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Google Play Billing Monopoly in Digital Media Era from the Law's Perspective

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ABSTRACT

Google, as a multinational company raises allegations of business violations committed due to its business practices that allegedly violate Law 5/1999. However, the difficulty of proving this alleged violation becomes a problem for KPPU. Therefore, the research questions formulated are: (1) How is the indication of Google's alleged monopoly related to its policy on Google Play Billing in this digital media era from the aspect of Law Number 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition? (2) How is KPPU's action related to the alleged monopoly of Google Play Billing?

This research method uses a qualitative approach with a case study method. Primary data collection was conducted through interviews and observations in KPPU. Secondary data was collected through literature review on law, business, and digital media. Data analysis is descriptive-thematic with a focus on seeing the implementation of Law 5/1999 on existing cases in the digital economy and seeing the legal consequences that arise if Google is guilty.

The findings of this study are (1) Google is proven to fulfil the allegation. In addition, KPPU has also not been able to act against Google independently. KPPU still requires assistance from other state commissions. The main factors that cause this are the lack of human resources needed to act against business actors in the digital economy and also the lack of research in the field of digital economy so that more research needs to be conducted.

Keywords: Digital Economy; Google Play Billing; KPPU; New Media

INTRODUCTION

As a multinational company based in the United States, Google, a subsidiary of Alphabet Inc., has various services and digital products related to the internet. Google's products include

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search engines, software, and online advertising. Google, along with Amazon, Facebook, and Apple, are The Big Four that are leading the technology trend going forward (Scott Galloway, 2017).

As a company that also develops software, Google has an operating system aimed at smartphone users. This operating system is called Android. As an operating system developed from the open-source Linux kernel, which everyone is free to use and tinker with without paying royalties, the Android operating system also enforces the same open-source policy (Goggin, 2012). Android distributes its kernel free of charge to companies as well as to individuals who want to customize the operating system in a certain version to suit user needs, even though, in some basic applications, the service cannot be removed (Gmail, Gmaps, Playstore, etc.) and with certain restrictions.

In Indonesia, most of the operating system market share for mobile phones is held by Android, which holds 89.77% of the domestic market (Statcounter, 2022). This is dominating when compared to its competitors: IOS with 10.12% and others with around 0.09% in Indonesia. This can create a monopoly if the user is in the ecosystem that Google created. Taking the case in South Korea as an example, since gaining market dominance in the Smartphone market in 2011, Google has forced Smartphone manufacturers not to modify Android excessively, and South Korean companies are in the process of developing their own operating systems that will later be used exclusively in LG and Samsung devices. In 2016, the South Korean Fair-Trade Commission (KFTC) again investigated the company Google Inc. for allegedly obstructing local smartphone makers such as Samsung Electronics Co. and LG Electronics Inc (Kate Park, 2021). from using the operating system developed by him. The multinational, a subsidiary of Alphabet Inc., has hampered market competition by requiring smartphone manufacturers to fulfill an Anti-Fragmentation Agreement (AFA) right when they signed a major contract with Google regarding app store licenses and early access to the operating system.

In Indonesia, one of the policies considered to have violated market mechanisms is the billing of payment for digital applications in the Playstore (Dewi, 2022). By holding the largest digital application market share for the Android operating system, the Google Play Billing case has emerged and has received serious concern in the eyes of the KPPU. Google Play Billing is a billing system that bridges the purchase of digital products between application developers

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who release their products on the Playstore and users. In its system, Google Play Billing allows users to buy a product as a one-time purchase or a recurring subscription. As reported on Google's own website, unless permitted by the payment policy, the use of Google Play Billing includes ("Sistem Penagihan Google Play," 2023):

- Digital items such as the use of in-game currency, the addition of certain functions such as lives and season passes, cosmetic items such as character clothing, and additional items.
- 2. Subscription services such as the purchase of fitness content, access to music and video streaming, and access to dating platforms
- 3. Additional application content, such as certain access openings not found in the basic service,
- 4. Cloud storage software and services, such as Google Drive,

