

# REGULATORY ANALYSIS DIGITAL MARKETS ACT (DMA) EUROPEAN UNION IN BUSINESS COMPETITION

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**Abstract:** *This study aims to analyze the concept of business competition Digital Markets Act (DMA) European Union and Regulatory influence Digital Markets Act (DMA) European Union to digital markets. The type of research used by the authors in examining the problems in this study is normative research and researchers use three approaches, namely the statutory approach (statue approach), conceptual approach method (conseptual approach), and the case approach method (case approach). The results of this study indicate that the European Commission recently published a proposal for a Digital Markets Act to complement existing competition policy tools through liability from before for platforms. DMA is an ex ante regulatory system inspired by competition law. Such companies are also called gatekeeper or translated as gate keeper. A gatekeeper is a company that has a significant impact on the internal market, providing core platform services that are an important gateway for business users to reach end users and enjoy a entrenched and long-lasting position in its operations or is expected to enjoy such a position.*

**Keywords:** *Business Competition; Digital Markets Act; European Union Regulatory.*

## 1. INTRODUCTION

Information and communication technology growing rapidly also influences the change from conventional to modern. This change towards modernity can not only be seen from new aspects of life but old aspects have also been eroded by modernization. One aspect that has been eroded by modernization is the conventional market. In today's modern life, conventional markets not only have to compete with modern markets such as malls or supermarkets but are also a tough challenge for the conventional markets themselves.

The industrial revolution is interpreted as a significant change to fundamental matters in managing human resources, society, culture and society's economy.<sup>1</sup> The industrial revolution 4.0 has had a positive impact on businesses in traditional markets, but some business people feel threatened because new markets change the way businesses operate by manifesting through *the digital market place* or sundries internet *of things/internet for everything*.<sup>2</sup>

Digital marketplace or e-commerce is a broad phrase covering commercial operations with related technical data that are carried out electronically when defining digital transactions<sup>3</sup> in other words, media or ways and efforts to introduce certain goods, services or brands using digital media and usually carried out with the help of internet networks,<sup>4</sup> with several elements that characterize digital markets, including business contracts conducted electronically in public networks without the need for the physical presence of the parties and without state jurisdictional boundaries and there is economic value in them.<sup>5</sup> There is a change in economic behaviour from conventional to digital. Changes that lead dynamically in digital market movements also affect business competition in every business actor and law enforcement against the business competition.<sup>6</sup> Competition law and its regulators must consider current factors such as the potential size of digital platforms and the importance of intangible capital.<sup>7</sup>

Business competition is a condition where two or more parties (business actors) try to outperform each other in achieving the same goal in a particular business. Business competition can affect policies relating to trade, industry, a conducive business climate, business certainty and opportunities, efficiency, public interest, people's welfare

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<sup>1</sup> Pusat Penelitian dan Pengembangan Aplikasi Informatika dan Informasi Kementerian Komunikasi dan Informatika, *Perkembangan Ekonomi Digital Di Indonesia*, vol. 1. 2019.

<sup>2</sup> Fitri Maghfirah, "Perubahan Pasar Di Era Disruptif: Analisis Etika Bisnis Islam", *Jurnal At-Tijarah*, 2019, hlm.58. dapat diakses online pada <https://ejurnal.iainlhokseumawe.ac.id/index.php/AT-TIJARAH/article/view/716/477>., diakses pada tanggal 30 Januari 2023.

<sup>3</sup> A. Nur Hayati, (2021), "Analisis Tantangan dan Penegakan Hukum Persaingan Usaha pada Sektor E-Commerce di Indonesia," *J. Penelit. Huk. Jure*, Volume 21, Nomor 1, hlm. 109, Feb. 2021, doi: 10.30641/dejure.2021.v21.109- 122.

<sup>4</sup> AturToko, "Meningkatkan Penjualan Dengan Memperluas Pasar Digital" dapat diakses online pada <http://www.aturtoko.id/en/blog/aturtoko-update/meningkatkan-penjualan-dengan-memperluas-pasar-digital#:~:text=Pasarnya%20digital%20atau%20yang%20lebih,dilakukan%20dengan%20bantuan%20jaringan%20internet.>, tanggal 31 Januari 2023.

<sup>5</sup> A. Sabirin and R. Haidar Heffian, (2021), "Dampak Ekosistem *Digital* terhadap Hukum Persaingan Usaha di Indonesia serta Optimalisasi Peran Komisi Pengawas Persaingan Usaha (KPPU) di Era Ekonomi *Digital*," *J. Persaingan Usaha*, Volume 1, Nomor 2, hlm. 75–82.

