empirical analysis of competition policy across countries reveals that the type of capitalism, whether CME or LME, plays a pivotal role in shaping competition policy approaches. These approaches reflect the broader economic philosophies and structures associated with each system. CMEs, characterized by close cooperation between businesses, labor unions, and governments, tend to emphasize social partnerships and consensus-driven decision-making. It may involve negotiations and agreements between industry and labor to address competition-related issues, such as mergers that affect employment. LMEs, characterized by free-market principles, competitive individualism, and limited government intervention, prioritize market competition as a means of achieving economic efficiency and innovation. Competition policy in LMEs reflects these priorities. In LMEs like the United States and the United Kingdom, competition policy places a strong emphasis on preventing anti-competitive behavior, dismantling barriers to entry, and promoting competitive markets. Regulatory intervention is typically minimized, and enforcement actions prioritize market efficiency. The type of capitalism prevalent in a country influences the regulatory approaches adopted in competition policy. CMEs may opt for sector-specific regulations to balance competition with social and economic stability, while LMEs may rely on general competition laws to address market competition. Competition policy in CMEs often involves consultations and negotiations with various stakeholders, including industry representatives and labor unions. In contrast, competition policy in LMEs typically places a greater emphasis on the role of competition authorities and market forces. The differences in competition policy approaches stemming from the type of capitalism can have global implications. Harmonizing competition policies across CMEs and LMEs can be challenging due to divergent priorities and regulatory philosophies. The type of capitalism prevalent in a country's economic system is a significant domestic-specific factor that profoundly influences competition policy. CMEs emphasize social partnerships and consensus-driven decision-making, while LMEs prioritize market competition and limited government intervention. Recognizing the impact of these economic models is vital for policymakers and practitioners seeking to craft effective competition policy frameworks that align with their nation's economic structure and objectives. This recognition underscores the enduring relevance of domestic-specific factors in the evolving landscape of competition policy.

Implications for Policymakers and Practitioners

The persistence of domestic-specific factors in shaping competition policy has significant implications for policymakers and practitioners. [26] While global convergence is a notable trend, it is essential to recognize and account for these factors when designing and implementing competition policy frameworks. Ignoring these factors can lead to ineffective policies that do not align with a country's unique economic, political, and institutional context. Therefore, understanding the enduring relevance of domestic-specific factors is crucial for crafting competition policies that are context-sensitive, adaptable, and effective. [27] Policymakers should acknowledge that a one-size-fits-all approach to competition policy is not suitable. Domestic-specific factors, such as levels of privatization, democracy, political ideology, legal origin, and types of capitalism, should be considered when formulating competition policies. Policies should be tailored to address the specific challenges and opportunities presented by a country's economic and political landscape. Recognizing the influence of democracy and public participation in competition policy, policymakers should adopt a consumer-centric approach. Policymakers should prioritize consumer protection, transparency, and accountability in competition policy formulation to ensure that the interests of the public are adequately represented and safeguarded. Policymakers should strike a balance between economic goals and social objectives. Acknowledging the influence of political ideology, policymakers should consider the trade-offs between market efficiency and social welfare. Competition policies should be designed to achieve both economic growth and equitable outcomes, taking into account the prevailing political ideology. Policymakers and practitioners should recognize that the legal origin of a country's legal system impacts competition law enforcement. Policies should be crafted in a manner that aligns with the principles and procedures of the specific legal system, whether it is common law or civil law. This ensures that competition laws are effectively interpreted and enforced within the legal

framework. Policymakers should be flexible in adapting competition policies to the economic model prevalent in a country. Understanding the differences between coordinated market economies (CMEs) and liberal market economies (LMEs) allows for the development of competition policies that support the unique characteristics of each economic model. Policymakers should actively engage in global cooperation efforts to harmonize competition policies while recognizing domestic-specific factors. This involves fostering international dialogue, sharing best practices, and addressing challenges arising from the differences in competition policy approaches across countries. The persistence of domestic-specific factors in shaping competition policy underscores the need for policymakers and practitioners to adopt a nuanced, context-aware approach. While global convergence is a significant trend, it should not overshadow the enduring relevance of these factors. By recognizing and incorporating domestic-specific considerations into competition policy frameworks, policymakers can ensure that competition policies are not only effective but also responsive to a country's unique economic, political, and institutional environment. This approach enhances the ability to craft competition policies that promote economic growth, innovation, and consumer welfare while addressing the distinctive challenges presented by each nation's context.[28]

CONCLUSION

In this comprehensive exploration of the political economy of competition policy, we have delved into the intricate interplay of domestic-specific factors that continue to shape competition policies across countries. While the global convergence of competition policies towards economic-based assessments and professionalization is a prominent trend, our analysis underscores the enduring relevance of these domestic-specific factors. Privatization levels, democracy, political ideology, legal origin, and types of capitalism all play pivotal roles in influencing the design and implementation of competition policies. Our study provides a more nuanced understanding of competition policy convergence and its drivers. It highlights that the path towards global uniformity is not straightforward, as each country's unique economic, political, and institutional context shapes the trajectory of its competition policies. These domestic-specific factors introduce variations that challenge the idea of complete harmonization.

RECOMMENDATION

Our findings offer valuable guidance to policymakers and practitioners engaged in the field of competition policy. Recognizing the influence of these domestic-specific factors is essential for crafting effective and context-sensitive regulatory frameworks. Therefore, we recommend that: Policymakers embrace a context-sensitive approach to competition policy formulation, considering the specific circumstances of their countries. Stakeholder engagement should be prioritized to ensure that a wide array of perspectives and interests are reflected in competition policies. Policymakers should balance economic objectives with social goals, acknowledging that political ideology plays a significant role in shaping competition policy priorities. Competition policies should align with the legal traditions and principles of a country's legal system to ensure coherence and effectiveness. Policymakers should adapt competition policies to the prevalent economic model, recognizing the differences between coordinated market economies (CMEs) and liberal market economies (LMEs). International cooperation in harmonizing competition policies should be actively pursued while considering domestic-specific factors. Regular monitoring and evaluation of competition policies should be established to ensure their continued relevance and adaptability.

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Potential Vulnerability to Corruption in Government Procurement: Prospects for Fair Competition

Sukarmi[1]
sukarmi@ub.ac.id
Reka Dewantara[2]
rainerfh@ub.ac.id

Faculty of Law Universitas Brawijaya[1,2]

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ABSTRACT

Embezzlement in the procurement of goods and services is the largest category of corruption cases handled by the KPK. In general, the form of fraud in the procurement of goods and/or services is the practice of direct appointment and the manipulation of the self-estimated price (HPS). The purpose of this research article is to analyse the potential susceptibility to corruption in tenders for the procurement of government goods and services that are not in accordance with the principles of fair business competition, and the efforts to prevent the potential susceptibility to corruption in tenders for the procurement of government goods and services that are in accordance with the principles of fair business competition. The method used is normative legal research. The results of the study indicate that the collusion between business actors and public officials in the tendering process begins during the budget planning and tendering process. The government's efforts to reduce the potential for corruption in the procurement of public goods and services by changing the organisational structure of procurement and tenders are being carried out through e-purchasing and expanding the object of refutation of auctions and tenders carried out by taking into account the principles of fair business competition, namely in a transparent, non-discriminatory manner and without barriers to entry.

