

---

**Risk of GoTo Company's Big Data Monopoly Reviewed from the Anti-Monopoly Law****Valencia Gustin, Helza Nova Lita, Aam Suryamah**Padjadjaran University  
[valencia19001@mail.unpad.ac.id](mailto:valencia19001@mail.unpad.ac.id)

---

Received: November 18,  
2022  
Revised : November 20,  
2022  
Accepted: November 22,  
2022

---

**Abstract (Indonesia)**

**Latar Belakang:** Konvergensi era digital akibat pengaruh perkembangan globalisasi membawa kesadaran akan nilai ekonomi data untuk keperluan bisnis. Kegiatan bisnis yang dilakukan di era digital cenderung menggunakan data sebagai bahan kajian riset pasar, termasuk dalam menentukan kebijakan perusahaan di masa depan. Sebagai dua perusahaan yang bergerak di pasar digital, Gojek dan Tokopedia memiliki kontrol yang besar atas ragam data konsumennya sehingga penguasaan data menjadi faktor dominan di keduanya.

**Tujuan:** Penelitian ini bertujuan untuk membahas bagaimana pengaturan hukum di Indonesia mengenai praktik monopoli data sebagai bentuk persaingan usaha yang tidak sehat dan apakah kegiatan merger antara Gojek dan Tokopedia yang dapat menimbulkan potensi monopoli data dapat dibenarkan menurut Undang-Undang Nomor 5 Tahun 1999 tentang Monopoli dan Persaingan Usaha dengan Baik.

**Metode:** Penelitian ini merupakan penelitian normatif yang dilakukan dengan berfokus pada kajian bahan um huk primer, sekunder, dan tersier.

**Hasil:** Hasil penelitian menunjukkan bahwa saat ini belum ada pengawasan yang ketat dan pembatasan kontrol data dari perusahaan GoTo dan masih termasuk dalam ranah abu-abu untuk disimpulkan sebagai tindakan monopoli menurut UU Nomor 5 Tahun 1999.

**Kesimpulan:** Di Indonesia, praktik monopoli data saat ini masih diatur dengan mengacu pada Undang-Undang Nomor 5 Tahun 1999 tentang Larangan Praktik Monopoli dan Persaingan Usaha Tidak Sehat. Menurut ketentuan tersebut, monopoli terjadi dan dilarang ketika penguasaan data kemudian dapat menimbulkan persaingan usaha tidak sehat di pasar, adanya pengendalian harga, serta mencegah pelaku usaha lain masuk dan bersaing di pasar. Alhasil, penguasaan Big Data membawa pelaku usaha memiliki dominasi penuh

---

di pasar. Jika hal ini terbukti terjadi, maka sesuai dengan ketentuan peraturan perundang-undangan, pelaku usaha dapat diancam dengan sanksi pidana denda dan pidana penjara sesuai dengan kerugian yang ditimbulkannya.

**Kata Kunci:** Data, GoTo, Monopoli, Persaingan Usaha

**Abstract (English)**

**Background:** *The convergence of the digital era due to the influence of globalization developments brings awareness of economic value to data for business purposes. Business activities carried out in the digital era tend to use data as material for market research studies, including in determining company policies in the future. As two companies engaged in the digital market, Gojek and Tokopedia have great control over the variety of data of their consumers so mastery of data is the dominant factor in both.*

**Objective:** *This study aims to discuss how legal arrangements in Indonesia regarding the practice of data monopoly as a form of unhealthy business competition and whether merger activities between Gojek and Tokopedia that can cause potential data monopolies can be justified according to Law Number 5 of 1999 concerning Monopoly and Business Competition Well.*

**Methods:** *This research is normative research conducted by focusing on the study of primary, secondary, and tertiary legal materials.*

**Results:** *The results of the study show that at this time there is no strict supervision and limitation of data control from the GoTo company and is still included in the gray realm to be concluded as a monopoly act according to Law Number 5 of 1999.*

**Conclusion:** *In Indonesia, the practice of data monopoly is currently still regulated by referring to Law No. 5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition. According to these provisions, the monopoly occurs and is prohibited when control of the data can then cause unfair business competition in the market, the existence of price controls, and prevent other business actors from entering and competing in the market. As a result, the mastery of Big Data brings business actors to have full dominance in the market. If this is proven to happen, then according to the provisions in the laws and regulations, business actors can be threatened with criminal sanctions of fines and*

---

---

*imprisonment following the losses they have caused.*

---

**Keywords:** Data, GoTo, Monopoly, Business Competition

*\*Correspondent Author : Valencia Gustin*

*Email : valencia19001@mail.unpad.ac.id*



## INTRODUCTION

Along with the development of globalization, human innovation in terms of technological developments has also become increasingly developed. Communication and information are getting easier and faster to obtain. As a result of this convenience, many changes have occurred in the industrial sectors. One of the changes that many feels in the economic field is a change in the business delivery model.

The digital era has made business systems change to become more advanced and efficient. The use of database systems and the internet makes business more flexible and expansive. Compared with conventional business patterns that are still carried out by bringing together sellers and buyers directly, business implementation in the digital era can simply occur immediately without the need for face-to-face meetings. This implementation becomes possible with the use of the internet as a means of supporting operations in business systems (Hotana, 2018).

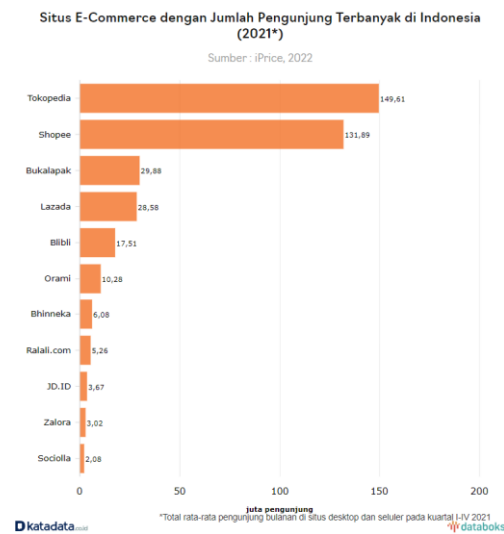
The rampant use of the internet in society affects changes in business system patterns. As a result of this, e-commerce businesses and various other types of digital businesses were created that carried out their business programs through digital applications. This is an answer to market demand in changing business systems based on the principle of practicality. People want a system that can meet their needs quickly and flexibly at all times. E-commerce and marketplaces are present in response to this demand, where they are present as a business pattern based on the use of the internet as a means of media in supporting their gan development lines and business operations (Hotana, 2018).

