

# Competition Law Perspective on The Assessment of Conglomerate Merger in Indonesia (Case Study: PT. Aplikasi Karya Anak Bangsa (Gojek) with PT. Tokopedia)

Varial Ashari Djafar

Master of Law, Faculty of Law, University of Indonesia

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## ABSTRACT

*This study examines conglomerate merger arrangements about monopoly practices and fair business competition in Indonesia conducted by PT. Aplikasi Karya Anak Bangsa and PT. Tokopedia uses a juridical-normative method with a descriptive research type, and research data is collected through secondary data consisting of legal materials. The results of this study are that KPPU as the authority that has the authority to supervise and examine business competition cases in Indonesia, made Commission Regulation Number 3 of 2019 concerning the Assessment of Mergers or Consolidations of Business Entities, or Acquisition of Company Shares Which May Lead to Monopolistic Practices and/or Unfair Business Competition and Guidelines for Evaluation of Mergers, Consolidations and Acquisitions issued and promulgated on October 6, 2020. The Komisi Pengawas Persaingan Usaha ("KPPU") does not apply the theory of potential competition to this assessment. The Assessment Method for Conglomerate Mergers in Indonesia in current laws and regulations has not yet applied the potential competition theory which can predict market conditions that will occur in the future so that the Merger of PT. GoTo has the potential to create a data monopoly because Gojek and Tokopedia services are practically connected vertically so that it can strengthen the ecosystem of PT. GoTo. The advantage of having an assessment of mergers that eliminates potential entrants as has been implemented by the United States, where the competitive law enforcement authorities there can predict market conditions that will occur in the future if a merger is carried out or not carried out. This research suggests that the Komisi Pengawas Persaingan Usaha should carry out intensive and strict supervision of PT. GoTo in the future and should in evaluating conglomerate mergers, especially in the digital market, apply the potential competition theory to minimize the potential for competitive behavior from giant companies merging in Indonesia.*

## ABSTRAK

Penelitian ini mengkaji pengaturan merger yang bersifat konglomerasi dalam kaitannya dengan praktik monopoli dan persaingan usaha sehat di Indonesia yang dilakukan oleh PT. Aplikasi Karya Anak Bangsa dan PT. Tokopedia menggunakan metode yuridis-normatif dengan tipe penelitian deskriptif, dan data penelitian dikumpulkan melalui data sekunder yang terdiri dari bahan hukum. Hasil dari penelitian ini adalah Komisi Pengawas Persaingan Usaha ("KPPU") sebagai otoritas yang memiliki kewenangan untuk mengawasi dan memeriksa perkara persaingan usaha di Indonesia, membuat Peraturan Komisi Nomor 3 Tahun 2019 tentang Penilaian Terhadap Penggabungan Atau Peleburan Badan Usaha, Atau Pengambilalihan Saham Perusahaan Yang Dapat Mengakibatkan Terjadinya Praktik Monopoli Dan/Atau Persaingan Usaha Tidak Sehat dan Pedoman Penilaian Penggabungan, Peleburan, dan Pengambilalihan yang diterbitkan dan diundangkan pada tanggal 6 Oktober 2020. Terhadap Penilaian tersebut KPPU tidak menerapkan teori *potential competition*. Metode Penilaian terhadap Merger bersifat Konglomerasi di Indonesia dalam peraturan perundang-undangan saat ini, belum menerapkan teori *potential competition* yang dapat memperkirakan kondisi pasar yang akan terjadi di masa yang akan datang, sehingga Merger PT. GoTo berpotensi menciptakan dataopoli karena layanan Gojek dan Tokopedia dalam praktiknya terhubung secara vertikal sehingga dapat memperkuat ekosistem PT. GoTo. Keunggulan dari adanya penilaian terhadap merger yang mengeliminasi *potential entrant* seperti yang telah diterapkan oleh Negara Amerika Serikat, dimana otoritas penegak hukum persaingan usaha disana dapat memperkirakan kondisi pasar yang akan terjadi di masa yang akan

datang jika merger dilakukan ataupun tidak dilakukan. Penelitian ini menyarankan kepada Komisi Pengawas Persaingan Usaha, hendaknya melakukan pengawasan yang intensif dan ketat terhadap PT. GoTo di masa yang akan datang dan hendaknya dalam melakukan penilaian terhadap merger yang bersifat konglomerasi terutama dalam pasar digital dilakukan penerapan teori *potential competition* sehingga meminimalisir potensi adanya perilaku persaingan dari perusahaan raksasa yang melakukan merger di Indonesia