Google faces many lawsuits in various countries; in South Korea, Google has been found guilty of monopolizing the digital market. The same thing also happens in the United States, where there are 37 states that sue Google for its monopoly actions. This research made based on the prior studies by Adis nur Hayati (Nur Hayati, 2021) and Abdannoor Ramadhan Halidi (Halidi, 2023). However, there are differences from the prior studies. Adis nur Hayati's research is focusing in the e-commerce meanwhile the Abdannoor Ramadhan Halidi's research comes from the wider perspective by using normative method and not specifically Google Play Billing. This study aims to look at the implementation of Law 5/1999 in cases of the digital economy including digital media sector and see the legal consequences that arise if Google is later proven guilty. Additionally, this study's focus is socio-legal law, which entails looking for a relationship between das sein as a factual phenomenon and das sollen as a legal principle and any potential implications.

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METHOD

As a research tool, one of the determining components is needed to find legal material from the research—in this case, the research method. The type of research used in writing this thesis is empirical juridical research. In empirical research, what the author should focus on is the impact of the law and the assessment of the gap between legal ideals and social reality. Later legal ideas must be considered as a social phenomenon, which writers are obliged to exploit for their social, political, economic, and cultural dimensions or legal implications (Dr. Ani Purwati, 2020).

The approach in this study uses a case approach, which is carried out by examining cases related to the case being studied, where the source of comparison can be domestic or foreign cases. A comparative approach is also used to see comparisons between a country and other countries so that the differences and similarities are seen, and the last one uses a factual approach based on the real situation and the conditions that should be (Muhaimin, 2020). This research uses descriptive analysis, where it studies the symptoms that exist in society about how to behave in a situation. According to Syahza, descriptive research is research that aims to describe a situation or event (Syahza, 2021). In empirical legal research, there are two types of data used: primary data in the form of interviews and direct observation at KPPU Surabaya. In this empirical research, the main materials to be used are interviews and observations carried out through an internship mechanism at KPPU Surabaya.. In addition, secondary data is also using legal materials that provide guidance and clarity on research topics, consisting of primary legal materials (laws and regulations), secondary legal materials (bills, research results, and legal literature), and tertiary legal materials (dictionaries and encyclopedias).

This research was processed using qualitative techniques. Descriptive analysis is carried out when analyzing by providing an overview of the topic and research objectives as a result of the research conducted. This descriptive analysis is used to draw conclusions as answers to existing problems using an inductive (generally inherent) approach (Muhaimin, 2020).

Theoretical Framework

The theoretical basis is part of a study that describes the theoretical basis, theoretical framework, variable concepts, indicators, and others. In the case of conducting research, theory is used to explain the interrelationships that arise from several observed variables. Furthermore,

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theory is used as a tool to explain and predict the phenomena under study based on empirical facts (Sukiati, 2016). The four-theories used are:

3.1 Theory of Justice

The purpose of establishing laws is to provide justice for each party. The theory of justice was first coined by the Greek philosopher Aristotle who defined that justice is obedience to law. Furthermore Roscoe Pound as a utilitarian philosopher develops this theory by seeing justice as the result of satisfying human needs with the minimum sacrifice possible..Andi Hamzah stated further that justice is a balance achieved by the parties, both in terms of losses and profits. From the several opinions above, it can be concluded that the meaning of "Justice" is different for experts.

However, justice is generally divided into seven categories (Pandit, 2016):

- 1. Communicative Justice / Iustitia Communicativa, justice that gives each person what their right are.
- 2. Distributive justice / Iustitia Distributiva, justice given to someone according to the proportion of that individual.
- 3. Legal Justice / Iustitia Legalis, justice given to the community to enjoy the benefits together.
- 4. Vindicative justice / Iustitia Vindicativa, justice to give sanctions according to the violation or crime.
- 5. Creative Justice / Iustitia Creativa, justice given to guarantee everyone the freedom of expression they have.
- 6. Protective Justice / Iustitia Protektiva, is justice that aims to provide protection for everyone from acts of arbitrariness—the arbitrariness of other parties.
- 7. Social justice is justice whose implementation depends on the economic, political, social, cultural, and ideological structure of the community.

