

## Legal Analysis of *Self-Preferencing* Conducted by Marketplace on Courier Services Based on Anti-Monopoly Law and Unfair Business Competition

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### Abstract

The rapid development of e-commerce has positioned marketplaces as dominant players within the digital economy, while simultaneously giving rise to complex competition issues, one of which is the practice of self-preferencing. This article analyzes the legal implications of self-preferencing practices carried out by marketplaces in Indonesia, particularly the tendency to prioritize or grant exclusive advantages to affiliated or self-owned courier services. Employing a normative legal research method with statutory regulatory and legal cases approaches, this study examines the extent to which such practices may violate Law No. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition (the Anti-Monopoly Law), specifically with regard to abuse of dominant position, discriminatory conduct, and exclusive dealing arrangements. The findings reveal that self-preferencing may hinder fair competition in the courier service sector, disadvantage independent courier providers, restrict consumer choice, and potentially stifle innovation. Such practices create entry barriers for new market entrants and unjustly reinforce marketplace dominance. Accordingly, it is imperative for the Indonesia Competition Commission (KPPU) to proactively monitor and take enforcement actions against self-preferencing practices in order to safeguard a fair and balanced competitive environment in the digital marketplace and promote consumer welfare and market efficiency.

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### Abstrak

Pesatnya perkembangan *e-commerce* telah memposisikan pasar sebagai pemain dominan dalam ekonomi digital, sekaligus menimbulkan masalah persaingan yang kompleks, salah satunya adalah praktik *self-preferencing*. Artikel ini menganalisis implikasi hukum dari praktik *self-preferencing* yang dilakukan oleh *marketplace* di Indonesia, khususnya kecenderungan untuk memprioritaskan atau memberikan keuntungan eksklusif untuk layanan kurir afiliasi atau milik sendiri. Menggunakan metode penelitian hukum normatif dengan pendekatan peraturan perundang-undangan dan kasus hukum, penelitian ini mengkaji sejauh mana praktik tersebut dapat melanggar Undang-Undang No. 5 Tahun 1999 tentang Larangan Praktik Monopoli dan Persaingan Usaha Tidak Sehat (UU Anti Monopoli), khususnya berkaitan dengan penyalahgunaan posisi dominan, perilaku diskriminatif, dan pengaturan transaksi eksklusif. Temuan ini mengungkapkan bahwa *self-preferencing* dapat menghambat persaingan yang adil di sektor layanan kurir, merugikan

penyedia kurir independen, membatasi pilihan konsumen, dan berpotensi menghambat inovasi. Praktik semacam itu menciptakan hambatan masuk bagi pendatang pasar baru dan secara tidak adil memperkuat dominasi pasar. Oleh karena itu, sangat penting bagi Komisi Persaingan Usaha Indonesia (KPPU) untuk secara proaktif memantau dan mengambil tindakan penegakan terhadap praktik *self-preferencing* untuk menjaga lingkungan persaingan yang adil dan seimbang di pasar digital serta mempromosikan kesejahteraan konsumen dan efisiensi pasar.

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## INTRODUCTION

The digital era has brought fundamental changes in the global economic landscape, with the development of e-commerce being one of its main pillars.<sup>1</sup> In Indonesia, the growth of e-commerce has accelerated rapidly in the last decade. Data from the Coordinating Ministry for Economic Affairs of the Republic of Indonesia shows that the value of e-commerce transactions in Indonesia continues to increase significantly, reaching more than IDR 533 trillion in 2023 and is projected to continue to grow.<sup>2</sup> This surge is driven by the increasing use of internet services, the increase in the use of mobile devices, and the shift in consumer behavior from direct shopping to online shopping.

The ecosystem in e-commerce, the marketplace has a very central and dominant role.<sup>3</sup> Marketplaces such as Shopee, Tokopedia, Lazada, and Blibli have become the main median for millions of sellers and buyers to transact.<sup>4</sup> They not only provide a buying and selling platform, but also an integrated ecosystem that includes payments, logistics, marketing, and other supporting features. This strategic marketplace position gives them significant market power, and it can even be said that they are like "gatekeepers" who control access to the market for sellers and support service providers in the online market.<sup>5</sup>

The role of the marketplace is not only limited to transaction facilitators, but also an important party in determining the dynamics of competition in various sectors connected to it.

