

## Potential Abuse of Dominant Position By Tiktok Shop Post Acquisition With Tokopedia

**Edwina Kesdimeiza Sukmaningrum\***

*Fakultas Hukum, Universitas Islam Indonesia, Yogyakarta, Indonesia,  
20410184@alumni.uui.ac.id*

**Indah Parmitasari**

*Fakultas Hukum, Universitas Islam Indonesia, Yogyakarta, Indonesia,  
154101304@uui.ac.id, ORCID ID 0000-0002-0821-464X*

**Abstract.** This research aims to analyze the potential abuse of a dominant position resulting from the acquisition of Tokopedia by TikTok Shop. The research problem in this study focuses on the analysis of social commerce transactions of TikTok Shop and Tokopedia, as well as analyzing the potential dominant position arising from the acquisition of Tokopedia by TikTok. The research method used is juridical-normative, by applying the method of statutory approach, case approach, and conceptual approach. Data were collected through literature study (library research) on primary legal materials, secondary legal materials and tertiary legal materials, which were then analyzed descriptively-qualitatively. The results of the study show that TikTok has complied with the regulations by transferring payments to Tokopedia, however, the unclear transaction structure can cause confusion for consumers regarding the responsibilities of each party. This indicates a lack of transparency and clarity, which is an important element in the principles of economic democracy, as stipulated in Article 2 and Article 3 of the Anti-Monopoly Law. In addition, the merger of two dominant players in the Indonesian e-commerce industry also has the potential to lead to abuse of a dominant position in the future, which is contrary to the provisions of the Anti-Monopoly Law.

**Keywords:** Acquisition, E-commerce, Dominant Position, TikTok Shop, Social-commerce

**Abstrak.** Penelitian ini bertujuan untuk menganalisis penyalahgunaan potensi posisi dominan akibat akuisisi Tokopedia oleh TikTok Shop. Rumusan masalah dalam penelitian ini yaitu berfokus pada analisis transaksi social commerce TikTok Shop dan Tokopedia, serta menganalisis potensi posisi dominan yang ditimbulkan akibat akuisisi Tokopedia oleh TikTok. Metode penelitian yang digunakan adalah yuridis-normatif, dengan menerapkan metode pendekatan perundang-undangan, pendekatan kasus, dan pendekatan konseptual. Data dikumpulkan melalui studi pustaka (library research) terhadap bahan hukum primer, bahan hukum sekunder dan bahan hukum tersier, yang selanjutnya dianalisis secara deskriptif-kualitatif. Hasil penelitian menunjukkan TikTok telah mematuhi regulasi dengan mengalihkan pembayaran ke Tokopedia, akan tetapi struktur transaksi yang tidak jelas dapat menimbulkan kebingungan bagi konsumen mengenai tanggung jawab masing-masing pihak. Hal ini mengindikasikan kurangnya transparansi dan kejelasan, yang merupakan elemen penting dalam prinsip demokrasi ekonomi, sebagaimana diatur dalam Pasal 2 dan Pasal 3 Undang-Undang Anti Monopoli. Selain itu, penggabungan dua pemain dominan di industri e-commerce Indonesia juga berpotensi menimbulkan penyalahgunaan posisi dominan di masa depan, yang bertentangan dengan ketentuan Undang-Undang anti-monopoli.

**Kata kunci:** Acquisition, E-commerce, Dominant Position, TikTok Shop, Social-commerce

Submitted: 23 December 2024 | Reviewed: 8 January 2025 | Revised: 31 January 2025 | Accepted: 4 February 2025

## INTRODUCTION

E-commerce is any buying or selling activity or transaction conducted using electronic media (internet).<sup>1</sup> E-commerce can be accessed through various platforms in Indonesia such as Shopee, Lazada, Tokopedia, and others. The increasing number of business actors in this sector significantly drives the intensification of business competition, creating a competitive and challenging market dynamic.<sup>2</sup> TikTok is a social media and music video platform that allows users to create, edit, and share short videos.<sup>3</sup> According to a recent report from We Are Social in January 2024, TikTok's advertising reach in Indonesia reached 126.83 million audiences, placing it as the country with the second-largest TikTok advertising reach in the world.<sup>4</sup> Recognizing the vast market potential, TikTok developed an e-commerce feature, enabling direct purchases within the app through TikTok Shop. This transformation has made TikTok not only a social media platform but also a social commerce platform, combining the functions of social media and e-commerce within a single platform. The Government of the Republic of Indonesia has issued Minister of Trade Regulation Number 31 of 2023 on Business Licensing, Advertising, Guidance, and Supervision of Business Actors in Trading Through Electronic Systems (hereinafter referred to as Regulation of the Minister of Trade Number 31 of 2023) as an amendment to Regulation of the Minister of Trade Number 50 of 2020 on September 26, 2023.<sup>5</sup> In the regulation, Article 21 prohibits social commerce platforms from providing payment transaction features through their own electronic systems. The government has taken steps to suspend buying and selling activities carried out through the TikTok platform. This decision is based on the consideration that TikTok does not yet have official permission to operate

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<sup>1</sup> Nanda Jarti, et.al, *Sistem E-Commerce*, Ctk. Pertama, Eureka Media Aksara, Purbalingga, 2023, page 1.

<sup>2</sup> Mohammad Orinaldi, "Peran *E-Commerce* dalam Meningkatkan Resiliensi Bisnis di era Pandemi", *Ultizam Journal of Shariah Economic Resea*, Edisi No. 2 Vol. 5, Universitas Islam Negeri Sultan Thaha Syaifuddin Jambi, 2020, page 44-45.

<sup>3</sup> Putri Naning Rahmana, et.al., "Pemanfaatan Aplikasi TikTok Sebagai Media Edukasi di Era Generasi Z", *Jurnal Teknologi Pendidikan*, Edisi No. 2 Vol. 11, Universitas Nusantara PGRI Kediri, 2022, page 403.

<sup>4</sup> Cindy Mutia Annur, "Iklan TikTok di Indonesia Jangkau 126 Juta Audiens, Terbanyak ke-2 Global", in <https://databoks.katadata.co.id/datapublish/2024/03/06/iklan-tiktok-di-indonesia-jangkau-126-juta-audiens-terbanyak-ke-2-global>, Accessed on 25 March 2024.

