

## DOMINANT POSITION DOCTRINE IN INDONESIA: A COMPARISON TO THE GERMAN COMPETITION LAW

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### ABSTRACT

This paper conducts a comparative legal study on the doctrine of dominant position in competition law, focusing on the frameworks of Indonesia and Germany. Although both countries prohibit the abuse of a dominant position, there are notable differences in the legal substance and practical application of their laws. This study addresses the gap in Indonesia's existing legal framework, which often struggles to effectively define and regulate dominant market power, especially in the digital economy era. Using a normative-comparative legal method, this paper analyzes legal norms and case law from both jurisdictions, examining the similarities and differences between them. By analyzing laws, doctrines, and cases from both countries, the paper finds that Indonesia's reliance on general provisions under Law No. 5/1999 complicates enforcement, whereas Germany's detailed rules facilitate addressing competition issues. The study suggests Indonesia can learn from Germany to better define dominance and regulate abuse, improving its competition law and market fairness.

**Keywords:** Competition Law; Dominant Position; Indonesian Law; German Law

### A. Introduction

The rapid advancement of technology in the digital era, particularly since the Industrial Revolution 4.0, has transformed the business landscape. E-commerce and digital platforms now drive economic growth and reshape trade practices, benefiting both consumers and entrepreneurs. However, this shift also presents new legal challenges, especially in business competition.<sup>1</sup> Digital platforms not only facilitate commerce but also accumulate significant market power and control over consumer data, raising concerns about unfair competition and the potential abuse of dominant positions.<sup>2</sup> In Indonesia, the digital economy is expanding rapidly, with e-commerce leading the way and projections estimating a valuation of USD 133 billion by 2025. These developments underscore the need for robust legal

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- 1 Rezmia Febrina, "Persaingan Usaha Pada Era Digital Menurut Persepektif Hukum Persaingan Usaha," *Jurnal Karya Ilmiah Multidisiplin (JURKIM)* 2, no. 1 (2022): 121–27, <https://doi.org/10.31849/jurkim.v2i1.9309>.
  - 2 Despoina Mantzari, "Power imbalances in online marketplaces: at the crossroads of competition law and regulation." *Research Handbook on the Law and Economics of Competition Enforcement*. Edward Elgar Publishing, (2022) 170-192. <https://doi.org/10.4337/9781789903799.00017>

frameworks to address emerging competition issues in the digital market.<sup>3</sup> For example, in 2025, Indonesia's Business Competition Supervisory Commission (IBCS) found Google LLC in violation of Law No. 5 of 1999 concerning the implementation of the Google Play Billing System and imposed a penalty through Decision 03/KPPU-I/2024. Google LLC required application developers to use the Google Play Billing System as the sole payment method for their applications. Non-compliance resulted in the removal of applications from the Google Play Store, as documented by evidence and witness statements. Google has announced its intention to appeal, asserting that its current practices benefit the Indonesian application ecosystem. The company maintains that by offering a secure platform, global market access, and options such as the user choice billing program, it supports the development of a healthy and competitive application market.<sup>4</sup> This case exemplifies the ongoing conflict between a dominant platform's right to manage its ecosystem and the need to prevent anti-competitive behavior. It highlights the challenge for competition authorities, such as the IBSC, to distinguish between pro-competitive practices and the abuse of market power.

This is evidence that the current digital trade transaction pattern is shifting towards becoming one-stop shopping, where the transaction agreement encompasses the flow of information, the flow of money, and the flow of goods in a single location. The ability of digital economic platforms to reach multiple markets (multi-sided markets) through the internet network's reach is a key characteristic of the platform itself.<sup>5</sup> Advances in communication and data processing have significantly impacted existing industries and reshaped economic values globally, enabling the emergence of new, disruptive products and services within the traditional economic system. This trend can provide benefits and stimulate economic growth. However, on the other hand, it can also give rise to business competition issues and create the need for new regulations.<sup>6</sup> While Article 33, paragraph (4) of the 1945 Constitution of Indonesia states that it aims to maintain balance with the principles of togetherness, fairness, sustainability, environmental consciousness, and independence. It is interpreted as the harmony of various things. Styles that work with neither one dominating the other, nor one controlling the elements. This principle requires both parties to fulfill their obligations within the relationship between humans as legal subjects.<sup>7</sup> In simple terms, it

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3 Nailul Huda, et.al, *Digital Economy Outlook 2025* (Center of Economic and Law Studies, 2024)

4 Cecilia Mediana, "Terbukti Monopoli, Google dedenda KPPU," *Kompas*, 22 Januari 2025, <https://www.kompas.id/artikel/terbukti-monopoli-dan-memakai-posisi-dominan-dalam-google-play-billing-kppu-denda-google-rp-2025-m>.