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<sup>1</sup> Cindy Aulia Khotimah & Jeumpa Crisan Chairunnisa, Legal Protection for Consumers in Online Buying and Selling Transactions (E-commerce). *Business Law Review*, 1, (2016). p. 14.

<sup>2</sup> The Ministry of Trade of the Republic of Indonesia, [https://ditjenpdn.kemendag.go.id/berita/forum-kemitraan-umkm-dengan-ritel-modern-dan-marketplace-di-bandung#:~:text=hingga%20akhir%202023,-Bank%20Indonesia%20\(BI\)%20record%2C%20value%20transactions%20e%2Dcommerce,e%2Dcommerce%20selong%20years%20ago](https://ditjenpdn.kemendag.go.id/berita/forum-kemitraan-umkm-dengan-ritel-modern-dan-marketplace-di-bandung#:~:text=hingga%20akhir%202023,-Bank%20Indonesia%20(BI)%20record%2C%20value%20transactions%20e%2Dcommerce,e%2Dcommerce%20selong%20years%20ago). Access date is July 10, 2025.

<sup>3</sup> Onno W. Purbo, Aang Arif Wahyudi, *Getting to know e-commerce (Chapter I)*, Jakarta: Alex Media Komputindo, 2001. p. 1.

<sup>4</sup> Danang Sugianto, "List of 10 E-commerce Heroes in Indonesia", <https://finance.detik.com/berita-ekonomi-bisnis/d-5735421/daftar-10-jagoan-e-commerce-diindonesia>, accessed July 10, 2025

<sup>5</sup> Asian Development Bank. (2021). *Digital Transformation in Indonesia: Opportunities and Challenges*. Diakses dari <https://blogs.adb.org/blog/indonesia-s-digital-transformation-leave-no-region-behind>

Their ability to collect big data, understand consumer preferences, and optimize search algorithms has strengthened their position.<sup>6</sup> On the other hand, the dependence of small and medium enterprises (MSMEs) on marketplaces to reach a wider market is also increasing, making this platform an important infrastructure for the growth of Indonesia's digital economy.<sup>7</sup>

With great market power and an integrated ecosystem, a phenomenon known as self-preferencing has emerged. This term refers to the practice in which a marketplace gives preferential treatment or exclusive advantages to products, services, or partners that are affiliated with or owned by the marketplace itself, as opposed to third parties competing on the same platform. In the context of courier services, self-preferencing can be done with several actions that can occur.

Based on self-preferencing courier services on the marketplace above, it can be seen the forms of self-preferencing that occur in the marketplace. The form of ranking and visibility on the marketplace's or affiliated courier services will rank higher in the list of shipping options, or more often appear as a common choice for buyers. This provides a great advantage of visibility, as buyers tend to choose the option they see for the first time or the most accessible.<sup>8</sup> An exclusive form of promotion and discount on marketplaces that provides discount offers or promotional shipping costs that are only valid if the buyer uses their affiliate courier services. This certainly directly affects the buyer's decision in choosing courier services available on the marketplace. Further, better forms of system integration and data access greatly affect the business system in the marketplace. An in-house logistics system or affiliate courier will have a smoother integration with the marketplace platform, allowing for faster processes, more accurate tracking, or exclusive features that are not available to third-party couriers. In addition, affiliate courier service data access also has better access to customer data or order information that can be used to optimize their operations and services, while third-party couriers do not have equal access. Finally, the policies and requirements in partnership relationships within the marketplace. Marketplaces may impose more onerous policies or requirements for third-party

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<sup>6</sup> Scott, M. S. (2018). *The e-commerce industry in creating a competitive market based on business competition laws*. Bonum Commune Journal of Business Law, 1(1), p. 20

<sup>7</sup> Zulfa, N., Millah, N., Nuratin, N., & Novitasari, K. *The Concept of Sharia Maqashid in the Practice of Tiktok Marketing Strategy with the Foundation of Islamic Business Ethics*. Journal of Accounting, Management, Economics, and Business (ANALYSIS), 2(1), 2024. pp. 69-85.