<sup>6</sup> Rohmat, "Urgensi Pembentukan Undang-Undang Pasar Digital sebagai Instrumen Pengawasan Persaingan Usaha di Era Digital", *Jurnal Persaingan Usaha*, 2022, hlm.119. dapat diakses online pada <https://jurnal.kppu.go.id/index.php/official/article/download/76/36>., tanggal 30 Januari 2023.

<sup>7</sup> A. K. Ramaiah, (2018), "Competition in Digital Economy: the State of merger Control on Customer Transportation in Asean," *Inter-national Journal of Modern Trends in Business Research (IJMTBR)*, Volume 2, Nomor 7.

and so on.<sup>8</sup> Fair business competition is certainly necessary for good economic performance. Without fair business competition, companies cannot develop properly. Unfortunately, monopolistic practices and others occur a lot in the market, so it requires an authority to regulate business competition.<sup>9</sup> Authority competencies have some of the broadest strengths and tools a managing authority can have.<sup>10</sup>

Unfair business competition occurs not without reason, but there are certain reasons that lead to this unhealthy competition. The occurrence of unfair business competition is certain to be carried out by business actors both jointly and individually to determine or create a situation that benefits the business actors themselves. Factors that cause unfair business competition can occur due to a situation that benefits the business actor and takes advantage of it for the interests and profits of the said business actor, even though this will ultimately harm other business actors.

There is a problem with giant companies dominating or monopolizing the digital market, so policies are formed, The so-called European Union Digital Market *Digital Markets Act* (DMA). DMA is designed to provide technology companies with a better competitive opportunity facing heavy dominance by tech giants.<sup>11</sup> The act establishes rules for internet companies that control data access and platforms like Google Alphabet, Amazon, Apple, Meta and Microsoft, given that over the last decade, it has made more than 400 acquisitions worldwide.<sup>12</sup> DMA has two general objectives to ensure contestability and fairness for the market in the digital sector.<sup>13</sup> The EU hopes this will help new companies innovate and compete with Big Tech, giving consumers more choices.<sup>14</sup>

The presence of the Digital Market policy calls for a digital monopoly control that is established by big technology and builds a fair competition environment.<sup>15</sup> The new

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<sup>8</sup> Bab II Asas dan Tujuan, Pasal 2 dan 3 UU No. 5 Tahun 1999 Tentang Larangan Praktek Monopoli Dan Persaingan Usaha Tidak Sehat.

<sup>9</sup> Prisma, "Persaingan Usaha di Era Industri Digital" dapat diakses online pada <https://www.primajurnal.com/post/persaingan-usaha-di-era-industri-digital/>, tanggal 30 Januari 2023.

<sup>10</sup> P. Akman, (2019), "An Agenda for Competition Law and Policy in the Digital Economy," *Journal of European Competition Law & Practice*, Volume 10.

<sup>11</sup> DW "Uni Eropa Putuskan UU Pasar Digital DMA", Dapat diakses online pada <https://www.dw.com/id/uni-eropa-sepakati-uu-pasar-digital/a-61255965>., tanggal 31 Januari 2023.

<sup>12</sup> T. Wu and S. Thompson, (202), "Tim Wu and Stuar A. Thompson, 2021, The Roots of Big Tech Run Disturbingly Deep, Washington-post, USA.," *Washington Post*, USA.

<sup>13</sup> Whitecase "The Digital Markets Act (DMA) goes live", dapat diakses online pada <https://www.whitecase.com/insight-alert/digital-markets-act-dma-goes-live>., tanggal 31 Januari 2023.

<sup>14</sup> Euronews.next "EU's Digital Markets Act comes into force: What is it, and what does it mean for Big Tech?" dapat diakses online pada [https://www.euronews-com.translate.goog/next/2022/11/02/eus-digital-markets-act-comes-into-force-what-is-it-and-what-does-it-mean-for-big-tech?\\_x\\_tr\\_sl=en&\\_x\\_tr\\_tl=id&\\_x\\_tr\\_hl=id&\\_x\\_tr\\_pto=sc](https://www.euronews-com.translate.goog/next/2022/11/02/eus-digital-markets-act-comes-into-force-what-is-it-and-what-does-it-mean-for-big-tech?_x_tr_sl=en&_x_tr_tl=id&_x_tr_hl=id&_x_tr_pto=sc)., tanggal 31 Januari 2023.