<sup>5</sup> Intan Rakhmayanti Dewi, "Deretan Fakta TikTok Shop Ditutup di Indonesia Hari Ini", in <https://www.cnbcindonesia.com/tech/20231004105351-37-477747/deretan-fakta-tiktok-shop-ditutup-di-indonesia-hari-ini>, Accessed on 27 March 2024.

as an e-commerce platform.<sup>6</sup> Through these issues, TikTok has made the decision to temporarily halt the buying and selling services that were previously growing organically within its platform. This decision reflects TikTok's commitment to operating legally and transparently in accordance with the policies set by the government.<sup>7</sup>

In an effort to continue operating in Indonesia after the government shut down its buying and selling activities, TikTok appears to have taken a strategic step by collaborating with Tokopedia, one of the leading e-commerce platforms in the country. On December 11, 2023, TikTok and Tokopedia officially announced a deep strategic partnership between the two. TikTok acquired a 75.01% majority share in Tokopedia through an investment of over US\$1.5 billion in order to realize the strategic partnership between the two.<sup>8</sup> However, in practice, even though TikTok has partnered with Tokopedia, shopping transactions still take place within the TikTok application itself.

Notification of the acquisition of Tokopedia's shares by TikTok has been submitted to the Business Competition Supervisory Commission (KPPU). The KPPU is currently reviewing the notification of the acquisition of 75.01% of Tokopedia's shares by TikTok to assess its impact on business competition in the e-commerce sector. This process involves market concentration analysis and a thorough evaluation of the potential for monopolistic practices. TikTok has held hearings with the KPPU, expressing its commitment to maintaining healthy business competition, supporting Micro, Small, and Medium Enterprises (MSMEs), and promoting local products, as well as preventing the circulation of illegal imported products.<sup>9</sup> TikTok and Tokopedia have

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<sup>6</sup> Nurmayanti, "Kemendag Pastikan TikTok Belum Ajukan Peizinan *e-commerce*", in [https://www.kemendag.go.id/berita/pojok-media/kemendag-pastikan-tiktok-belum-ajukan-perizinan-e-commerce#:~:text=e%2Dcommerce..,\(Dok%2FFimela.com%2FTikTok%20Shop\).,niaga%20elektronik%20atau%20e%2Dcommerce](https://www.kemendag.go.id/berita/pojok-media/kemendag-pastikan-tiktok-belum-ajukan-perizinan-e-commerce#:~:text=e%2Dcommerce..,(Dok%2FFimela.com%2FTikTok%20Shop).,niaga%20elektronik%20atau%20e%2Dcommerce), Accessed on 27 March 2024.

<sup>7</sup> <https://newsroom.tiktok.com/in-id/informasi-terkini-dari-tiktok-shop-indonesia>, Accessed on 28 March 2024.

<sup>8</sup> Muhammad Ahdaf Amali, "TikTok dan Tokopedia Bersatu, Apa Dampaknya?", <https://arek.its.ac.id/hmsi/2023/12/30/tiktok-dan-tokopedia-bersatu-apa-dampaknya/>, Accessed on 28 March 2024.

<sup>9</sup> <https://kppu.go.id/blog/2024/04/tiktok-temui-kppu-jelaskan-komitmennya-untuk-persaingan-sehat/>, Accessed on 19 June 2024.

the same position in the e-commerce market in Indonesia since they both facilitate online buying and selling transactions.

TikTok Shop has a market share of 13.2% in Indonesia, while Tokopedia has a market share of 13.9%.<sup>10</sup> The features available in TikTok Shop include the yellow shopping cart, seller-buyer communication, and payments can be made directly, and promo codes can be entered at product checkout.<sup>11</sup> Likewise, Tokopedia has similar features, such as buying and selling features, top-up and bill payment features, free shipping features, discount features, and others.<sup>12</sup> This indicates that both services have the same market share, which is e-commerce. The acquisition of a majority share in Tokopedia by TikTok raises concerns about the occurrence of monopolistic practices or excessive market concentration in the social media and e-commerce sectors in Indonesia. By combining the strengths of two major players, there is a risk that this merger could hinder healthy business competition and harm consumer interests.<sup>13</sup> Furthermore, with significant market power, there are concerns that the merged company could easily implement anti-competitive practices, such as unfair pricing, restricting access for new competitors, or abusing a dominant position to stifle innovation.<sup>14</sup>

The acquisition of a majority share in Tokopedia by TikTok has the potential to violate the provisions of the Law on the Prohibition of Monopolistic Practices and Unfair Business Competition (hereinafter referred to as the Anti-Monopoly Law). Abuse of a dominant position by business actors is regulated in Article 25 paragraph (1) of the Anti-Monopoly Law, which prohibits business actors from using their dominant

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<sup>10</sup> Maulina Ulfa, "Resmi Caplok Tokopedia, Pangsa Pasar TikTok di Asia Tenggara Bisa Makin Jumbo, in <https://www.idxchannel.com/amp/market-news/resmi-caplok-tokopedia>, Accessed on 16 May 2024.

<sup>11</sup> Muhamaad Daral Darullah dan Rinabi Tanamal, "Faktor yang Paling Mempengaruhi Keputusan dalam Menggunakan TikTok Shop", *Journal of Economic, Management, Accounting and Technology (JEMATech)*, Edisi No. 2 Vol. 5, Program Studi Information System for Business Universitas Ciputra, Agustus 2023, page 168.

<sup>12</sup> Furqon Kautsar Syabani, et.al., "Analisis dan Pengembangan Fitur Aplikasi Tokopedia menggunakan Metode *Design Thinking*" Makalah Disampaikan dalam *Seminar Nasional : Inovasi & Adopsi Teknologi*, STMIK ROSMA Karawang, 2022, page 55.

<sup>13</sup> Leni Wandira, "Soal Potensi Monopoli TikTok Akuisisi Tokopedia Ini Kata IDIEC", in <https://industri.kontan.co.id/news/soal-potensi-monopoli-tiktok-akuisisi-tokopedia-ini-kata-idiec>, Accessed on 12 May 2024.