<sup>8</sup> European Commission. (2020). *Digital Services Act package: fact-sheet on the Digital Markets Act (DMA)*. Diakses dari [https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/europe-fit-digital-age/digital-services-act\\_en](https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/europe-fit-digital-age/digital-services-act_en)

couriers, such as higher commission fees, stricter quality of service requirements without adequate support, or a more complicated sign-up process.

This self-preferencing phenomenon does not only occur in Indonesia, but has become a global concern. Competition authorities in Europe and the United States have investigated marketplace giants such as Amazon and Google for similar practices, and acknowledged their potential negative impact on healthy business competition.<sup>9</sup> This issue is becoming increasingly relevant in Indonesia considering the high dependence of sellers and buyers on the marketplace in their business activities.

The self-preferencing practice carried out by the marketplace has a serious impact on healthy business competition in the courier service sector. This sector is vital for e-commerce operations, and the sustainability of courier service providers is highly dependent on fair access to marketplace platforms. When marketplaces prioritize their affiliate couriers, independent or non-affiliated courier service providers will face major challenges, such as a decrease in the volume of service users as a result of restrictions on consumer choice that have an impact on a significant decrease in the profitability and business sustainability of business actors.

As happened to the alleged self-preferencing practice that befell Shopee. In May 2024, the Business Competition Supervisory Commission (KPPU) has started an investigation against PT Shopee International Indonesia and PT Shopee Express Indonesia regarding alleged violations of Article 19 letters a and b of Law Number 5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition (Anti-Monopoly Law). KPPU alleges that Shopee abused its dominant position by requiring or directing sellers on its platform to use the Shopee Express delivery service, which is their affiliate courier service.<sup>10</sup> This allegation indicates how self-preferencing can lead to anti-competitive practices and harm other couriers who are not affiliated with Shopee, such as J&T Express, SiCepat Express, or JNE, who may lose market share unfairly.

Seeing the potential negative impact caused by self-preservation, legal analysis is very urgent and crucial. In Indonesia, the main legal basis for maintaining healthy business

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<sup>9</sup> OECD. (2021). *The Digitalisation of Competition Policy*. OECD Publishing, Paris. Diakses dari <https://www.oecd.org/daf/competition/the-digitalisation-of-competition-policy.htm>

<sup>10</sup> Business Competition Supervisory Commission (KPPU). (2024). *KPPU Investigates Shopee Regarding Alleged Discriminatory Practices in Delivery Services*. Accessed from <https://www.kppu.go.id/berita/kppu-selidiki-shopee-terkait-dugaan-praktik-diskriminasi-jasa-pengiriman-46325>

competition is the Anti-Monopoly Law. The Act is designed to prevent practices that could lead to monopolies and unfair competition, as well as to protect the public interest.

However, the Anti-Monopoly Law was formulated long before the era of e-commerce and marketplaces reached its dominance as it is today. Therefore, the interpretation and application of the law to new practices in the digital economy, such as self-preferencing, is a challenge in itself. Some of the relevant articles in the Anti-Monopoly Law to be analyzed in the context of self-preferencing include Article 15, Article 19 and Article 25 of the Antitrust Law. Article 19 which talks about the prohibition of abuse of dominant positions, in this Article prohibits business actors who have a dominant position from taking actions that can hinder other business actors from entering or developing in the market, or discriminate against certain business actors. Self-preferencing is inherently a form of discrimination carried out by marketplaces that have a dominant position. Furthermore, in Article 15 about closed agreements. If the marketplace requires sellers to only use their affiliate courier services, this can be categorized as a closed agreement that restricts other business actors. Finally, Article 25 is about the prohibition of excessive market share control. *Self-preferencing* practices can unreasonably enlarge the marketplace's affiliate courier service market share, which in turn can lead to prohibited market dominance.

An in-depth legal analysis will help identify whether and how self-preferencing practices can be categorized as violations of the Anti-Monopoly Law. The results of this analysis are not only important for law enforcement by KPPU, but also to provide clarity for business actors about the limitations that exist in doing business in the digital ecosystem. This urgency is even more increasing given that the e-commerce ecosystem continues to evolve, and marketplaces will continue to look for ways to optimize their operations, including through vertical integration with supporting services such as logistics. Therefore, a comprehensive understanding of the legal aspects of self-preferencing is crucial to maintain healthy competition dynamics and protect the interests of all parties.