<sup>15</sup> Bocasay "What is the EU's Digital Markets Act (DMA) all about?" dapat diakses online pada [https://www.bocasay-com.translate.goog/eus-digital-markets-act-dma/?\\_x\\_tr\\_sl=en&\\_x\\_tr\\_tl=id&\\_x\\_tr\\_hl=id&\\_x\\_tr\\_pto=sc](https://www.bocasay-com.translate.goog/eus-digital-markets-act-dma/?_x_tr_sl=en&_x_tr_tl=id&_x_tr_hl=id&_x_tr_pto=sc)., tanggal 31 Januari 2023.

rules will also prevent these giants from using data generated on their sites by business customers to better compete with them, as alleged by Amazon. Unfair practices by giant companies as if they act as gatekeepers in the economy platform *online*.

Based on the above background, the problems that will be studied in this article include How is the concept of the Business Competition Digital Markets Act (DMA) European Union and How does the regulation affect Digital Markets Act (DMA) EU to digital market?

## 2. METHODS

The science of law will have authority and strength if it is integral in ontological, epistemological, and axiological aspects. Therefore it is necessary and uses methods, especially in scientific research, to find the law.<sup>16</sup> The type of research used by the authors in examining the problems in this study is normative research, namely legal research that examines laws conceptualized as norms or rules that apply in society and become a reference for everyone's behaviour.<sup>17</sup> Normative legal research has characteristics of library research (literature research), which is different from the empirical research method (non-doctoral), which has the characteristics of field research (field study).<sup>18</sup> Another name for normative legal research is doctrinal legal research, also known as library research or document study. It is called doctrinal legal research because it is conducted or aimed only at written regulations or legal materials. It is referred to as library research or document study because this research is mainly done on secondary data in the library.<sup>19</sup>

The qualitative research method is a research method that places more emphasis on aspects of in-depth understanding of a problem rather than looking at the problem for generalization research, which uses in-depth analysis techniques (in-depth analysis), namely examining problems on a case-by-case basis, because qualitative methodologies believe that the nature of one problem will be different from the nature of other problems.<sup>20</sup> The research approach is needed to obtain information about the study's themes. Regarding the type of normative research, researchers used three approaches:

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<sup>16</sup> Yati Nurhayati, (2013), Perdebatan Antara Metode Normatif dengan Metode Empirik Dalam Penelitian Ilmu Hukum Ditinjau Dari Karakter, Fungsi dan Tujuan Ilmu Hukum, *Jurnal Hukum Al Adl*, Volume V Nomor 10, Juli Desember 2013, hlm. 14.

<sup>17</sup> Ishaq, (2017), *Metode Penelitian Hukum Dan Penulisan Skripsi, Tesis, Serta Disertasi*, Cet. I. Bandung: Alfabeta, hlm. 66.

<sup>18</sup> Nurhayati, Y., Ifrani, I., Said, M.Y., (2021), "Metodologi Normatif dan Empiris Dalam Perspektif Ilmu Hukum", *Jurnal Penegakan Hukum Indonesia*, Volume 2 Nomor 1, 1-20, <https://doi.org/10.51749/jphi.v2i1.14>.

<sup>19</sup> Muhaimin, (2020), *Metode Penelitian Hukum*, Cet. I. Mataram: Mataram University Press, hlm. 45.

<sup>20</sup> Tengku Erwinsyahbana Ramlan, "Penelitian Kualitatif Bidang Ilmu Hukum Dalam Perspektif Filsafat Konstruktivis", *Jurnal Ilmu Hukum Universitas Muhammadiyah Sumatera Utara*, 2017, hlm. 5. Dapat diakses online pada <http://jurnal.borneo.ac.id/index.php/bolrev/article/view/706/389>., tanggal 01 Februari 2023.

the statutory approach, the conceptual approach method, and the case approach method.