5 Adis Nur Hayati, "Analisis Tantangan dan Penegakan Hukum Persaingan Usaha pada Sektor E-Commerce di Indonesia," *De Jure Legal Research Journal* 21, no. 1 (2021): 113.

6 MA Hasbullah, "Enforcement of Competition Law in the Digital Economy Sector," *Jurnal Ilmiah MEA (Manajemen, Ekonomi, dan Akuntansi)* (2020) 582

7 Muhammad Irayadi, "Asas Keseimbangan Dalam Hukum Perjanjian," *HERMENEUTIKA: Journal of Legal Studies* 5, no. 1 (2021).

can be understood that when carrying out activities in the economic sector, one party is not permitted to dominate another party to benefit from it.

By examining the unique challenges of the digital economy, which differ from business competition in traditional markets (offline/conventional), it is appropriate for both the government and competition authorities to devote special attention to addressing these issues. This is because some of the main characteristics of digital markets include business models based on platforms, multilateral markets, and network effects that make the subject of competition more complex. The substantial economic potential of e-commerce in Indonesia necessitates a comprehensive analysis of the competitive dynamics within the sector. Access and control of consumer data is the upstream of the abuse of dominant position in e-commerce, which has an impact on giving market power to digital platforms. The vertical development of digital platforms has an impact on increasing data collection capabilities and enhancing competitiveness, which can lead to an increased likelihood of abuse of position dominance among online store owners and application users.<sup>8</sup>

With Indonesia is the fifth most populous country globally and has the highest internet usage. Data from the Central Statistics Agency in 2021 stated that as many as 62.10% of the population used the internet. On the other side of the continent, Germany is listed as the country with the most internet users in Europe. As of December 2021, Internet users in Germany reached 79.1 million, equivalent to 95% of the German population.<sup>9</sup> These figures highlight that the two nations represent distinct stages of digital economic development. Indonesia, with its large and growing internet user base, is experiencing rapid digital economic growth but faces early-stage challenges in regulating dominant players and ensuring fair competition. In contrast, Germany, with its mature digital economy and advanced legal system, has developed a comprehensive competition law framework to address dominance issues. For instance, the Amazon case investigated by the German Federal Cartel Office (FCO) highlights concerns regarding alleged monopolistic practices in the German e-commerce market. In November 2018, the FCO initiated an investigation into Amazon's contractual arrangements with its partners, focusing on the company's dominant position. The FCO determined that Amazon was leveraging its dominance to structure contracts and set market conditions in ways that disadvantaged small sellers and diminished competition within the e-commerce sector.<sup>10</sup> Also, Germany has established specific regulations prohibiting the abuse of economic dependency, which do not require proof of market domination if certain prohibitions outlined in Article 102 of the Treaty on

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8 Effendi, A. M. (2024). Peran Hukum Anti Trust Dalam Mengatur Dan Mengadili Praktik Monopoli Dan Persaingan Usaha Tidak Sehat. *Multilingual: Journal of Universal Studies*, 4(2), 186-195.

9 Marc Bourreau, et.al, "Digital Conglomerates and EU Competition Policy" Alexandre de Streel, University of Namur, *CRIDS / NADI, CERRE*, no. February (2019): 1-44.

