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The Concept of Dominant Position in the Practice of Digital Business: A Legal Analysis on the Improvement of Indonesia's Business Competition Law

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Abstract

The growth of the digital economy has introduced new forms of market dominance that cannot be addressed by Indonesia's conventional competition law frameworks. Law No. 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition employs quantitative market share thresholds 50% or 75% as the primary indicator of dominant position. In the digital era, market dominance is no longer determined by traditional market share, but rather by control over user data, algorithmic systems, and technological infrastructure. Based on this issue, the article aims to analyze the extent to which the dominant position concept in Law No. 5 of 1999 can reach these new forms of digital dominance. This article employs normative legal methods with conceptual, statutory, and comparative approaches. In addition, the article also uses Satjipto Raharjo's Progressive Law Theory as a tool for an in-depth legal analysis. Finally, our study concludes that there are three fundamental limitations to the current legal framework regarding business competition: (1) a dominant position definition relying solely on quantitative market share; (2) the absence of data market, algorithmic dominance, and gatekeeper concepts within its normative framework; and (3) an ex-post approach incapable of responding to the rapid dynamics of digital markets. Drawing on Rahardjo's theoretical framework, it is recommended to expand the meaning of dominant position so that law can function preventively and curatively within the digital economic ecosystem.

Keywords: *Dominant Position; Digital Economy; Progressive Law*

Introduction

The Industry 5.0 revolution and the acceleration of economic digitalisation have fundamentally transformed the way businesses acquire and maintain market power. Market power in the digital age is no longer determined solely by the ownership of physical assets or the size of capital, but rather by the ability to master user data on a massive scale, control the algorithms that determine market access, and control the digital infrastructure that acts as a gatekeeper for other businesses (Heimburg & Wiesche,

2023). As commercial transactions have increasingly shifted from conventional marketplaces to digital platforms, the nature and scope of market competition have also evolved significantly. This transformation has created new opportunities for corporations to exercise market dominance through digital channels rather than traditional business structures. Consequently, monopolistic practices are no longer limited to the concept of control over physical markets but may also emerge through the concentration of digital resources, platforms, and network effects. The expansion of economic activities into the digital sphere, therefore, necessitates a re-examination of competition law and regulatory approaches to address emerging forms of market monopoly (Kim & Ahn, 2025).

Data from the Indonesian Central Statistics Agency shows that in 2021, 62.10% of Indonesia's population used the internet for economic activities. In the same year, Indonesia's digital economy contributed Rp1,490 trillion, or 6.12%, to the national GDP, and is projected to reach USD 130 billion by 2025. This rapid growth has brought with it new business competition practices that can no longer be addressed by the current legal instruments, especially regarding the business monopolistic behaviour. Currently, the prohibition of monopoly practice is regulated in Law No. 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Competition as a form of legal basis for competition law in Indonesia, having emerged from a conventional economic context. Article 1, paragraph 4 defines a dominant position based on four parameters: market share, financial capacity, access to supply or sales, and the ability to adjust supply or demand. In addition, Article 25, paragraph 2 sets quantitative thresholds: 50% market share for a single undertaking or 75% for two or three undertakings.

In a digital market underpinned by network effects, multi-sided market models, and a pace of innovation that outstrips the rhythm of legal change, these quantitative thresholds have proven inadequate. A platform with a numerical market share below 50% can still function as a gatekeeper that absolutely controls market access if it controls user data that cannot be replicated by competitors, or algorithms that determine the visibility of third-party products on its platform. This development demonstrates that the 50% threshold, as stipulated in Indonesia's Anti-Monopoly Law, is becoming increasingly irrelevant in changing market structures, particularly in the digital era. The shift from traditional asset-based competition to data-driven and platform-based competition has reduced the explanatory power of market-share calculations alone. As a result, competition law must adopt a more dynamic assessment that considers control over data, digital ecosystems, network effects, and access to users rather than relying solely on numerical market-share as a threshold, a recalibration that other jurisdictions have likewise pursued through alternative quantitative thresholds such as deal-value-based merger review (Chauhan & Mehta, 2024).

Empirical evidence of these limitations is evident in the Google case handled by the Indonesian Competition Commission. In its ruling, the commission imposed a fine of Rp. 202.5 billion on Google for requiring app developers to use the Google Play Billing system as the sole payment mechanism. This payment mechanism by Google was considered a form of dominance based on control over technological systems that is not explicitly regulated under Law No. 5 of 1999. This case underscores that dominance in the digital market is not determined solely by market share, but also by control over systems, data, and technological design as the digital world keeps developing into a more sophisticated form.