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### Corresponding Author:

Varial Ashari Djafar,  
Faculty of Law,  
University of Indonesia,  
Pondok Cina, Beji, Depo, East Java, Indonesia  
Email: varial.ashari@gmail.com.

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## I. INTRODUCTION

The dynamic of the business world demands the latest innovations as demands from globalization cause competition in the business world to be very fierce. Even the history of mergers has recorded the occurrence of five phases of merger waves in the United States which apparently tend to give birth to monopolistic industrial structures. The three largest types of mergers are horizontal mergers, vertical mergers, and conglomerate mergers. (Patrick A. Gaughan, 1999). From the three types of mergers, each of the three has a different impact from the perspective of competition law. Conglomerate mergers can gain a lot in marketing against acquiring companies. For example, conglomerate mergers can provide an increase from the joint use of distribution and promotion channels as well as marketing, production, and economic research. Based on the marketing management's perspective, acquiring a rationally selected conglomerate can increase the company's chances of competition. However, from the perspective of antitrust institutions, there are strong questions about the social will of certain conglomerate mergers. Like certain horizontal and vertical mergers, private efficiency gains can hinder social efficiency by tending to reduce competition in one or more markets (John C. Narver, 1967).

From a business point of view, actions such as mergers, consolidations, and acquisitions are a form of restructuring of business entities that are commonplace and legitimate to achieve efficiency. However, from a legal point of view, such actions can be viewed as prohibited means (*illegal*) if done based on unnatural motives. Such an unreasonable action is if mergers, consolidations, and acquisitions are carried out with the motive to increase market power to increase the price of goods or services above the level of existing competition or create *barriers to entry* for new competitors, either individually (*unilateral effects*) or collectively (*coordinated effects*). These things will be causing a negative impact that can harm market conditions and the country's economy. Therefore, mergers, consolidations, and acquisitions must be clearly and in detail in a firm and binding legal instrument. This is of course also useful for improving the implementation of a fairer competition for all parties, including parties who will carry out the merger. The practice of mergers has the potential to do monopolistic practices and unfair business competition. Through the merger strategy, business actors try to maintain their position and even dominate the market. This dominance can be gained

through greater market share control, cost leadership, and technology leadership. Excessive dominance allows opportunities for other businesses to compete healthily. If this situation occurs, parties will be harmed because they do not have the space to compete fairly (Abdul Moin, 2007).

Around the end of May 2021, the business world in Indonesia was enlivened by a merger carried out by PT. Aplikasi Karya Anak Bangsa and PT. Tokopedia. They became one giant business entity called GoTo. With the motto *Go Far Go Together*, the two official mergers combine e-commerce, logistics, transportation, and financial services. This corporate action has received the blessing of investors of the two startups who are intertwined with each other such as Alibaba Group, Astra International, BlackRock, Capital Group, DST, Facebook, Google, JD.com, KKR, Northstar, Pacific Century Group, PayPal, Provident, Sequoia Capital India, SoftBank Vision Fund 1, Telkomsel, Temasek, Tencent, Visa dan Warburg Pincus. The joining of the two jumbo-valuation startups gave rise to technology companies with an estimated company value of US\$ 17 billion. Using the assumption of an exchange rate of Rp 14,500, the value reaches Rp 246.5 trillion (CNBC Indonesia, 2021). The merger carried out by the two major companies in the field of digital technology certainly shows an indication of the dominant position in market control in the digital economy trend in Indonesia.