Keywords: *Corruption, Tender, Fair Competition.*

ABSTRAK

Penggelapan pengadaan barang dan jasa merupakan kategori kasus korupsi terbesar yang ditangani KPK. Secara umum bentuk penipuan dalam pengadaan barang dan/atau jasa adalah praktik penunjukan langsung dan manipulasi harga perkiraan sendiri (HPS). Tujuan dari artikel penelitian ini adalah untuk menganalisis potensi kerentanan korupsi dalam tender pengadaan barang dan jasa Pemerintah yang tidak sesuai dengan prinsip persaingan usaha yang sehat, dan upaya untuk mencegah potensi kerentanan korupsi dalam tender pengadaan barang dan jasa Pemerintah. pengadaan barang dan jasa Pemerintah yang sesuai dengan prinsip persaingan usaha yang sehat. Metode yang digunakan adalah penelitian hukum normatif. Hasil penelitian menunjukkan bahwa kolusi antara pelaku usaha dan pejabat publik dalam proses tender dimulai pada saat perencanaan anggaran dan proses tender. Upaya Pemerintah untuk mengurangi potensi korupsi pengadaan barang dan jasa publik dengan mengubah struktur organisasi pengadaan dan tender dilakukan melalui *e-purchasing* dan memperluas objek sanggahan lelang dan tender yang dilakukan dengan memperhatikan prinsip persaingan usaha yang sehat, yaitu transparan, tidak diskriminatif, dan tanpa hambatan masuk (*barriers to entry*).

Kata Kunci: Korupsi, Tender, Persaingan Usaha.

INTRODUCTION

The practice of collusion in tenders for the procurement of goods and services is prohibited because it may lead to unfair business competition and conflict with the objectives of the tender, namely to provide equal opportunities for participants to participate in offering competitive prices and quality. Implementation of the tender procedure. The aim is to obtain the lowest price for the best quality. In several corruption cases heard by the Corruption Court, corruption of the state budget was usually carried out by several bureaucrats through the procurement of goods and services. The most common method is to increase the value of projects and to rig tenders. Some individuals budget for fictitious projects in the APBN.[1]

This is consistent with the data from the KPPU, which shows that almost 75% of KPPU cases are related to bid rigging. In bid-rigging, there is always facilitation by public officials in the form of a vertical conspiracy to direct one of the winners in the hope of getting an imbalance from the suppliers of goods/services. There must be a game here that starts with the collusion behind the corruption in the procurement of goods/services through collusive tenders. Data from the KPPU show that in the period 2006-2014, the KPPU has dealt with 247 cases, in terms of violations that form the basis for investigations and decisions, 75% of the cases are cases related to tenders for the procurement of goods and services that incidentally use government budgets, both central and regional. As preliminary data, the tender value for 43 decisions is Rp. 2.3 trillion. 52.1% or 35 of the 43 tenders that were proven to be collusive amounted to Rp. 1.2 trillion. This allows us to estimate the potential loss to the state due to the bid-rigging conspiracy. The bidding conspiracy between businessmen and public officials started when the budget was planned and the bidding was carried out. So the tender that took place was a mere formality because the winner was targeted from the beginning.

Tender collusion by circumventing the budget for the procurement of goods and/or services with surcharges, planning activities/ projects that are not in line with needs, fictitious projects, choosing a tender system that has been directed to one supplier of goods/services and the goods and/or services to be auctioned can only be supplied by one particular economic actor (directing certain brands) and the Procurement Committee (POKJA)/public officials appointed to conduct the auction do not have the required qualifications, so they are easily influenced and regulated by economic actors who have colluded with the PPK (Commitment Making Officer). This often includes the minister, governor, regent, mayor, head of the service and even councilors. These are the forms that often appear in vertical bid rigging. Vertical collusion is a conspiracy between economic actors (bidders) and other parties vertically. This kind of thing happened in a number of cases, including the construction of an integrated sports facility at the Ministry of Youth and Sports, and the procurement project for two-wheel and four-wheel SIM simulators at the National Police Traffic Corps, E-KTP, Trans Jakarta, and so on. There are also individuals who budget fictitious projects in the APBN.[2]

Essentially, the conduct of the tender must comply with the principles of fairness, openness and non-discrimination. In addition to tenders, attention must be paid to matters that do not conflict with the principle of fair business competition. It is now being implemented through the electronic procurement of goods or services (e-procurement). This means that the wider business community that is interested and qualified can follow it. However, in practice, the mechanism of electronic procurement of goods and services is only effective for the procurement of goods, but it has not been fully implemented for the service sector, especially construction services. So far, there is still a lot of bad collusion between job providers and service providers, which leads to corrupt practices. For example, by registering the names of different companies but still in the same syndicate or controlled by the same person, giving rewards to employers, and so on. In addition to the unfair business competition practices described above, there are other forms or models of competition that business actors engage in with government institutions. This means that there are countries that facilitate, or in other words, this unfair business competition is carried out by the state by receiving certain rewards by facilitating the process of procuring government goods and/or services.

According to Kaufmann, the procurement of goods and services (PBJ) is the government activity that is considered most vulnerable to corruption, and this is true all over the world. The results of this study have been more or less confirmed in Indonesia. KPK case handling statistics are available in several KPK annual reports, since 2004-2014, the KPK has handled 411 corruption cases, of which 131 or one third of the cases occurred in the procurement of goods/services. This makes corruption in this area the second most common case handled by the Commission after bribery. Therefore, it is necessary to conduct research on the potential

susceptibility to corruption in tenders for the procurement of government goods and services that do not comply with the principles of fair business competition.

The purpose of this study is to find out what are the potential vulnerabilities to corruption in tenders for the procurement of government goods and services that are not conducted in accordance with the principles of fair business competition, and what efforts are being made to prevent potential vulnerabilities to corruption in tenders for the procurement of government goods and services that are conducted in accordance with the principles of fair business competition.

The research used in this study is a combination of normative and sociological legal research. This research does not only aim to find the rule of law, legal principles, and legal doctrines to answer the legal questions faced.[3] but also the implementation of existing provisions in the field[4]. Thus, the statute approach and the empirical approach are used. For the collection of legal materials in this study, the library research method is used. As for the data obtained from interviews with relevant stakeholders. The research collects legal materials, and the data needed for further research is collected based on the problem topics that have been formulated and classified according to the source and hierarchy to be studied comprehensively. The analysis technique used in this study is a qualitative descriptive technique.[5] From the results of the analysis, the interpretation or interpretation of the law is then carried out with the help of methods or doctrines of interpretation. The methods of interpretation used in this study are grammatical interpretation, systematic interpretation, and futuristic interpretation

DISCUSSION

Emerging Potential Vulnerability to Corruption in Tenders for The Procurement of Goods and Services by The Government

Corruption is one of the inhibiting factors in the process of creating a healthy and competitive business climate, as well as the realization of added value and economic progress, both nationally and internationally. Marwan Effendy mentions corruption itself, namely:

> "*An act carried out to obtain an advantage that is not in accordance with the official duties and rights of another party, wrongfully using one's position or character to obtain an advantage for oneself or for another person, together with one's duties and rights. from the other side*"[6]

The elements of the criminal offense of corruption are specified in Articles 2 and 3 of Law No. 20 of 2001 on Amendments to Law No. 31 of 1999 on the Eradication of Criminal Acts of Corruption, including the fulfillment of the following elements: (1) Anyone, (2) Unlawful, (3) Benefiting oneself or another person or entity, (4) May cause economic or financial loss to the state (Article 2) Or (1) Anyone, (2) Deliberately, (3) Benefiting oneself or another person or entity, (4) By abusing their authority to their position or position, (5) May cause economic or financial loss to the state (Article 3). The extent to which the implementation of the State's financial management is carried out in accordance with the provisions of the legislation is examined in order to find elements against the law, whether there are personal gains or not other people, and whether there are financial losses to the State as a result of acting against the law. The element against the law must meet the following requirements: the formal legal requirements of a criminal act, i.e. the act of the perpetrator must be expressly determined to have deviated from the provisions of the law, is not considered by society to be despicable or contrary to decency, public order and security.