The type of research used in this study is normative legal research that relies on a legislative approach and a legal case approach. The technique of collecting legal materials is carried out through the literature study method, where the researcher examines various written

sources, such as laws and regulations, reference books, scientific journals, articles, theses, and other scientific works that are relevant to the subject of research.<sup>11</sup>

All legal materials obtained from these sources are then analyzed using two main approaches, namely the legal approach and the case approach. The analysis applied is prescriptive, which aims to build a normative argument on the research findings.<sup>12</sup> Through this approach, the researcher seeks to provide a critical assessment of the legal facts or events being studied, by formulating what is considered right, wrong, or should be according to the provisions of the applicable law.<sup>13</sup>

## DISCUSSION

### ANALYSIS OF SELF-PREFERENCING MARKETPLACE PRACTICES ON COURIER SERVICES IN INDONESIA

The practice of self-preferencing by marketplaces in Indonesia, although often not explicitly acknowledged, can be observed in various concrete forms that give an unfair advantage to their affiliated courier services.<sup>14</sup> These forms directly affect consumer choice and accessibility for non-affiliated courier service providers.

One of the most common forms is superior placement and visibility. Often, when the buyer completes the checkout process, the delivery option from the marketplace's courier service (for example, Shopee Express on Shopee, or GoSend/GrabExpress on Tokopedia affiliated with the same group) will appear as the first choice or recommended by default. In fact, in some cases, affiliate courier options are placed in a different category or with a more prominent visual emphasis than other couriers. For example, when a buyer chooses a delivery service, they may see "Save" or "Fast" which automatically redirects to the courier service belonging to that marketplace, without transparently displaying the price comparison and travel time of other couriers in the initial view.<sup>15</sup>

Exclusive promotions and discounts are also powerful self-preferencing tools . Marketplaces that often offer free shipping (postage) or shipping discounts that only apply if

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<sup>11</sup> Ali Zainuddin, Metode Penelitian Hukum, Jakarta : Sinar Grafika, 2017, hlm. 24.

<sup>12</sup> Abdulkadir Muhammad, Law and Legal Research, Bandung: Citra Aditya Bakti, 2004, p. 81

<sup>13</sup> Mukti, Fajar., & Yulianto, Achmad. 2010. "Dualisme Penelitian Hukum Normatif & Empiris" Yogyakarta:Pustaka Pelajar. Hlm. 184

<sup>14</sup> Galuh Puspaningrum, 2013, Business Competition Law Agreements and Prohibited Activities in Business Competition Law in Indonesia, Aswaja Pressindo, Yogyakarta, p. 43

<sup>15</sup> Komisi Pengawas Persaingan Usaha (KPPU). (2024). *Rilis Pers KPPU Nomor 39/KPPU-PR/V/2024 terkait Dugaan Pelanggaran Pasal 19 UU No. 5 Tahun 1999 oleh Shopee*. Diakses dari <https://www.kppu.go.id/>

the buyer chooses their affiliate courier service. This scheme significantly influences buyers' decisions, considering that shipping costs are one of the main considerations in online shopping in the marketplace.<sup>16</sup> Non-affiliated couriers that are not supported by similar subsidies will struggle to compete, regardless of their operational efficiency or quality of service. Marketplace actively promotes their affiliate courier services through advertising banners, push notifications, and discount schemes. These promotional campaigns are often very aggressive, offering significant discounts on shipping or even full free shipping if you choose an affiliate courier. These discounts are often subsidized by the marketplace itself, which allows affiliate couriers to offer much lower prices than independent couriers who have to bear the full cost of their operations.<sup>17</sup>

In addition, system integration and exclusive features are also a form of self-preservation. Affiliate couriers often have deeper integration with marketplace systems, allowing for more real-time tracking processes, more flexible delivery options (e.g. same-day or instant only available to affiliate couriers), or more centralized ease of claims. In contrast, non-affiliated couriers will face API integration limitations or more complex technical requirements, which ultimately impact efficiency and user experience.<sup>18</sup>

Finally, there is an indication of burdensome or non-transparent requirements for non-affiliated couriers. Some marketplaces may charge higher commission fees, set performance standards that are difficult to meet without adequate technical support from the platform, or even change the bidding algorithm without clear notice, all of which indirectly encourage users to choose an affiliate courier.<sup>19</sup>

The issue of self-preferencing in the marketplace is not a phenomenon limited to Indonesia, it is a global challenge that is also faced by business competition authorities in various countries. Comparison with other countries around Indonesia, such as Malaysia, Singapore, and Australia.