Viewed from the point of view of Competition Law in Indonesia, the merger carried out by PT. Aplikasi Karya Anak Bangsa and PT. Tokopedia is not only related to the magnitude of changes in the asset value of the two companies but also related to the problem of potential unfair business competition practices arising from the merger of conglomerates carried out by the two giant companies in Indonesia. Each country certainly has different arrangements and methods for assessing conglomerate mergers. One of the countries that have more comprehensive arrangements regarding conglomerate mergers among other countries is the United States through various arrangements related to its guidelines listed in *Non-Horizontal Merger Guidelines 1984*. The arrangement in the United States, according to the author is more comprehensive in anti-competitive problems that occur in a transaction in the business world, one of the reasons is that the United States has included a *potential competition* theory. In the assessment method carried out, namely in determining an anti-competition case using the theory of potential competition, where the court has considered various issues related to the economy, such as available capital, marketing, and advertising capabilities, prediction of profits obtained by companies entering the market, the history of company growth, availability to enter the market by acquiring small companies, and market entry barriers specific (such as *price reduction and product differentiation*) (Norman Yoerg, 1987).

Based on the description above, this article contains the main issues which include: how the arrangements regarding mergers are conglomerates based on applicable laws and regulations in Indonesia, as well as how to apply an assessment of a merger or consolidation of business entities, or a takeover of company shares that can result in monopolistic practices and/or unfair business competition in the merger process of PT. Aplikasi Karya Anak Bangsa and PT. Tokopedia based on the provisions of Competition Law in Indonesia.

## II. RESEARCH METHODS

In this study, the authors used mono-disciplinary research based on one discipline, (Sri Mamudji, 2005) namely legal science with normative juridical research methodology (*normative legal research*), namely legal research carried out by conducting research with library materials or secondary data,

namely writing carried out by researching library materials or secondary data which are legislation, court decisions, legal theories, and legal opinions (Soerjono Soekanto, 1986). In writing the results of this research, the author uses a descriptive type of research which is a study that aims to describe a certain situation, symptom, or group to determine the frequency of a symptom, is regarding the assessment of conglomerate mergers carried out by Komisi Pengawas Persaingan Usaha on mergers carried out by PT. Aplikasi Karya Anak Bangsa (GOJEK) and PT. Tokopedia.

### III. RESULT AND DISSCUSION

#### 1. Merger Arrangements in Competition Law in Indonesia

The review of merger activities must be analyzed from the aspect of competition law so that the merged company or bank does not cause the potential to become a dominant position or control market power in the market concerned. As explained earlier, the merger action must pay attention to the community's interests and healthy business competition. Therefore, provisions regarding mergers are also regulated in Law Number 5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition.

The business competition law was formed to safeguard the public interest and improve the efficiency of the national economy to improve the welfare of the community. This law is also expected to provide equal opportunities for every citizen to be able to participate in the production and marketing process of both goods and services in a healthy, effective and efficient business climate that can encourage economic growth. Law No. 5 of 1999 was also formed as an effort to prevent economic concentration on certain business actors that can hinder healthy and reasonable business competition. The purpose and objectives of Law No. 5 of 1999 are stated in articles regulating the forms of agreements that are prohibited, prohibited activities, and the abuse of the dominant position in which arrangements regarding mergers can give rise to monopolistic practices and unfair business competition. In Article 28 of Law No. 5 of 1999, it is stated that business actors are prohibited from merging or consolidating a business entity that can result in monopolistic practices and or unfair business competition. Business actors are also prohibited from taking over shares of other companies if these actions may result in monopolistic practices and or unfair business competition. That further arrangements governing mergers within the scope of the Competition Law to implement the provisions of Article 28 paragraph (3) and Article 29 paragraph (2) of Law Number 5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition, a Government Regulation on the Merger or Consolidations of Business Entities and Takeover of Company Shares that May Result in Monopolistic Practices and Unfair Business Competition Number 57 of 2010 was issued.