### 3. RESULTS AND DISCUSSION

#### *3.1. The European Union's Digital Markets Act (DMA) competition concept*

The current development of the business world is characterized by increasingly fierce business competition on a global scale. This condition is due to technological advances, especially information technology, production technology, transportation and communication technology. Business competition or business is the efforts of two parties/more companies, each of which is active in obtaining orders by offering the most favourable prices/conditions. Business actors try to offer attractive products and services in terms of price, quality and service. The combination of these three factors to win the competition to win the hearts of consumers can be obtained through innovation, application of the right technology, and managerial ability to direct company resources in winning the competition.<sup>21</sup>

The rapid development of the business world and accompanied by high demand (demand) the market or a commodity (commodity) creates and encourages business actors to continuously innovate according to consumer needs, so that consumers do not run away and can make the market sluggish,<sup>22</sup> as a result many events of unfair business competition occur happen. Unfair business competition is competition between business actors in carrying out production and or marketing activities of goods or services that are carried out dishonestly or unlawfully or impede business competition.<sup>23</sup>

Factors that cause unfair business competition can occur due to a situation that benefits the business actor and takes advantage of it for the interests and profits, even though this will ultimately harm other business actors.<sup>24</sup> If business actors are more innovative, qualified and competitive, they are likely to become superior in the market (market leader) so that they will achieve a dominant position, which allows abuse of

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<sup>21</sup> Kajianpustaka, "Pengertian, Aspek dan Jenis-jenis Persaingan Usaha", dapat diakses online pada <https://www.kajianpustaka.com/2019/12/pengertian-aspek-dan-jenis-jenis-persaingan-usaha.html>., tanggal 01 Februari 2023.

<sup>22</sup> Andos Rewindo Sirait, "Faktor-Faktor Penyebab Terjadinya Persaingan Usaha Tidak Sehat di Indonesia", *Jurnal Fakultas Hukum Universitas Quality*, 2019, hlm.2. dapat diakses online pada <http://www.portaluniversitaskuality.ac.id:5388/ojsystem/index.php/JUSTIQA/article/download/206/162>., tanggal 01 Februari 2023.

<sup>23</sup> PARALEGAL.ID, "Persaingan Usaha Tidak Sehat", dapat diakses online pada <https://paralegal.id/pengertian/persaingan-usaha-tidak-sehat/>., tanggal 01 Februari 2023.

<sup>24</sup> Andos Rewindo Sirait, *Op.cit*, hlm.1.

this dominant position to occur where it arises when a business actor has economic power that allows him to operate in the market without being affected by competition and then take actions that can reduce competition.<sup>25</sup> The concept of a dominant position will continue to develop, as will the development of the concept of economics and law that underlies it.<sup>26</sup>

Over the past few years, several reports have highlighted the market power of online platforms mediating between business and consumers and the difficulty of classic competition policy tools to deal effectively with anti-competitive practices in platform. This. For example, the German state revised its competition law in 2017 to capture the new features of the digital economy by turning free products/services provided by platforms into a single market.<sup>27</sup> In response, the European Commission recently published a proposal to Digital Markets Act (DMA) to complement existing competition policy tools through liability from before for platforms.<sup>28</sup> DMA is a regulatory system from before inspired by competition law. DMA is one of the European Commission's legislative proposals to develop a fair, safe, accountable and open European digital market.<sup>29</sup>

The DMA will enter into force on the twentieth day after its publication in the Official Journal of the European Union, i.e. on 1 November 2022, and will enter into force six months after it enters into force, i.e. on 2 May 2023. The Digital Markets Act aims to ensure a level playing field for all digital companies, regardless of size. The regulations will set clear rules for large platforms – a list of “do's” and “don'ts” – to stop them from imposing unfair conditions on businesses and consumers.

DMA aims to prevent the world's leading companies in the IT industry from abusing their dominant position by enacting mandatory measures that ensure the formation of open markets.<sup>30</sup> Network effects and economies of scale in tenure and

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<sup>25</sup> Hasbullah, M. Afif, (2020) Penegakan Hukum Persiangan Usaha Dalam Sektor Ekonomi Digital. *Syntax Literate: Jurnal Ilmiah MEA (Manajemen, Ekonomi, Akutansi)*, Volume 4 Nomor 1, hlm. 582-597.

<sup>26</sup> Hasbullah, M. Afif, (2021), Perdebatan Definisi dan Kriteria Posisi Dominan dalam Perspektif Regulasi dan Ekonomi, *Syntax Literate: Jurnal Ilmiah Indonesia*, Volume 6 Nomor 1, hlm. 12.

<sup>27</sup> D. Hendarsyah, (2019), “E-Commerce di Era Indus-tri 4.0 dan Society 5.0,” Volume 8, hlm. 171–184.

<sup>28</sup> SSRN, “The EU Digital Markets Act A Report from a Panel of Economic Experts”, dapat diakses online pada [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3783436](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3783436)., tanggal 01 Februari 2023.