10 Philipp Westerhoff, "The German Amazon Marketplace Agreement Case: A Landmark Settlement with Global Reach or More Hype Than Substance?" *Hausfeld Competition Bulletin*, Fall (2019) 1-7

the Functioning of the European Union (TFEU) are exceeded.<sup>11</sup> The German competition authority has a history of significant advancements, including the publication of the “Market Power of Platforms and Networks” working paper by the *Bundeskartellamt* in 2016, which details the identification of market power and dominance assessment in digital platforms and networks. In 2017, the Financial Services Authority and the German Competition Commission introduced criteria for identifying infringements in the digital sector, addressing unfair competition.<sup>12</sup> Legal reforms have also recognized the transformation of free products and services into unified markets. Furthermore, in 2021, Germany enacted the 10th Amendment to the Competition Act (*Gesetz gegen Wettbewerbschrankungen*), strengthening regulations to address competition issues in the digital economy, particularly those concerning dominant positions.<sup>13</sup> This paper narrows its focus from the global digital era to a specific comparative study between Indonesia and Germany, aiming to draw lessons from Germany’s experience to strengthen Indonesia’s legal framework and promote fair competition in the digital economy.

As a nation governed by law, Indonesia implements business competition policies aimed at promoting general welfare, protecting small and medium-sized enterprises, preventing the concentration of economic power, and ensuring equal opportunities for competition.<sup>14</sup> For these purposes, this article critically examines the challenges faced by Indonesia in defining, regulating, and addressing the abuse of dominant positions within its digital economy, highlighting shortcomings in the existing legal framework when compared to Germany’s more advanced and adaptive competition law. The study emphasizes that Indonesia’s current regulations are often too general and lack clear guidance for identifying and enforcing rules against dominance and anti-competitive practices by digital platforms. By drawing on Germany’s experience, where legal provisions are well-established and tailored to the complexities of digital markets, the article seeks to identify specific gaps in Indonesia’s approach and propose targeted reforms. Ultimately, this comparative analysis aims to offer practical insights for strengthening Indonesia’s competition law to better address market dominance and promote fairness in the rapidly evolving digital sector.

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- 11 Pranvera Këllezi, Bruce Kilpatrick, and Pierre Kobel, “Abuse of Dominant Position and Globalization & Protection and Disclosure of Trade Secrets and Know-How”, Springer (2017)
  - 12 Wolfgang Kerber and Karsten K. Zolna, The German Facebook Case: The Law and Economics of the Relationship between Competition and Data Protection Law, *European Journal of Law and Economics*, vol. 54 (Springer US, 2022), <https://doi.org/10.1007/s10657-022-09727-8>.
  - 13 Sascha Dethof and Lea Josten. “*Bundeskartellamt Gives Users of Google Services Better Control over their Data on the Basis of Section 19a of the German Competition Act, GWB (Germany)*.” *Journal of European Competition Law & Practice* 15.2 (2024): 108-116.
  - 14 H. Karli Kalianda, “*Problems of Regulating Business Competition in the Legal System Indonesia*,” *Wasaka Hukum* 8, 1(2020): <https://ojs.stihsa-bjm.ac.id/index.php/wasaka/article/view/49>

## B. Research Method

This research is normative legal research with a conceptual approach. This paper also uses a comparative approach method, aiming to analyze the regulation and implementation of competition law concerning dominant position in the digital economy sector, specifically in Indonesia and German. The statute approach examines legal provisions governing abuse of dominant position, while selected case examples are analyzed to illustrate practical implementation in both jurisdictions. Data were collected through a literature review, including national legislation, policy documents, and scholarly publications related to competition law in digital markets.<sup>15</sup> The analysis used in this study is qualitative, by studies from the laws and regulations, books, journals, and doctrines regarding laws and regulations related to dominant position. Such as Law No. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition in Indonesia, and the Act Against Restraints of Competition (*Gesetz gegen Wettbewerbsbeschränkungen/GWB*) in Germany, as well as the applicable European Union regulations. Comparative analysis is used to identify similarities, differences, and potential lessons that Indonesia may adopt to strengthen its legal framework in response to emerging digital market challenges.

## C. Discussions

This chapter comprises three sections. The first section analyzes the dominant position doctrine in Indonesia. The second section provides a comparative overview of the German competition law framework. The third section discusses gaps and lessons learned by comparing Indonesian and German law, including recommendations for strengthening competition law in Indonesia.