This regulation explains in more detail the prohibitions and notices in carrying out Mergers, Consolidations, and Acquisitions. This Government Regulation is made to create a healthy and efficient business climate where there must be no control of economic resources or concentration of economic power in certain groups or groups of elites. Mergers, Consolidations, and Acquisitions that lead to the occurrence of a Monopoly or Unfair Business Competition must be prohibited and avoided while still paying attention to the interests of the wider community, consumers, and also other business actors who are likely to be harmed due to Merger, Consolidations, and Acquisitions actions may result in Monopolistic Practices or Unfair Business Competition. The article that prohibits

Business Actors from Merging Business Entities, Consolidating Business Entities, or Takeover of Company Shares that May Result in Monopolistic Practices and Unfair Business Competition is contained in Article 2 paragraph PP No. 57 of 2010.

## **2. Method of Assessment of Conglomerate Merger May Result in Monopolistic Practices and/or Unfair Business Competition in Indonesia**

Following the Article 2 by Government Regulation No. 57 of 2010 explains that monopolistic practices and/or unfair business competition occur if the business entity resulting from the merger, and/or the result of the merger, or the business actor who takes over the shares of another company is suspected of committing (1) A prohibited agreement; (2) Prohibited activities; and/or (3) Abuse of dominant position.

Referring to Article 3 paragraph (1) of PP 57 of 2010 which states that the commission assesses the merger, consolidations, and acquisitions that have been effective and are suspected of causing monopolistic practices and or unfair business competition, we can see the Regulation of the Komisi Pengawas Persaingan Usaha Number 3 of 2019, KPPU conducts an assessment based on market concentration analysis, market entry barriers, potential anti-competitive behavior, efficiency, and insolvency. This is by what is mandated in Article 3 paragraph (2) of PP 57 of 2010 concerning Mergers or Consolidations of Business Entities and Takeover of Company Shares May Result in Monopolistic Practices and Unfair Business Competition.

The assessment-related analysis used by KPPU to assess conglomerate mergers that may give rise to monopolistic practices or unfair business competition is explained in the Regulation of the Komisi Pengawas Persaingan Usaha Number 3 of 2019 and the Guidelines for Assessing Mergers, Consolidations, and Acquisitions issued and promulgated on October 6, 2020. The method is fully described as follows: (Komisi Pengawas Persaingan Usaha, 2022).

### **a. Market Concentration**

Market concentration is an early indicator to assess Mergers, Consolidations, or Acquisitions that may result in monopolistic practices and/or unfair business competition. Market Concentration Analysis will result in conclusions: 1. Mergers, Consolidations, or Acquisitions that create market concentrations that do not have the potential to result in monopolistic practices and/or unfair business competition; or 2. Mergers, Consolidations, or Acquisitions that create market concentrations that have the potential to result in monopolistic practices and/or unfair business competition.

The analysis of market concentration begins by first defining the Relevant Market. The analysis of market concentration begins by first defining the Relevant Market. Following Article 1 number 10 of Law No. 5/1999, the Relevant Market is a market related to a certain reach or marketing area by Business Actors for the same or similar goods and/or services or substitution of these goods and/or services. Analysis of market concentration in Conglomerate Mergers or Takeovers which are categories of business fields that are not related horizontally or vertically pays attention to the potential impact of competition that can occur if a conglomerate-resulting business entity has a portfolio of products or services that can be sold by tying and/or bundling. KPPU will assess the existence of potential tying and/or bundling of a Conglomerate Merger, Consolidation, or Takeover transaction. A thorough assessment is not conducted if there is no potential tying and/or bundling of a Conglomerate Merger, Consolidation, or Takeover transaction.

### **b. Entry Barrier**

Entry Barriers in the Market are the existence of higher than reasonable costs or other obstacles that prevent new Business Actors from entering the Market Concerned. This barrier to entry provides

benefits to Business Actors who are already in the market (existing) because it protects the income and profits of these Business Actors. If there are no Barriers to Market Entry, Business Entities after a Merger, Consolidation, or Takeover with large market share will find it difficult to carry out anti-competitive behavior. This is because the Business Entity at all times faces competitive pressure with the emergence of new Business Actors in the market. With a high Barrier to Market Entry, a Business Entity resulting from Mergers, Consolidations, or Acquisitions with middle market control has the possibility of abusing its position to hinder competition or exploit consumers.