Focusing on operations in the digital market, *e-commerce* is not spared from business competition in the market. The trend of the digital market entering Indonesia makes many other similar businesses enter and compete in the digital market. Unfortunately, causality in the continuity of the e-commerce business is not only limited to its business operations in the digital market, but the control of data owned by the sector will also affect other business development sectors in different fields due to cooperation carried out by both parties in the sale or release of products. This is because mastery of the marketplace makes them special data to see market developments in real-time. For example on the current trends in the search list of their site, including also the age, hobbies, and transaction patterns of their users with a fantastic total number of users.

The focus of this research will take a case study on the GoTo company as a result of the merger between Gojek and Tokopedia which was carried out in May 2021. As a brief illustration, Gojek itself is a company that offers *on-demand* business programs, where based on applications, they offer automotive services, food, daily necessities, to household services. As a result, since its establishment in 2010, Gojek has become a company that leads a leading position in the field of service services. It was recorded that in June 2021, Gojek has achieved many application downloaders of more than 190 (one hundred and ninety) million downloads. This number is a fantastic number, which is accompanied by a large amount of data mastery (Pressrelease, 2021).

Unlike Gojek with its *on-demand* services, Tokopedia is present as a leading company in the *e-commerce* business sector (Sorace, Reinhardt, & Vaughn, 1997). In its company's track record in 2020, Tokopedia is recorded to have achieved market share with

a value of 6,465 million USD which makes the company ranked first in the retail industry throughout Southeast Asia (Sorace et al., 1997).



**Figure 1.**

*E-commerce Visitor Count Statistics, Source: Katadata, 2021.*

Tokopedia has a record number of visitors that still far exceeds Shopee (see Figure 1). As a result, there is no need to doubt that Tokopedia has far more consumer data records. The calculation of data mastery also considers data that is included in consumer interactions in the retail market obtained in the use of its application.

The merger between Gojek and Tokopedia in 2021 made GoTo automatically dominate a wide variety of industries. The dominance sector is also then accompanied by mastery of large data, where the data comes from a combination of Gojek data with Tokopedia. As a result, there is a risk of a data monopoly on the company. These data are controlled in very large quantities and include every piece of information that is crucial to its users so it should be present as one of the considerations in monopoly practices. If left unattended, one of the potential risks can lead to data monopoly practices in the company. In this case, the Business Competition Supervisory Commission (KPPU) then has a role and obligation in the field of business competition to ensure that data monopolies that lead to unfair business competition do not occur in the future (Effendi, 2020).

### Research Objectives

This study aims to discuss the answers to solving problems as follows:

1. What is the legal regulation in Indonesia regarding the practice of data monopoly as a form of unfair business competition?
2. Can the merger between Gojek and Tokopedia that can cause a potential data monopoly to be justified according to Law Number 5 of 1999 concerning Monopoly and Unfair Business Competition?

## RESEARCH METHODS

The research in this paper is carried out using normative juridical methods, where research is carried out using sources of research considerations derived from secondary materials. The research is then carried out by analyzing related materials which will then be used to answer the burden of questions asked as material for problems to be studied subsequently (Mughtar, 2015).

Analysis of research studies is carried out by utilizing literature study sources that are studied and studied further in the research. These sources are obtained by taking research materials and conclusions contained in literature materials, both in the form of books, journals, and official websites, as the main source object of research. In addition, the study tested an analysis sourced from primary legal materials in the form of various laws and regulations that regulate provisions related to aspects of the problem under study. The results of the subsequent discoveries are analyzed in qualitative data, in the form of descriptive notes and analysis of the findings of sources in the literature found.

## **Theoretical Review**

### **1. Economic Democracy and Anti-Monopoly Law**

Indonesia's position as a country of law is clearly stated in the idea of the 1945 Constitution (hereinafter referred to as the "1945 Constitution"). In a legal state, the law is the essence of the continuity of state administration. Law is a system that is just and functional. Law is formed to structure an orderly and orderly state of affairs in every existing field, both economic, social, political, and other areas in the implementation of state life (Asshiddiqie, 2011).

The relevance between the legal position and the practice of organizing Indonesia's national economic activities itself is contained in Article 27 paragraph (2) and Article 33 paragraph of the 1945 Constitution. Article 27 paragraph (2) explains the importance of regulating the market economy where there is a right to a decent livelihood and work for every Indonesian citizen. This opportunity is then contained in Article 33 which explains the economic system that is carried out based on the principle of kinship and that every important branch of production will be controlled by the state. Based on the explanation of Article 33 of the 1945 Constitution, Indonesia is a country that implements economic democracy. This is as stated in the 1993 MPR Decree in the Outlines of the State Direction that the implementation of economic democracy is held by avoiding the centralization of the economy in a certain group, harming other parties, and the occurrence of unfair business competition that is contrary to the principle of justice (Margono, 2009).

To ensure that economic democracy is achieved in the market system in Indonesia, the Government of Indonesia issued relevant regulations to ensure that business competition in the market healthily takes place. The competition itself is a term that boils down to English, namely competition which means competition, competing activities, or matches. In the management dictionary itself, competition is defined as an event where there are two or more parties of a person or company each party competes with the other to get orders through offers with the most profitable conditions or prices. This competitive context can be done through various means, such as sales promotion (advertising), target market segments, variations, quality offers, discounts or discounts, and others (Marbun, 2003).

While the definition of self-effort comes as a term that describes an action event that is held in a directed and organized manner, whether carried out by a person or a group, to achieve a predetermined goal. The business competition will be referred to the as fair competition when subject to and complying with existing regulations. However, if there is a violation later, there will be indications of the possibility of unfair business competition, such as monopoly.