<sup>29</sup> EUR-Lex, “on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act)”, dapat diakses online pada [https://eur-lex.europa.eu.translate.google/legal-content/EN/TXT/?uri=CELEX:32022R1925&x\\_tr\\_sl=en&x\\_tr\\_tl=id&x\\_tr\\_hl=id&x\\_tr\\_pto=sc](https://eur-lex.europa.eu.translate.google/legal-content/EN/TXT/?uri=CELEX:32022R1925&x_tr_sl=en&x_tr_tl=id&x_tr_hl=id&x_tr_pto=sc)., tanggal 02 Februari 2023.

<sup>30</sup> Program Studi Bisnis Digital, “DMA – Peluang Untuk Platform Yang Lebih Kecil Atau Tantangan Bagi Hukum Eropa?”, dapat diakses online pada <https://bisdig.amikompuwoko.ac.id/dma-peluang-untuk-platform-yang-lebih-kecil-atau-tantangan-bagi-hukum-eropa/>., tanggal 02 Februari 2023.

processing data could be a factor entry barrier that strengthens the dominant position of certain companies.<sup>31</sup>

DMA's apply in principle to large businesses called "gatekeepers" and impose a series of obligations they must comply with. These are the rules for big online platforms that love to abuse their market position. Such companies are also called "gatekeepers" or translated as "gatekeepers".

Gatekeeper or gatekeeper is a company that significantly impacts the internal market, provides core platform services that are an essential gateway for business users to reach end users and enjoys an entrenched and long-lasting position in its operations or is expected to enjoy such a position in the near future.<sup>32</sup>

To qualify as gatekeepers, companies must have had annual EU revenues of at least €7.5 billion (\$8.2 billion) over the past three years or have a market value of at least €75 billion (\$82 billion). "Gateway" must also have at least 45 million monthly users and 10 registered business users in the EU.<sup>33</sup>

Gatekeepers are companies that act as an essential link between two or more groups of users (say, buyers and sellers). When they attract the most users on one side of the platform (buyers), the gatekeepers can become unavoidable tolls on the route to specific markets or customers. The user on the other side of the platform (the seller) may have little choice but to use the gatekeeping infrastructure.

In DMA, a gatekeeper is defined as a platform operating in one (or more) of eight core digital world services (including search, social networks, advertising and marketplaces) in at least three EU countries and:<sup>34</sup>

DMA sets the rules about "gatekeepers" in the digital sector. Large corporations serve as barriers between businesses and consumers in the digital world because their size influences internal markets, their ability to control digital gateways is important to business users, and their (hopefully) entrenched and enduring position. Gatekeepers can be search engines, social networking services, certain messaging services, operating systems and online intermediary services.

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<sup>31</sup> Ciuriak, Dan. (2018). *The Economics Of Data: Implications For The Data-Driven Economy*.

<sup>32</sup> Osborne Clarke, "EU rules for 'gatekeepers' coming in 2023 as Digital Markets Act is published" dapat diakses online pada <https://www-osborneclarke-com.translate.google/insights/eu-rules-gatekeepers-coming-2023-digital-markets-act-published? x tr sl=en& x tr tl=id& x tr hl=id& x tr pto=sc.>, tanggal 02 Februari 2023.

<sup>33</sup> Root Nation, "Undang-undang baru di UE akan menghancurkan monopoli sekelompok perusahaan yang disebut Big Tech", dapat diakses online pada [https://root-nation.com/id/ua/news-ua/it-news-ua/ua-zakon-dma-u-es-zruynue-monopoliyu-grupi-big-tech/.](https://root-nation.com/id/ua/news-ua/it-news-ua/ua-zakon-dma-u-es-zruynue-monopoliyu-grupi-big-tech/), tanggal 02 Februari 2023.

<sup>34</sup> Bruegel, "Regulating big tech: the Digital Markets Act", dapat diakses online pada <https://www-bruegel-org.translate.google/blog-post/regulating-big-tech-digital-markets-act? x tr sl=en& x tr tl=id& x tr hl=id& x tr pto=sc.>, tanggal 02 Februari 2023.