### c. Potential Anti-Competition Behavior

Analysis of potential anti-competitive behavior based on Unilateral Impact analysis, Coordinated Impact, and Market Foreclosure can be described as follows:

#### (1) *Unilateral Effect*

Coordinated Impact is the impact of the result of a Merger, Consolidation, or Takeover that does not produce 1 (one) dominant Business Actor in the Relevant Market that is increasingly concentrated, but there are still several Business Actors who are significant competitors to the Business Entity resulting from the Merger, Consolidation, or Takeover. In conducting a Coordinated Impact analysis, KPPU pays attention to, among others: (a.) market transparency that allows for the knowledge of strategies between competitors, for example, price transparency; (b.) differentiation of products sold on the market; (c.) the existence of an independent company that does not agree with competitors (mavericks) in the relevant market; (d) close linkages between competitors, for example through cross-shareholding or similarity of directors and/or commissioners; (e.) the historical conditions of competition in a market are important to know. Historical conditions are used to assess tendencies: the presence or absence; or the strengthening of it; coordinated behavior post Merger, Consolidations, and Takeover; (f.) historical data on the ease of entry of new entrants in the market; (g.) the existence of buyer bargaining power in the market that can prevent coordinated behavior; and/or (h.) other matters that may indicate a tendency to arise or intensify coordinated behavior following a Merger, Consolidation, or Takeover.

#### (2) *Coordinated Effect*

- a) Coordinated Impact is the impact of the result of a Merger, Consolidation, or Takeover that does not give birth to 1 (one) dominant Business Actor in the Relevant Market that is increasingly concentrated, but there are still several Business Actors who are significant competitors to the Business Entity resulting from the Merger, Consolidation, or Takeover. In conducting a Coordinated Impact analysis, KPPU pays attention to, among others: a. Market transparency that allows knowing strategies between competitors, for example: price transparency;
- b) Differentiation of products sold on the market;
- c) The existence of an independent company that does not agree with competitors (mavericks) in the relevant market;
- d) Close linkages between competitors, for example through cross-shareholding or similarity of directors and/or commissioners;
- e) The historical conditions of competition in a market are important to know. Historical conditions are used to assess trends: The presence or absence; or The strengthening of it; coordinated behavior post Merger, Consolidations, and Takeover; Historical data on the ease of entry of new entrants in the market; The existence of buyer bargaining power in the market that can prevent coordinated behavior; and/or Other things that may indicate a tendency to develop or intensify coordinated behavior after a Merger, Consolidations, or Takeover.

#### d. Market Access Closure

The form of Market Access Closure can occur by increasing the costs required by competing Business Actors to sell their products to the market (raising rivals' cost), by not providing market access to competing Business Actors; providing access but with discriminatory prices, quality, and/or terms of trade; refuse to supply; and/or supplying but at a higher price to its competitors.

#### e. Efficiency

Efficiency arguments must be submitted by the Business Actor who performs the Notification by indicating: the calculation of the efficiency resulting from the Merger, Consolidation, or Takeover and the benefits that will be enjoyed by consumers as a result of such efficiency; cost savings; increased use of existing capacity; increased economies of scale; network upgrade; product quality improvement; and/or other matters as a result of a Merger, Consolidation, or Takeover. and there is no potential harm to other business actors in the relevant market. Efficiency tends to have an impact on price reductions in the short term if the Business Entity after the Merger, Consolidation, or Takeover makes savings on variable costs or marginal costs. On the other hand, savings on fixed costs generally do not have an impact on price reductions in the short term, so efficiency in this case is not enjoyed by consumers directly. KPPU, therefore, emphasizes the importance of an efficiency explanation that distinguishes between savings to variable costs, marginal costs, or fixed costs.