The element of abuse of the power, opportunity or facility available to someone by virtue of their position or status from Article 3 of Law No. 20 of 2001 is basically an element of Article 52 of the Criminal Code. However, the wording, which uses the general term abuse, is broader compared to Article 52 of the Criminal Code, which specifies it in the words, for committing a crime, or when committing a crime using the power, opportunity or effort obtained from his position. The word authority means having the right and power to do something. This means that someone with a certain position or status will have a certain authority, and with that authority he will have the power or opportunity to do something. This power or opportunity to do something is what is meant by opportunity. Meanwhile, someone who has a position or authority will usually be given certain facilities in order to carry out his duties and authority.[7]

Tendering for goods/services (procurement) is an activity that begins with the identification of needs and ends with the delivery of the work. The guidelines for the implementation of the procurement of goods/services include the preparation of the procurement of goods/ services from suppliers, the preparation of the selection of suppliers, the implementation of the selection of suppliers, the implementation of the contracts and the delivery of the work

results. In the explanatory note to Article 22 of Law No. 5 of 1999, it is stated that a tender is an offer to submit a price for the purchase of a work, the procurement of goods or the provision of services. In this case, the number of bidders is not specified, it may be more than one person or only one economic operator in the case of direct appointment/selection. The definition of tender in the Regulation includes an offer to submit a price to buy or carry out a contract, procure goods/services, buy goods/services, sell goods and/or services.[8]

Procurement includes activities to procure goods/services through one of the following three approaches, namely self-management (swakelola), purchase (buy) and rent. Before this approach is chosen, a general procurement plan is prepared and preparation for the implementation of the procurement of goods/services is carried out, resulting in a general procurement plan document and a goods/services procurement document.[9]Efficient, open and competitive procurement of goods/services is necessary for the availability of affordable and quality goods/services, so it will have an impact on improving public services, especially procurement in government agencies. It is hoped that corrupt practices in the procurement of goods and services by government can be eliminated. The reality of corruption in the procurement of government goods and services is increasing. The modus operandi and methods are also becoming more diverse and systemic.

Public Procurement is a government business system that focuses on government procurement process issues such as preparing project specifications, requests/requests, receiving and evaluating bids, awarding contracts and making payments. Public procurement, also known as public contracting, is a process that is a set of multi-step procedures established for the acquisition of goods and services by a government entity. It includes the full cycle of needs assessment, preparation of procurement documents, award of contracts, performance and final accounting of completed contracts. General procurement applies to any government contract for goods, works or services, including consultants.[10]

With reference to the concept of the Association of Certified Fraud Examiners [11], It is relevant to describe the issue of preventing corruption in terms of the four-diamond theory of abuse (the four-diamond theory of fraud). In essence, this theory states that corrupt behaviour (abuse) can occur due to four things: (i) incentives for employees to misuse money and institutional assets; (ii) circumstances that allow employees to abuse; (iii) employees' mindset and ethics that allow employees to abuse; (iv) employees' ability to make their crimes go undetected by the system.[12]

There are 3 (three) elements to be categorised as a criminal offence: firstly, the abuse of authority, secondly, the granting of benefits to oneself and others, and thirdly, causing financial loss to the State. If there are indications or "strong suspicions" of irregularities in the ongoing process, even if it is not final, it may or may not be categorised as a violation of the Corruption Law.

The following are some of the actions that can give rise to criminal offences in the procurement of government goods and services: The crime of bribery is a crime of the same type as corruption and is a very old type of crime. Bribery as a colloquial term, as outlined in the Act, is a gift or promise ("gifted" or "beloften") given or received. The perpetrators of bribery are divided into active bribery, which is the type of bribery where the perpetrator is the giver of a gift or promise, and passive bribery, which is the type of bribery where the perpetrator is the recipient of a gift or promise. The purpose of this bribery is for the procurement manager to win the bid from the partner so that the activity manager receives the goods/services submitted by the partner, where the quality and/or quantity is lower than agreed in the contract.

Second, splitting or merging packages can be done for clear reasons and in accordance with the principles of effective and efficient procurement. Package splitting can be done because of differences in the target supplier, significant differences in the location of the recipients/users of the goods, or differences in the time of use of these goods and services. Both the Criminal Code (KUHP) and Law No. 31 on the Elimination of Criminal Acts of Corruption do not regulate the threat of bundling or splitting packages. Presidential Decree 54 of 2010, in conjunction with Presidential Decree 70 of 2012, also does not address the threat of merging or splitting packages. The threat of criminal sanctions arises when it is proven that the splitting or merging of packages is followed by the practice of price gouging. In this case, the practice of price gouging is punishable.

Transactive corruption in tendering usually begins with a conspiracy. This is done through agreements, both written and unwritten. This conspiracy is aimed at manipulating tenders/auctions or colluding in tendering (collusive tendering), which can occur through collusion between economic agents or between economic agents and contractors. This collusive tendering or conspiracy is aimed at restricting other

potential competitors from doing business in the relevant market by determining the winner of the tender, starting from the planning and setting of requirements by the executors or the tender committee, through the coordination of tender documents between tender participants, to the announcement of the tender. Forms of irregularities that occur in the procurement of public goods/services include, but are not limited to, corrupt behaviour in the procurement of goods and services. Corrupt behaviour in the procurement of goods and services is a business conspiracy, i.e. a form of cooperation between business actors with the intention of controlling the relevant market for the benefit of the conspiring business actors.[13] Conspiracy can occur between economic agents and other economic agents (competitors of suppliers of goods and services) by creating a pseudo-competition between bidders. This is better known as social gathering bidding, where the winner is determined in advance. Conspiracy can also occur between one or more economic operators and the tendering or auction committee, for example, a procurement plan that targets economic operators by setting qualification requirements and technical specifications, resulting in a brand that prevents other economic operators from participating in the tender.[14]

Efforts to Reduce The Potential for Corruption In The Procurement of Government Goods and Services

The Indonesian government has redesigned the structure of the procurement organization, from a very vertical (hierarchical) one to a more horizontal one. The old structure was based on Presidential Decree (Keppres) No 80/2003, while a more horizontal structure was established by Presidential Regulation (Perpres) No 54/2010. The horizontal structure allows for more mutual control over the procurement process. According to Presidential Decree 80/2003, the organizational structure of procurement is divided into three officers: (i) leaders of public bodies; (ii) Users of Goods and Services; and (iii) Procurement Officers or Committees.

There are at least two weaknesses in this organizational structure, as described below. The structure of the Presidential Decree is such that the first officer elects the second officer and the second officer elects the third officer. In other words, the third officer is responsible to the second officer and the second officer is responsible to the first officer (Article 1, Article 9(2) and Article 9(3)(b)). This means that the structure of the procurement organization is hierarchical and tiered, with the first officer at the top of the structure and the third officer at the bottom. The disadvantage of this is that the control pattern that can arise is only from superiors to subordinates.

The potential vulnerability to corruption in tenders for the procurement of government goods and services that do not comply with the principles of fair business competition occurs in a bid-rigging conspiracy of the vertical type, i.e. collusion between business actors participating in the auction/procurement of goods and services with the owner or employer (procurement committee), by facilitating the winning of the tender through rewards in the form of increases in the tender value, bribes, and gratuities. Efforts made by the government to reduce the potential for corruption in the procurement of government goods and services, changing the organizational structure of procurement and tenders are carried out through e-purchasing and expanding the object of refutation of auctions and tenders carried out by taking into account the principles of fair business competition, namely in a transparent, non-discriminatory manner, no barriers to entry and effective and efficient.

Once the public body has found the item it wants, it invites the supplier to negotiate a price. For many categories of goods, such as the procurement of motor vehicles, public authorities may only invite one supplier. These negotiations allow public bodies to bid on prices listed in electronic catalogues. In practice, this system has shown many positive things. Firstly, e-purchasing is believed to be able to prevent budget inflation, as the price of the desired goods has been “fixed” with an umbrella contract. In addition, the price is transparent because it is published on the website of the electronic catalogue.[15]

The concept of challenge in Indonesia tends to focus on downstream activities, namely the decision of the winner of the auction, and not on upstream problems: the challenge of the tender documents. Thus, the concept of rebuttal in Indonesia is still narrow and does not meet the needs of preventing corruption, considering that efforts to outsmart the procurement process have started from the upstream side by engineering the bidding requirements in the procurement documents. In other countries, the concept of this objection is commonly referred to as bid protest. In contrast to the concept of rebuttal, the bid protest mechanism allows potential bidders who feel disadvantaged to request a review of the procurement documents.

