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A Legal Comparison of Corporate Takeovers in The Digital Sector Under Competition Law in Indonesia and Germany

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Abstract

The digital economy and the rise of data-driven acquisitions challenge the effectiveness of conventional competition laws, which typically rely on physical asset parameters. This study aims to compare the legal frameworks for corporate takeover oversight in the digital sector between Indonesia and Germany. This research employs a normative legal method utilizing statutory and comparative approaches. The findings reveal fundamental differences and significant regulatory gaps. Indonesia still employs a post-merger notification system with thresholds strictly based on asset and revenue values. This conventional approach fails to detect strategic acquisitions of asset-light but high-valuation digital startups, leading to undetected data barriers. In contrast, Germany has successfully reformed its framework through the 10th Amendment to the GWB. Germany implements a pre-merger notification system alongside a transaction value threshold. This mechanism effectively captures startup acquisitions driven by strategic data control and future innovation potential rather than current revenue. The study concludes that Indonesia's current competition law is inadequate for the digital economy, and it is recommended that Indonesia adopt the transaction value threshold and transition to a pre-merger system to strengthen legal certainty.

INTRODUCTION

The fast-growing digital era has made data one of the most important assets for companies today. Whereas in the traditional industrial era, market power was determined by control over physical assets and capital, today the main pillar rests on control over the most strategic intangible asset known as Big Data. From Graef's perspective, Big Data includes, among other things, behavioral data from customers or consumers obtained through the activation of 'cookies' on the computers they use, which is then sent to the servers of digital service providers for data analysis.[1] It can be seen that the main characteristics of Big Data are volume the sheer

[1] Dian Parluhutan, "Analisis Hukum Kompetisi Terhadap "Big Data" Dan Doktrin "Essential Facility" Dalam Transaksi *Merger* Di Indonesia", *Jurnal Persaingan Usaha*, Komisi Pengawas Persaingan Usaha, Vol. 1, No. 1 2021, hlm. 86-87.

amount of data, velocity the speed at which data is acquired and variety the diversity of data types.[2]

From a competitive perspective, big data must be understood in terms of how companies use it. This relates to the evolution of business models driven by technology platforms, namely multi-sided markets. Unlike traditional markets, multi-sided markets function as intermediaries connecting two or more distinct user groups; the platform's value lies in its ability to connect these groups.[3] The strength of this market is driven by "indirect network effects"; this cycle collects vast amounts of data from one side of the market and supports business operations on the other.[4]

This change in the value of intangible assets in the form of data sets also presents new challenges in corporate acquisition valuations. Legal frameworks established in the past generally imposed limitations by focusing on physical assets, giving rise to a new phenomenon known as the "Killer Acquisition." In this phenomenon, a giant corporation acquires a startup that possesses few physical assets but controls a massive dataset to support the acquiring company's business. Therefore, legal frameworks are needed that can accommodate this fundamental shift in the value of a company's assets.

In Indonesia, Article 1(11) of Law No. 40 of 2007 on Limited Liability Companies defines a takeover as a legal act to acquire shares that results in a transfer of control over the company.[5] The Indonesian Competition Supervisory Commission (KPPU) has the authority to assess whether such acquisition activities have the potential to result in monopolistic practices or unfair business competition under Law No. 5 of 1999. However, the KPPU's current analytical framework is considered not to explicitly accommodate "data barriers" as significant barriers to market entry in the digital era.

This weakness is clearly evident in the acquisition transaction between PT TikTok Nusantara (SG) Pte. Ltd. and PT GoTo Gojek Tokopedia Tbk., estimated to be worth Rp 23.25 trillion. This transaction combines massive amounts of data from 184.95 million TikTok users

[2] Andriyanto, "Keterkaitan Mengenai Akses Big Data Terhadap Hukum Persaingan Usaha", *Jurnal Hukum Adigama*, Fakultas Hukum Universitas Tarumanegara, Vol. 4, No. 2 Desember 2021, hlm. 2695.

[3] M. Afif Hasbullah, "Perdebatan Definisi Dan Kriteria Posisi Dominan Dalam Perspektif Regulasi Dan Ekonomi", *Jurnal Ilmiah Indonesia*, Fakultas Hukum Universitas Islam Darul Ulum Lamongan, Vol. 6, No. 1 November 2021, hlm. 11.

[4] Tabea Bauermeister, "Section 19a GWB as the German "Lex GAFA" – Lighthouse Project or Superfluous National Solo Run?", *Jean Monnet Network on EU Law Enforcement*, No. 23 tahun 2022), hlm. 4.

[5] Binoto Nadapdap, *Hukum Perseroan Terbatas* (Jakarta: Jala Permata Aksara, 2016); 172.

with 12 million sellers on Tokopedia, creating exclusive control over a rich dataset.[6] Although traditional analysis suggests that the combined entity may not meet the criteria for absolute dominance in the e-commerce market, cross-market data integration creates the potential for the misuse of Big Data as an essential facility that has not been fully anticipated by Indonesian regulations.