3.2 Theory of Legal Protection

The classical Greek philosophers (Plato, Aristotle, and Zeno) viewed that law and morals are an internal and external reflection of human life, which is manifested through law and morals (Rahardjo, 1991). Wahyu Simon Tampubolon defines legal

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protection as protection given to legal entities in the form of preventive or repressive actions, orally and in writing. In other words, legal protection can be said to be an independent description of the functioning of the law, with the understanding that the law provides justice, order, certainty, benefit, and peace. In carrying out and providing legal protection, there must be a place or container for its implementation, which is often referred to as a legal protection device (Tampubolon, 2016).

Legal protection is always related to power. There are two forces that are always a concern: government power and economic power. In relation to government, the issue of legal protection for the people (those who are governed) against the government (the people who rule) In terms of economic strength, legal protection is meant to protect the economically weak from those who are economically stronger. For example, to protect workers from employers (Wijayanti, 2009). Legal protection is divided into two types: preventive legal protection (Prohibition) and repressive legal protection (repression). (Erlangga & Sarjana, 2022).

3.3 Monopoly Theory

Monopoly, as an act of controlling the market by one or more economic actors, can arise naturally or by law. In general, monopoly theory can be divided into two parts: The Theory of Monopoly Capitalism and The Theory of State Monopoly Capitalism. The Theory of Monopoly Capitalism was developed by Baran and Sweezy, who stated that the growth of mega corporations resulted in the growth of unhealthy business competition caused by excess concentration of capital accumulation, where this capital accumulation appeared due to price regulation, control regulation, and an emphasis on innovation (Foster, 2014). Then The Theory of State Monopoly Capitalism was coined by Marx and developed by Lenin, which was described by Raymond Williams as a form of state ownership where, in actual circumstances, the state is centralized in terms of wages, capital accumulation, and production management (Williams, 1985). The characteristics of a monopoly market are (Suhardi, 2016) There Are No Similar Substitute items, One Company Industry, No Advertising is required, It is difficult for other companies to enter the industry, Mastering Pricing.

The characteristics of a monopoly market are (Suhardi, 2016):

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- a. There Are No Similar Substitute Items
- b. One Company Industry
- c. No Advertising Required
- d. It is difficult for other companies to enter the industry
- e. Mastering Pricing

Monopoly does not only have one form; there are several types of causes of monopoly. The following reasons include (Friedman & Friedman, 1962):

- a. A private unregulated monopoly is a monopoly that occurs due to natural causes because the process of producing goods or services is already effective and efficient. Furthermore, this can also happen because there is no anti-competition law that limits the occurrence of this monopoly.
- b. Private monopoly regulated by the state, which, if translated into a private monopoly regulated by the state, means that the government limits competition in markets that concern the lives of many people. In fact, often the government provides subsidies to producers of these goods or services.
- c. Government operation, which is translated into the implementation of government policies, is a monopoly that occurs because the government wants to take part in the process of producing goods or services.

3.4 The Theory Of Digital Economic Law

Digital Economy Law is regulation and legal thinking regarding procedures for regulating, facilitating, and accelerating digital technology-based national economic development and economic democratization within internet legal jurisdictions and virtualization products in Indonesia. Danrivanto Budhijanto further explained that this law will become a foundation that can be used as a step in anticipating the speed of economic growth by utilizing infrastructure based on digitalization, disruptive business models, and massive information technology innovations (Budhijanto, 2019).