### 1. Analysis of the Dominant Position Doctrine in Indonesia

The issue of dominant positions in digital transactions has become a primary concern for the Indonesian Business Competition Supervisory Commission (IBCS or *Komisi Pengawas Persaingan Usaha*). The enforcement of relevant laws aims to prevent the emergence of unfair business competition. Article 1, No. 6 of Law No. 5 of 1999 defines unhealthy competition as competition among business actors in the production or marketing of goods and services that is conducted unethically, dishonestly, unlawfully, or in a manner that impedes competition. Unfair competition may arise through restrictive agreements or the abuse of dominant positions.<sup>16</sup> IBCSC plays a critical role in the digital economy by preventing monopolistic practices, including the abuse of dominant positions, such as

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15 Legrand, Pierre, and Roderick Munday, eds. *Comparative legal studies: traditions and transitions*. Cambridge University Press, 2003.

16 Aldo Suhartono Putra, "Competition Law 4.0: Issues of Big Data, Artificial Intelligence, and Blockchain in the Context of Competition Law in the Era of the Digital Economy Industry," *Dharmasysya: Journal of the Master of Law Program, Faculty of Law, University of Indonesia* 1, no. 3 (2021): 1131–1134.

when a dominant provider locks in consumers. The competition model on digital platforms, which involves big data and extensive networking, enables stored data to enhance inter-platform networks and strengthen the marketplace.<sup>17</sup>

From an economic perspective, the dominant position is occupied by business actors with the largest market share.<sup>18</sup> Misusing the dominant position is regulated in Article 25 of the Law, which is regulated as follows (English version of the Act is translated by the Author):

- a) Business actors directly or indirectly determine the terms and conditions of trade by implementing measures that prevent or obstruct consumers from obtaining goods and/or services that can be competitive in terms of both price and quality.
- b) There are market restrictions and restrictions on technological development.
- c) Carrying out obstacles for other business actors who have the potential to become competitors in the relevant market scope.

The criteria for a dominant position, as outlined in the law, specify that a single business actor or group must control at least 50% of the market share for a particular type of good or service. If two or three business actors or groups are involved, they must collectively control at least 75% of the market share for the relevant goods or services. Abuse of a dominant position can occur through share ownership, particularly when affiliated business actors hold majority shares in multiple companies operating in the same sector. This structure increases the risk of unfair competition due to potential misuse of market power.<sup>19</sup> Law No. 5 of 1999 also addresses prohibited activities related to dominant positions, including dual positions or affiliated management (Article 26), share ownership or affiliation (Article 27), and mergers and acquisitions (Articles 28 and 29).

The development of the digital ecosystem has significantly changed competition law in Indonesia. This shows that technology and information have been well received; for example, changes in the development of digital-based industries have encouraged a shift from traditional markets to digital markets. As a result, business implementation is expanded by business actors through digital platforms. Digital platforms also present challenges for business actors in the competitive business environment, as they must be able to innovate and adapt to create and market products, including both goods and services.<sup>20</sup>

In Indonesia, regulations governing dominant positions in the digital economy, including e-commerce, are outlined in the same Business Competition Law. This law serves as the primary legal framework for regulating business competition and preventing unfair

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17 Filippo Lancieri, and Patricia Morita Sakowski. "Competition in digital markets: a review of expert reports." *Stan. JL Bus. & Fin.* 26 (2021): 65.

18 Herman, *Law on the Prohibition of Monopolistic.*, 41.

19 Ganis Tribhuwana Kameswari, "Abuse of Market Dominance in Indonesia's Rice Industry: A Legal Analysis of PT Wilmar Padi's Alleged Price Monopoly." *Jurnal Hukum In Concreto* 3.2 (2024): 220-236.

20 *ibid*

practices, monopolies, and conduct detrimental to consumers and competitors. Since there is no specific legislation addressing e-commerce competition in the digital economy, the Indonesian Competition Law remains the principal basis for oversight in this sector.

Within the e-commerce sector, the IBCSC plays a crucial role in law enforcement during the digital economy era. As mandated by Articles 35 and 36 of Law No. 5 of 1999, the IBCSC is responsible for monitoring and enforcing competition laws in Indonesia. It operates as an independent body, free from influence by the government or any parties with conflicts of interest in the investigation, adjudication, or processing of business competition cases. The IBCSC enforces regulations on dominant positions in the e-commerce sector through investigations and supervision of business practices that may result in market domination or abuse of dominance. The IBCSC initiates investigations when there are allegations of competition rule violations, such as practices that harm consumers, restrict entry by competitors, or undermine healthy competition. Upon finding evidence of violations, the IBCSC may impose sanctions, including fines, and can require companies to cease unlawful practices or modify their business conduct to align with fair competition standards.<sup>21</sup>