<sup>14</sup> Angie Fauziah Dwiliandari, "Dilematika Pelonggaran Pengawasan Aksi *Merger* sebagai Kebijakan Reformasi Pemulihan Ekonomi", *Jurnal Persaingan Usaha*, Edisi No. 1 Vol. 1, Fakultas Hukum Universitas Indonesia, 2021, page 44.

position, either directly or indirectly. This restriction applies if the dominant position results in: a) One business actor or one group of business actors controlling more than 50% of the market share of one type of good/service; or b) Two or three business actors or groups of business actors controlling more than 75% of the market share of one type of good/service.<sup>15</sup>

The purpose of TikTok's purchase of a majority share in Tokopedia, as a form of cooperation between the two digital platforms, is that TikTok as a social media platform and Tokopedia as an e-commerce platform seek to combine their strengths to create synergy that can expand market reach and increase operational efficiency. Through this collaboration, TikTok aims to leverage Tokopedia's e-commerce infrastructure and vast user base to strengthen its position in the Indonesian e-commerce market. Conversely, Tokopedia can utilize TikTok's popularity and interactive technology to enhance the online shopping experience for consumers, expand its network of sellers, and introduce new and innovative features.<sup>16</sup>

However, there are issues and doubts regarding TikTok's purchase of a majority share in Tokopedia. One of the main concerns is that TikTok bought Tokopedia's shares solely to obtain regulatory permits and increase its operational legitimacy in Indonesia. In actual practice, if the entire TikTok Shop e-commerce system and transactions still remain within the TikTok application without transitioning to the Tokopedia application, then this acquisition can be seen as an attempt to circumvent applicable legal provisions. This creates a risk that TikTok can continue to facilitate payment transactions within its own system, which is contrary to Article 21 paragraph (3) of the Minister of Trade Regulation Number 31 of 2023. Thus, this acquisition has the potential to not only result in excessive market concentration but also blur the regulatory boundaries designed to maintain healthy and fair business competition in the Indonesian e-commerce market.

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<sup>15</sup> Hermansyah, *Pokok-Pokok Hukum Persaingan Usaha di Indonesia*, Ctk. Pertama, Kencana, Jakarta, 2008, page 44-45.

<sup>16</sup> Kholifatul Muna and Budi Santoso, "Regulasi Izin Perdagangan TikTok Shop sebagai Fitur Tambahan Aplikasi TikTok di Indonesia", *Jurnal USM Law Review*, Edisi No. 1 Vol. 7, Fakultas Hukum Universitas Diponegoro, 2024, page 424.

The sale of a majority stake in Tokopedia to TikTok raises serious concerns about the abuse of a dominant position because it can conflict with the provisions of Article 25 of the Anti-Monopoly Law. In this context, it needs to be considered that monopolistic practices not only could harm the online market but could also extend to the offline market. Based on the explanations and descriptions above, along with the problems, this research will focus on social commerce transactions carried out by TikTok Shop and Tokopedia from the perspective of business competition law in Indonesia and analyze the potential abuse of a dominant position caused by TikTok Shop after the acquisition with Tokopedia.

## **METHODOLOGY**

This research is a normative-juridical legal research, with the research approaches used are the statutory approach, case approach, and conceptual approach. The research object is the acquisition of Tokopedia by TikTok, using Law Number 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition and Regulation of the Business Competition Supervisory Commission Number 3 of 2023 on Assessment of Mergers or Consolidations of Business Entities or Acquisition of Company Shares. The research data sources consist of primary legal materials (laws and regulations), secondary legal materials (books, literature, journals, and internet sources), and tertiary legal materials (Indonesian Dictionary and Legal Dictionary). The data collection technique used is literature study, by analyzing and collecting written legal materials related to the research. Data analysis is carried out using the descriptive-qualitative analysis method.

## **RESULT AND DISCUSSION**

### **Social Commerce Transactions on TikTok Shop and Tokopedia**

The rapid development of information and communication technology has resulted in a significant transformation in the digital business ecosystem. Social commerce is a blend of social media and e-commerce that enables user interaction and contribution

to enhance the online shopping experience.<sup>17</sup> The social commerce model allows sellers to promote and sell their products directly through social media platforms. To transform an e-commerce website into a social commerce website, at least three categories of features must be present. These features include transactional features (features that support buying and selling transactions), relational features (which facilitate interactions and relationships between customers), and social features (features that allow users to interact and share content socially).<sup>18</sup> The role of social commerce in e-commerce is to provide and integrate these three categories to create a more interactive, social, and connected shopping experience for consumers.

E-commerce and social commerce are two different but interconnected platforms. The most fundamental difference between the two is on the platform side; where e-commerce focuses on buying and selling transactions and facilitates a complete sales process flow, while social commerce focuses on the integration of social activities with the sales process. Social media in distinction of the previous mentioned platforms, are various digital platforms that facilitate social interaction and activities among users. As a result of technological and information developments, various types of procedures, business models, sales techniques, and new transactions have emerged in the digital ecosystem.<sup>19</sup>

Tokopedia is one of the early pioneers of e-commerce in Indonesia that adopted the marketplace model as its digital platform. Meanwhile, Investment Minister/Head of Indonesia Investment Coordinating Board (BKPM) Bahlil Lahadalia emphasized that the TikTok application initially only obtained a permit as a social media platform and not as a place to sell or run a business.<sup>20</sup> However, the TikTok social media platform has undergone significant development by adding a new feature called TikTok Shop.

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<sup>17</sup> Diah Agustina, "Fitur *Social Commerce* Dalam Website *E-commerce* di Indonesia", *Jurnal Informatika Mulawarman*, Edisi No. 1 Vol. 12, Fakultas Teknik Universitas Gadjah Mada, Februari 2017, page 26.

<sup>18</sup> *Ibid*, page 25.

<sup>19</sup> Deby Kusuma .A dan Didiek Wahyu I., "Pengawasan Hukum *Platform E-commerce* TikTok dan UMKM oleh KPPU berdasarkan UU Nomor 5 Tahun 1999", *Jurnal Hukum dan Pranata Sosial Islam*, Edisi No. 2 Vol. 5, Universitas Bojonegoro, Desember 2023, page 2394.

<sup>20</sup> Kuntum Riswan, "Bahlil: Izin TikTok sebagai media sosial, bukan untuk berjualan", in <https://m.antaranews.com/amp/berita/3743559/bahlil-izin-tiktok-sebagai-media-sosial-bukan-untuk-berjualan>, Accessed on 5 July 2024.