A rebuttal mechanism that does not allow review of procurement documents also reduces public confidence in the procurement system. Because it is not part of the legal process, it is

very likely that suppliers frustrated with the procurement system will resort to illegal means. Common methods include hiring thugs, lobbying politicians, and even using the machinery to pressure the procurement committee.

CONCLUSION

The potential vulnerability to corruption in tenders for the procurement of public goods and services that do not comply with the principles of fair business competition arises in the case of vertical bid-rigging, i.e. collusion between economic operators participating in the auction/ procurement of goods and services and the owner or employer (procurement committee), by facilitating the winning of the tender through the provision of rewards in the form of premiums on the tender value, bribes, and gratuities. Efforts made by the government to reduce the potential for corruption in the procurement of government goods and services by changing the organizational structure of procurement and tenders are carried out through e-purchasing and expanding the subject of refutation of auctions and tenders carried out by taking into account the principles of fair business competition, namely in a transparent, non-discriminatory manner. no barriers to entry and effective and efficient.

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Competition Law and Artificial Intelligence: Solution or Threat

Ahmad Sabirin[1]
ahmad.sabirin@uiii.ac.id
Anna Maria Tri Anggraini[2]
anna.mta@trisakti.ac.id

Faculty of Social Sciences Universitas Islam Internasional Indonesia[1]
Faculty of Law Universitas Trisakti[2]

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ABSTRACT

This article discusses the solutions and threats posed by artificial intelligence in the context of business competition law. The findings of this article indicate that artificial intelligence presents both challenges and opportunities in this field. While artificial intelligence can enhance competition by increasing efficiency and fostering innovation, it raises concerns about market dominance and collusion. Consequently, the KPPU must adapt to these complexities to ensure fair competition and protect consumers. Balancing innovation with competitive enforcement is essential to leveraging the benefits of artificial intelligence while mitigating potential threats as artificial intelligence becomes more prevalent in the market. Based on these findings, the authors recommend that the KPPU increase its oversight of artificial intelligence-related activities to ensure compliance with business competition laws. The KPPU should look for evidence of anti-competitive behavior driven by artificial intelligence, such as price collusion through price monitoring and algorithmic matching software, by amending Law No. 5 of 1999. The KPPU enforces laws and regulations to address the impact of artificial intelligence on business competition law. For instance, the European Union's Digital Markets Act empowers the European Commission to request algorithms, data about their testing, and explanations about their use from companies designated as competition gatekeepers.

Keywords: *AI, Digital Market, Monopoly, Discrimination*.

ABSTRAK

Artikel ini membahas terkait solusi dan ancaman yang ditimbulkan oleh kecerdasan buatan dalam konteks hukum persaingan usaha. Temuan menarik dari artikel ini menunjukkan bahwa kecerdasan buatan menghadirkan tantangan dan peluang dalam persaingan usaha. Meskipun kecerdasan buatan dapat meningkatkan persaingan dengan meningkatkan efisiensi dan mendorong inovasi. Di sisi lain kecerdasan buatan juga dapat menimbulkan kekhawatiran akan dominasi pasar dan kolusi. Oleh karena itu, KPPU harus dapat beradaptasi dengan kompleksitas ini untuk memastikan persaingan usaha yang sehat dan melindungi konsumen. Menyeimbangkan inovasi dengan penegakan hukum yang kompetitif sangat penting untuk meningkatkan manfaat dari kecerdasan buatan sambil mengurangi potensi ancaman karena kecerdasan buatan. Berdasarkan temuan-temuan ini, penulis merekomendasikan agar KPPU meningkatkan pengawasannya terhadap kegiatan-kegiatan yang berhubungan dengan kecerdasan buatan untuk memastikan kepatuhan terhadap Undang-Undang persaingan usaha. KPPU harus mencari bukti perilaku anti-persaingan usaha yang didorong oleh kecerdasan buatan, seperti kolusi harga melalui pemantauan harga dan perangkat lunak pencocokan algoritmik, dengan mengamandemen Undang-Undang Nomor 5 Tahun 1999 dengan memberikan kewenangan tersebut kepada KPPU. KPPU harus menegakkan hukum dan peraturan untuk mengatasi dampak kecerdasan buatan terhadap hukum persaingan usaha. Sebagai contoh, Undang-Undang Pasar *Digital* Uni Eropa memberikan wewenang kepada Komisi Eropa untuk meminta algoritma dan data mengenai pengujian algoritma tersebut, dan penjelasan mengenai penggunaannya dari perusahaan-perusahaan yang ditunjuk sebagai penjaga gerbang persaingan usaha.

Kata kunci: AI, Pasar Digital, Monopoli, dan Diskriminasi.

INTRODUCTION

Artificial intelligence and competition law are closely related, as artificial intelligence has the potential to reshape the dynamics of competition in the market and can lead to anti-competitive behavior. The European Union Competition Commission has recognized that algorithms can facilitate traditional collusion and can be used to reinforce and monitor collusion. It has also identified two situations involving different groups of algorithms, namely algorithmic conventional collusion facilitation and algorithmic alignment through third parties. Software monitoring tools and digital platforms can also have anticompetitive effects[1]. Therefore, in this era of technology and digitalization, competition authorities in the European Union are increasingly focusing on the potential impact of artificial intelligence on market competition. Enforcement agencies in the European Union are currently studying how artificial intelligence can facilitate collusion, exploit market power, and foreclose competitors. They also consider corporate liability for actions taken by artificial intelligence algorithms, even if the algorithms are not fully understood by the individuals who develop or implement them[2].

The European Union Competition Commission believes that businesses are responsible for the actions of their automated systems, including artificial intelligence algorithms, and they must ensure that they understand how these systems work to avoid breaching competition law. The Competition & Markets Authority (CMA) has published proposed principles to guide a competitive artificial intelligence market and protect consumers in the United Kingdom. The European Union's Digital Markets Act (DMA) authorizes the European Commission to request algorithms, data on testing, and an explanation of their use from companies designated as gatekeepers under the Act, which can assist in monitoring the use of algorithms.[3] The potential risk of artificial intelligence in competition law is that it facilitates price collusion through price monitoring and algorithmic matching software, allowing companies to adjust prices to align with their competitors' prices without direct communication. Artificial intelligence can also exploit market power, resulting in discrimination or foreclosure of competitors. This can occur through mergers, exclusive cooperation agreements, or the use of large amounts of big data. [4]

Artificial intelligence can enable collusion without direct communication between competitors, as sophisticated algorithms can facilitate anti-competitive behavior. Artificial intelligence algorithms operate without human intervention, making it difficult to assign responsibility for their actions, especially in cases where companies do not directly control the algorithms.[5] Artificial intelligence's increased transparency can make it easier for companies to communicate and coordinate, potentially leading to anti-competitive behavior. Artificial intelligence poses new challenges for competition enforcement agencies, including adapting to new forms of anti-competitive behavior and difficulties in determining liability for actions driven by artificial intelligence.

Regulatory artificial intelligence in competition law presents several challenges. Artificial intelligence is a rapidly evolving technology, and governments must keep up with the latest developments and adapt their regulations accordingly. Artificial intelligence algorithms operate without human intervention, making establishing liability for their actions difficult, especially in cases where companies do not control the algorithms directly. [6] The increased transparency provided by artificial intelligence can make it easier for companies to communicate and coordinate, potentially leading to anti-competitive behavior. The government, in this case, the KPPU, faces challenges in determining which companies are relevant to cross-market competition and identifying dominant players in the market. Liability for the actions of artificial intelligence still needs to be defined as who should be liable for the actions of artificial intelligence algorithms, mainly when such algorithms are used in strategic decision-making processes. The use of artificial intelligence in the cloud sector may harm competition, thereby strengthening the position of cloud providers. Some models and application developers may integrate their artificial intelligence-powered applications with other services, potentially creating anti-competitive practices.[7]

In Indonesia, awareness of artificial intelligence's dangers still needs to be implemented. In developed countries like the United States, the European Union, and the United Kingdom, authorities sought solutions to benefit business competition. This is because Law No. 5/1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition (Law No. 5/1999) has not regulated the mechanism for monitoring digital-based companies. This is undoubtedly a challenge for business competition law enforcement in Indonesia. The Indonesia Competition Commission (KPPU), as the regulator to oversee monopolistic practices and unfair business competition, needs complete authority and instruments to conduct surveillance and take

firm action against business actors who violate business competition. This moment is also an opportunity for business actors to utilize artificial intelligence to streamline their business for profit in today's digital era.