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3.5 New Media Theory

New media is the development of media base on the internet era. Flew explained that new media is the media of digitization where the media technologies, industries, and services merge with the computing, communication network and content (Flew & Smith, 2014). For the simplest term, new media is internet-based media. The term "new media" used to differ with the old ones such as television, radio, newspaper, magazine etc. the new media characteristic based on the "interactive side" since the audience has its right to choose and interact with the media. Since the pandemic of Covid-19 the digital era is uprising and establishing so many digital platform to interact with.

FINDINGS AND DISCUSSION

Business competition usually occurs in a business climate when there are entrepreneurs who are engaged in the same business sector or substitute or complement each other. In this case competition usually occurs when companies in the same operating area try to gain more advantages than their competitors. A good company is a company that has good competitiveness in the form of comparative advantage and competitive advantage so that it can compete fairly by relying on its human resources and other resources (Ibrahim Ingga, 2011). However, in practice, within the scope of this business competition fraud can occur because it wants to hinder competitors and gain profits as much as possible (Maryanto, 2020).

Structurally, there are four types of market structures known in economics, including (Sudarmanto et al., 2021):

1. Monopoly market

A monopoly market is a market structure in which one firm dominates the entire market. In this scenario, the company has the greatest market power because consumers have no choice. As a result, monopolies often reduce production to increase prices and generate more profit.

In general, the characteristics of a monopoly market are:

- a. maximum profit.
- b. Can determine the price
- c. There are also high barriers to entry and exit
- d. only one firm dominates the entire market.

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2. Oligopoly market

An oligopoly market describes a market structure dominated by only a small number of firms with limited competition. Companies can compete or cooperate with each other. That allows them to use their collective market power to drive up prices and make more profit.

The characteristics of this oligopolistic market structure are as follows:

- a. All firms maximize their profits.
- b. Oligopolies can set prices.
- c. There are barriers to entry and exit of the market.
- d. Products can be homogeneous or different.
- e. The market is controlled by several companies.

3. Monopolistic competition market

Monopolistic competition is a market structure in which a large number of firms compete with each other. In contrast to perfect competition, firms in monopolistic competition sell products that are similar but slightly different. This gives them a certain market power which allows them to charge a higher price in certain areas.

The characteristics of this monopolistic competition market include:

- a. All firms maximize their profits.
- b. Free entry and exit.
- c. The company sells a wide range of products.
- d. Consumers may choose one product over another.

4. Perfect competition market

Perfectly competitive market describes a market structure in which a large number of small firms compete with each other. In this scenario, no single company has significant market power. As a result, the industry as a whole produces optimal levels of output because no single firm can influence market prices.

The characteristics of a perfectly competitive market are:

- a. All firms maximize their profits.
- b. All companies have the right to enter and exit the market.

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- c. All firms sell completely identical (homogeneous) products.
- d. There is no consumer preference.

In his statement on March 2, 2023, Mr. Achmad Affifudin as a law enforcement staff for KPPU Regional Office IV once explained that there is actually no problem with managing companies in any market, the main problem in Law No. 5 of 1999 is the practice of unfair business competition. In this case the monopoly as the sole producer of goods/services can use its power in the market to commit acts of fraud easily. Monopoly practices are carried out when a business actor has the power to expel or terminate a competing company so that it will have a serious economic impact as a result of his fraudulent actions.

According to the guideline of article 17 in the Regulation of the Commission for the Supervision of Business Competition Number 11 of 2011, in its development, the notion of monopoly as one seller is no longer relevant. The current understanding of monopoly is more towards understanding in terms of behavior. Based on developments that occur, even though there are several business actors in a market or industry, if there is one or a group of business actors who have monopoly-like behavior, it can be said that the company has a monopoly position which can lead to the practice of concentration of economic power. Concentration of economic power is real control over a relevant market by one or more business actors so that they can determine the price of goods and or services.