This feature allows for direct buying and selling transactions within the application, not just as a means of promotion. Thus, TikTok has evolved into a digital ecosystem that not only functions as social media, but also as a place for transactions between sellers and buyers.<sup>21</sup> Commercial activities through the TikTok Shop feature on the TikTok application at that time still referred to the Minister of Trade Regulation Number 50 of 2020. This regulation has not explicitly prohibited social media platforms from facilitating transactions within their electronic systems. Therefore, TikTok's move in developing the TikTok Shop feature can be considered as not violating legal rules.<sup>22</sup>

The Government of the Republic of Indonesia in mid-2023 established the Minister of Trade Regulation Number 31 of 2023. This latest regulation is considered an improvement of the previous regulation, which is the Minister of Trade Regulation Number 50 of 2020. One of the latest arrangements in the Minister of Trade Regulation Number 31 of 2023 is regarding the definition of social commerce. Article 1 paragraph (17) of the Minister of Trade Regulation Number 31 of 2023 defines social commerce as a social media organizer that provides certain features, menus, and/or facilities that allow merchants to post offers of goods and/or services.

The presence of the TikTok Shop feature, which allows transactions to still be carried out directly through the TikTok application, makes the TikTok platform an entity with great potential to develop e-commerce activities. However, TikTok currently does not yet have official permission as an e-commerce platform in Indonesia, even though e-commerce regulations in this country have regulated aspects of consumer protection and data management. This situation creates challenges related to adjustments to the applicable legal framework.<sup>23</sup>

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<sup>21</sup> Budi Dharma dan M. Rafiq Efrianda, "Analisis Penjualan *Online* melalui Media Sosial TikTok", *Jurnal Publikasi Ekonomi dan Akuntansi (Jupea)*, Edisi No. 3 Vol. 3, Universitas Islam Negeri Sumatera Utara, September 2023, page 273-274.

<sup>22</sup> Kholifatul Muna dan Budi Santoso, *Op.Cit.*, page 417.

<sup>23</sup> Dzacky Agustin Anhar dan Shelly Kurniawan, "Ketidakpastian Hukum dalam Kembalinya TikTok *Shop* sebagai Platform Social Commerce", *Jurnal Unes Law Review*, Edisi No. 3 Vol. 6, Universitas Kristen Maranatha, March 2024, page 8969.

In response to the situation where the TikTok Shop feature did not yet have official permission as an e-commerce platform to operate in Indonesia and after establishing the Minister of Trade Regulation Number 31 of 2023, the government took firm action. On Wednesday, October 4, 2023, at 17:00 Western Indonesia Time, TikTok officially stopped operating the TikTok Shop feature in Indonesia. This step demonstrates TikTok's commitment to complying with applicable regulations, as well as ensuring the digital platform's compliance with legal provisions and permits established.<sup>24</sup>

On December 12, 2023, the TikTok Shop feature returned to the TikTok social media platform. The strategic step taken by TikTok was to establish a partnership with Tokopedia, a leading e-commerce platform, with an investment value reaching more than US\$1.5 billion. However, the reintroduced TikTok Shop feature does not show significant differences compared to before. Electronic commercial transactions can still be carried out directly through the TikTok application itself, without fundamental changes to the integration model with social media.<sup>25</sup>

TikTok acquired 75.01% of Tokopedia's shares through an agreement between the two companies with the aim of expanding, strengthening, and promoting the growth of the digital economy in Indonesia. The strategy behind this move is to provide benefits for users and MSMEs. The reasons TikTok chose Tokopedia include Tokopedia's large and active user base in Indonesia, which has the potential to reach more customers and support the growth of MSMEs.<sup>26</sup>

Responding to TikTok's planned acquisition of Tokopedia, the Minister of Trade Minister Zulkifli Hasan announced that the government will provide a trial period of 3-4 months, starting in December 2023.<sup>27</sup> TikTok and Tokopedia's trial period ends in March 2024.<sup>28</sup> After the trial period, the Ministry of Trade stated that the integration

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<sup>24</sup> Dzacky Agustin Anhar dan Shelly Kurniawan, *Loc.Cit.*

<sup>25</sup> Muhammad Ahdaf Amali, *Loc.Cit.*, in <https://arek.its.ac.id/hmsi/2023/12/30/tiktok-dan-tokopedia-bersatu-apa-dampaknya/>, Accessed on 5 July 2024.

<sup>26</sup> *Ibid.*

<sup>27</sup> Hanif Reyhan Ghifari, "Pemerintah Beri Waktu 3 Bulan Uji Coba TikTok Shop & Tokopedia", in <https://www.kemendag.go.id/berita/pojok-media/pemerintah-beri-waktu-3-bulan-uji-coba-tiktok-shop-tokopedia>. Accessed on 5 July 2024.

<sup>28</sup> "Resmi Berlaku! TikTok Shop Kini Jadi Shop Tokopedia", in <https://pontianak.tribunnews.com/2024/04/05/resmi-berlaku-tiktok-shop-kini-jadi-shop-tokopedia>. Accessed on 5 July 2024.

process carried out by Tokopedia with TikTok had been completed and had an Electronic System Organizer Registration Certificate (TDPSE) issued by the Ministry of Communication and Information.<sup>29</sup> Tokopedia President Melissa Siska Juminto also stated that all payment activities, transactions, and user and merchant management previously carried out by TikTok, have now been fully transferred to the PT Tokopedia domain and managed through the "Shop Tokopedia" application.<sup>30</sup>

So far, TikTok Shop transactions are carried out directly within the TikTok social media application and "Processed by Tokopedia" and transactions are managed by Tokopedia. TikTok and Tokopedia have partnered to deliver a better shopping experience for users. TikTok provides an attractive platform to showcase products, while Tokopedia has a strong infrastructure to manage transactions and deliveries. By integrating their systems, the two companies can optimize the transaction process and provide faster service to customers.

Minister of Trade Regulation Number 31 of 2023, specifically in Article 21 Paragraph (3), states that Business Actors in Electronic Commerce (PPMSE) who implement a social commerce business model are not allowed to facilitate direct payment transactions. Although currently the purchase process in the TikTok application can be carried out directly, payment transactions are actually managed by Tokopedia, which is visible when users make a purchase, where there is a "Processed by Tokopedia" statement. This shows that TikTok, as a social media and social commerce platform, does not have the authority to carry out payment transactions independently and must collaborate with other platforms that have a license as a marketplace, such as Tokopedia, to manage the process.