In the era of digitalization, many digital companies are leveraging artificial intelligence to gain market share. In Indonesia, potential unfair business practices by Google over the use of proprietary payment services for its software distribution platform, Google Play Store[8]TikTok-Shop invested US$1.5 billion in Tokopedia, a local e-commerce platform. [9]. This has the potential to impact competition in the Indonesian e-commerce market, as Tokopedia is one of the largest e-commerce companies in Indonesia.[10]The potential impact of unfair competition can lead to market dominance by utilizing artificial intelligence. Indonesian tech giants, such as Tokopedia's acquisition and merger by Gojek into GoTo, reject acquisition and merger talks with their competitor Grab and emphasize the company's solid fundamentals and financial position. [11]This potential share/ asset acquisition or merger could significantly impact the ride-hailing market in Southeast Asia. The merger between Gojek and Tokopedia in Indonesia is the largest deal in the history of technology companies in Indonesia. Combining the two most prominent tech companies creates a digital behemoth spanning e-commerce, ride-hailing, and financial services. This merger could impact competition in the Indonesia and Southeast Asia sectors.[12].

In the European Union, the corporate action of merging or acquiring the digital shares of Google and Fitbit took place in 2020. This created two tech companies operating in the e-commerce and fitness sectors.[13] While in the United States in 2022-2023s occurred between Apple and Google companies which were carried out in 2023 [14]In China, between 2022 and 2023, the same thing happened between Alibaba and Tencent.[15] These mergers can increase the company's business value, expand market share, and accelerate digital transformation. Assessment of acquisitions and mergers of app-based companies with the help of artificial intelligence with an impact on unfair competition. In China, the United States, and the European Union, this involves analyzing various aspects of the deal, including the size of the investment, the companies involved, and the potential impact on competition. These regulatory and supervisory mechanisms provide legal certainty and fairness in business competition due to the effects of artificial intelligence, which results in monopolistic practices and unfair business competition.

Indonesia should learn from China to face the challenges of artificial intelligence in competition law in the digital era. The Standing Committee of the National People's Congress, in 2022, amended the Anti-Monopoly Law for the first time. The amendments to China's Anti-Monopoly Law took effect in August of the same year. Meanwhile, one of the focuses of the amendment is adjustments in the face of business development in the digital era. This can be seen in Article 9:

> *"Undertakings shall not use data, algorithms, technology, capital advantages, and platform rules to engage in monopolistic acts prohibited by this Law."*

Article 9 of the China Antimonopoly Law is considered urgent because, in this era, we can see dominated by new companies that are starting to emerge and grow and dominate in the e-commerce market that have used technology that can be said to be vulnerable to monopolistic practices and other unfair business competition. Another article that also relates to the digital sector is Article 21:

> *"For concentrations of business operators that meet notification standardds prescribed by the State Council, operators shall notify the anti-monopoly law enforcement agency of the State Council in advance, and the concentration shall not be implemented if the notification is not made. "Where the concentration of business operators falls below notification thresholds stipulated by the State Council, but there is evidence that the concentration has or may have the effect of excluding or restricting competition, the anti-monopoly enforcement agency of the State Council can request business operators to notify." If the business operators fail to notify by the provisions of the preceding two paragraphs, the anti-monopoly law enforcement agency of the State Council shall investigate by law."*

However, artificial intelligence can also positively impact the progress of competition law in Indonesia if used wisely and responsibly. Artificial intelligence can increase competition and improve decision-making in today's technological and digital era. Artificial intelligence can contribute to helping businesses by improving their operations, reducing costs, and increasing competitiveness, which can lead to better outcomes for consumers and the market as a whole. In addition, artificial intelligence can also assist in making better decisions by analyzing large amounts of data and providing insights that humans may not be able to identify independently, resulting in more informed and competitive business practices. Therefore, Law

No.5 of 1999 must accommodate it to avoid monopolistic practices and unfair business competition. In response to these challenges, this paper discusses artificial intelligence's impact, challenges, and opportunities on competition law in the era of technological advancement and digitalization.

DISCUSSION

Is Artificial Intelligence a Threat to Competition Law in the Age of Technology?

Artificial intelligence is a computer science discipline that focuses on developing intelligent systems that can execute tasks that generally require human abilities, such as understanding visuals, recognizing sounds, making decisions, and translating languages. Artificial intelligence systems are designed to learn from data and improve their performance over time, allowing them to adapt to new situations and environments. [16] Artificial intelligence includes machine learning, deep learning, neural networks, natural language processing, and computer vision. These technologies enable artificial intelligence systems to recognize patterns, make predictions, and learn from data. Artificial intelligence is used in various industries, including healthcare, finance, transportation, and retail, to automate tasks, increase efficiency, and improve decision-making.[17]

Artificial intelligence has limitations, such as difficulty understanding context, low transparency, and lacking the same sense of intelligence as humans. [18] Artificial intelligence systems need to fully understand the context of a situation, which can result in incorrect decisions or actions. The scope of artificial intelligence is rapidly expanding, with ongoing research and development in areas such as deep learning, reinforcement learning, and quantum computing. Artificial intelligence is expected to continue transforming various industries and aspects of daily life. Still, it is essential to address limitations and ethical issues to maximize benefits while minimizing potential risks. Artificial intelligence is indeed a new thing in business competition, especially in Indonesia; until now, the challenge of artificial intelligence has threatened law enforcement in Indonesia and other countries. This technological advancement brings both opportunities and risks, with potential issues ranging from regulatory gaps to ethical concerns, requiring a balanced approach to leverage its benefits while mitigating its drawbacks.

The use of artificial intelligence in business competition law in Indonesia has also emerged with the enactment of Law No. 19/2016 on the Amendment to Law No. 11/2008 on Electronic Information and Transactions (UU ITE), which regulates the regulation of artificial intelligence technology in Indonesia.

From data collection, then proceed to data processing. Artificial intelligence and big data can help process data faster and more effectively. However, if not done correctly, the data collected may contain unnecessary or unauthorized personal information of customers. In addition, artificial intelligence technology can detect unusual security threats to data, accurately identify users, and prevent unauthorized access to sensitive data. However, if not done appropriately, the data collected may contain unnecessary or impermissible personal information of customers. Law No. 27 of 2022 on Personal Data Protection (PDP) has set the legal basis for the four subjects, namely individuals, corporations, public bodies, and international organizations, which must protect consumers' data, particularly in using artificial intelligence. [25] However, if not done appropriately, the data collected may contain unnecessary or impermissible personal information of customers.