In making payments on the Playstore application on Android, every developer is required to use Google Play Billing as a payment gateway. This use is required to provide a sense of security and comfort to Android users in order to prevent unwanted things from entering. Furthermore, applications that are distributed through the Playstore must provide access to features or services in the application. This includes application functions, digital content, and digital products. The services or features that are required to use this system include:

- a. In-game or application items such as in-game currency, additional lives and playing time, additional items and avatars where in-game currency is only valid in-game and it is prohibited to use it as a means of payment outside the application.
- b. Subscription services such as fitness services (Gofasting), game subscription services (Xbox Gamepass or PS Plus), education (Teacher Room or Zenius), music (Spotify Premium, Joox VIP, Apple Music Premium), videos (Viu, Bilibili, Netflix), service upgrades and other content subscription services;

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- c. Unlocking locked features such as ad-free features;
- d. Cloud software and services such as data storage services (Microsoft Onedrive, Dropbox, and Mega), business productivity software (Stock Count: Stock Take Opname and Simple Stock Manager), financial management software (BukuKas, Ikas, and Dipay).

Not all services can use Google Play Billing. There are several services that may not be used, including:

- a. Purchasing or renting products in real form such as groceries, clothing, electronic equipment, and household appliances and food delivered directly
- b. Purchase and rental of physical services such as cleaning services, sports club memberships, rental of handyman services, purchase of tickets and transportation services
- c. Peer to peer payments, online auction payments, and tax-free donations
- d. Transfer of funds to pay off credit card bills or household bills
- e. In-app payments prohibited by Google policy.

Google's policy prohibits application developers from advising their application users to use other payment methods outside of the Google Play Billing system. This prohibition applies to the scope of:

- a. Apps listed through Google Play;
- b. In-app promotions regarding purchasable content;
- c. WebView (Snap View), buttons, messages, advertisements and solicitation messages to purchase services outside of Google Play; And
- d. API flow (Application Programming Interface/interface that connects application users and service providers) to direct users to use payment services outside of Google Play.

This digital economy is new, so it is still being studied in several developed countries and is currently being regulated. For example, in European Union at 2020, has made regulations prohibiting the use of bloatware (pre-installed applications) that are installed directly in the operating system on smartphones (Heimert, 2023). In Japan, there was a case of Apple violating its Antimonopoly act when it blocked external links for its e-reader application (Daiki Ikeda, 2023). Currently, the current trending topic in the world is Google as it doing several unfair business practices around the world since it held the dominant position.

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In Indonesia, the practices that is being paid attention to by KPPU is the Google's policy on Google Play Billing. In the case of Google Play Billing, the alleged violation by setting trade terms in the form of a standard clause, which has the effect of monopoly in the payment gateway system and prevents competitors from entering the Google Pay system, violates Article 25 paragraph 1 letter a Law No 5 of 1999. The standard clause is a very detrimental thing for application developers who stand as Playstore consumers because their position is unequal with the burden that should be carried by the seller, so now it becomes the consumer's burden. In its policy rules, Google Pay Billing is required to use it for security reasons so that it can be suspected of violating the Tying Agreement in Article 15 Paragraph 2 because the consument must use it as a package with Playstore without any other alternative.

The Payment Gateway system applies discriminatory rules in which Google products included in the payment policy are excluded from this system so that payments become more immersive and without deductions, which also indicates discriminatory pricing violations in Article 5, Paragraph 1 Law No 5 of 1999. Even though Google products are currently used with Google Play Billing in several countries, not all countries are subject to the same rules. If we examine further the Google Play Billing policy mentioned above, then Google violates several points in its business practices, both in article 5 paragraph 1, article 15 paragraph 2, article 17, and article 25 paragraph 1 letter a of Law No. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, as well as in Article 18 paragraph 1 letter g of Law No. 8 of 1999 concerning Consumer Protection.