This statement is reinforced by the Director General of Domestic Trade of the Ministry of Trade, Isy Karim, who stated that currently the payment process on TikTok Shop has been transferred to Tokopedia, although this happens in the back end, so it is not

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<sup>29</sup> Newswire, "Merger TikTok Shop dan Tokopedia Tuntas, Ini kata Kemendag", in <https://www.kemendag.go.id/berita/pojok-media/merger-tiktok-shop-dan-tokopedia-tuntas-ini-kata-kemendag>, Accessed on 5 July 2024.

<sup>30</sup> Anisa Indraini, "Kemendag Pastikan Transisi TikTok dan Tokopedia Sudah Tuntas", in <https://finance.detik.com/berita-ekonomi-bisnis/d-7277596/kemendag-pastikan-transisi-tiktok-dan-tokopedia-sudah-tuntas>, Accessed on 5 July 2024.

visible to users. Karim even mentioned that he had personally tested the payment process. It is important to note that the back-end refers to the part of the website that is not accessible to customers. In short, the payment process on TikTok Shop will still be carried out in the same application, but under the responsibility of Tokopedia. According to Karim, this is legal and does not violate the relevant provisions. He explained that in the transaction process, the main display (front-end) is still in the TikTok application, while all back-end management is carried out by Tokopedia.<sup>31</sup>

This situation has the potential to disrupt healthy business competition. This case is related to Article 2 and Article 3 of the Anti-Monopoly Law. In Article 2 of the Anti-Monopoly Law, the principle of economic democracy demands that every business actor, both large and small, carry out their business activities by considering the balance between the interests of business actors and the public interest. This principle is closely related to fairness in business competition, where there should be no business actor who dominates the market unfairly. In addition, Article 3 in the same law also regulates transparency and clarity in business competition. The aim is to create a conducive business climate and prevent monopolistic practices and unfair business competition. Business actors are required to provide correct and open information, so that all parties, including consumers, the government, and other business actors, have equal access to relevant information.

"One of the criteria for healthy business competition is the principle of transparency, which serves to ensure that all business actors and consumers have equal access to relevant information.<sup>32</sup> Transparency includes openness in terms of price, products, and transaction processes, which allows consumers to make informed and fair decisions. With transparency, business actors are expected to avoid harmful practices, such as fraud or abuse of dominant position, and create a fair competitive climate. In

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<sup>31</sup> Martyasari Rizky, "TikTok Shop Belum 100% Penuhi Aturan Kemendag, Ini Penjelasannya", in <https://www.cnbcindonesia.com/tech/20240304171318-37-519558/tiktok-shop-belum-100-penuhi-aturan-kemendag-ini-penjelasannya/amp>, Accessed on 12 September 2024.

<sup>32</sup> Nanin Koeswidi Astuti dan Reka Dewantara, "Regulasi Persaingan Usaha dalam Mencegah Praktik Tidak Sehat pada Securities Crowdfunding", *Honeste Vivere Jurnal*, Edisi No. 1 Vol. 34, Universitas Kristen Indonesia dan Universitas Brawijaya, 2024, page 104.

addition, transparency also contributes to increasing consumer trust in business actors, which is important for creating mutually beneficial relationships. The principle of transparency in this case not only supports fairness in competition, but also encourages innovation and efficiency, which ultimately contributes to sustainable economic growth.

Lack of clarity or transparency in this case can lead to uncertainty and even open opportunities for monopolistic practices or market dominance that harm other business actors, especially small and medium enterprises. For example, in a social commerce model like TikTok, which combines aspects of social media with electronic commerce, it is important that transparency is maintained at every stage of the transaction, from product offerings to the payment process. Although TikTok has complied with Minister of Trade Regulation No. 31 of 2023 by transferring payments to Tokopedia, the transaction process that occurs mostly within the TikTok platform can cause confusion for consumers regarding who is responsible at each stage of the transaction.

Meanwhile, the Instagram and Facebook platforms, which also operate as social commerce, apply a clearer and more transparent approach in this regard. The transaction process on their platforms is clearly separated from the promotion and offering process, where after users select a product, they are directed to an external website or e-commerce platform to complete the transaction. This approach is more in line with Article 2 and Article 3 of Law No. 5 of 1999, as it ensures that the roles of business actors and platforms in the trading ecosystem are clear and transparent, preventing potential monopolies or abuse of market power.

The Rule of Reason approach is one of a method in business competition law that is used to analyze whether certain business practices have the potential to harm healthy competition. In the context of the acquisition carried out by TikTok against Tokopedia, there are indications that although TikTok has formally fulfilled e-commerce licensing requirements by partnering with Tokopedia, this practice raises the potential for violations of Article 21 paragraph (3) of Minister of Trade Regulation No. 31 of 2023. Although payments are technically made through Tokopedia, TikTok Shop still

facilitates all pre-transactions within the TikTok application, which can be considered an attempt to blur the lines between the functions of social media and e-commerce, which should be regulated separately.

Transparency and clarity are important elements in the principle of economic democracy, as regulated in Article 2 and Article 3 of Law No. 5 of 1999. TikTok, by claiming that payments are made through Tokopedia, while still controlling the system behind the scenes, creates legal uncertainty that can harm other business actors who strictly comply with regulations. This practice can encourage other business actors to try to take advantage of similar regulatory loopholes, thereby weakening the credibility of the legal system in Indonesia and creating an unfair business environment.

TikTok's acquisition of Tokopedia, moreover, is not only to fulfill formal requirements but can also be seen as a strategy to strengthen TikTok's dominance in the e-commerce market. This fact certainly is contrary to the principle of economic democracy which demands equal business opportunities for all business actors, both large, medium, and small. By blurring the boundaries between social media and e-commerce, TikTok has the potential to disrupt the order of healthy business competition, which should protect small businesses from the dominance of big players.