Through the Malaysian Competition Commission (MyCC), it has shown increased attention to competition issues in the digital economy. Although there has not been a major case explicitly decided regarding the marketplace's self-preference over courier services, MyCC

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<sup>16</sup> Ernest Gellhorn and William E. Kovacic, *Antitrust Law and Economics in a Nutshell*. Minnesota: West Publishing Co, 1994, hlm 88

<sup>17</sup> Rachmadi Usman, *Business Competition Law in Indonesia*. Jakarta: Sinar Grafika, 2013, p. 98

<sup>18</sup> Interview with public relations of non-affiliated courier service provider partners in Pekanbaru.

<sup>19</sup> Center for Strategic and International Studies (CSIS). (2025). *Sustainable Trade and Investment Report in Indonesia 2025: Building Resilience to the Uncertain Nature*.

actively monitors the behavior of digital platforms. MyCC's main focus is often on the abuse of market dominance and anti-competitive practices that affect MSMEs. MyCC has published guidance and engaged in advocacy to ensure fair practices in digital markets, and cases similar to self-preferencing are likely to be dealt with under the general provisions of the Competition Act Malaysia 2010 regarding abuse of dominant positions or anti-competitive agreements.<sup>20</sup>

Furthermore, the Singapore Competition and Consumer Authority (CCCS) is one of the proactive regulators in the issue of digital competition. CCCS has investigated and taken action against anti-competitive practices committed by digital platforms. Although its main focus is not specifically self-preferencing on courier services, CCCS has shown a willingness to crack down on the abuse of market power by large platforms. For example, CCCS has investigated ride-hailing platforms (which have operational similarities to marketplaces in controlling service providers) regarding practices that limit consumer choice or suppress driver-partners. The CCCS approach tends to focus on the impact on consumers and overall market efficiency.<sup>21</sup> Singapore is also considering a regulatory framework for gatekeeper platforms, which will be directly relevant to handling self-preferencing.

Then the Australian Competition and Consumer Commission (ACCC) is also one of the most vocal and active regulators in cracking down on self-preferencing practices by digital platforms. The ACCC has conducted a number of investigations into global tech giants, including Amazon and Google, over the practice of self-favouring their own products and services on their platforms. In Amazon's case, the ACCC has voiced concerns about how Amazon prioritizes its own branded products in search results and buy boxes, which directly affects the visibility of third-party sellers.<sup>22</sup> The ACCC considers self-preferencing to be a significant form of abuse of market power, and argues that doing so can harm innovation, consumer choice, and competition. They have urged governments to strengthen the regulatory framework to address the power of digital platforms and ensure fairer behaviour. Australia's aggressive approach to this issue reflects a recognition of the serious impact of self-preferencing on the digital business ecosystem.

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<sup>20</sup> Malaysia Competition Commission (MyCC). (2024). The Competition Economic Symposium: “Raising The Ceiling-Competition Policy And The Madani Economy Framework”

<sup>21</sup> Competition & Consumer Commission Singapore (CCCS), Annual Report 2023-2024, Championing Fair Markets Empowering Consumers.

<sup>22</sup> Australian Competition and Consumer Commission (ACCC), Interim Report: Report on expanding ecosystems of digital platform services provider, Digital Platform Service Inquiry.

Based on this comparison, it can be concluded that Indonesia, through KPPU, is on the right track in following up on allegations of self-preferencing by marketplaces. While the approach and level of enforcement aggressiveness may vary, the key commonality is the global recognition that self-preferencing by dominant platforms is a serious competition issue that requires regulatory intervention to maintain a fair and open market for all business actors.