### 3.2. Effect of the European Union's Digital Markets Act (DMA) Regulations on Digital Markets

The digital era has brought changes in trading activities which can be understood as changes in the patterns of transactions carried out.<sup>35</sup> Trading activities previously carried out conventionally (traditionally) by visiting markets and/or shops now transact digitally or online in practice<sup>36</sup> Digitalization presents challenges for both business actors and law enforcement themselves. Business actors must adapt to new market mechanisms by considering the risks and opportunities of the digital market. Thus, requiring business people to carry out their business activities online. As a result, buyers will also make purchases online. This implication will have an impact on business competition.<sup>37</sup>

Meanwhile, legal instruments need to be reviewed in adjusting the dynamics of digital-based trade in suppressing unfair business competition and guaranteeing business actors. Existing regulations must pay attention to all aspects and strategic factors in supporting the functioning of the digital market mechanism. The law is an instrument that provides limits on what is permissible and what is not permissible to prevent the emergence of unfair competition, which was unexpected. Besides that, legal authority in maintaining legal certainty is a way of solving problems.<sup>38</sup> This needs to be considered considering that the structure and mechanism of the digital market do not operate like a conventional market. Business competition must be created with a healthy climate for all aspects of business actors, individuals and companies.

Both consumers and companies should benefit from digital markets. However, it may backfire if there are no clear boundaries to follow. Clear laws and regulations will then guarantee the obligations and rights of business actors and consumers, prohibiting unfair commercial competition in the digital market. Business competition in the digital market requires legal provisions that comprehensively suppress unfair competition. Law is needed to control social life in all aspects, including social, political, and cultural, and its impact on economic growth during trading activities.<sup>39</sup> The law is very important to

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<sup>35</sup> M. Armin Bin Ali, (2017), "Penegakan Hukum Persaingan Usaha Di Negara Berkembang (Studi Kasus Putusan KPPU Dalam Perkara Temasek)," *Jatiswara*, Vol. 31, No. 1, hlm. 113–119.

<sup>36</sup> Rohmat, *Op.Cit.*, hlm. 118.

<sup>37</sup> Ahmad Sabirin, "Dampak Ekosistem Digital terhadap Hukum Persaingan Usaha di Indonesia serta Optimalisasi Peran Komisi Pengawas Persaingan Usaha (KPPU) di Era Ekonomi Digital", *Jurnal Persaingan Usaha*, 2021, hlm.75. dapat diakses online pada <https://jurnal.kppu.go.id/index.php/official/article/download/23/18>, tanggal 04 Februari 2023.

<sup>38</sup> M. Julyano and A. Y. Sulistyawan, (2019), "Pemahaman Terhadap Asas Kepastian Hukum Melalui Konstruksi Penalaran Positivisme Hukum," *J. Crepido*, Volume 01, Nomor 1, hlm. 13–22.

<sup>39</sup> R. Manli, H. Kusmayan, and A. Afriana, (2016 ), "Problematika Penegakan Hukum Persaingan Usaha di Indonesia Dalam Rangka Menciptakan Kepastian Hukum," *Padjajaran J. Ilmu Huk.*, Volume 3, Nomor 1, hlm. 116– 132.

prevent disputes between economic resources due to limited economic resources on the one hand and endless demands or needs on the other. The law plays a vital role in economic growth to generate social welfare.

Digital markets are characterized by a “winner takes all” principle, where once a venture advances, it will only get better and better over time, making it harder for other businesses to compete, ultimately resulting in one major player in that market.<sup>40</sup>

The increasing prominence of the digital economy has attracted the attention of governments and competition authorities because competition in digital markets is very different from competition in traditional markets (*offline markets*). Digital marketplaces often include multiple vital features (such as a platform-based business model, a *multi-sided market* (a condition where there is an operator (*platform*) that interacts with two or more users, where available cross-network *effect* between users,<sup>41</sup> *network effect*) which makes the problem of business competition even more complex.<sup>42</sup> In addition, several business competition violations have the potential to occur in the digital era, including:

1. Potential abuse of dominant position.
2. Potential cartel or deal. The emergence of the Digital Platform has made prices between competitors in the market transparent. Data and algorithms enable businesses to predict market trends, map consumers, and adjust their pricing strategies.
3. Control of mergers, acquisitions and consolidation (merger). Mergers that meet specific criteria must be reported to the competition authority. However, generally, the criteria do not include data values controlled by the parties carrying out the Merger.<sup>43</sup>

As a result, several Merger transactions are not required to be notified because they do not meet the criteria, even though the data controlled by the parties carrying out the Merger has a high value. On the other hand, there is the term “*killer acquisition*” or “*killer takeover*”, where many large digital companies invest/take over