Based on the analysis above, it can be concluded that the Principle of Economic Democracy, as regulated in Article 2 and Article 3 of the Anti-Monopoly Law, requires business actors to carry out their activities by considering the balance between individual and public interests, as well as ensuring fairness in competition. The obligation to provide correct and open information is very important to prevent monopolistic practices and maintain transparency at every stage of the transaction, especially in social commerce models like TikTok. Although TikTok has complied with regulations by transferring payments to Tokopedia, the unclear transaction structure can cause confusion for consumers regarding the responsibilities of each party. In contrast, platforms like Instagram and Facebook are more successful in separating the promotion and transaction processes, in accordance with the principles regulated in the law.

## **Analysis of the Potential Abuse of Dominant Position by TikTok Shop post-Acquisition of Tokopedia**

Acquisition is a legal action taken by a legal entity or individual to take over shares of a company which results in the transfer of control over the company (Article 1 number 11 of the Company Law). As a legal consequence of the acquisition process, the status and ownership of the acquired company will change. The party who conducts an acquisition will become the majority shareholder and gain control over the acquired company.<sup>33</sup> In its implementation, Article 126 of the Company Law also regulates the prohibition for companies to carry out acquisitions that can result in monopolistic practices and/or unfair business competition. In addition, the acquisition process must also pay attention to the provisions regarding conflicts of interest and information disclosure obligations.

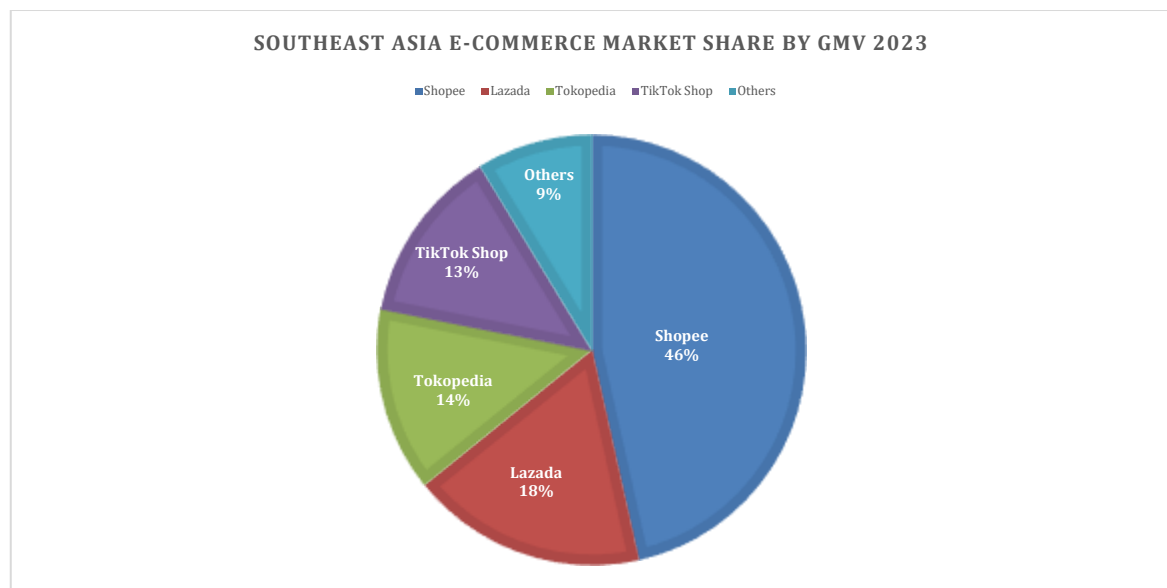
A strategic acquisition has taken place between TikTok (a popular social media platform) and Tokopedia (one of the leading e-commerce platforms in the country). On December 11, 2023, the two companies officially announced their strategic partnership, in which TikTok invested more than US\$1.5 billion and acquired a controlling ownership of 75.01% in Tokopedia. TikTok sees Tokopedia as an ideal partner to enter the Indonesian e-commerce market. The reason being, first, Tokopedia has a large and active user base, reaching more than 130 million monthly active users, providing great potential for TikTok to reach more customers. Second, Tokopedia already has extensive infrastructure and experience in e-commerce, allowing TikTok to enter the market more quickly and efficiently. Third, Tokopedia has a strong commitment to supporting MSMEs, in line with TikTok's vision to encourage the growth of MSMEs in the country. As a result of this partnership, TikTok will move its customer shopping transactions from the TikTok application to the Tokopedia application, in line with plans to reopen TikTok Shop in Indonesia after it was previously closed for two months due to licensing issues.<sup>34</sup>

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<sup>33</sup> Josua Tarigan, et.al., *Merger dan Akuisisi: dari perspektif strategis dan kondisi Indonesia (Pendekatan Konsep dan Studi Kasus)*, Ctk. Pertama, Ekuilibria, Yogyakarta, 2016, page 8.

<sup>34</sup> Muhammad Ahdaf Amali, *Loc. Cit.*, in <https://arek.its.ac.id/hmsi/2023/12/30/tiktok-dan-tokopedia-bersatu-apa-dampaknya/>. Accessed on 9 July 2024.

There is an interesting dynamic in the development of e-commerce market share in Southeast Asia, particularly involving TikTok Shop and Tokopedia. According to a Momentum Works report, TikTok Shop's market share is estimated to increase sharply from 4.4% in 2022 to 13.2% in 2023. Meanwhile, Tokopedia appears to be one of the e-commerce platforms that is still able to maintain and even increase its market share. Tokopedia's market share reached 13.9%.<sup>35</sup> The following is a graphical image of Southeast Asia's e-commerce market share based on GMV 2023:



**Graphic 2.1 Southeast Asia E-commerce Market Share by GMV 2023**

Source: Momentum Works, 2023

Prior to the projection revision, TikTok Shop's market share in 2023 was estimated to be only around 13.2%. However, that figure has been corrected to 13.9%, showing significant growth. Momentum Works, a research firm from Singapore, indicates that TikTok Shop has successfully gained a substantial market share and has been able to erode some of its competitors, such as Shopee, Lazada, Amazon, Tiki, and Bukalapak. Then, Tokopedia's market share was projected to be at the 13.9% level. However, after

<sup>35</sup> Maulina Ulfa, *Loc.Cit.*, in <https://www.idxchannel.com/amp/market-news/resmi-caplok-tokopedia-pangsa-pasar-tiktok-di-asia-tenggara-bisa-makin-jumbo>, Accessed on 9 July 2024.

the revision, that figure increased to 14.2%, showing that this platform continues to experience positive growth in the e-commerce market.<sup>36</sup>