## **LEGAL EVALUATION OF SELF-PREFERENCING PRACTICES BASED ON THE ANTI-MONOPOLY LAW**

The practice of Self-Preferencing that occurs in the marketplace today is very diverse and patterned. So that the legal evaluation of the practice of Self-Preferencing in Anti-Monopoly regulations in Indonesia can be seen in several articles, namely Article 15, Article 19 and Article 25 of the Anti-Monopoly Law.

Article 15 of the Anti-Monopoly Law specifically prohibits the existence of closed agreements. Paragraph (2) of Article 15 states, "Business actors are prohibited from making agreements that result in the buyer having to be willing to buy other goods and or services from the supplier business actor."<sup>23</sup> Although this article normatively speaks of "buyer" and "supplier," the principles contained therein can be applied analogously to the relationship between the marketplace as a platform provider and in this context also as a "supplier" of an affiliate courier service and a seller as a "buyer" of the courier service to deliver its products.

In the case of Shopee, this potential violation of Article 15 arises from the allegation that the marketplace requires or effectively directs sellers to use the Shopee Express delivery service, which is their affiliate courier service. This indication of "obligation" can manifest itself in several ways:

First, the default setting of Shopee Express for merchant partners in the sales service. Sellers will find that Shopee Express is automatically set as the default shipping option without sufficient transparency to change it. Although sellers if they still have the option to activate another courier, the process could be more complicated or not recommended. Second, disproportionate incentives. Shopee offers various "Free Shipping" or "Cashback" programs that are often only valid if the seller activates or the buyer chooses Shopee Express. This very attractive financial incentive can actually force sellers and buyers to use Shopee Express, as not

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<sup>23</sup> See Law of the Republic of Indonesia Number 5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition

choosing it means losing a significant competitive advantage.<sup>24</sup> This condition creates a strong dependence, where sellers feel "forced" to activate Shopee Express so that their products remain in demand by buyers looking for shipping promos.

While there is no explicit "must use Shopee Express" written agreement, the combination of default settings and strong incentives can create a closed-door agreement effect. Sellers who want to stay competitive and reach buyers who are interested in shipping promos, are indirectly forced to "buy" or use Shopee's affiliate courier services.

The Business Competition Protection Commission (KPPU) in several previous cases has shown that agreements do not have to be written to be considered to violate competition law. Economic coercion or conditions created by dominant business actors that substantially close market access can be categorized as closed agreements. In the context of Shopee, if it is proven that the platform's policy effectively closes or severely restricts the access of other couriers to the market provided by Shopee, then the potential violation of Article 15 paragraph (2) of the Anti-Monopoly Law is very strong. KPPU will investigate whether there is an element of coercion or binding rewards so that the seller does not have full freedom in choosing a courier service provider.<sup>25</sup>

Article 19 of the Anti-Monopoly Law prohibits business actors who have a dominant position from abusing this position to hinder healthy business competition. Alleged violations of this article are at the heart of many cases of self-preferencing in various places, including those being investigated by KPPU related to Shopee.

Efforts to determine the fulfillment of the characteristics of Article 19 of the Anti-Monopoly Law began by analyzing potential violations of Article 19. Namely determining whether an e-commerce marketplace such as Shopee has a dominant position in the relevant market. The determination of a dominant position is usually based on several indicators, including:

- 1) Market Share: Shopee is one of the largest marketplaces in Indonesia, competing closely with Tokopedia, Lazada, and Blibli. Various market research reports show that Shopee consistently leads or is at the top of the ranks in terms of the number of visitors, transaction

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<sup>24</sup> Rezmia Febrina, *Business Competition in the Digital Era According to the Legal Perspective of Business Competition*, Journal of Multidisciplinary Scientific Works (JURKIM) Vol. 2, No. 1 January 2022, p. 125

<sup>25</sup> Mushtapa Khamal Rokan, *Business Competition Law Theory and Practice in Indonesia*, Depok : Raja Grafindo Persada, 2019, p. 169

volume, and transaction value.<sup>26</sup> A market share of 50% or more is often an early indication of a dominant position, although this threshold is not absolute and must be combined with other factors.