The enforcement of regulations concerning dominant market positions by the IBCSC remains inadequate in the context of the digital era. The distinct mechanisms of e-commerce, particularly digital payment systems, introduce complexities that differ markedly from those in traditional markets, further complicating regulatory efforts.<sup>22</sup> For example, in January 2025, the IBCSC determined that Google LLC had abused its dominant position by requiring app developers to use the Google Play Billing System, thereby excluding alternative payment options. This case illustrates that the conventional understanding of market control, previously centered on physical goods, must now address a landscape in which digital platforms, rather than products alone, can exert monopolistic influence and hinder innovation within the digital ecosystem.

Unhealthy competition can emerge in e-commerce in Indonesia, particularly among dominant start-ups, such as those classified as unicorns or decacorns, which possess significant market power.<sup>23</sup> For instance, Shopee, Lazada, Tokopedia, and Bukalapak are leading marketplace platforms. According to SimilarWeb, Shopee averaged 157.9 million visits in the first quarter of 2023, followed by Tokopedia with 117 million and Lazada with 83.2 million. These platforms occupy dominant positions in the Indonesian market. Their market power enables them to collect extensive data, enhance competitiveness, and operate as both marketplace owners and application providers. Such dominance can facilitate

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21 Rika Azizah, et.al. "Fungsi Dan Peran Lembaga Kppu Dalam Praktek Persaingan Usaha." *Karimah Tauhid* 2.3 (2023): 697-707.

22 Tulung, Sonny V., and Hudi Yusuf. "Analisis Regulasi Hukum Dagang Atas Persaingan Usaha Dalam E-Commerce Di Era Digital." *Jurnal Intelek Dan Cendekiawan Nusantara* 1, no. 2 (2024): 1265-1278.

23 Dewi, Galuh Dian Prama, and Alvin Ernesto Lusikooy. "E-commerce transformation in Indonesia: Innovation and creative destruction." *Nation State: Journal of International Studies* 6.2 (2023): 117-138.

the abuse of market position, including limiting access to competitors, creating unequal partnerships, and fostering digital monopolies or lock-in effects. The current Indonesian Competition Law faces challenges in addressing these issues due to its limited scope of application.

## 2. The German Competition Law Framework as a Comparison

Germany enacted the 10th Amendment to the Anti-Terrorism Law in 2021, which has begun to encompass business competition in the digital economy-based industry. The Competition Law in Germany is regulated in the *Gesetz gegen Wettbewerbsbeschränkungen* (hereinafter referred to as GWB), which is also known as the German Antitrust Law. This law was first enacted in 1958 and has undergone several changes. The Formation of the Anti-Monopoly Law Towards an Information Society. Germany aims to protect healthy and fair business competition. The existence of this law regulates practices that can reduce unfair competition or harm consumers. Some aspects regulated by the German Anti-Monopoly Law, including supervision of mergers and acquisitions, arrangement of action in cases of dominant position, consumer protection, and compliance and sanctions.<sup>24</sup>

As technology advances, the digitalization process alters market economic competition in several ways, leading to the emergence of new business models. A relevant example of this is the rise in the role of digital platforms and data-driven markets; these developments present specific challenges for competition policy, which must be addressed in consideration of the unique economic characteristics of digital goods and markets. Digitalization is rapidly providing momentum to all industrial markets and has triggered an extraordinary transformation process affecting companies, consumers, and competitors. Competition law in Germany also applies to digital economy-based industries.

However, due to the unique and continuously growing nature of the industry, several policies and more specific regulations are in place to ensure healthy business competition. The 9th Amendment to the GWB, which came into effect in 2017, previously provided several additional criteria for assessing market power. Primarily aimed at the digital market.<sup>25</sup>

This law regulates several aspects, such as merger approval. Additionally, we handle acquisitions, dispute resolution, consumer collective action, and data protection. Additionally, the *Bundeskartellamt* (Competition Supervisory Agency) of Germany plays a crucial role in competition supervision, including the digital economy-based industry. This agency has the authority to monitor and investigate monopolistic or oligopolistic practices that may harm consumers or competitors in the market. On January 18, 2021, the German legislature

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24 Sascha Dethof, and Lea Josten. "Bundeskartellamt Gives Users of Google Services Better Control over their Data on the Basis of Section 19a of the German Competition Act, GWB (Germany)." *Journal of European Competition Law & Practice* 15.2 (2024): 108-116.