According to Suyud Margono, in his book "Anti-Monopoly Law", monopoly occurs when a business actor has exclusive control in determining market prices and the supply of certain goods and/or services (Marbun, 2003). Meanwhile, according to the *Black Law Dictionary*, monopoly itself is the advantage (privilege) of a certain company, one of which can be in the form of exclusive rights to power in carrying out a business activity, to the control of a commodity (Dictionary, 1979).

The Anti-Monopoly Law in Indonesia is further contained in Law Number 5 of 1999 (Law No. 5/1999) concerning the Prohibition of Monopoly Practices and Unfair Business Competition. In general, the establishment of the Anti-Monopoly Law itself is held to support the market economy system so that competition in the market is held healthily, there is no exploitation of consumers, and competition remains alive in supporting market development.

One of the corporate behaviors regulated in the policy of the Anti-Monopoly Law is mergers (Fuady, 1999). Basically, according to Stephen F. Ross, violations of the Anti-Monopoly Law can be reviewed according to the *rule of reason* or *per se illegal*, namely the approach used by the Business Competition Supervisory Commission (KPPU) in conducting evaluations related to the procurement of a certain agreement, where whether the agreement has consequences as contained in Law No. 5/1999. This assessment can be seen in the formulation of the provisions of Law No. 5/1999, where more in-depth research will be needed on articles that have the sound of "*suspected*" or "*which can result*". On the contrary, the *per se illegal* approach is generally used against the provisions of articles that state prohibitions. According to Johnny Ibrahim, the difference between the two lies in the burden of proof (Prananingtyas, Lubis, Anggraini, & Toha, 2017), wherein the rule of reason, the proof is needed on the impact of actions carried out by business actors, where whether these actions are proven to be detrimental to society or are a form of unfair business competition (Citrawan, 2017). The next analysis of monopoly practices will use a rule of reason approach with the consequences in Law No. 5/1999 as a classification of prohibited activities and needs to prove in advance the impact of its activities (Ibrahim, 2006).

In the analysis to determine whether a merger practice is an act of monopoly, it is necessary to analyze the elements of monopoly on the practice that occurs. In the *rule of reason* approach, a review of monopoly practices can be analyzed in terms of legislation and market potential. Based on the review of laws and regulations, the elements of monopoly according to Law No. 5/1999 are (Sirait & Gunadarma, 2010):

1. The existence of concentrating economic power on one or more business actors;
2. There is mastery of the marketing or production of goods and/or services;
3. The occurrence of unfair business competition; and
4. Inflicting harm on the public interest.

## **2. Data and Monopoly Practices**

In contrast to the review according to these laws and regulations, the *theory of the rule of reason* in the practice of monopoly is also seen through the potential for monopolies to occur in market development. According to the writings of Hanif N. W., to test the monopoly aspect of the market, a measure of various references is needed as a factor that assesses whether a business competition is real and substantial. It requires prior proof for an anti-competitive measure that it has a negative effect on market competition. This evidence can be seen through an analytical study of Article 25 of Law No. 5/1999 on the dominant position and also Article 27 of Law No. 5/1999 on cross-ownership. According to Law No. 5/1999, for example, the dominant position occurs when a business actor has no competitors in the market or he has the highest position so that he has power over market share, financial capabilities, access to sales of the supply of goods, adjustments to demand and supply of goods, to business adjustments to the demand for goods and services in the market. One of these adjustments can be easily achieved if a business actor has sufficient data to review market developments up-to-date (Widhiyanti, 2016).

The use of data in company business operations in the digital age often has a close relationship with the "value of data." According to Atal Malviya and Mike Malmgren's writings in "Big Data for Managers; Creating Value", data has an important value, both for society, government, and companies. For the public, data is present as information related to public policy and public services. For governments, data exists as a tool to improve the efficiency of government policies, law enforcement (such as in looking at the potential for tax evasion at the Tax Department in the UK), and in communicating with the public. As

for companies, data is often present as an increase in economic value for companies. The importance of data for business actors in their business ventures is born from the ability of Big Data to identify consumer behavior and tastes, where companies can better know their consumers, target consumers in marketing, to know which consumer segments are needed to be given more or less marketing allocation so that companies can then attract more consumers and achieve maximum profits. (Malviya & Malmgren, 2018) .

According to the provisions of Article 1 paragraph (2) of Law Number 8 of 1999 concerning Consumer Protection (hereinafter referred to as "Law No. 8/1999"), consumers are each person who uses (consumes) a good and/or service that exists in society, where the user is carried out either for the benefit of others, himself, or other living beings, and the goods and/or services are not traded back (Benuf, Mahmudah, & Priyono, 2019). Consumers who are related buyers of a company generally also provide related data needed for the continuity of the company's business operations. The data provided by consumers can be in the form of non-confidential data to data that is personal and needs to be kept secret. Personal data itself is data belonging to a person that needs to be stored, treated, secured the truth about it, and given protection against the confidentiality of the data. In electronic systems, the protection of personal data is considered a privacy that needs to be maintained for its rights and honor.

According to the provisions of Article 1 paragraph (3) of Law No. 8/1999, business actors are business entities and individuals both domiciled and carrying out their business activities in the economic sector, both the form of legal entities and not, through agreements held jointly in the territory of the State of Indonesia. A business actor must run his business based on good faith and always convey honest.

## RESULTS AND DISCUSSION

### 1. Positive Legal Regulation in Indonesia Regarding Data Monopoly Practices

The digital revolution in the economic field presents the use of data as an economical commodity. In their research, Agung Pujianto, Awin Mulyati, and Novaria (2018) stated that the presence of *Big Data* provides open opportunities for every company in managing the company's business strategy and future innovations carried out by taking, processing, and analyzing the data effectively and quickly and with a large level of volatility. In Dumbill's (2012) opinion, *Big Data* is data with a capacity load that exceeds the conventional system on the *database*. Furthermore, according to Gartner, *Big Data* is a variety of data with high volumes and large information assets so that then its use in business systems can make the business improve the automation process which leads to efficiency and accuracy of decision-making and understanding of the market (Pujianto, Mulyati, & Novaria, 2018).