- 2) Market Strength: Dominant position is not only measured by market share, but also by the ability of business actors to set prices, limit the production or marketing of goods/services, or inhibit other business actors from entering or developing. Marketplaces like Shopee have significant power because they act as "gatekeepers". Sellers rely heavily on these platforms to reach consumers, and the platform can set terms and conditions that affect sellers' ability to compete.<sup>27</sup>
- 3) Barriers to Entry: The e-commerce marketplace market has a high barrier to entry. Building and developing a platform with millions of users, state-of-the-art technology infrastructure, logistics network, and consumer trust requires a huge capital investment and a long time. This makes it difficult for newcomers to compete with established players like Shopee.
- 4) Network Effects: The marketplace benefits from powerful network effects. The more sellers on the platform, the more options there are for buyers, and the more buyers, the more attractive the platform is to sellers. This creates a business vortex that strengthens the dominance of large business actors.<sup>28</sup>

By considering these factors, it is very likely that KPPU will conclude that Shopee has a dominant position in the e-commerce marketplace market in Indonesia. However, not all dominant positions can be blamed entirely, because it is possible that the dominant position occurs naturally due to demand and market construction. What is of concern in this legal analysis is the emergence of acts of abuse of dominant positions that lead to efforts to eliminate healthy business competition in the e-commerce marketplace market in Indonesia through self-preferencing.

For example, the abuse of a dominant position through the practice of self-preferencing to courier services, namely the Shopee marketplace with its affiliate, namely Shopee Express. Article 19 of the Anti-Monopoly Law prohibits several actions by dominant business actors such as Shopee, including:

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<sup>26</sup> E-commerce data <https://databoks.katadata.co.id/teknologi-telekomunikasi/statistik/66989de7b7168/shopee-dominasi-pasar-e-commerce-asia-tenggara-pada-2023> access on July 11, 2025

<sup>27</sup> European Commission. (2020). *Digital Services Act package: fact-sheet on the Digital Markets Act (DMA)*. Diakses dari [https://ec.europa.eu/commission/presscorner/detail/en/qanda\\_20\\_2348](https://ec.europa.eu/commission/presscorner/detail/en/qanda_20_2348)

<sup>28</sup> OECD. (2018). *Market Studies and the Digital Economy*. OECD Publishing, Paris. Diakses dari <https://www.oecd.org/competition/market-studies-and-the-digital-economy-2018.pdf>

- 1) Inhibiting other businesses from entering or expanding in the market: Self-preferencing practices, such as prioritizing Shopee Express in display, providing exclusive promotions, or integrating systems more deeply, directly inhibit independent courier service providers (such as J&T Express, JNE, SiCepat Ekspres) from competing fairly. They struggle to get the same visibility, sufficient shipping volume, or compete in price because they don't get the same subsidies or operational benefits from the marketplace.<sup>29</sup> This can lead to the "foreclosure" of its competitors from the market, where independent couriers are gradually marginalized or even forced out of the market.
- 2) Discriminating against certain business actors: Self-preferencing is basically a form of discrimination. Shopee gives preferential treatment to Shopee Express compared to third-party couriers who also operate on its platform. This discrimination can be in the form of fees (e.g., different commission deductions), access features (e.g., more advanced tracking or pickup features for Shopee Express), or visibility (placement on the checkout page). This kind of discrimination creates inequality in the market and healthy business competition.<sup>30</sup>

In addition to Article 19, the practice of self-preferencing also has the potential to violate Article 25 of the Anti-Monopoly Law, which prohibits business actors from having a dominant position by exercising unreasonable control over the market share of certain goods and/or services.<sup>31</sup> Article 25 specifically mentions the limitation of market share as an indicator, although it is not absolute.

Self-preferencing mechanisms such as display priority, exclusive promotions, and superior system integrations directly drive a huge volume of shipments to Shopee Express. If this practice is implemented consistently and effectively, Shopee Express' market share in the e-commerce courier service segment (especially for goods sold through the Shopee platform) will increase drastically. This can significantly reduce the market share that third-party couriers can access.