Businesses must ensure that the data used by artificial intelligence is defined as personal data, which can be stored securely and protected from harmful threats. [26]From an economic perspective, using artificial intelligence and big data may threaten competition, particularly regarding economic data collection. Artificial intelligence may carry anti-competitive risks if financial data is not required or allowed. To date, business competition law in Indonesia, Law No. 5 of 1999, uses the Rule of Reason and Illegal Per Se approach to prevent anti-competitive practices. [27] The Rule of Reason approach is an analysis method that includes an action's influence on creating obstacles and anti-trust practices.[28], while Per Se Illegal is where a specific business action is deemed to violate the law without further proof of the impact that occurs [29]. Using artificial intelligence and big data in business competition also requires appropriate and effective governance to prevent anti-competitive risks. Good artificial intelligence governance can help manage risks, reduce operational costs, and speed up business processes. However, using this technology also requires special attention to data security and collecting personal data so as not to create anti-competitive risks. [30]

Artificial intelligence in competition law in the European Union and the United States has emerged since the early 2000s. [19] This is due to the rapid development of artificial intelligence technology, which allows the use of artificial intelligence in various fields, including information processing, decision support, and

recommendation making.[20][21] Using artificial intelligence in business has become a growing trend in the European Union. Artificial intelligence approaches are attractive, especially for retailers, and have been used extensively in creating pricing and marketing algorithms for company effectiveness.[22]

In the United States, the use of artificial intelligence in competition law has also become an increasingly common trend, such as in the correctional system, which aims to help people answer complex challenges. [23] The use of artificial intelligence in competition law in the European Union and the United States continues to grow and is expected to be increasingly used in various fields. This is inevitable with the advancement of technology. Undeniably, the use of artificial intelligence in business competition in Indonesia can affect the security of customer data. Data misuse can occur by utilizing data collection with artificial intelligence and big data, allowing companies to collect more extensive and faster data.[24] However, if not done appropriately, the data collected may contain unnecessary or impermissible personal information of customers.

In the context of the impact of artificial intelligence on competition, businesses have competitive risks by using pricing algorithms to monitor and adjust their prices. Competitors subscribing to the same third-party pricing tools using commercially sensitive information from competitors, such as future prices, could result in an unlawful exchange of information. This artificial intelligence has the potential to facilitate collusion, exploit market power, and reduce competitive pressures. [31]. Some critical challenges and risks of facilitating collusion between competitors through price monitoring and algorithmic matching software make it easier for companies to adjust their prices to align with those of their competitors without direct communication.[32]

In this context, the use of technologies such as algorithmic matching software can allow for unauthorized coordination between competitors, which can be detrimental to free and fair competition in the market. This highlights the need for strict regulation to oversee the use of these technologies so that they are not misused for unfair advantage and harm consumers and competitors who are not involved in such collusion practices.

Additionally, businesses use artificial intelligence to exploit market power, resulting in discrimination or foreclosure of competitors. This can happen through mergers, acquisitions, exclusive cooperation agreements, or the use of large amounts of big data.[33] It becomes complicated because Artificial intelligence algorithms operate without human intervention, making it difficult to assign responsibility for their actions, especially in cases where the company does not control the algorithms directly.[34] The government, in this case, the KPPU, faces challenges in determining which companies are relevant to cross-market competition and identifying dominant players in the market. Who should be responsible for the actions of artificial intelligence algorithms, mainly when such algorithms are used in strategic decision-making processes? Law No. 5 of 1999, as the primary basis for business competition law in Indonesia, can threaten companies that do so. Using artificial intelligence in data use laws can be a threat in using artificial intelligence to carry out anti-competitive practices. If artificial intelligence is used to carry out anti-competitive practices, then Indonesia's data use laws could threaten companies that do so. To prevent anti-competitive risks, companies in Indonesia must ensure that the data used by artificial intelligence is defined as personal or economic data, which can be stored safely and protected from detrimental threats. [35]

Competition law in the European Union and the United States recognizes that the negative impact of artificial intelligence in the European Union and the United States is becoming a concern as technology and digitalization advance. In the context of competition law, use in the European Union and the United States in the market raises the potential risk of anti-competitive behavior, such as algorithmic collusion, where companies may act in a way that distorts competition without direct communication. Draft laws in the European Union and the United States aim to regulate artificial intelligence systems to prevent systemic risks and ensure the safety and trustworthiness of artificial intelligence applications, especially applications that are classified as high risk due to their potential harm to various aspects such as health, safety, and rights. The basics of these regulations have been created to provide a clear and comprehensive framework for overseeing and controlling the use of artificial intelligence. This includes the implementation of ethical standardds, transparency, and accountability so that these technologies can be used responsibly and provide maximum benefits without ignoring the risks that may arise.

On the negative side, the spread of artificial intelligence poses challenges in effectively enforcing business competition laws. The rapid development and application of artificial intelligence systems, such as generative artificial

intelligence models, may outstrip regulators' ability to keep up with these technological advances, making it more difficult to detect and sanction competition law violations. This dynamic landscape raises concerns regarding the enforcement of business competition law in the face of developments in artificial intelligence technology. [36]. Thus, while artificial intelligence offers transformative potential, it also carries complexities and risks that require careful regulation and enforcement to ensure fair competition and mitigate negative impacts on markets and society. [37] In business competition law, two issues concern the influence of artificial intelligence in business competition: market control and monopoly, as well as price discrimination and anti-competitive practices.

Market domination and monopolies carried out by companies using artificial intelligence can threaten fairness and balance in the market because such companies can control prices and hinder the entry of new competitors. Meanwhile, price discrimination and other anti-competitive practices facilitated by artificial intelligence can create injustice for consumers and harm other businesses that do not have the same access to such technology. Therefore, it is important to develop regulations that are able to anticipate and overcome these challenges in order to maintain healthy and fair business competition.

Market Control and Monopoly Practices

Increasing efficiency and productivity Artificial intelligence offers various solutions to improve efficiency and productivity in multiple industries. One example concerns the automation of repetitive tasks, such as data analysis and customer service, optimization of production and logistics processes, and personalization of products and services to improve customer experience. [38]. The potential for market domination with increased efficiency and productivity driven by artificial intelligence could give some companies a competitive advantage. This could encourage market concentration, where a few large companies control most of the market share. Triggering monopolistic practices, where one company has complete control over the market and can determine prices and output. Google dominates the search engine and online advertising services market. Amazon dominates the e-commerce market. Facebook dominates the social media market. [39]

According to the theoretical view, market control by a company or group of companies reflects monopolistic actions or practices, which refer to the efforts of a company or group of companies to maintain or increase monopoly advantage or dominance in the relevant market. [40]A monopoly or dominant position gives a company or group of companies the power to regulate or control critical market factors. These key factors include price, production, service level, quality, and distribution of goods or services. [41] Market control and monopoly are essential concepts in business competition law. Market control occurs when a company or individual can control a product or service's price, quality, and availability. Monopoly, an economic condition where one company has the power to determine the cost and quality of a product or service that the market cannot decide, is one form of market control. [42]. The prohibition of monopolistic practices is regulated in Article 17 of Law No. 5 of 1999, which explains that:

> *"Business actors are prohibited from exercising control over the production and marketing of goods or services, thereby resulting in monopolistic practices or unfair competition."*

Furthermore, the business actor should be suspected or considered to be controlling or producing and marketing goods or services as mentioned in paragraph (1), namely as follows;

1. There is no substitute for the goods and/ or services concerned; or
2. Causing other business actors to be unable to enter into the same business competition or
3. Business actors can control more than 50 percent of the market share of a particular type of goods or services.

The consequences of a market monopoly include:

1. Resulting in relatively high buying and selling prices while less is being sold, which can often result in losses for consumers;
2. Resulting in what is produced not being more efficient;
3. Production capabilities and natural resources cannot be used comprehensively;

Apart from the provisions regarding monopolistic practices, artificial intelligence can potentially violate the provisions prohibiting market control as regulated in Article 19 of Law 5/1999. Article 19 sets out restrictions on company behavior contrary to Law Number 5 of 1999. These restrictions include refusing or preventing certain business actors from operating in the same market, preventing competitors' consumers or customers from interacting with their competitors, limiting the distribution or sale of goods or services in that

market, and discriminating against certain business actors. In particular, several impacts on business competition could result from violations of Article 19 of Law no. 5 1999, including and not only limited to [43]:

1. The presence of competitors in the market that will undergo reduction or complete elimination;
2. The role of competitors in a market whose proportion has decreased significantly;
3. One or more business actors who have the power to enforce their will in the market;
4. The emergence of competitive barriers, such as difficulties in entering the market or difficulties in developing markets in the region;
5. Decreasing the level of healthy competition in the relevant market;
6. A decrease in the choices available to consumers in those markets.