25 The English translation of the 9th Amendment to the German Competition Act is available at <https://www.bundeskartellamt.de/SharedDocs/Publication/EN/Others/GWB.html>.

adopted the 10th Amendment to the GWB, which includes several Legal changes aimed at protecting competition in the digital era.<sup>26</sup> In addition to providing competitive protection, this Amendment also introduces changes to merger control, the implementation of the ECN+ directive (European Union directive that aims to empower National Competition Authorities by harmonizing their independence, resources, and enforcement powers for EU competition rules), and modifications to administrative processes.<sup>27</sup>

The Competition Law regulates German competition law in digital economy-based industries regarding dominant positions. In articles 18 to 21 of the GWB regulate the prohibition of actions that lead to a dominant position. Alternatively, exploit a dominant market position. Regarding the provisions regulated regarding dominant position actions on the German Competition Act, or GWB can be briefly described as follows:

- a) Article 18: This provision prohibits practices that violate competition, including monopolistic and oligopolistic practices, that can cause harm to consumers or competitors.
- b) Article 19: This provision prohibits discriminatory practices by companies. Those who are in a dominant position, including discrimination in prices, conditions of purchase, or other requirements
- c) Article 20: This provision prohibits unfair pricing practices. Companies in dominant positions, including those that employ practices of high pricing and low pricing, can be detrimental to their competitors.
- d) Article 21: This provision prohibits mergers that result in market dominance.

The main innovation from the formation of the 10th Amendment is Article 19a, which relates to modernization and the granting of new powers to the *Bundeskartellamt* as the authority for German competition. In this case, the *Bundeskartellamt* controls abuse when dealing with large digital platforms. In GWB, the *Bundeskartellamt* is also allowed to intervene at an early stage to the end, faster and more effectively, in cases where companies critical to cross-competition are involved in specific behavior. The new provisions under Article 19a introduce a twofold mechanism for the *Bundeskartellamt*. First, the authority is empowered to designate a business as significant based on its strategic position and available resources. Second, Article 19a enables the *Bundeskartellamt* to intervene in markets where companies have not yet attained a dominant position, allowing the authority to prohibit certain forms of conduct identified as problematic, even before dominance is established. This approach reflects a proactive regulatory stance, aiming to

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26 The decision of the German Bundestag on the GWB Digitalisation Act (Bundesrat publication 38/21) can be downloaded here: [https://www.bgbl.de/xaver/bgbl/start.xav#\\_bgbl\\_%2F%2F%5B%40attr\\_id%3D%27bgbl121s0002.pdf%27%5D\\_161104311854](https://www.bgbl.de/xaver/bgbl/start.xav#_bgbl_%2F%2F%5B%40attr_id%3D%27bgbl121s0002.pdf%27%5D_161104311854)

27 Jens-Uwe Franck, and Martin Peitz. "Germany's new competition tool: sector inquiry with remedies." *Journal of European Competition Law & Practice* 15.8 (2024): 515-525.

address competition concerns at an early stage.<sup>28</sup>

Differences in competition law in economic-based industries and digital-related industries in Indonesia and Germany. Germany prohibits unfair business practices, including practices that lead to market domination by one or more companies. If a violation is found, the company concerned may be fined or even removed from the market. Meanwhile, in Indonesia, competition law is regulated by Law No. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition. This law also prohibits business practices that lead to market domination by one or a few companies.

The regulation of dominant positions in Germany, as outlined in the 10th Amendment to the German Competition Act, identifies seven prohibited practices. These include self-preferencing by vertically integrated companies, obstructing the supply or distribution activities of other firms (including non-competitors), impeding competitors' market expansion, using collected data to raise market entry barriers or requiring user consent for such use, restricting competition by denying or limiting interoperability or data portability, withholding information about company performance, and demanding disproportionate compensation from business customers.<sup>29</sup>

The Important criteria for the application of Article 19a of the Law on Competition are that the law addresses companies that are 'very important for competition in the entire market. The Competition Act of Germany is discussed in a memorandum prepared by the parliamentary committee responsible for reporting the final version of the 10th Amendment. The criteria for companies included in Article 19a are financial, technical, or related to their data or as an ecosystem or platform digital across markets, specifically able to expand their position of power across market boundaries or secure their positions that cannot be penetrated.<sup>30</sup> One of the reasons the German legislature adopted the Amendment, the 10th Law on German Competition ('*Gesetz Gegen Wettbewerbsbeschränkungen*'), is that it will cover several legal changes to protect competition in the digital era. Its main innovation is a competition instrument enshrined in Article 19a of the Law on Competition, which will give the *Bundeskartellamt* new strength. German competition authorities, when dealing with large digital platforms.