Mastery of Big Data has a close relationship with business processes in the digital era colored by technology in its development. By using Big Data, companies will be able to know firsthand the factors that influence consumer decisions in purchasing, and social media sentiment, track market trends in real-time and improve the company's image (Kalangi, 2017). As a result, a company that succeeds in utilizing and processing data in high complexity, with a variety of variety, large volumes, and high speed, will be able to obtain large profits or profitability as well. This is the advantage of mastering data in the digital era. A thorough data analysis can lead companies to conclude the populations that produce these varieties of data. As a result, output on economic benefits is affected.

The crucial data position in the development of the company makes companies that have control over Big Data gain an advantage. However, too much control can be at risk to monopolistic practices in the context of unfair business competition. According to a review

of the positive legal rules in force in Indonesia, monopolistic practices can lead to unfair business competition in the market. In Indonesia's positive law constituents, unfair business competition is further regulated in Law Number 5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition (Law 5/1999).

According to the provisions of Article 1 paragraph (6) of Law No. 5/1999, a business competition practice is categorized as unfair business competition when in carrying out the business competition, business actors use methods that are unlawful, dishonest, or hinder the occurrence of business competition in carrying out production and/or marketing activities on certain good and/or service. This unfair business competition can occur for various reasons, one of which is the company's actions, such as merging or merging which then has the potential to monopolistic practices that are prohibited by law. This action further has the potential to violate the provisions of Article 12 of Law No. 5/1999, where the regulation regulates related to the prohibition that a business actor is not allowed to merge to create a joint company on a larger scale with other business actors if the activity has the potential to lead to monopolistic practices or unhealthy. While still paying full attention to the survivability of the two companies, the new company was then established to master the production or marketing control of a good and/or service, as well as dominate the market. As a result monopoly, practices are potentially occurring (Effendi, 2020).

Broadly speaking, an act of a business actor in trading that is prohibited according to Law No. 5/1999 is the act of a business actor who in carrying out his business brings the potential in making a loss to the public interest and unfair business competition. This also applies to monopolistic practices that have the potential to lead to unfair business competition in the market. Therefore, the prohibition is then interpreted as a prohibition in carrying out acts of monopoly practice, which is a practice that occurs over the control of the market or control over the production of a good and/or service held by one person or group of business actors.

Data monopoly exists as a term for the classification of monopoly cases that are exclusively present and become a highlight in the digital business era. In reviewing violations on the data monopoly basis, a definition of the data itself is needed in the positive legal position in Indonesia. If reviewing according to the definition contained in the Government Regulation of the Republic of Indonesia Number 80 of 2019 (PP No. 80/2019) concerning Trade Through Electronic Systems, the data can be positioned as goods. This is explained in the provisions of Article 1 paragraph (19) PP No. 80/2019, that (Article 1 paragraph 19 of the Government Regulation of the Republic of Indonesia Number 80 of 2019 concerning Trade Through Electronic Systems, n.d.)

*"Digital Goods are any intangible goods in the form of electronic or digital information including goods that are the result of conversion or transfer or goods that are originally in electronic form, including but not limited to software, multimedia, or electronic data."*

The definition of goods according to the provisions of Article 1 paragraph (18) PP No. 80/2019, goods are references used to every object, whether moving or not, as well as tangible or intangible objects, objects that can be exhausted or not, where the object can be used, handled, utilized, and traded by consumers and business.

The context of the definition of data as goods as contained in PP No. 80/2019 can be justified by the current use of data. Data is used as a commodity to evaluate business development, form business strategies, even as goods that are sold freely on the internet. There are many cases of data sales in Indonesia, where it explains the economic value that is present from the data.

As a result of the position of data as an item, in accordance with the provisions of monopoly as stipulated in the provisions of Article 1 paragraph (2) of Law No. 5/1999, control over excessive data can lead to monopolistic practices. In the definition of monopoly practice, there are several indicators contained, including [34]:



1. That monopoly arises at a time when there is a concentration of economic power;
2. Can be done by one or more business actors;
3. The result of actions that lead to control over the production or marketing of a good and/or service; and
4. Have the risk of making losses that affect the public interest and unfair business competition.

When viewed from every indicator contained in the elements of monopoly practice according to the provisions of Article 1 paragraph (2) of Law No. 5/1999, it can be said that a business actor becomes a data monopoly when he controls a very large amount of data, which makes him economically superior and carries risks to the occurrence of unfair business competition and losses to the public interest. With the mastery of this very large data, the company then becomes superior in market control, thus hindering the occurrence of healthy business competition. In addition, several indicators need to be considered as part of the assessment indicators to be able to assess whether a business actor should practice monopoly or not. These indicators are contained in Article 17 paragraph (2) of Law No. 5/1999 which states that a business actor will be considered or suspected if he carries out monopolistic practices if in his business line he does the following things [35]:

1. If there is no substitution of the goods and/or services concerned;
2. If the business results in the obstruction of other business actors from entering with similar types of goods and/or services in their business competition; or
3. If there is a dominance of control of more than 50% (fifty percent) over the market share of a certain good and/or service by one business actor or one group of business actors.

To be able to assess whether a business actor carries out an act of data monopoly or not has not been found a clear standard in the provisions of positive law in Indonesia. At present, the evaluation of monopoly practices is in the hands of the KPPU as the institution responsible for determining the occurrence of a monopoly violation. This is following the provisions of Article 1 paragraph (18) of Law No. 5/1999 which explains that the KPPU is present as a commission whose formation is carried out to supervise business activities carried out by business actors to ensure that the business activities they carry out do not lead to monopolistic practices or unfair business competition.