From the legal issue that has been presented above, this article aims to re-formulate the definition of a dominant position under Law No. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Competition to adapt to the current digital market competition in Indonesia. This research is important to be done since current digital businesses emphasize more control over data, algorithms, and technological systems. In addition, this article also aims to identify the normative limitations of monopoly practices in order to analyse their implications for the enforcement of competition law in the digital age.

Research Method

This study employs a normative legal method, as a research method that examines law as a system of norms through secondary legal sources such as legislation, legal doctrine and other relevant literature (Sihombing & Hadita, 2022). Three approaches are used in an integrated manner: (1) the statutory approach to systematically examine the provisions of Law No. 5 of 1999 and other relevant regulations; (2) the conceptual approach to analyse legal terms and principles relating to dominant positions; and (3) the comparative approach to compare the Indonesian legal framework with the European Union's Digital Markets Act (Bostoen, 2023). Primary legal sources include Law No. 5 of 1999 and Regulation (EU) 2022/1925 (Digital Markets Act). Secondary legal sources include books, academic journals, and other relevant literature that support the analysis of the article. The analysis was conducted qualitatively to identify existing relevance and normative gaps.

Results and Discussion

1. The Concept of a Dominant Position in Indonesia's Legal Framework

The provisions of Article 1, paragraph 4 of Law No. 5 of 1999 stipulate the definition of a dominant position as:

"*A dominant position is a situation where a business actor does not have any significant competitors in the relevant market in relation to the market share controlled, or the business actor has the highest position among its competitors in the relevant market in relation to financial capacity, ability to access supply or sales, and ability to adjust supply or demand for certain goods or services.*"

Furthermore, Article 25, paragraph 2 sets out quantitative benchmarks as follows: (a) a single business entity controlling 50% or more of the market share for a single type of goods or services; or (b) two or three business entities which together control 75% or more of the market share. Meanwhile, Article 25 (1) prohibits business entities in a dominant position from: imposing trading conditions that hinder consumers; restricting markets and technological development; and hindering other business entities that have the potential to become competitors.

Conceptually, this normative framework is based on the Harvard School's Structure-Conduct-Performance (SCP) paradigm, which posits that market structure directly influences the behaviour of market participants and ultimately determines market performance. Within this paradigm, market concentration measured by market share is regarded as an adequate proxy for assessing the strength and potential for abuse of business actors who hold a dominant position (Colino, 2025).

However, this paradigm, which is relevant for conventional markets based on physical products, faces fundamental challenges when applied to digital ecosystems driven by network effects, multi-sided business models, and extraordinary innovation speeds. In digital markets, the value of a platform is not determined solely by production volume or market share of a particular good, but rather by the quantity and quality of data it controls, the ability of algorithms to control access and visibility, and the position of the infrastructure as a gatekeeper that determines who can participate in the ecosystem. This development reflects a paradigm shift in business competition from traditional product-based markets to dynamic digital ecosystems that evolve at an unprecedented pace. As digital markets are characterized by rapid technological change, data-driven advantages, and network effects, conventional competition law frameworks may no longer adequately capture emerging forms of market power. Consequently, competition law must be continuously updated to accommodate new concepts of dominance and ensure that regulatory approaches remain effective in addressing the realities of the digital economy.

2. Forms of Digital Dominance Uncovered by Indonesia's Regulations

a. Data Control as a New Form of Dominance

In the digital economy, data has become 'the new oil', determining the direction of innovation and competitive advantage. Businesses capable of collecting, storing, analysing, and monetising user data on a large scale possess a cumulative and permanent structural advantage. The more data a platform possesses, the better its services, the more users it attracts, and the greater the barriers for new entrants to compete effectively (Ciotti et al., 2025). The ability to access and monetise users' personal data is a critical factor in gaining a competitive advantage in the digital economy. The data collected is utilised for various purposes, such as improving service quality, targeted advertising, and even personalised pricing based on individual user profiles. In this context, companies that control the largest user databases effectively hold a dominant position even if, numerically, their market share has not exceeded the 50% threshold as stipulated in Article 25 of Law No. 5 of 1999.

In comparison to the European Union, the EU has recognised the advancement of digital business competition since the CJEU's (Court of Justice of the European Union) ruling in the Hoffmann-La Roche case in 1979 determined that the company held a dominant position based on the "highly detailed customer information" it controlled. This recognition signifies that data control is not merely a privacy issue, but also a fundamental competition issue (Colangelo, 2023). This case illustrates that the concept of dominant position has evolved beyond a purely quantitative assessment based on market share percentages. In digital and data-driven markets, dominance may also arise from the ability to control strategic resources, such as data, information flows, and access to users. Consequently, competition authorities are increasingly required to assess market power through a broader framework that reflects the realities of the digital economy.