Various new arrangements are outlined in the 10th Amendment, one of which is the enforcement of the *Bundeskartellgesetz* aimed at companies that engage in prohibited practices. These practices include those that are 'unlawful', directly or indirectly, hinder competitors in the market, and can quickly expand their position. These provisions include

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28 Kozak, Malgorzata, and Veerle Peters. "Double jeopardy of Article 102 TFEU and the DMA-the challenges of a multi-level enforcement system." *Available at SSRN* (2024).

29 König Carsten, and Fernanda Luisa Bremenkamp. "Competition Law Sanctions in Germany." *The Cambridge Handbook of Competition Law Sanctions* (2022): 381-406.

30 Deutscher Bundestag, Drucksache 19/25868, 13 Januari 2021, Beschlussempfehlung und Bericht des Ausschusses für Wirtschaft und Energie (9. Ausschuss), 112. Lihat: Drucksache 19/25868 (bundestag.de)

strategies to drive competitors out of the market. Not yet (not yet) dominated: predatory pricing, agreements, or bindings, anti-competitive exclusivity, and bundling practices.<sup>31</sup> These arrangements apply to major cases such as the Amazon case.

In 2019, the *Bundeskartellamt* received extensive improvements for sellers on the Amazon online marketplace. The Amendment addresses many complaints about Amazon that the *Bundeskartellamt* received from sellers. Exceptions include unilateral responsibility for Amazon's profits, termination of employment, blocking of seller accounts, court jurisdiction in the event of a dispute, handling of product information, and other related issues. This case was resolved in eight months, and Amazon adjusted its business terms to sellers worldwide.<sup>32</sup>

In May 2021, the *Bundeskartellamt* initiated proceedings against Amazon. Based on section 19a GWB, to check whether Amazon is essential for competition across the market. In line with this process, the *Bundeskartellamt* also initiated two proceedings against Amazon based on abuse of control rules before the latest amendments to the law on competition took effect. Examining the impact of seller prices on the Amazon marketplace through price control mechanisms and algorithms. In the second process, authorities examine the extent of the agreement between Amazon and brand manufacturers, including Apple, which excludes third-party sellers from selling products or brands on Amazon Marketplace that constitute a violation of competition rules.<sup>33</sup>

### 3. Gaps and Lessons Learned: A Comparison of Indonesia and Germany

Indonesia, as one of the largest countries in Southeast Asia, must urgently reform and strengthen its legal system to effectively respond to the rapid growth of the digital economy and promote business competition. To build a more robust legal framework that can prevent and address competition issues in this sector, regulatory updates should be guided by Laurence M. Friedman's three pillars of the legal system: legal substance, legal structure, and legal culture.<sup>34</sup>

In terms of legal substance, Indonesia needs to revise its Anti-Monopoly Law by learning from Germany's regulations. This includes expanding the scope of Law No. 5 of 1999 to explicitly cover business activities utilizing information systems, such as internet-based commerce. The law should also address the direct and indirect effects of network activities, user behavior involving multiple platforms, economies of scale associated with

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31 Gesetzentwurf (n 7), 76; Beschlussempfehlung (n 29), 116.

32 Dominic Alexander Knappe. *Cooperation Strategies for the Amazon Marketplace*. Diss. Universität St. Gallen, 2021.

33 Sarah Hinck and Rupprecht Podszun. "Beyond DMA: the Amazon section 19a case (Germany)." *Journal of European Competition Law & Practice* 16.1 (2025): 35-40.