KPPU exists as an independent institution that ensures that business competition activities in Indonesia can healthily take place. As an independent institution, the position of the KPPU is independent of the influence of government power and any party so that then the position of this institution will have strong neutrality. To ensure that business competition in Indonesia healthily takes place, based on the provisions of Article 35 of Law No. 5 of 1999, KPPU has the following duties (Article 35 of Law Number 5 of 1999 concerning Prohibition of Monopoly Practices and Unfair Business Competition, n.d.):

1. The task of assessing an agreement against its implications for monopolistic practices and unfair business competition;
2. The task of assessing a business activity against its implications for monopolistic practices and unfair business competition;
3. The task is assessing the use of dominant positions to their implications for monopolistic practices and unfair business competition;
4. Take action following the authority of the KPPU as stipulated in Article 36 of Law No. 5/1999;
5. Preparing publications and/or guidelines related to the Anti-Monopoly Law; San
6. Conduct regular reporting to the House of Representatives and the President related to the work of the KPPU.

In monopoly practice, KPPU must ensure that every monopoly practice that occurs is not a practice that violates the provisions of Law No. 5/1999 or causes unfair business competition. Therefore, in carrying out this task, the KPPU is further given several authorities as contained to receive complaints reports of related violations and investigate

and decide on alleged acts n violations of Law No. 5/1999 (Article 36 of Law Number 5 of 1999 concerning Prohibition of Monopoly Practices and Unfair Business Competition, n.d.).

In the constituents of positive business competition law in Indonesia, Law No. 5/1999 has provided a series of clear provisions for business actors who are proven to have monopolized as a form of unfair business competition action. Based on the provisions contained in Article 48 paragraph (1) of Law No. 5/1999, it is stated that a business actor who is proven to have violated the provisions of the laws and regulations in the field of monopoly activities is threatened with a criminal penalty of confinement in place of a maximum fine of 6 (six) months or a fine with a minimum Rp. 25,000,000,000.00 (twenty-five billion rupiahs) with a maximum value of Rp. 100,000,000,000.00 (one hundred billion rupiahs). In addition, the punishment provisions can also be supplemented by additional criminal provisions as referring to Article 10 of the Criminal Code (KUHP) which is described as an additional criminal section of Article 9 of Law No. 5/1999. Some of the additional penalties that may be imposed further consist of the following (Article 49 of Law No. 5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition, n.d.) :

1. Revocation of business licenses from the business actors concerned;
2. Prohibited from the business actor concerned in occupying the position of commissioner or director within a drinking period of 2 (two) years and a maximum of 5 (five years); or
3. Dismissal of certain actions or activities that are considered detrimental to other parties.

In addition, in the renewal of its legal reforms, the Indonesian government then further issued Government Regulation of the Republic of Indonesia Number 44 of 2021 (PP No. 44/2021) related to the Implementation of the Prohibition of Monopoly Practices and Unfair Business Competition. The regulation was formed to be able to monitor competition in the market so that there is no form of unfair business competition or other things that are not desirable to happen, such as monopoly practices that cause losses to third parties or the general public. PP No. 44/2021 is then present as the implementer of the provisions of Articles 118 and 185 letter b of Law Number 11 of 2020 related to Job Creation (Law No. 11/2020). Article 118 of Law No. 11/2020 regulates the authority of the KPPU in imposing administrative sanctions on business actors who violate the provisions of Law No. 5/1999 (Article 118 of Law Number 11 of 2020 concerning Job Creation, n.d.).

As an implementing regulation of Law No. 11/2020, PP No. 44/2021 also regulates the criteria for imposing sanctions and fines for business actors who violate the provisions of Law No/5/2020. This criterion can be used as an illustration of the type of administrative sanctions that will be imposed on violators for their actions, according to the provisions of Article 5 paragraph (1) of PP No. 44/2021, administrative sanctions imposed by the KPPU are carried out for the following considerations (Article 5 paragraph 1 of Government Regulation Number 44 of 2021 concerning the Implementation of the Prohibition of Monopoly Practices and Unfair Business Competition, n.d.) :

1. That the sanctions will be imposed depending on the impact or extent of the violation of the business actor;
2. That the sanctions will be imposed by looking at the ongoing business activities; and/or
3. That the sanctions will be imposed on clear grounds and considerations.

Therefore, based on the provisions of Article 5 paragraph (1) of PP No. 44/2021, a sanction to business actors will be imposed following the three existing consideration criteria. That way administrative sanctions can be imposed lightly or severely depending on the actions of business actors and their impacts, as well as other factors that can affect the consideration of the KPPU in determining alleged violations of these business actors.

## 2. GoTo Merger Practices According to Anti-Monopoly Law

The development of the global digital era has brought a significant change to the market. The digital market is one type of market that grows due to advances in technology based on the use of internet network systems. At this time, almost every company will at least intersect with business in the digital market due to the adaptation of the use of technology to improve efficiency and business lines in the company.

But apart from every type of business carried out by the company, business competition that arises in the market is an unavoidable thing. Of course, business competition is also a normal and familiar thing to the business world in every country in the world. In Indonesia, the birth of the existence of the digital market is a new field opportunity for every business actor who competes in this market segment. In general, the main players competing in the digital market sector consist of the digital learning business sector, digital marketing, marketplaces, to e-commerce engaged in digital business lines. In general, each of these companies often intersects with each other due to their movements which are in a fairly uniform pattern, namely using digital interfaces in their operations. As a result, business competition is unavoidable in the digital market. Every business actor will then try as much as possible to be able to achieve a position as a leader in the market with maximum profit (Hotana, 2018).

Although it is not entirely a bad thing, a business competition that is not properly controlled brings the potential in giving birth to unfair business competition practices. In the digital market, business competition has the potential to occur in the e-commerce business line, namely the business sector that offers to buy and sell transactions using internet facilities carried out through electronic media (Unpas, 2012). Differences in the number of users and the mastery of different data in each company make a separate dispersion of business competition. As a result, companies with a large amount of data and consumer mastery will win the competition.