#### f. Insolvency

Insolvency arguments must be submitted by the Business Entity that performs the Notification. KPPU considers the insolvency argument in the event that a Business Entity can prove: is in a state of insolvency so that it will exit the market in the near term if it does not carry out a Merger, Consolidation, or Takeover; A Merger, Consolidation, or Takeover is the only way to avoid insolvency; there is no potential for reduced level of competition in the market in the form of monopolistic practices and/or unfair business competition resulting from the Merger, Consolidation, or Takeover; and/or the potential for greater consumer losses if they do not make a Merger, Consolidation, or Takeover.

### **3. The Assessment of Conglomerate Merger between PT. Aplikasi Karya Anak Bangsa (GOJEK) and Tokopedia by KPPU and the relation with Potential Competition Theory**

Based on KPPU Press Release No. 038/KPPU-PR/V/2021 with the title KPPU AWASI POTENSI PELANGGARAN PASKA PEMBENTUKAN GRUP GOTO, it is known that KPPU as a law enforcement authority in the field of business competition simultaneously supervises various corporate actions that have implications for business competition, both mergers and acquisitions and strategic alliances. The supervision will focus on various relevant markets in the GoTo Group ecosystem, as well as the potential for monopolistic practices or unfair business competition that can arise after the transaction. For information, in international practice, a transaction in a digital market generally involves a multi-sided market. In this regard, the market that monitors is quite diverse and requires complex network effect analysis.

Furthermore, based on the KPPU Press Release Number 05 / KPPU-PR / II / 2022 with the title KPPU LAKUKAN PENILAIAN MENYELURUH ATAS NOTIFIKASI AKUISISI TOKOPEDIA OLEH GOJEK, it is known that KPPU conducts an Assessment through 2 (two) stages, namely Initial Assessment and Comprehensive Assessment. The Initial Assessment is carried out through market concentration analysis to determine the potential impact of transactions on business competition in the industry and/or market. If an analysis of market concentration finds such potential impacts, then the Initial Assessment process will proceed to the Comprehensive Assessment stage. The Comprehensive Assessment will focus on several analyses such as market entry barriers, potential anti-competitive behavior, efficiency, and/or insolvency. Meanwhile, on March 14, 2022, KPPU issued Notification No.

A111121, KPPU stated that there were no allegations that could result in monopolistic practices and/or unfair business competition in the takeover of Tokopedia's shares.

Not a few argue that the merger is not a monopoly practice because Gojek and Tokopedia are not competitors. When viewed from the literature for mergers in the conventional market, it is true that mergers between business actors who are not competitors do not risk creating monopolies because they do not increase concentration in the market. Nevertheless, PT. GoTo does not operate in the conventional market, but in the digital market. This is important to highlight because the digital market has different economic characteristics than the conventional market. The combination of strong network effects, competitive advantages of big data, and high barriers to entry makes the digital market vulnerable to being monopolized because the dynamics of competition become winner-takes-all. Therefore, we cannot use a conventional approach in responding to the merger of PT. GoTo because it is in the digital market is a mistake in the approval of a merger can condemn an industry to a monopoly. (Stigler Committee on Digital Platform, 2019).

This business model in the digital marketplace offers enormous benefits in terms of new and innovative service options, availability or coverage on a domestic and often international scale, and delivery over increasingly fast broadband connections. However, each also has a series of potentially anti-consumer and anti-competitive issues. In a market dominated by cross-border platform businesses, choices can be limited by the marketing practices of the platform in question, for example, by restricting vendors' access to the platform or by more traditional binding contracts and refusal to transfer customers' personal data to other service providers thereby reducing consumer mobility. Service providers can also carve out markets for different pricing or product promotions and while this may not be anti-competitive, this raises controversial issues that also exist in the non-digital world, where consumers may want to buy cheaper versions of the same product through parallel imports (Asia-Pacific Economic Cooperation, 2022).