Monitoring the latest developments in the Indonesian e-commerce industry, there has been a significant shift in the composition of market share in this sector. The integration of the social media application TikTok with Tokopedia in 2023 has substantially changed the competitive landscape. With the acquisition of Tokopedia by TikTok, TikTok's market share in Indonesia is likely to be 28.1%. Before this acquisition, Shopee dominated the national e-commerce market with a market share of around 46.5%. Shopee, which was previously the market leader, must face a tough challenge to maintain its market share. Data shows that Shopee's market share has fallen to 45.9% as TikTok-Tokopedia's dominance strengthens.<sup>37</sup>

The integration of TikTok and Tokopedia will create a new dominant player in the Indonesian e-commerce market, supported by a strong ecosystem and capital. This will increase the intensity of competition among the major players, such as Shopee, Tokopedia-TikTok, Lazada, Blibli, and others. This situation will make it more difficult for smaller e-commerce businesses to compete, especially in terms of market penetration, resource allocation, and competitive pricing strategies.

Tokopedia's acquisition by TikTok raises concerns regarding the potential for monopolistic practices and the dominance of a position in the Indonesian e-commerce market. Referring to Article 25 paragraph (1) of the Anti-Monopoly Law, business actors are prohibited from using their dominant position to set different trading conditions, which can lead to unhealthy business competition.<sup>38</sup>

Based on the analysis of the acquisition of Tokopedia by TikTok Shop, there is a potential for the emergence of abuse of dominant position as referred to in Article 25

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<sup>36</sup> Annisa Kurniasari dan Dwi Rachmawati, "TikTok Tokopedia Geser Shopee, Laju Blibli Bukalapak Makin Sengit 2024", in <https://m.bisnis.com/amp/read/20231230/266/1728262/tiktok-tokopedia-geser-shopee-laju-blibli-bukalapak-makin-sengit-2024>, accessed on 9 July 2024.

<sup>37</sup> *Ibid.*

<sup>38</sup> L. Budi Kagramanto, *Mengenal Hukum Persaingan Usaha (Berdasarkan Undang-Undang Nomor 5 Tahun 1999)*, Ctk. Pertama, Laras, Surabaya, 2008, page. 217.

paragraph (1) of the Anti-Monopoly Law. Some potential practices of abuse of dominant position include:

1. Unreasonable pricing

Zulkifi Hasan, the Minister of Trade revealed the existence of a pricing practice suspected as predatory pricing by the TikTok Shop platform. Predatory pricing, which is selling at below-cost prices to eliminate competitors, is one of the main issues of concern for the government. According to him, TikTok Shop implements a loss-leader scheme, which is selling products at prices far below the cost of production with the aim of dominating the market and eliminating competitors, especially MSMEs. This practice is feared to threaten the sustainability of MSMEs that are unable to compete with very low selling prices.<sup>39</sup> Thus, if TikTok Shop implements very low pricing, it could potentially violate Article 25 Paragraph (1) letter a, so that in this case it can eliminate competitors, reduce choices for consumers, and damage market quality.

After the acquisition of Tokopedia by TikTok, the TikTok platform has committed to healthy competition in the e-commerce ecosystem. The process of migrating TikTok Shop into the Tokopedia platform has become a focus in efforts to address and prevent predatory pricing practices. Through the Minister of Trade Regulation Number 31 of 2023, the government has regulated and protected MSMEs and consumers from predatory pricing practices in the e-commerce sector. Specifically, the regulation is in Article 13 paragraph (1) of the Minister of Trade Regulation Number 31 of 2023, requiring all platforms to maintain the prices of goods and/or services free from price manipulation practices, both directly and indirectly. In this case, TikTok and Tokopedia have expressed their commitment to eradicate the potential for predatory pricing. They will conduct proactive detection and strict monitoring of more than 1,600 product categories on the platform.<sup>40</sup>

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<sup>39</sup> Afif Faus Yusriyah, et.al., “Belajar dari TikTok Shop: *The Iceberg*”, in [https://bem.unud.ac.id/protected/storage/lampiran\\_post/57694487ac4ff39e0afdb9b4dc8d6eb6.pdf](https://bem.unud.ac.id/protected/storage/lampiran_post/57694487ac4ff39e0afdb9b4dc8d6eb6.pdf), Accessed on 10 July 2024.

<sup>40</sup> Hana Nushratu Uzma, “Lindungi UMKM, TikTok-Tokopedia Tutup Semua Pintu *Predatory Pricing*”, in <https://finance.detik.com/berita-ekonomi-bisnis/d-7267751/lindungi-umkm-tiktok-tokopedia-tutup-semua-pintu-predatory-pricing/amp>, Accessed on 20 July 2024.

## 2. Restricting access for new competitors

Tokopedia's acquisition by TikTok has become a major concern regarding the negative impact on business competition in the Indonesian e-commerce industry. Theoretically, the merging of strengths between the established TikTok platform and the Tokopedia e-commerce platform, which is also a dominant player in the market, could create barriers for new competitors to enter and compete effectively. After the acquisition, TikTok will have enormous power through its control of Tokopedia. This can create various entry barriers, such as greater economies of scale, technological and innovation advantages, control over distribution channels, and others. With TikTok acquiring 75.01% of Tokopedia's shares, TikTok automatically becomes a very dominant player in the market. This dominant position can be abused to block new competitors, for example through the utilization of user data, distribution networks, and financial resources. This action has the potential to violate Article 25 paragraph (1) letter c of the Anti-Monopoly Law regarding the prohibition for business actors who have a dominant position to abuse their position to hinder competitors.

## 3. Abuse of dominant position to inhibit innovation

The phenomenon of massive discounts carried out by social commerce platforms like TikTok has shifted consumer focus solely to cheap prices. This situation results in a lack of incentive for businesses to innovate and develop higher quality products or services. Consumers tend to be fixated on large discount offers without considering other aspects such as quality, uniqueness, or long-term benefits. As a result, innovation growth in the industry is hampered, as business actors prefer to compete aggressively through discount schemes rather than innovate. This condition not only harms consumers in the long term, but also hinders efforts to increase state revenue through the tax sector. When consumers focus on large discount offers, the transaction volume and added value that can be taxed become lower. This action can potentially violate Article 25 Paragraph (1) letter c of the Anti-Monopoly Law regarding the prohibition for business actors who have a dominant position to abuse their position to hinder competitors.