In Indonesia, the regulation regarding the concept of dominant position in Law No. 5 of 1999 contains neither provisions that explicitly state the regulation concerning data control as an indicator of a dominant position nor does the legislation recognise the concept of a data market. The relevant market for data as a commodity is a new dimension in determining the relevant market. This regulatory gap could, potentially, bring a weakness to the competition authorities, since the regulation lacks a strong legal basis for systematically assessing data-based dominance.

b. Algorithmic Collusion and Algorithm-Based Dominance

In the context of the digital economy, an algorithm is a series of computational instructions that process data inputs into outputs in the form of automated decisions ranging from price setting, content selection and product ranking in search results, to the recommendations displayed to users. Control over such algorithms grants the power to steer user behaviour and determine who gains visibility in the digital marketplace. The phenomenon of algorithmic collusion demonstrates that price coordination amongst market players can occur without any explicit agreement. Through algorithms that monitor one another and respond to market conditions in real-time, competing companies can achieve price uniformity without meetings or agreements, making it difficult to prove under conventional competition law instruments, which require the existence of an agreement as an element of the infringement.

Furthermore, digital platforms that control product ranking or recommendation algorithms have the ability to engage in self-preferencing, that is, prioritising their own products or services over those of competitors in search results or on the platform's interface without necessarily monopolising market share in quantitative terms (Kapacinskaite & Mostajabi, 2024). There is one interesting case that illustrates this condition, which is the Google case. The European Commission fined Google €2.42 billion in the Google Shopping case in 2017 for such self-preferencing practices. The case arose because Google was found to have systematically given preferential placement and greater visibility to its own comparison-shopping service in general search results, while simultaneously demoting rival comparison-shopping services through its ranking algorithms. Following the European Commission's decision, Google challenged the ruling before the European courts; however, the core finding of abuse was ultimately upheld, and Google was required to comply with the decision and pay the €2.42 billion fine. Compared to the European

Union, Indonesia's regulation on the dominant position, which is the Law No. 5 of 1999, contains no provisions that specifically prohibit or even define the practice of algorithmic self-preferencing.

c. Control of Technology Systems as Gatekeepers

The concept of a gatekeeper refers to digital businesses that act as the primary gateway for business users to reach end consumers. The characteristics of a gatekeeper are not determined by the market share of a particular product, but rather by the platform's strategic position in controlling access, data and the digital ecosystem as a whole (Ozili, 2025).

Another case of Google being a gatekeeper in Indonesia clearly illustrates this phenomenon. The Indonesian Competition Commission fined Google for about Rp. 202.5 billion for requiring app developers to use the Google Play Billing system as the sole payment mechanism within the Android ecosystem. This requirement was not based on market dominance over a specific product, but rather on control over the technology infrastructure that serves as the sole distribution channel for digital applications for hundreds of millions of Android users in Indonesia. Unfortunately, Law No. 5 of 1999 does not recognise the concept of a gatekeeper or digital essential facility. Although the doctrine of essential facilities exists in competition law, which can be implicitly inferred from Article 25, paragraph 1, point (b), regarding restrictions on technological development, this provision does not explicitly or operationally regulate situations where digital platforms controlling critical technological infrastructure are prohibited from using their position to exclude competitors or force other businesses into dependency.

The Commission's ruling against Google sets an important precedent whilst also highlighting the limitations of Law No. 5 of 1999 in addressing digital dominance. The Commission imposed a fine of Rp. 202.5 billion on Google for requiring app developers to use Google Play Billing as the sole payment system, which was found to violate Article 17 and Article 25, paragraph 1, point (b), of Law No. 5 of 1999 on market restrictions and technological development.

Although the Commission succeeded in imposing sanctions, the evidentiary process faced serious challenges: Google's dominance does not stem from quantitative control over the market share of a specific product, but rather from control over the digital application distribution infrastructure, for which there are no substitutes. This situation forced the Commission to stretch the interpretation of existing norms, which can be done as a form of progressive legal practice that signalled the inadequacy of the available normative framework.

In addition, this case also demonstrates that the ex-post approach under Law No. 5 of 1999, where legal action can only be taken after an abuse of a dominant position has occurred and actual harm has been caused, is inefficient in the context of the fast-moving digital market. By the time the Commission succeeds in proving a breach, the dominance structure based on control of the technology system has been in place for years and has created ecosystem dependencies that are difficult to reverse through financial sanctions alone.