Companies can use artificial intelligence to use monopolistic practices, such as predatory pricing (Article 21 of Law 5/1999) or facial recognition technology to detect citizens' movements in offices, schools, or other public places. [44] The use of artificial intelligence in large-scale data collection and analysis can be a threat to privacy. The excessive use of facial recognition and surveillance technology can also threaten privacy. Aside from its direct impact on competitors, artificial intelligence could increase social inequality if used to help companies with tremendous economic power. This can make the company smaller and lower its chances of market survival. Companies with artificial intelligence can more easily form monopolies because they can use artificial intelligence to effectively control the price, quality, and availability of products or services. Artificial intelligence can be used to develop anti-competitive innovations, making it easier for companies to control the market.

In the European Union and the United States, market control and monopoly have influenced the use of artificial intelligence and business competition. Artificial intelligence can influence market competitive dynamics, leading to anti-competitive risks such as algorithmic collusion. Companies' use of artificial intelligence can help control the prices of products and services, which can influence market share. This can threaten business competition, as companies can use artificial intelligence to form monopolies or engage in anti-competitive practices. Competition law oversight in the European Union and the United States can help prevent anti-competitive practices in the artificial intelligence market. This oversight can use data from artificial intelligence algorithms to identify and prevent anti-competitive practices. European Union Antitrust Chief Margrethe Vestager has warned about the impact of artificial intelligence on merger control policy, which could lead to market domination and monopoly risks. [45]

The European Commission is also drafting a European Union Artificial Intelligence Act, which will strengthen competition law and clarify the actions competition law supervisors can take against anti-competitive practices in the artificial intelligence market. [46]. The European Union could also use existing powers in the Digital Markets Act to help prevent market capture and monopoly in the artificial intelligence market. This can help control prices of products and services, as well as prevent anti-competitive practices such as algorithmic collusion. Therefore, it is essential for KPPU that Law No.5/1999 still needs to accommodate digital algorithms. Consequently, it is necessary to amend the law and include rules governing digital markets and algorithms, as implemented in several countries such as the UK, United States, EU, and China. This is certainly in the common interest of KPPU and other stakeholders, such as different business actors, consumers, and the Indonesian state.

Price Discrimination and Anti-Competitive Practices

Article 6 states that price discrimination refers to a company's ability to charge different prices for the same product or service of the same quality to other consumers. A price fixing action considered prohibited price discrimination occurs when the following conditions are met: the seller or producer has monopolistic power, at least in one market. [47]. There is a separation between markets that do not allow buyers to resell (no arbitrage). The basis for price discrimination:

1. Business actors draw up agreements regarding price discrimination and are not unilateral agreements, carried out in a structured and ongoing manner;
2. The relationship is vertical;
3. There is no significant difference in costs in preparing goods and services until they are ready for use by final consumers or producer consumers;
4. Negative impact on business competition and result in losses for consumers.

Discrimination is treatment directed at certain business actors to eliminate competitors from the market or prevent potential competitors from entering the market. [48]. According to KPPU Regulation Number 3 of 2011 concerning the Interpretation of Article 19 Letter D (Discriminatory Practices) of Law Number 5 of

1999 (Commission Regulation No. 3 of 2011), discriminatory practices are defined as actions that hinder or violate the principles of fair business competition, both in the form of price and non-price discrimination. Therefore, based on this interpretation, Telkom's blocking action against Netflix can be considered a form of discrimination. [48].

Robinson defined selling the same article as produced under a single control at different prices to different buyers. [49]. Above price discrimination occurs when the act satisfies the requirement that different prices be charged for the same good. Two articles in Law Number 5 of 1999 regulate price discrimination agreed to in the agreement, namely Article 5, paragraph 1, and Article 6. The prohibition against price discrimination is regulated in Article 6 of Law No. 5 of 1999, which states that;

> *"Business actors are prohibited from making agreements that result in one buyer having to pay a different price from the price that other buyers have to pay for the same goods and/or services."*

Business actors are not permitted to enter into agreements that result in one buyer paying a different price than another for the same goods or services. A company can enter into an anti-competitive deal if it can prove that:

1. The agreement provides benefits in terms of technology, efficiency, and social aspects by the provisions contained in Section 5 of the 2010 Competition Act;
2. These benefits can only be achieved through participation in such anti-competitive agreements;
3. The impact on competition is balanced with the benefits expected to be obtained;
4. The agreement does not eliminate the competitive process [50].

The elements of price discrimination are as follows. [51]:

1. Traders carry out sales actions for two or more sales with price discrimination;
2. Carried out by a seller to two or more different consumers;
3. The same quality and quantity and type of goods;
4. Products for use, consumption;
5. Carried out in a relatively short period;
6. Price discrimination has an impact on business competition.

Buyers in different markets have different levels of demand and demand elasticity. Monopolistic sellers/producers can take advantage of differences in the willingness to pay off each consumer. When these conditions occur, when a company sets different prices for the same goods and services with the same quality and quantity to other buyers, it has undoubtedly committed price discrimination, which is prohibited by Article 6. Price discrimination with artificial intelligence allows companies to personalize product and service prices based on consumer data, such as purchase history, demographics, browsing habits, and location [52]. This price personalization aims to increase revenue, attract and retain customers, and increase the potential efficiency of price discrimination. However, price personalization risks fueling price discrimination, where consumers with different profiles are charged different prices for the same product or service. Consumers with low purchasing power or minority groups are disadvantaged.

The problem of price discrimination still attracts considerable attention because the act of differentiating the nominal price of identical products or services is easily found everywhere, from advertisements in the mass media to subscription offers in various publications.[49] Price discrimination can be part of anti-competitive practices, such as selling products at prices below production costs to exclude competitors and setting different prices for consumers in various markets to maximize profits.

Uber and Grab use artificial intelligence algorithms to personalize prices for online taxi services. [53]. Amazon and Lazada use artificial intelligence algorithms to personalize e-commerce product prices. [54] Concerns about discrimination and Anti-Competitive Practices can harm consumers with higher prices and fewer choices, stifle innovation and competition, and create economic inequality. [55] Pricing algorithms using prices as input and/or computational procedures to determine prices as output have been under intense scrutiny by competition authorities for some time. Software to track competitors' prices and, in response, adjust a company's prices is widely used, especially in e-commerce. Many platforms, such as Amazon Marketplace and Airbnb, offer pricing algorithms to users on the supply side. [56][57]Although pricing algorithms can produce pro-competitive effects, such as improving business decision-making, enabling faster and better decisions, or helping them develop more customized services, the main concern is that they can facilitate collusion between competitors. [49]

In 2020, companies in the European Union and the United States raised €6.7 billion from investments in artificial intelligence start-ups, which is one of several levels of rigor imposed

by competition law to help prevent unfair behavior in the marketplace. The use of artificial intelligence and the strength of competition between the United States, China, and the European Union in the development of artificial intelligence have become the main focus of competition in the technology field. China has become one of the leaders in the development of artificial intelligence and plans to become a global leader before 2030. Europe has several high technical and industrial strengths, as well as high digital infrastructure and basic regulations based on fundamental values to become a global leader in innovation and application of artificial intelligence. This will help the well-being of all European societies and economies through an artificial intelligence ecosystem for citizens, businesses, and public services. [58]

Is Artificial Intelligence a Solution in Business Competition Law in the Technological Era?