The data problem is new in the context of assessing business competition activities. Controlling huge amounts of data without dick limits can lead to data monopoly practices. In Indonesia, one of the well-known cases of business competition in the digital market recently was the merger between two *decacorn* group companies, namely Gojek and Tokopedia, which merged to help one GoTo company as a joint company. GoTo then combines each service which, among others, includes services in the fields of financial transactions, modes of transportation, delivery of food and goods, *e-commerce*, and other services that were previously loaded separately at the two previous Gojek and Tokopedia companies. As a result, GoTo has a very wide level of service differentiation with each of these businesses engaged in the digital market. In addition, GoTo also has a very high data mastery rate, considering that both Gojek and Tokopedia are *leading companies* in their fields (A, 2021).

The company's legal activities, such as in the merger, are carried out by integrating shares and assets owned by the two companies (Aliy & Susilowati, 2019). As a result, practical data as a digital asset will also be incorporated and play a large role in the company's operations in making a profit. According to Suciati (2019), data monopoly has been proven to be able to increase product advertising based on consumer preferences, increase offers, and help companies to be able to make their best business decisions (Suciati, 2019).

Access to data plays a big role in the expansion of the power that a company has. Companies that are positioned to have a large Big Data warehouse with the ability to process it tends to have a superior position in the market. According to Asep Irawan (2020), a market controlled by companies holding Big Data generally occurs due to the company's position which has a high bargaining value, both in company activities and negotiations in corporate cooperation (Kurniawan & Yun, 2018). Companies that have great data mastery will be able to get many benefits, both in the company cooperation sector that attracts many parties to cooperate, collaboration, marketing, and high sales levels.

As an overview, Gojek is currently a company engaged in the on-demand service sector and financial transactions on a large scale. The number of active users of Gojek is widespread throughout Southeast Asia and Gojek is present as a leading company in its sector. Meanwhile, Tokopedia is a company in the marketplace sector, where it does its business based on the use of technology and *digital platforms* to carry out buying and selling transactions and other services, including investment. So from the two business lines, GoTo can be said to dominate the variety of business sectors ranging from investment, payment systems, logistics, *marketplaces*, and other business lines in the digital market economy ecosystem in Indonesia. As a result, GoTo has a large data mastery of the various market. This starts from consumer addresses, telephone numbers, tastes, active hours, daily life, and various other data without limitations. Meanwhile, in their capital, both Gojek and Tokopedia stood up by getting large capital injections as the basis for business from foreign investors.

In 2021 GoTo is recorded to have a total of 100 million active users every month. From this figure, this company targets an increase to reach 140 million active users (Sukarmi, Tejomurti, & Alam, 2021). When assessed based on iPrice digital analysis in the second quarter of 2021, visitors from Tokopedia have reached nearly 150 million visitors per month. This figure is much more than Shopee which only reaches a figure of around 132 million per month. Meanwhile, with the merger of Gojek and Tokopedia, the data sites of the two companies will then be incorporated and integrated into GoTo. As a result, there is a potential data monopoly in the company's data warehouse. If left without strict planning or supervision, it has the potential to have an impact on the development of the company and marketing in the market sector of digital Indonesia in the future.

However, in ascertaining whether GoTo's actions are included in monopoly practices that can cause unfair business competition, this needs to be seen according to the consideration of Law No. 5/1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition. Mastery of data on GoTo is a definite thing and no longer needs to be questioned. However, is mastery sufficient to be an indicator of monopolistic practices?

To prove whether an activity falls under prohibited monopolistic practices, according to the rule of reason approach, proof of the actions of the business actor is needed if the action violates the provisions of the law. At this time, Law No. 5/1999 still does not include the Big Data standard as one of the standards in assessing monopoly practices. However, in the provisions on monopoly practices, Law No. 5/1999 states that a monopoly practice is considered to occur at the time of fulfillment of the elements of monopoly practice required in Law No. 5/1999 which includes, among others, the concentration of economic activities, unfair business competition, losses to other parties, and control over goods and/or services. (Article 1 paragraph 2 of Law Number 5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition, n.d.) .

Economic centralization is considered to occur if there is real control by one or more business actors over the market so that then the business actor can determine the price of goods and/or services (Article 1 Paragraph 3). Until now, namely September 2022, there is still no indication of GoTo's ability to unilaterally increase prices for its services and it has not happened. The controversial phenomenon is only limited to the transportation system, but it is still implemented within reasonable limits. Therefore, it can be concluded that the concentration of economic power does not arise after the merger.

Unfair business competition is an indicator of monopoly when business competition is carried out unlawfully, dishonestly, or hinders business competition. In practical terms, GoTo control GoTo data cannot be said to be unlawful, because at this time there are no laws and regulations governing the number of data limitations that can be owned by a company or what data cannot be collected. The new Personal Data Protection Law passed on September 20, 2022, is only limited to providing an overview of the guarantee of protection of personal data and the responsibility of the data holder for their

obligations to safeguard the data. Therefore, what GoTo does is not an act that is against the applicable law in Indonesia. In addition, every data collection is carried out honestly and openly, following the consent of its consumers as stated through the application. This is like for example Identity Card (KTP) data for verification, phone number data, address, and other data that is filled in voluntarily. However, GoTo still must protect these data. Meanwhile, other data related to tastes, hobbies, and needs are data obtained through Big Data processing on application traffic. As a result, the data is not exclusive and is still not regulated by law in the Personal Data Protection Law.

A special characteristic arising from the Big Data monopoly is its great risk to hinder the growth of other business actors to enter and compete. This is caused by the mastery of large data, causing problems with market competition. A company can accurately predict the market, and then become the overlord of the market. But at this time, this situation has not yet fully occurred. At this time GoTo still has many competitors in each of its sectors, although similar competitors have not yet emerged that master similar business diversification. For example, in the marketplace field, there are still Lazada and Shopee who are still competing fiercely, regardless of their defeat. In addition, in terms of on-demand business, there is still Grab with a similar type of business. Therefore, despite its wide scope of diversification, the practice is not enough to be said to be a monopoly practice. But on the one hand, broadly speaking, the impact brought by the GoTo merger has made it difficult for new players who are still growing to enter the market. This is due to the control over the digital market that has already been controlled by big players. As a result, despite the exciting innovations, new players are difficult to develop because their growth depends on the practices of large players in the Indonesian digital market (Fauzie, 2021).