From a media perspective, the monopoly of Google Play Billing will cause a catastrophe. For the developer, the monopolization of Google Play billing reduces the incentive and its ability to serve good-quality, innovative, and beneficial content. Since the developer has to pay more to use Google Play Billing as a service tied to the Playstore, it will reduce the developer's margin of profit. Furthermore, since the Playstore is dominating the distribution of smartphone apps in Indonesia, the developer has no option but to follow the rules made by Google. For The users, the monopolization of Google Play Billing means that they have to pay more to get the content that they want. The user also doesn't have any other alternative options to choose from. On the other hand, since the developer is experiencing difficulties in obtaining profit margins, the users may lose their favorite content or apps that were previously available in Playstore. The GPB monopoly can hinder the growth of local content because local application developers

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have to compete with global application developers, who have greater resources and benefits from Google. Local application developers also have to adapt to GPB standards and conditions, which may not suit the characteristics of the local market.

Any indication of unfair business competition practices in the community can be reported to a business competition commission in that country. To deal with this, since 1999 Indonesia has established KPPU (Indonesia Competition Commission), which has two types of reporting sources: the public and initiative cases. People who wish to report can do so through the KPPU's central office, the KPPU's regional offices in the regions, and online applications. The Google Play Billing case is one of the cases investigated under the authority of the KPPU. The investigation of this case emerged by observing the increasingly massive technological developments and the Competition commissions works in other countries. In this case, the allegations imposed on Google Play Billing are temporarily in a dominant position, especially regarding article 25 (a), Conditional Sales (Tying) in article 15 (2), Monopoly in article 17, and price discrimination in article 6 of Law No. 5 of 1999. The handling of cases in developed countries by the commissions themselves now leads to changing the business practices.

Nowadays, economic violations in digital media are carried out by changing the business practices behavior. This change in behaviour, or leniency, was inspired by the JFTC (Japan Fair Trade Commission), where it is also something new and prioritized; moreover, leniency in effect in Japan already uses a grade system to assess the urgency of each behaviour change. This has been stated in the amendments to the new anti-monopoly law (Act No. 45 of 2019), which inspired KPPU to issue Perkom Number 1 of 2019. The existence of leniency is expected to provide comfort for entrepreneurs because often the entrepreneurs do not have adequate human resources related to the company and business competition law. On the other hand, this may not create a deterrent effect for entrepreneurs and does not provide compensation for the impact made for consumers. The Google Play Billing Monopoly case handled by KPPU is currently in the investigation stage. However, so far, the KPPU has acknowledged that it is quite overwhelmed regarding economic violations in the digital field.

So far, the approach that is being taken by KPPU to catch up in the field of the digital economy has been to conduct research in the field on a case-by-case basis, following international methods. Furthermore, the KPPU's inability to decode the source code contained in the application has become a big scourge for the KPPU's staff. In the meantime, what can

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be done is to request the source code that has been opened at the Commission for the Supervision of Business Competition in other countries and may request assistance from the Commission for the Supervision of Business Competition from the multinational company to assist in providing the necessary administrative data.

CONCLUSION

The conclusion of this research can be seen as first, Google, as the holder of market share for digital smartphone applications in Indonesia, fulfills the elements contained in several violations of Article 5 regarding price fixing, Article 15 regarding binding agreements (Tying agreements), Article 17 regarding monopoly, and Article 25(a) regarding the Dominant Position in Law Number 5 of 1999, and also violates Article 18 of Law Number 8 concerning standard agreements. Moreover, the implication of the Google's violation is widespread since it can give effects to many aspect including digital media as the one of the product that published in playstore.

Second, In terms of following up on violations that occur within the scope of the digital economy, KPPU is still unable to handle them. KPPU still needs a lot of studies and research looking at foreign countries. In addition, it is also necessary to establish a special unit that has expertise in the digital economy by reflecting on the Business Supervision Commission in other countries. In the meantime, what KPPU can do to deal with this is ask for assistance from the Business Supervision Commission in other countries to open the source code of applications that have been tried to be given to KPPU. In addition, KPPU can also communicate with the Business Supervision Commission in the country where the parent company operates to provide data to support the evidence.

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