

Urgensi Implementasi Digital Markets Act (DMA) Uni Eropa: Usaha Preventif Terhadap Potensi Pelanggaran Praktik Anti-Persaingan Usaha Digital Gatekeeper di Indonesia = The Urgency of Implementing the EU Digital Markets Act (DMA): Preventive Efforts Against Potential Violations of Anti-Competitive Practices by Gatekeepers in Indonesia

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Abstrak

Karakteristik pasar digital, seperti network effects, extreme return to scale, dan dominasi penguasaan data menjadikan struktur dan cara kerjanya berbeda dengan pasar konvensional. Perbedaan karakteristik ini berdampak pada cara pelaku usaha bertindak. Salah satu pelaku usaha di pasar digital adalah digital gatekeeper, yaitu penghubung esensial antar dua kelompok pengguna yang sebelumnya tidak terhubung, serta memiliki informasi penting yang dibutuhkan satu sama lain. Struktur pasar yang berbeda dan eksisnya digital gatekeeper, menciptakan tantangan baru bagi sistem hukum persaingan usaha konvensional di Indonesia. Penelitian ini berusaha menjawab 3 (tiga) rumusan masalah: 1) pengaruh digital gatekeeper terhadap persaingan usaha di pasar digital; 2) latar belakang dan tujuan Digital Markets Act (DMA) di Uni Eropa; 3) Undang-Undang No. 5 Tahun 1999 dalam menghadapi praktik persaingan usaha oleh digital gatekeeper. Penelitian ini menggunakan metode penelitian doktrinal dengan pendekatan studi komparatif antara Indonesia dengan Uni Eropa. Hasil penelitian menunjukkan bahwa berdasarkan network exchange theory, struktur dan karakteristik pasar digital mengakselerasi digital gatekeeper untuk melakukan tindakan persaingan usaha yang tidak sehat. Berkaca pada Uni Eropa, tantangan tersebut berusaha dijawab melalui DMA, yakni regulasi pendekatan ex-ante yang mengatur digital gatekeeper dengan serangkaian kewajiban yang telah ditentukan sebelumnya (predetermined obligations). Melalui predetermined obligations, tindakan digital gatekeeper diatur secara preventif agar tidak melahirkan kondisi persaingan usaha tidak sehat. Penelitian menemukan bahwa Undang-Undang No. 5 Tahun 1999 dengan pendekatan ex-post belum berfokus pada tindakan pencegahan untuk mengantisipasi dinamika pasar digital. Padahal dalam Putusan KPPU No. 03/KPPU-I/2024, Majelis Komisi secara implisit mengakui eksistensi Terlapor sebagai penghubung esensial (gatekeeper) yang melakukan tindakan penyalahgunaan posisi dominan. Oleh karena itu, diperlukan kerangka peraturan dengan pendekatan ex-ante yang berfungsi sebagai pelengkap hukum persaingan usaha konvensional yang bersifat ex-post, guna menjamin ekosistem digital yang adil dan kompetitif di Indonesia.

.....The characteristics of the digital market, such as network effects, extreme returns to scale, and data dominance, make its structure and functioning different from conventional markets. These differences in characteristics have an impact on how businesses operate. One type of business in the digital market is the digital gatekeeper, which is an essential link between two previously unconnected groups of users and possesses important information that each group needs. The distinct market structure and the existence of digital gatekeepers present new challenges for Indonesia's conventional competition law system. This study aims to address three research questions: 1) the impact of digital gatekeepers on competition in the digital market; 2) the background and objectives of the Digital Markets Act (DMA) in the European Union; 3) Law No. 5 of 1999 in addressing competition practices by digital gatekeepers. This study employs a doctrinal

research method with a comparative approach between Indonesia and the European Union. The results of the study indicate that, based on network exchange theory, the structure and characteristics of the digital market accelerate digital gatekeepers to engage in unfair business competition practices. Drawing on the European Union, these challenges are addressed through the DMA, which is an ex-ante regulatory approach that regulates digital gatekeepers through a series of predetermined obligations. Through predetermined obligations, the actions of digital gatekeepers are regulated preventively to avoid creating conditions of unfair competition. The study found that Law No. 5 of 1999, with its ex-post approach, has not focused on preventive measures to anticipate the dynamics of the digital market. However, in KPPU Decision No. 03/KPPU-I/2024, the Commission implicitly acknowledged the existence of the Respondent as an essential intermediary (gatekeeper) engaging in the abuse of dominant position. Therefore, a regulatory framework with an ex-ante approach is needed to complement conventional ex-post competition law, ensuring a fair and competitive digital ecosystem in Indonesia.