In Indonesian practice, the KPPU's ban on merger activities will occur when the merger significantly creates weaknesses in effective market competition and the emergence of market forces from business actors holding mergers. If this context is viewed in terms of analysis of the use of Big Data on GoTo, then the question that will need to be answered is the extent to which Big Data will bring its role to GoTo's progress in market competition as one of the indicators that have the potential to cause monopoly.

At the time of the GoTo merger, KPPU was recorded as conducting a special evaluation of the merger. In the results of his evaluation, Guntur Syahputra as Deputy Chairman of the Business Competition Supervisory Commission (KPPU) stated that the merger practice from GoTo did not violate the provisions of the Anti-Monopoly Law or Law No. 5/1999. The result of the decision was born after a thorough evaluation of the KPPU, where it was stated that there would be no monopolistic practices occurring due to the absence of a market concentration formed. The existing market between Gojek and Tokopedia is a *multi-set market* so the impact of the merger of the two does not have a significant impact. Even so, it is undeniable that the merger made the income of the two lead to a significant increase ("KPPU: Gojek and Tokopedia Merger So Goto Does Not Monopolize - Startup Katadata.co.id," 2022).

Unfortunately, data mastery has not been a special consideration in the process carried out by KPPU for the evaluation of the GoTo merger. GoTo's mastery of large data should automatically make every collaboration with the company get information on the digital market that has a significant impact. Unfortunately, at this time, the problem still cannot be answered accurately because there is no definite report on the extent to which the data is used in GoTo's business competition activities. There is no definitive calculation of the data related to how much data GoTo currently holds, including the complete variation of each data type. However, because there is no complete report that the control of Big Data on GoTo brings major obstacles to the market due to its company, the things done by GoTo cannot be classified as monopolistic actions at this time.

Despite the unclear amount of data available, researchers believe that the use of large data without these limitations will bring great risks to the market. Data that can

analyze the market including the tastes of a large number of consumers, will quickly assess market trends and developments, making the company will be able to put itself in a favorable position in the competition. As a result, the company and each of its partners in related cooperation can have an absolute advantage in looking at certain market trends.

## CONCLUSION

Mastery of Big Data is an important point that needs to be studied in business competition in the digital market. In Indonesia, the practice of data monopoly is currently still regulated by referring to Law No. 5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition. According to these provisions, the monopoly occurs and is prohibited when control of the data can then cause unfair business competition in the market, the existence of price controls, and prevent other business actors from entering and competing in the market. As a result, the mastery of Big Data brings business actors to have full dominance in the market. If this is proven to happen, then according to the provisions in the laws and regulations, business actors can be threatened with criminal sanctions of fines and imprisonment following the losses they have caused.

In GoTo's merger practice, dominance over the market is clearly due to Big Data dictating occurring in very large numbers. In addition, in its study of the GoTo merger, KPPU has not added data control as one aspect of the assessment of monopoly activities. As a result, there is currently no definitive study of the impact of mastering GoTo data on business competition. However, researchers believe that mastery of the data has a significant influence on the market, which has the potential to impact data monopolies. Even so, at this time GoTo still has not achieved a position where it can fully control prices or achieve dominance over the digital market so the monopoly position has not yet fully occurred.

### Suggestion

Based on the results of this study, the authors have some suggestions as follows:

1. For the KPPU to start including supervision of the amount of data as an indicator of assessment of monopolistic practices or business competition that is not as good as t.
2. The establishment of special regulations on data is non-crucial or not personal data but has value in business development so that then there is no control of data that has the potential to damage market competition.

## BIBLIOGRAPHY

- A, Fahmi. (2021). GoTo Business Octopus Overshadows Four Gojek and Tokopedia Business Lina. Retrieved September 24, 2022, from <https://katadata.co.id/yuliawati/digital/60a26e040f57f/gurita-bisnis-goto-menaungi-empat-lini-usaha-gojek-dan-tokopedia>
- Aliy, Laynardho Abulkhair, & Susilowati, Indri Fogar. (2019). Juridical Analisis Against Case Decision No. 26/Rev. G/2015/Pn. Wsb Concerning The Limits of Regulating Criminal Responsibility and Civil Liability towards Bank Mandiri's Responsibility in Misuse of Bank Customer Data. *Novum: Journal of Law*, 6(2).
- Asshiddiqie, Jimly. (2011). The idea of an Indonesian legal state. Papers presented at the National Legal Development Planning Dialogue Forum organized by the National Legal Development Agency of the Ministry of Law and.
- Benuf, Cornelius, Mahmudah, Siti, & Priyono, Ery Agus. (2019). Legal Protection of