One approach that has a lot to do with overarching assessments in terms of conglomerate mergers in the digital market is to use the *Potential Competition Theory*. *Potential competition theory* is an economic theory that provides an argument that conglomerate mergers can cause reduced competition in the relevant market. This *Potential Competition Theory* influences the analysis of mergers in two directions. A merger carried out by one of the few companies will not reduce the competition if the barriers to entry to the market are low enough and other companies in the market remain ready to operate, but on the contrary will provide a threat to enter the market if the company that is already in the market is bound in an anti-competitive attitude. On the other hand, this theory states that a merger can lead to reduced competition even when the parties to the merger are not competitors when the merger eliminates new companies that will enter a potential market that holds existing companies in the market. (Asia-Pacific Economic Cooperation, 2022).

*Potential Competition* can be defined as a competitive constraint on the behavior of a company that has *the potential to arise* but has not actually done so. Therefore, potential competition constraints can be useful to distinguish from *potential competitors* or *participants* who may have imposed existing competitive restrictions on the company's behavior, even though they have not *competed in that market*. For example, a potential competitor might be currently selling a product that isn't competing, or it might not sell at all. In both cases, if the possibility of entry has already affected the behavior of the company, then the obstacle already exists. Focusing on existing constraints, whether from existing competitors or potential entrants, will be much easier because the impact must be observable in existing market data and internal documents i.e. the market should have taken them into account. (Stephen F. Ross, 1993).

The debate about the importance of potential competition and how to assess it under competition laws, however, also extends to unregulated markets where innovation is important, for example in digital markets. This includes a multi-sided platform market where a large network effect can direct

the market to a single company, meaning that there are very few actual constraints, and therefore any remaining potential constraints become critical. Potential competitive constraints are also important for any supply market, for example for concessions, as well as for any market where consumer demand requires the flow of innovative products. (The Organization for Economic Cooperation and Development, 2021). Assessing the competitive impact of acquisitions is an integral part of antitrust law enforcement. There has been a lot of attention paid to certain categories of acquisitions in recent years, namely, the acquisition of potential competitors and the threat of nascent competition. In that regard, there are concerns that post-acquisition, the acquiring company will discontinue a competitor's product, or a potential competitor, of a product acquired in what is labeled a "killer acquisition." (John M. Yun, 2022).

One of the applications related to the potential competition theory is stated by the United States through the Merger Guidelines 1984 regulations governing the provisions regarding conglomerate mergers in the Non-Horizontal Merger section which in that section also regulates the provisions regarding vertical mergers. To assess a conglomerate merger, *the Merger Guidelines* and courts have established a criterion. The main concern of *the Merger Guidelines* and courts seems to be the possibility of reduced potential competition as a result of *the merger*. (Norman Yoerg, 1987). In Indonesia, the guidelines for conducting merger assessments are regulated by Komisi Pengawas Persaingan Usaha Regulation Number 3 of 2019. These guidelines govern the terms for mergers in general. The assessment methods used for merger analysis based on these guidelines are market concentration, market entry barriers, potential anti-competitive behavior (consisting of unilateral effect, coordinated effect, and market foreclosure), efficiency, and/or insolvency. Unlike in the United States, these guidelines do not provide for conglomerate mergers specifically. In Indonesia, there is no provision to assess a merger that eliminates *potential entrants*. The review of merger activities must be analyzed from the aspect of competition law so that the merged company or bank does not cause the potential to become a dominant position or control market power in the market concerned. As explained earlier, the merger action must pay attention to the interests of the community and also healthy business competition. Therefore, provisions regarding mergers are also regulated in Law Number 5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition. The competition law in Indonesia was formed with the aim of safeguarding the public interest and improving the efficiency of the national economy as an effort to improve the welfare of the community.

The advantage of the merger assessment is that can eliminates the *potential entrant* in the United States is the competition law enforcement authority there can estimate market conditions that will occur in the future if the merger is carried out or not carried out. This assessment can be used even before any actual violations occur. This assessment will be a preventive measure to prevent violations of competition law in the form of monopolistic practices or unfair business competition. By looking at the assessment of the rules in Indonesia, the existing rules in Indonesia are not made to predict future market conditions. The rules for assessing mergers in Indonesia only examine at the actual conditions that occur in the market, but do not examine at potential conditions that may occur in the future. This will result if in Indonesia there is a conglomerate merger that eliminates *potential entrants* as is the case in the United States, the merger cannot be acted upon because Indonesia does not have rules that look at the potential that occurs in the future such as those owned by the United States.