34 Halim, Mustafa' Afifi Ab, Shabrina Zata Amni, and Mufti Maulana. "Legal System in the Perspectives of HLA Hart and Lawrence M. Friedman." *Peradaban Journal of Law and Society* 2, no. 1 (2023): 51-61.

network effects, access to competitively relevant data, and innovation-driven market pressures. Provisions should also be established for intermediary companies operating in digital markets, including clear criteria, assessment mechanisms, and open market access to ensure fair procurement and sales practices. Additionally, restrictions should be imposed on companies engaging in extraordinary cross-market activities, with the IBCSC empowered to identify and regulate such behavior based on specific criteria. The law must also consider the conduct of firms with significant or superior market power, particularly in relation to small and medium-sized enterprises, considering factors such as market dominance, financial resources, vertical integration, and the impact on third-party access to markets.

The legal structure must also be reinforced to ensure more effective law enforcement, particularly by enhancing the capacity and functionality of the IBCSC in its supervisory role. The IBCSC must urgently and decisively review Law No. 5/1999 and implement revisions that foster fair business practices. It is imperative to strengthen Articles 8 to 18, which outline prohibited acts, and Articles 19 to 28, which address accountability, ensuring these reforms effectively promote fairness and economic integrity. Healthy commercial competition offers significant advantages to economic actors. Consumers enjoy lower prices, increased choices, and enhanced product quality. Conversely, unfair business competition among certain economic actors' harms market participants and consumers and weakens the national economy. This involves ensuring adequate human resources to manage public complaints and reports concerning unfair competition, as well as employing knowledgeable and skilled personnel capable of anticipating and resolving complex issues arising from the digital economy.<sup>35</sup>

Ultimately, legal culture plays a pivotal role in bridging the gap between legal norms and societal behavior. As Friedman describes, legal culture encompasses the values and attitudes that shape the practice of law.<sup>36</sup> Strengthening legal substance and structure should be accompanied by fostering a legal culture that upholds healthy and fair business competition in the digital era. This will serve as a safeguard for the evolving marketplace, supporting the emergence of a vibrant digital economy. Echoing Roscoe Pound's, as cited in Gochhayat, argued that law is a tool for social engineering, these reforms are expected to create an environment in which business actors, including small enterprises, can compete fairly and contribute to a more equitable and dynamic economy for all.<sup>37</sup>

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35 Ahmad Sabirin and Raafid Haidar, " Dampak Ekosistem Digital terhadap Hukum Persaingan Usaha di Indonesia serta Optimalisasi Peran Komisi Pengawas Persaingan Usaha (KPPU) di Era Ekonomi Digital" *Jurnal Persaingan Usaha* 1, no. 2 (2021): 75-82.

36 Friedman, Lawrence M. "Law, lawyers, and popular culture." *Popular Culture and Law*. Routledge, 2017. 3-30.

37 Gochhayat, Sai Abhipsa. "Social Engineering by Roscoe Pound': Issues in Legal and Political Philosophy." *Available at SSRN 1742165* (2010).

Digital transformation challenges traditional economic systems, and competition law must adapt accordingly. To address these challenges, lawmakers, courts, institutions, and economists must take proactive roles. Indonesia requires legal regulations that address the unique issues of the digital economy. Digital economic developments have the potential to cause unfair business competition.<sup>38</sup> Therefore, legal regulations are essential to anticipate, prevent, and control conflicts of interest arising from business competition in the digital sector. Such measures are necessary to support healthy economic growth and promote the welfare of the broader community.

#### **D. Conclusion**

In summary, this study has highlighted a substantial gap in Indonesia's competition law, particularly in its capacity to address challenges arising from the digital economy. The current legal framework remains limited in scope and specificity, making it difficult to effectively regulate market dominance and anti-competitive practices by digital platforms. By analyzing Germany's more mature and adaptive approach, which underwent its 10th amendment in 2021 with additional protections in the digitalization era. In addition to the GWB, Germany implemented the Openness Act Digital in 2021 to oversee large technology companies. It becomes evident that Indonesia can benefit from comprehensive legal reforms that expand substantive provisions, strengthen institutional capacity, and foster a supportive legal culture. Lessons drawn from Germany demonstrate the importance of clear statutory definitions, proactive enforcement mechanisms, and a holistic regulatory strategy that integrates substance, structure, and culture. Bridging these gaps is crucial for Indonesia to establish a fair, competitive, and dynamic digital marketplace that fosters sustainable economic growth.

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