To carry out legal reforms, Germany was chosen as a point of comparison due to the similarity of its civil law tradition, which prioritizes written codification of laws. Germany has taken a progressive step through the 10th Amendment to the Gesetz gegen Wettbewerbsbeschränkungen (GWB), or the GWB Digitalization Act. Unlike Indonesia, which still relies on asset- and revenue-based thresholds, Germany has introduced a transaction value threshold to cover acquisitions of high-value digital companies with low revenue. This demonstrates the success of German law in detecting and enabling in-depth analysis of data-driven strategic acquisitions.

Based on the background outlined above, this article focuses on the following legal issue: How do the regulations governing corporate takeovers in the digital sector in Indonesia compare with those in Germany?

After describing the background of the existing issues and the focus of this study, the author will now explain the scope of this research. Several previous studies have examined business competition, particularly in the digital context. Some of these studies include:

1. Andriyanto,[7] in a study titled "The Relationship Between Access to Big Data and Competition Law," examines the significance of big data in the context of the digital economy and analyzes its relationship with competition. The study concludes with recommendations for regulating and overseeing corporate access to big data that has the potential to create market monopolies. However, this previous study remains strictly conceptual and does not offer a specific regulatory mechanism for merger control. The present research fills this gap by providing a concrete, tested regulatory blueprint from Germany specifically the 10th Amendment to the GWB as a technical comparative model for assessing data-driven takeovers in the digital sector.

[6] Abdullah Taufik, "Analysis of Monopoly Risk in TikTok Shop's Acquisition of Tokopedia: A Per Se Illegal Perspective" k*hazanah Hukum* 7, no. 1 (2025); 83, https://doi.org/https://doi.org/10.15575/kh.v7i1.43213.

[7] Andriyanto, dengan judul "Keterkaitan Mengenai Akses Big Data Terhadap Hukum Persaingan Usaha.", Jurnal Hukum Adigama Vol. 4 No. 2.

2. Rezmia Febrina,[8] in a paper titled “Business Competition in the Digital Age from a Competition Law Perspective,” describes the state of business competition in the digital age, particularly with regard to mergers and acquisitions. The conclusion is that to assess these types of merger and acquisition transactions, the obligation to notify competition authorities is no longer limited to a set of thresholds but must also include high-value transactions. Nevertheless, this previous research lacks an in depth technical analysis of how such a high-value threshold operates within a concrete statutory framework. The originality (*novelty*) of this current research lies in its specific, comparative evaluation of Indonesia's outdated *post-merger* system against Germany’s progressive *pre-merger* system, explicitly detailing the mechanics of the "transaction value threshold." Thus, this study establishes its *state of the art* by positioning itself not merely as an identifier of the legal vacuum, but as a practical legal model for reforming Indonesian competition law.

This study employs a normative legal methodology using both a statutory approach and a comparative legal approach. Research with a normative juridical approach is legal research conducted by examining library materials or secondary data as the basic foundation, which is done by tracing regulations and literature related to the problems under study. According to Soerjono Soekanto, normative legal research includes research on legal principles, legal systematics, the level of legal synchronization, legal history, and comparative law.[9] Through this comparative approach, the researcher will be able to uncover the background behind the formulation of specific legal provisions addressing the same issue from two or more countries, making it possible to be used as a recommendation for drafting or amending legislation.[10] The secondary data utilized consists of primary legal sources such as Law No. 5 of 1999, Law No. 40 of 2007, and the German Civil Code (GWB), as well as secondary legal sources including relevant academic literature and scholarly articles. Data analysis was conducted qualitatively to draw logical and systematic conclusions.

This study aims to analyze and explain the differences in the regulatory frameworks governing corporate takeovers in the digital sector in Indonesia and Germany. The findings of this study are expected to contribute theoretically to the development of business law and

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[8] Rezmia Febrina, Fakultas Hukum, and Universitas Lancang Kuning, “Persaingan Usaha Pada Era Digital Menurut Persepektif Hukum Persaingan Usaha” 2, no. 1 (2022): 121–27.

[9] Soerjono Soekanto, *Pengantar Penelitian Hukum* (Jakarta: UI-Press, 2005), 51.

[10] Sheyla Nichlatus Sovia, Abdul Rouf Habullah, and Andi Ardiyan Mustakim, *Ragam Metode Penelitian* (Kediri: Lembaga Studi Hukum Pidana, 2022), 29-30.

provide practical insights for policymakers in Indonesia as they address the challenges of the digital economy.

DISCUSSION

Regulatory Framework for the Acquisition of Digital Sector Companies in Indonesia

Business competition is one of the key factors driving a nation's economy. Business competition can influence policies related to trade, industry, a conducive business climate, legal certainty and business opportunities, efficiency, the public interest, public welfare, and so on.[11] According to Arie Susanto, competition law refers to the legal instruments that determine how competition should be conducted.[12] Competition is expected to ensure the efficient allocation of resources in accordance with their intended purposes and to enhance public welfare. Existing competition is shaped by competition policy.