- Financial Technology Consumer Data Security in Indonesia. *Legal Reflections: Journal of Legal Sciences*, 3(2), 145–160.
- Citrar, Fitrah Akbar. (2017). *Competition law: the application of the rule of reason in the handling of cartel practices*. Suluh Media.
- Databooks.katadata.com. (n.d.). E-commerce Site with the Highest Number of Visitors in Indonesia 2021. Retrieved June 27, 2022, from <https://databoks.katadata.co.id/datapublish/2022/04/12/tokopedia-e-commerce-dengan-pengunjung-terbanyak-pada-2021>
- Dictionary. (1979). *Black Law, The Fifth Edition*. St. Paul Minn West Publishing.
- Effendi, Basri. (2020). Supervision and Law Enforcement of Digital Business (E-Commerce) By The Business Competition Supervisory Commission (KPPU) In Unfair Business Competition Practices. *Syiah Kuala Law Journal*, 4(1), 21–32.
- Fauzie, Yuli. (2021). Reading the Purpose and Impact of the Gojek-Tokopedia Merger – Page 2. Retrieved September 26, 2022, from Economic website: <https://www.cnnindonesia.com/ekonomi/20210518065203-92-643595/membaca-tujuan-dan-dampak-merger-gojek-tokopedia/2>
- Fuady, Munir. (1999). *Anti-monopoly law: ushering in the era of fair competition*. Image of Aditya Bakti.
- Goodstats.id. (n.d.). 10 largest retail companies in Southeast Asia, Indonesia dominates. Retrieved September 24, 2022, from <https://goodstats.id/article/10-perusahaan-ritel-terbesar-di-asia-tenggara-indonesia-mendominasi-KwT5O>
- Hotana, Melisa Setiawan. (2018). The e-commerce industry in creating a competitive market based on competition law. *Bonum Combine Journal of Business Law*, 1(1), 28–38.
- Ibrahim, Johhny. (2006). *Competition Law: Philosophy, Theory, and Implications of Its Application in Indonesia*. Malang: Banyumedia Publishing.
- Jurnalhukum.com. (n.d.). Definition of Business Actors and Rights and Obligations of Business Actors. Retrieved June 28, 2022, from [www.jurnalhukum.com/pengertian-pelaku-usaha/](http://www.jurnalhukum.com/pengertian-pelaku-usaha/)
- Kalangi, Betriks Eva. (2017). Procedures for Handling Monopoly and Fraudulent Competition Cases and Legal Sanctions for Violations of Law Number 5 of 1999. *Lex Crimen*, 6(1).
- KPPU: Gojek and Tokopedia Merger Becomes Goto Is Not Monopoly - Startup Katadata.Co.Id. (2022). Retrieved September 26, 2022, from Katadata.Co.Id website: <https://katadata.co.id/desysetyowati/digital/6245d52b715fe/kppu-merger-gojek-dan-tokopedia-jadi-goto-tak-monopoli>
- Kurniawan, Asep, & Yun, Yun. (2018). The influence of entrepreneurial competence and business perpetuation on competitive advantage. *Journal of Business Inspiration and Management*, 2(1), 65–78.
- Malviya, Atal, & Malmgren, Mike. (2018). *Big Data for Managers: Creating Value*. Routledge.
- Marbun, B. N. (2003). *Management Dictionary*. Jakarta: Sinar Harapan Library.
- Margono, Suyud. (2009). *Antitrust law*.
- Muchtar, Henni. (2015). Normative Juridical Analysis of the Synchronization of Local Regulations with Human Rights. *Humanus*, 14(1), 80–91.
- Article 1 paragraph 18 of the Government Regulation of the Republic of Indonesia Number 80 of 2019 concerning Trade through Electronic Systems.
- Article 1 paragraph 19 of the Government Regulation of the Republic of Indonesia Number 80 of 2019 concerning Trade Through Electronic Systems.
- Article 1 paragraph 2 of Law Number 5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition.
- Article 1 letter a of Law Number 5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition.

- Article 118 of Law Number 11 of 2020 concerning Job Creation.
- Article 12 of Law Number 5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition.
- Article 35 of Law Number 5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition.
- Article 36 of Law Number 5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition.
- Article 49 of Law Number 5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition.
- Article 5 paragraph 1 of Government Regulation Number 44 of 2021 concerning the Implementation of the Prohibition of Monopoly Practices and Unfair Business Competition.
- Prananingtyas, Paramita, Lubis, Andi Fahmi, Anggraini, Anna Maria Tri, & Toha, Kurnia. (2017). *Competition Law*.
- Pressrelease. (2021). Increasingly Becoming a Mainstay of Consumers, Gojek Encourages Innovation in Three Main Services. Retrieved September 23, 2022, from Pressrelease.Id website: <https://pressrelease.kontan.co.id/release/makin-jadi-andalan-konsumen-gojekdorong-inovasi-di-tiga-layananutama?page=all>
- Pujianto, Agung, Mulyati, Awini, & Novaria, Rachmawati. (2018). Utilization of Big Data and Consumer Privacy Protection in the Digital Economy Era. *WISE Scientific Magazine*, 15(2), 127–137.
- Repository.umy.ac.id. (n.d.). Research Methods. Retrieved September 23, 2022, from [http://repository.umy.ac.id/bitstream/handle/123456789/15946/g.CHAPTER II.pdf?sequence=7&isAllowed=y](http://repository.umy.ac.id/bitstream/handle/123456789/15946/g.CHAPTER%20II.pdf?sequence=7&isAllowed=y)
- Sirait, Ningrum Natasya, & Gunadarma, Andika. (2010). Overview of Business Competition Provisions. *The Indonesia Netherland National Legal Reform Program (NLRP)*, Jakarta.
- Sorace, Ronald E., Reinhardt, Victor S., & Vaughn, Steven A. (1997, September 16). *High-speed digital-to-RF-converter*. Google Patents.
- Suciati, Titis Nurwulan. (2019). Privacy Cynicism, Discrimination And Data Commodities: The Social Media Paradox In The Era Of Surveillance Capitalism. *Journal of Communication Sciences Acta Diurna*, 15(2), 145–166.
- Sukarmi, Sholahuddin Al Fatih, Tejomurti, Kukuh, & Alam, Moch Zairul. (2021). Assessing the Merger of Online Platform Companies: Does it Lead to Monopoly or just Business Expansion? (Analysis of The Merged Company of GoTo). *Jurnal Cita Hukum*, 9(3), 551–566.
- Toba, Hapnis. (n.d.). Big Data: Towards the Next Evaluation of the Information Age. Retrieved September 23, 2022, from Conference paper website: [www.researchgate.net/publication/274712668](http://www.researchgate.net/publication/274712668)
- Unpas. (2012). What Is E-Commerce. Retrieved September 24, 2022, from Pasundan University website: <http://www.unpas.ac.id/apa-itu-e-commerce/>
- Upeks.co.id. (n.d.). Gojek-Tokopedia (Go-To) has 100 million monthly users. Retrieved September 23, 2022, from <https://upeks.co.id/2021/05/gojek-tokopedia-go-to-miliki-100-juta-pengguna-bulanan/>
- Widhiyanti, Hanif Nur. (2016). Per Se Illegal Approach and Rule of Reason in Competition Law (Indonesia-Malaysia Comparison). *Law Arena*, 8(3), 385–410.



© 2021 by the authors. Submitted for possible open access publication under the terms and conditions of the Creative Commons Attribution (CC BY SA) license (<https://creativecommons.org/licenses/by-sa/4.0/>).