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<sup>40</sup> Radovanovic Stojanovic & Partners, “The Digital Markets Act: an ambitious attempt at regulating digital markets”, dapat diakses online pada [https://rspartner.rs.translate.google.com/the-digital-markets-act-an-ambitious-attempt-at-regulating-digital-markets/?\\_x\\_tr\\_sl=en&\\_x\\_tr\\_tl=id&\\_x\\_tr\\_hl=id&\\_x\\_tr\\_pto=sc](https://rspartner.rs.translate.google.com/the-digital-markets-act-an-ambitious-attempt-at-regulating-digital-markets/?_x_tr_sl=en&_x_tr_tl=id&_x_tr_hl=id&_x_tr_pto=sc)., tanggal 06 Februari 2023.

<sup>41</sup> Hagi, Andrei, & Wright, Julian. (2015). Multi-Sided Platforms. *International Journal of Industrial Organization*, 43, hlm. 162–174., lihat juga Yang, Sung Yoon. (2018). Rethinking Modes Of Market Definition For Multi-Sided Platforms. *International Journal of Trade, Economics and Finance*, Volume 9 Nomor 4, hlm. 164–169.

<sup>42</sup> Jdih.Banyuwangikab, “Ini Potensi Pelanggaran Persaingan Usaha di Era Digital”, dapat diakses online pada <https://jdih.banyuwangikab.go.id/berita/detail/ini-potensi-pelanggaran-persaingan-usaha-di-era-digital>., tanggal 06 Februari 2023.

<sup>43</sup> Hukumonline, “Ini Potensi Pelanggaran Persaingan Usaha di Era Digital” dapat diakses online pada <https://www.hukumonline.com/berita/a/ini-potensi-pelanggaran-persaingan-usaha-di-era-digital-lt6006b094f0131?page=2>., tanggal 07 Februari 2023.

small/new companies because they assess them as potential future competitors.<sup>44</sup> The authorities have revoked all mergers with major digital platforms due to potential unfair business competition practices.<sup>45</sup>

To get big profits, it is not uncommon for many companies to try to justify any means. This fraudulent practice is not only detrimental to society but also to the company itself.<sup>46</sup>

The European Union-approved Digital Markets Act (DMA) provides fines for Big Tech who violate it. Non-compliance with DMA obligations can result in:

- Fines (up to 10% of the company's total annual turnover worldwide, or up to 20% in case of repeated violations);
- Periodic penalty payments (up to 5% of the average daily turnover);
- Additional corrective actions in case of systematic violations and after-market investigation.<sup>47</sup>

Under the new law, companies must give business users access to their data and make their messaging services interoperable on other platforms. DMA prohibits tech giants from dominating their services and may no longer prevent users from automatically removing pre-installed apps.

The direct impact of DMA on the large platforms business model, particularly in the short term, is unclear. However, we can make some assumptions about the long-term effects.

- First, DMAs can result in applying "platform laws" in other jurisdictions.
- Second, even if no "platform law" exists in a jurisdiction, DMAs can trigger antitrust cases against platforms that do not have gatekeeper status but have a dominant position. History shows that laws against abuse of dominance can be very broad.
- Third, it prohibits specific strategies that aim to reduce "*contestability*" and can push platforms to look for other strategies so that their products are difficult to compete with.<sup>48</sup>

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<sup>44</sup> C. et al Cunningham, (2021), "Killer Acquisitions, Journal of Political Economy," *The University Chicago Press Journal*, Volume 129.

<sup>45</sup> A. Sara, (2019), "Verghese is Policy Analyst, Inter-national Trade and Investment, World Economic Forum, Cross-policy implications," *White Paper*.

<sup>46</sup> Universitas Gadjah Mada Fakultas Ekonomika dan Bisnis, "Pentingnya Melawan Pelanggaran Etika Bisnis di Era Digital" dapat diakses online pada <https://feb.ugm.ac.id/id/berita/3031-pentingnya-melawan-pelanggaran-etika-bisnis-di-era-digital>., tanggal 07 Februari 2023.

<sup>47</sup> Eucrim, "New EU Rules for Online Platforms" dapat diakses online pada <https://eucrim-eu.translate.google.com/news/new-eu-rules-for-online-platforms/? x tr sl=en& x tr tl=id& x tr hl=id& x tr pto=sc>., tanggal 07 Februari 2023.