Based on the analysis of Article 25 of the Anti-Monopoly Law, no concrete evidence of violations of anti-monopoly provisions has been found in the integration between the social media platform TikTok and the e-commerce platform Tokopedia. The acquisition transaction process is still in the initial assessment stage by the KPPU after TikTok submitted a notification. Although the collaboration between TikTok and Tokopedia can create a significant e-commerce entity, their combined market share in the Indonesian e-commerce industry has not reached the 50% threshold, which is generally considered an indicator of a dominant position according to Article 25 of the Anti-Monopoly Law.

Shopee currently still maintains its position as the e-commerce market leader in Indonesia with a market share of around 40%, while the combined market share of TikTok-Tokopedia is estimated to be almost reaching 40%. Nevertheless, the potential and possibility of monopolistic practices related to the abuse of dominant position in the future still exist. The vertical integration between social media and e-commerce can create strong network effects and increase barriers to entry for new competitors.

TikTok has completed the share and asset purchase transaction of PT Tokopedia on January 30 and 31, 2024. This transaction has been reported to the KPPU on 13 and 19 March 2024, and the initial assessment process has begun. TikTok held an audience with the KPPU to explain their commitment to Indonesia, including promoting local products and developing MSMEs in Indonesia, ensuring a healthy e-commerce process, and preventing the import of goods that violate Indonesian government regulations.<sup>41</sup>

The analysis of the acquisition conducted by TikTok of Tokopedia regarding the assessment carried out by the KPPU can refer to the Regulation of the Business Competition Supervisory Commission Number 3 of 2023 on Assessment of Mergers, Consolidations, or Acquisitions of Shares and/or Assets That May Result in Monopolistic Practices and/or Unfair Business Competition.

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<sup>41</sup> “Soal TikTok-Tokopedia Bersatu, KPPU beri pendapat ini”, in <https://www.bloombergtechnoz.com/detail-news/34257/soal-tiktok-tokopedia-bersatu-kppu-beri-pendapat-ini>, accessed on 16 July 2024.

The Tokopedia's acquisition by TikTok, and the steps taken by various related parties, it can be concluded that currently there is no indication of monopolistic practices. However, there was a delay of 48 days in the notification regarding the merger of the two companies. Based on Article 2 of KPPU Regulation No. 3 of 2023, the maximum period for submitting a notification is 30 days from the completion of the merger or acquisition process. Violation of the time limit is found in Article 6 of Government Regulation No. 57 of 2010 on administrative sanctions that can be imposed on business actors in late submission of notifications, related to the late notification of Tokopedia's acquisition by TikTok, an administrative sanction of IDR 25,000,000,000.00 could be imposed.

Based on the analysis of Tokopedia's acquisition by TikTok Shop, it was found that this action cannot be categorized as an abuse of dominant position that violates the Anti-Monopoly Law. First, the combined market share of TikTok and Tokopedia is still below 50%, so it has not reached the level of market dominance that is considered monopolistic according to Article 25 of the law. Second, the e-commerce market in Indonesia remains competitive, with the presence of other major players such as Shopee still leading. Third, the government, through the Ministry of Trade, actively monitors the integration process to ensure compliance with applicable regulations. TikTok has also stated its commitment to supporting MSMEs and local products, demonstrating an intention to operate competitively. However, in this case there was a delay in submitting the notification report after the acquisition.

Nevertheless, the merger between two dominant players in the Indonesian e-commerce industry, which are TikTok Shop and Tokopedia, are two large companies with very strong resources. When combined, the resulting entity has the potential to control a large portion of the e-commerce market share, raising concerns about the occurrence of unhealthy business competition practices in the future. With the market dominance it possesses, this merged entity can create potential risks of monopolistic practices related to the abuse of dominant position in the future. Some possibilities that can occur include market dominance, restriction of innovation, price increases,

barriers to market entry, and others. These practices can have a negative impact on a healthy competitive climate in the Indonesian e-commerce industry.

## CONCLUSION

Based on the discussion above, the following conclusions can be drawn as follow:

1. The principle of economic democracy in Article 2 and Article 3 of the Anti-Monopoly Law requires business actors to consider the balance between individual and public interests and to ensure fairness in competition. The obligation to provide accurate and transparent information is crucial to prevent monopolistic practices and maintain clarity in transactions, especially in social commerce models like TikTok. Although TikTok Shop has complied with regulations by transferring payments to Tokopedia, ambiguity in the transaction structure can confuse consumers about the responsibilities of each party. In comparison, platforms like Instagram and Facebook are more effective in separating the promotion and transaction processes in accordance with the principles regulated in the law.
2. There is a potential for abuse of dominant position in the future due to the merger of two major players in e-commerce in Indonesia. In addition, the delay in submitting the notification report after the acquisition violates the provisions of KPPU Regulation No. 3 of 2023. However, Tokopedia's acquisition by TikTok up to the current research has not been included in the category of abuse of dominant position that violates regulations, marked by (1) the acquisition of TikTok Shop and Tokopedia that has not reached the dominant position indicator according to Article 25 of the Anti-Monopoly Law, (2) the Indonesian e-commerce market which is still competitive with the presence of other major players such as Shopee, and (3) TikTok showing a commitment to supporting MSMEs.

## SUGGESTION

Based on the conclusions above, the following suggestions can be given:

1. TikTok needs to increase transparency in its transaction structure by providing clear information about the responsibilities of each party. In addition, TikTok must continue to coordinate with the authorities to ensure that all of its business practices comply with applicable regulations and follow policy developments that may affect its operations. Thus, TikTok can be more effective in implementing the principles of economic democracy and increase consumer trust in its business model.
2. The acquisition entity resulting from TikTok and Tokopedia must always comply with regulations and healthy business practices. In addition, continuous supervision must also be carried out by the KPPU on the dynamics of the e-commerce market in Indonesia. With active supervision, the KPPU can quickly identify monopolistic practices that may arise due to rapid changes in this industry. Effective supervision carried out by the KPPU will help maintain a stable and innovative competitive climate, for the long-term benefit of consumers.

## CONFLICT OF INTEREST

There is no conflict interest in the publication of this article.

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