Merger PT. GoTo has the potential to create dataopoli because Gojek and Tokopedia services are connected vertically so that they can strengthen the Goto ecosystem. Dataopoli is a digital platform that has evolved into a dominant ecosystem so that users, sellers, and advertisers become dependent on that ecosystem. Through this ecosystem, dataopoli gets massive volumes and types of data at a high speed so that insights from big data can be used to strategize to get rid of competitors and exploit consumers. Merger PT. GoTo can also provide capabilities and incentives for PT. GoTo to close market

access because Gojek has services, such as fintech which is an important input for transactions on the *marketplace platform*. Therefore, Gojek can block the access of Gopay competitors to provide fintech services on Tokopedia to increase Gopay's market share. In addition, because of PT. GoTo is a multi-sided platform, PT. GoTo can also close market access, either by prohibiting drivers or sellers from using the services of competing platforms.

#### IV. CONCLUSIONS

Based on the subject matter, as well as the results of research and discussion, it can be concluded that: Regulations regarding mergers, consolidations, and takeover that may result in monopolistic practices are regulated in Law No. 5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition. The law was formed as an effort to prevent economic centralization on certain business actors that can hinder healthy and reasonable business competition. The purpose and objectives of Law No. 5 of 1999 are stated in articles regulating the forms of agreements that are prohibited, prohibited activities, and also the abuse of the dominant position in which there are arrangements regarding mergers that can give rise to monopolistic practices and unfair business competition. That further arrangements governing mergers within the scope of the Competition Law to implement the provisions of Article 28 paragraph (3) and Article 29 paragraph (2) of Law Number 5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition, a Government Regulation on the Merger or Consolidation of Business Entities and Takeover of Company Shares that Can Result in Monopolistic Practices and Unfair Business Competition Number 57 of 2010. Furthermore, KPPU as the authority that has the authority to supervise and examine business competition cases in Indonesia makes Commission Regulation Number 3 of 2019 concerning the Assessment of Mergers or Consolidations of Business Entities, or Takeover of Company Shares That May Result in Monopolistic Practices and/or Unfair Business Competition and also Guidelines for Assessment of Mergers, Consolidations, and Takeovers issued which promulgated on October 6, 2020.

Based on the Determination of Notification No. A111121 dated March 14, 2022, issued by KPPU, KPPU stated that there are no allegations that can result in monopolistic practices and/or unfair business competition in the takeover of Tokopedia's shares and KPPU Press Release Number 05/KPPU-PR/II/2022 with the title KPPU LAKUKAN PENILAIAN MENYELURUH ATAS NOTIFIKASI AKUISISI TOKOPEDIA OLEH GOJEK, KPPU has conducted a Preliminary Assessment and continued a Comprehensive Assessment focused on several analyses such as market entry barriers, potential anti-competitive behavior, efficiency, and/or insolvency. Against this assessment, KPPU did not apply *the potential competition theory*. The Assessment Method for Conglomerate Mergers in Indonesia in the current laws and regulations, has not applied *the potential competition theory* that can estimate market conditions that will occur in the future, so the Merger of PT. GoTo has the potential to create dataopoli because Gojek and Tokopedia services are in practice connected vertically so that they can strengthen the PT. GoTo ecosystem. The advantage of the existence of a merger assessment that eliminates potential entrants has been implemented by the United States, where the competition law enforcement authorities there can estimate market conditions that will occur in the future if the merger is carried out or not carried out. This assessment can be used even before any actual violations occur. This assessment will be a preventive measure to prevent violations of competition law in the form of monopolistic practices or unfair business competition. By looking at the valuation of the rules in Indonesia, the existing rules in Indonesia are not made to predict future market conditions.

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