3. Analysis of the Structural Limitations of Law No. 5 of 1999 from the Perspective of the Theory of Progressive Law

In analyzing the legal issue raised in this article, the theory of progressive law from a prominent Indonesian scholar, Satjipto Rahardjo, will be used. Rahardjo emphasizes that the law must serve as an instrument to protect society from injustice, particularly when power imbalances arise in social or economic relations. The law has two primary functions: a preventive function, which operates through regulations capable of preventing domination before it causes harm; and a remedial function, which operates through the restoration of rights for those who have become victims of a certain action.

In the context of the digital market, Law No. 5 of 1999 fails to fulfil these two functions optimally. The preventive function does not operate because regulations are unable to detect data, and algorithm-based dominance at an early stage—by the time digital platforms begin to establish a dominant position through data accumulation and network effects, regulations only react after market distortions have already happened in society. The remedial function is also limited because the burden of proof remains

hindered by the mismatch between normative indicators (quantitative market share) and the reality of digital dominance (control over data, algorithms, and ecosystems).

Satjipto Rahardjo's theory of progressive law rejects a literal reading of legal texts and encourages law enforcement officials to make interpretative breakthroughs in the interests of substantive justice. From this perspective, the limitations of Law No. 5 of 1999 are not merely a legislative issue, but also a matter of how the law is applied. At least three progressive interpretative breakthroughs can be made by the Indonesian Competition Commission without having to wait for legislative changes:

First, the expansion of the definition of the relevant market beyond the boundaries of financial transactions, so as to encompass the data market and the attention economy, where dominance is measured not by price but by the volume and exclusivity of data access. Second, a reinterpretation of dominant position based on control of access, so that businesses controlling algorithms or infrastructure that act as bottlenecks for other competitors can be classified as holding a dominant position even if their market share has not yet reached the 50% threshold. Third, strengthening the role of the Indonesian Competition Commission as a progressive legal agent that proactively identifies potentially anti-competitive digital market structures and takes preventive action.

The identified normative limitations of Law No. 5 of 1999 encompass three interrelated dimensions. First, the definition of a dominant position relies solely on quantitative market share and does not reflect the reality of digital market power derived from control over data, algorithms, and infrastructure. Second, the absence of concepts such as the data market, algorithmic dominance, and gatekeepers within its normative framework creates a legal gray zone where technology-based anti-competitive practices can occur without a sufficient legal basis for enforcement. Third, an ex-post approach requiring authorities to wait for actual market distortions to occur is incompatible with the dynamics of the digital market, which reaches a tipping point very rapidly.

Progressive Law theory by Satjipto Rahardjo asserts that law is for humans, not the other way around. In this context, small and medium-sized enterprises that rely largely on giant digital platforms, like Google, Facebook, Amazon, and others, are in an extremely asymmetrical position since they lack access to the data, algorithms, and infrastructure controlled by dominant platforms. It is precisely this condition of structural inequality that requires more adaptive legal protection. Analyzing from the progressive law theory, the Indonesian Competition Commission can take the following interpretive steps without having to wait for changes in the law: (1) expand the definition of the relevant market to include the data market and the attention market; (2) reinterpret the concept of a dominant position by incorporating control over algorithms and essential digital infrastructure as indicators of market power; and (3) shift from a reactive stance to a proactive one by conducting periodic assessments of the structure of digital markets, without waiting for complaints.

Conclusion

Based on the analysis presented above, it can be concluded that Law No. 5 of 1999 contains fundamental limitations in addressing the dominance of digital businesses based on control over data, algorithms, and technological systems. These limitations stem from: (1) a definition of a dominant position that relies solely on a quantitative market share of 50% or 75%; (2) the absence of the concepts of data markets, algorithmic dominance, and gatekeepers within its normative framework; and (3) an ex-post approach that is unable to respond to the rapid pace of change in the digital market. Through the theoretical framework of Satjipto Rahardjo's Progressive Law, these limitations result in the failure of the law's preventive and remedial functions to protect weaker market participants from power imbalances in the digital market. This situation opens the door for the Indonesian Competition Commission to proactively pioneer interpretive breakthroughs without waiting for legislative changes, through the expansion of the relevant market's definition, the reinterpretation of dominant positions based on access control, and the strengthening of the Commission's proactive role as an agent of legal change. Based on this analysis, two recommendations are proposed. First, in the short term, the Indonesian Competition Commission needs to issue interpretive guidelines that explicitly recognize data control, algorithmic

control, and gatekeeper status as relevant indicators of market power in assessing dominant market positions, without waiting for legislative changes. Second, in the long term, it is necessary to revise or amend provisions in Law No. 5 of 1999 or enact a specific digital markets law that adopts an ex-ante approach by establishing preventive obligations for dominant digital platforms, as implemented in the European Union's Digital Markets Act, while remaining attentive to the potential unintended effects of such ex-ante obligations on market entry and investment (Yang, 2025).

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