<sup>48</sup> Dentons, "EU Digital Markets Act: next steps and long-term outlook" dapat diakses online pada <https://www.dentons-com.translate.google.com/en/insights/articles/2022/december/7/eu-digital-markets-act-next-steps>

The idea of stopping Big Tech companies from mastering the internet has been greeted with enthusiasm and outrage. Many experts agree that it strips the power of this behemoth and increases competition will benefit more people than not. Of course, not everyone is convinced. A common complaint is that legislation will remove incentives to innovate and hinder the quality of goods and services.<sup>49</sup>

Then there's the question of money. DMA is quite complex and would be costly to implement, not only for states but also for so-called gatekeepers. These companies are also among the most widely held stocks in the world, meaning that removing them from their throne would affect ordinary people's finances which the law is supposed to protect.<sup>50</sup>

Big Tech companies have lobbied hard against the new rules. The company has defended itself, alleging that the new law unfairly targets US companies.<sup>51</sup>

According to the European Commission, DMA benefits businesses and individual users. Small businesses and start-ups can offer services in a fairer environment than before. This way, they depend less on gatekeepers to offer their services and have more opportunities to innovate without dealing with unfair terms and conditions. For users, this means a wider variety of options and the ability to control the services they want to use. Users will also find it easier to choose alternative options beyond the limits platform online and choose a fairer competitive price, which will stimulate the market.<sup>52</sup>

Some potential gatekeepers have started adapting their business to the new DMA obligations. For example, Google recently announced it would allow some European developers to use alternative payment systems and explicitly called it an early attempt to comply with the DMA.

#### 4. CONCLUSIONS

Today's business world is characterized by increasingly fierce business competition on a global scale. Business competition or business is the efforts of two parties/more companies, each of which is active in obtaining orders by offering the

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[and-long-term-outlook? x tr sl=en& x tr tl=id& x tr hl=id& x tr pto=sc.](#), tanggal 10 Februari 2023.

<sup>49</sup> Investopedia, "Digital Markets Act (DMA): How the EU Law Will Work" dapat diakses online pada <https://www.investopedia-com.translate.goog/digital-markets-act-7097402? x tr sl=en& x tr tl=id& x tr hl=id& x tr pto=sc.>, tanggal 10 Februari 2023.

<sup>50</sup> *Ibid.*

<sup>51</sup> Media Indonesia, "Denda Besar bagi Big Tech yang Langgar UU Pasar Digital" dapat diakses online pada <https://mediaindonesia.com/teknologi/480829/denda-besar-bagi-big-tech-yang-langgar-uu-pasar-digital.>, tanggal 10 Februari 2023.

<sup>52</sup> Eipa, "The Digital Markets Act: more choice and improved data protection for users?" dapat diakses online pada <https://www-eipa-eu.translate.goog/blog/the-digital-markets-act-more-choice-and-improved-data-protection-for-users/? x tr sl=en& x tr tl=id& x tr hl=id& x tr pto=sc.>, tanggal 10 Februari 2023.

most favourable prices/conditions. The combination of these three factors to win the competition to win the hearts of consumers can be obtained through innovation, application of the right technology, and managerial ability to direct company resources in winning the competition. In response, the European Commission recently published a proposal for a Digital Markets Act to complement existing competition policy tools through mandatory *before* for platforms. DMA is an *ex-ante* regulatory system inspired by competition law. Such companies are also called gatekeepers or translated as gatekeepers. A gatekeeper or gatekeeper is a company that significantly impacts the internal market, providing core platform services that are an essential gateway for business users to reach end users and enjoy an entrenched and long-lasting position in its operations or is expected to enjoy such a position. position in the near future.

DMA sets the rules about gatekeepers in the digital sector. Large corporations serve as a barrier between businesses and consumers in the digital world because of their size influences internal markets, their ability to control digital gateways is important to business users, and their deep-rooted and enduring position. The digital era brings changes in trading activities.

## 5. SUGGESTION

Existing regulations must pay attention to all aspects and strategic factors in supporting the functioning of the digital market mechanism. Business competition must be created with a healthy climate for all aspects of business actors, individuals and companies.

Both consumers and companies should benefit from digital markets. However, it may backfire if there are no clear boundaries to follow. Digital markets often include several key features that make competition issues even more complex. The emergence of the Digital Platform has made prices between competitors in the market transparent. Data and algorithms enable businesses to predict market trends, map consumers, and adjust their pricing strategies.

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### **Legislation**

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