Business competition law is vital in forming business ethics for business actors. Ensuring competition in artificial intelligence is very important to maintaining the democracy of business actors in business competition. Enforcement of business competition law in artificial intelligence complements preserving democratic values. Additionally, artificial intelligence applications' pro-competitive and anti-competitive impacts underscore the need to identify and address critical challenges and opportunities in this field. [59] Overall, the European Union and the United States are actively engaged in shaping policies regarding the regulation of artificial intelligence in competition law and recognize the importance of encouraging innovation while mitigating the potential risks associated with advanced technologies such as artificial intelligence.[60]

Artificial intelligence is not only considered to hurt business competition law in any part of the world. On the other hand, artificial intelligence can also solve business competition law in the era of technology and digitalization because it can potentially increase competition and improve decision-making. Artificial intelligence can contribute to driving progress in business competition law. In this regard, artificial intelligence can help businesses improve their operations, reduce costs, and increase competitiveness, leading to better outcomes for consumers and the market as a whole.[61] Additionally, artificial intelligence can help in making better decisions by analyzing large amounts of data and providing insights that humans may not be able to identify on their own [62]. This can lead to more informed and competitive business practices, impacting healthy competition in the business world.

Business actors can respond more effectively to artificial intelligence's positive impact by targeting their marketing efforts. This can increase competition and improve customer service. In addition, it can help businesses respond to market changes and customer needs more quickly, thereby increasing competitiveness and improving consumer outcomes. [63] In other respects, artificial intelligence can help ensure compliance with competition laws by monitoring and analyzing business practices, which can help prevent anti-competitive behavior.

This presence of artificial intelligence should be used in a pro-competitive manner in businesses to monitor trends, track competitor performance, and produce in-depth reports on competitors' strengths, weaknesses, and market share. This information can be used to improve products and services and remain competitive, analyzing market data and grouping target markets into different groups based on shared characteristics. This helps business actors make the right decisions regarding product suitability for the market and market potential. On the other hand, it can also analyze unstructured data to flag abnormalities, reduce the possibility of human error in data analysis, improve data integrity, and help project teams analyze previous project schedules, resource allocation, and problem tracking, making it easier to identify potential risks and predict project delays.

The use of artificial intelligence and big data in Indonesia's businesses has the potential to help create effective and competitive markets. Still, it can encourage anti-competitive practices, such as price discrimination, using several unique qualifications, such as network effects, radical scale economies, data-driven markets, privacy, and token impact [62]. Business competition law in Indonesia creates market efficiency by preventing monopoly, both productive and allocative efficiency. Law Number 5 of 1999, concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, uses a Rule of Reason and Per Se Illegal approach to guarantee freedom of competition without obstacles. [64]Artificial intelligence governance is essential to protecting monopolistic practices and unfair business competition and promoting healthy business competition. Law enforcers in business competition, both substantially and structurally, need to receive preparation, attention, and improvements. [65][66]

Artificial intelligence-based predictive analytics can make forecasts and predict risks

based on external factors, market trends, and historical data. This can help businesses make the right decisions and stay competitive. [67]Artificial intelligence systems can predict customer preferences and trends, enabling companies to offer personalized experiences and increase customer engagement. By automating routine tasks and customer service, artificial intelligence can optimize processes, efficiency, and productivity, saving time and reducing costs.

Personalizing services, product recommendations, and predictions and improving customer experience and satisfaction can leverage artificial intelligence and detect fraud and auto-respond, increasing security and trust in online transactions. Other benefits include the following: it can provide automated insights for data-driven industries, helping businesses make data-driven decisions; it can also be used for news feeds and content personalization, improving user experience and engagement. [68] Companies must ensure that their use complies with existing competition laws and regulations. Educating and training employees on the proper use of artificial intelligence can help prevent unintended anti-competitive consequences. Regularly reviewing and updating artificial intelligence systems to ensure they do not lead to anti-competitive practices can help businesses stay compliant.

Companies must collaborate with the KPPU to understand their concerns and work together to address potential anti-competitive practices. By following these guidelines, businesses can use artificial intelligence pro-competitively, ensuring that their artificial intelligence systems do not lead to anti-competitive practices. Companies must be transparent about using artificial intelligence and disclose the data, models, and algorithms used in decision-making. This will help the Commission and competitors understand how artificial intelligence is used and detect potential discriminatory or anti-competitive practices. Developing ethical guidelines for using artificial intelligence in business can help ensure that algorithms are designed and utilized relatively and non-discriminately. Meanwhile, from the government side, the KPPU can carry out supervision and regulations to ensure that the application of artificial intelligence in business complies with business competition laws and does not lead to unfair market practices. Encouraging competition by preventing large firms' accumulation of market power can help prevent anti-competitive practices. Protecting customer data and privacy rights can help avoid discriminatory and anticompetitive practices. Companies should monitor their artificial intelligence systems for potential anti-competitive behavior and report any such behavior to competition authorities. The KPPU mentioned in 35 Law No.5 of 1999 is crucial in ensuring fair business practices and preventing monopolistic behavior in Indonesia. As detailed in Articles 35 and 36 of Law No. 5 of 1999, the KPPU is entrusted with several important duties:

1. Assessing agreements that could lead to monopolistic practices and/or unfair business competition (Articles 4 to 6).
2. Evaluating business activities and actions of business actors that may result in monopolistic practices and/or unfair business competition (Articles 17 to 24).
3. Investigating potential abuses of dominant positions that could result in monopolistic practices and/or unfair business competition (Articles 25 to 28).
4. Taking appropriate actions in line with the commission's authority (Article 36).
5. Suggestions and considerations regarding government policies related to monopolistic practices and/or unfair business competition.
6. Preparing guidelines and publications related to this law.
7. Reporting regularly on the commission's work to the President and the House of Representatives.

Given these extensive responsibilities, the KPPU must adapt and address the challenges posed by artificial intelligence in the business sector. By enhancing oversight and collaborating with technical experts, the KPPU can effectively balance innovation with competitive enforcement, ensuring that AI contributes positively to market efficiency and innovation while mitigating potential risks to fair competition.

Business competition law and the positive impact of artificial intelligence in the European Union and the United States are essential discussion topics to become an example for Indonesia in responding to artificial intelligence. In the European Union and the United States, efforts to regulate artificial intelligence are intensifying, focusing on balancing the risks associated with artificial intelligence systems with the economic and social benefits they generate. [69]The European Union and the United States cooperate in artificial intelligence under the Trade and Technology Council (TTC), implementing a joint roadmap on artificial intelligence and trustworthy risk management. [70] They have

also agreed to increase collaboration on artificial intelligence research in the public interest.

In anticipation of the use of artificial intelligence in business competition, the European Union and the United States have taken steps to face the challenges of artificial intelligence in business competition law. The European Union has made comprehensive regulations regarding the development and use of artificial intelligence technology. This includes regulating the use of biometric data and limiting the use of facial recognition technology. The European Union uses a solid legal and regulatory approach in responding to developments in artificial intelligence, such as bypassing the Artificial Intelligence Act, which imposes fines of up to 7.5 million euros on violators [71].

As the KPPU is at the forefront of activating and fighting monopolies and unhealthy business competition, international cooperation is expected to support the use and development of artificial intelligence globally. This is important for establishing norms and standardds that regulate and manage artificial intelligence. In addition, a preventive approach is taken by creating general guidelines for the development and use of artificial intelligence, such as the Ethics Guidelines for Trustworthy Artificial Intelligence, with the aim that each country can help each other in formulating the best solutions in dealing with the negative impacts of the development of artificial intelligence. With comprehensive regulations, a robust regulatory approach, international cooperation, and a preventive approach, Indonesia can strive to anticipate the impact of artificial intelligence in business competition effectively [72][73].

CONCLUSION

Based on the discussion above, due to inadequate regulations, artificial intelligence may harm business competition law, especially in Indonesia. Law No. 5 of 1999 still does not address the negative impacts of artificial intelligence. These negative impacts, such as monopolistic practices, market dominance, price discrimination, and anti-competitive behaviors, can arise through using big data, data collection, and data processing by business actors to enhance their interests and profits.

Therefore, companies need to understand how their algorithms function. Collaboration between the KPPU and technical experts is essential to conducting risk assessments and comprehending AI's capabilities. As the use of algorithms continues to grow, competition law enforcers must become more sophisticated in addressing the associated risks. Businesses must proactively implement procedures to identify and address evolving risks and issues. Taking algorithm compliance with competition law seriously will help avoid future burdensome competition investigations or worse consequences.

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