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<sup>29</sup> Online Law. 2024. Admitting to Violating, Shopee and Shopee Express Receive Behavior Change Points from KPPU. Accessed from <https://www.hukumonline.com/berita/a/akui-melanggar-shopee-dan-shopee-express-terima-poin-poin-perubahan-perilaku-dari-kppu-lt667bfl4749e74/>

<sup>30</sup> Australian Competition and Consumer Commission (ACCC). (2021). *Digital Platform Services Inquiry – Final Report*. Diakses dari <https://www.accc.gov.au/focus-areas/digital-platform-services/digital-platform-services-inquiry-2020-2025>

<sup>31</sup> See Law of the Republic of Indonesia Number 5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition

Although the Anti-Monopoly Law does not set a single percentage figure for "unreasonable" market dominance, Article 25 paragraph (2) of the Anti-Monopoly Law states that business actors who control 50% or more of the market share are considered to have a dominant position. If Shopee Express, thanks to the self-preferencing of its parent, reaches or exceeds this threshold in the e-commerce courier services market, then the potential for violation of Article 25 is very strong. Even if it is below 50%, KPPU can assess "unfairness" based on the negative impact on competition and the ability of competitors to compete effectively.<sup>32</sup>

If Shopee's self-preferencing continues without intervention, this can change the structure of the courier market from a previously competitive one to a more concentrated one. Independent couriers that are not affiliated with large marketplaces will struggle to survive, which will ultimately reduce choice for consumers and sellers. This consolidation can eliminate competitive pressures for innovation and efficiency, ultimately harming consumers through higher prices or lower quality of service in the future.<sup>33</sup>

KPPU will need to conduct an in-depth economic analysis to measure Shopee Express' market share in the *overall e-commerce* courier service market, as well as identify a causal relationship between *self-preferencing* practices and increased market share. If it is proven that this practice substantially shifts market share from other couriers to Shopee Express to an unreasonable level, then legal action under Article 25 of the Anti-Monopoly Law will become relevant. This is a crucial part of ensuring that marketplace market power is not used to create monopoly or dominance that is detrimental to competition in related sectors.

## CONCLUSIONS

Based on the juridical analysis that has been presented, it can be concluded that the practice of self-preferencing by marketplace-based business actors towards affiliate courier services has the potential to violate the provisions of Law Number 5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition. These practices systemically show forms of preferential treatment that benefit affiliated courier services through higher visibility arrangements, exclusive promotions, integration of technology systems that

<sup>32</sup> Peraturan Pemerintah Republik Indonesia Nomor 44 Tahun 2021 tentang Pelaksanaan Larangan Praktik Monopoli dan Persaingan Usaha Tidak Sehat

<sup>33</sup> OECD. (2021). *The Digitalisation of Competition Policy*. OECD Publishing, Paris. Diakses dari <https://www.oecd.org/daf/competition/the-digitalisation-of-competition-policy.htm>

are limited to affiliated partners, and the application of discriminatory partnership terms to non-affiliated courier business actors. Such a constellation can be qualified as a form of abuse of dominant position (Article 19), closed agreements (Article 15), and unfair market domination (Article 25). The Shopee and Shopee Express cases are concrete examples that are currently under the attention of the authorities, and reflect the urgency of updating legal instruments to be more adaptive to the development of the digital economy. This phenomenon is also in line with global trends that show concern about anti-competitive practices by dominant digital platforms. Therefore, firm and progressive law enforcement by the Business Competition Supervisory Commission (KPPU) is an important instrument in maintaining a healthy, efficient, and inclusive business competition ecosystem in the e-commerce courier service sector in Indonesia.

In order to strengthen the effectiveness of law enforcement on *self-preferencing practices* in the digital marketplace sector, strategic and progressive steps from various stakeholders are needed. First, the Business Competition Supervisory Commission (KPPU) needs to develop special guidelines that regulate the criteria and indicators of self-preferencing as a form of abuse of dominant position, as well as expand the meaning of closed agreement clauses in the context of digital platform-based services. Second, regulatory reform both in the form of a partial revision of Law Number 5 of 1999 and through implementing regulations is a necessity to accommodate the special characteristics of the digital economy, including the issue of data mastery, algorithmic dominance, and vertical integration. Third, an active role is needed from associations of logistics business actors and MSME actors to provide input in the process of formulating fair competition policies.

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