Unfair competition is defined as competition among business entities in the production and/or marketing of goods and/or services that is conducted in a dishonest or unlawful manner or that hinders fair competition. According to Abdulkadir Muhammad, business competition is divided into two categories: fair competition and unfair competition. Fair competition does not generate excessive profits and does not cause harm. Conversely, unfair competition is conducted in an unreasonable manner, violates the law, and causes harm to others.[13]

Regulations governing corporate takeovers in Indonesia are based on Law No. 40 of 2007 on Limited Liability Companies and Law No. 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition. As derivatives of these laws, the government enacted Government Regulation (PP) No. 57 of 2010 and Competition Supervisory Commission Regulation (PerKPPU) No. 3 of 2023, which technically govern the supervisory procedures.[14]

The Limited Liability Companies Act explains that a takeover is a legal act by a legal entity or an individual to acquire shares in a company, resulting in a change of control over that

[11] Andi Fahmi Lubis, Anna Maria, and Kurna Toha, *Hukum Persaingan Usaha* (Jakarta: Komisi Pengawas Persaingan Usaha, 2017), 24.
[12] Arie Susanto, *Hukum Persaingan Usaha* (Jakarta: Ghalia Indonesia, 2004), 3.
[13] Tami Rusli, *Hukum Persaingan Usaha Di Indonesia* (Bandar Lampung: UBL Press, 2021), 14.
[14] Muhammad Fadhali Yusuf, "Reformulasi Sistem Post Merger Notification Untuk Menghindari Rechtvacuum Pembatalan Merger Oleh KPPU," *Jurnal Persaingan Usaha* 2, no. 2 (2022):112, https://doi.org/10.55869/kppu.v2i2.44.

company.[15] If a company wishes to carry out a takeover of a corporation, it must obtain approval through a General Meeting of Shareholders (GMS), in accordance with Article 89 of the Company Law. The Board of Directors must draft a plan for the takeover, which must then be approved by the GMS. After obtaining approval from the GMS, the plan will be formalized in a takeover deed before a notary public and then registered with the Ministry of Law. If there are changes to the articles of association, approval from the Minister is required. Once all previous stages have been completed, the results of these stages or the preceding process must be announced by the company's Board of Directors in two newspapers and to employees in writing. This announcement must be made no later than 30 days from the effective date of the merger. This is to ensure that third parties are aware of the merger. In this case, the announcement period begins on the date of the Minister's approval of the amendments to the articles of association.[16]

In addition to the steps described above, companies are also required to comply with competition laws. This is to maintain competition within a market. The legal framework for merger control in Indonesia is based on the Anti Monopoly Law. Regarding this, Article 28 prohibits business entities from engaging in mergers, consolidations, or share acquisitions that could result in monopolistic practices and/or unfair competition.

The main characteristic of the regulatory system in Indonesia is the implementation of a post-merger notification system. Based on Article 2 of PerKPPU No. 3/2023, business entities are required to submit a notification to the Business Competition Supervisory Commission (KPPU) no later than 30 (thirty) days from the date the acquisition of shares and/or assets becomes legally effective.[17] Upon receipt of the notification, the KPPU will conduct an initial assessment that may take up to 90 days, and if a significant change in market concentration is found, the process will proceed to a comprehensive assessment through a commission panel hearing.

Although there is a notification requirement, the regulations specify that not all mergers, consolidations, and acquisitions of companies must be notified to the KPPU. This is explained

[15] Zabrina Hijriani Musyafak et al., "Analisis Akuisisi Perusahaan Menurut Hukum Persaingan Usaha Dan Pengaruhnya Terhadap Profitabilitas Perusahaan," *Indonesian Journal of Law an Justice* 1, no. 4 (2024): 2, https://doi.org/10.47134/ijlj.v1i4.2668.

[16] Riski R. Laloan, "Kajian Pengambilalihan Dan Pemisahan Perusahaan Berdasarkan Undang-Undang Nomor 40 Tahun 2007 Tentan Perseroan Terbatas," *Lex Privatum* 9, no. 1 (2021): 84.

[17] Raditya Pradipta and Hernawan Hadi, "Konsultasi Merger & Akuisisi Sebagai Solusi Penguatan Pencegahan Terciptanya Praktik Monopoli Dan Persaingan Usaha Tidak Sehat Di Indonesia," *Privat Law* 10, no. 1 (2022): 78, https://doi.org/10.20961/privat.v10i1.60468.

in Article 3 of KPPU Regulation No. 3/2023. Based on this article, it can be concluded that not all acquisitions must be reported to and reviewed/assessed by the KPPU.

Under Article 3, business entities are required to notify the KPPU when certain conditions are met, including the thresholds for asset value and/or sales revenue. Business entities are only required to notify the KPPU if the combined asset value resulting from the acquisition exceeds Rp2.5 trillion, or if the combined sales revenue exceeds Rp5 trillion. These asset and revenue values are calculated based on the total of the most recent audited year, covering the ultimate parent company (BUIT) down to its subsidiaries.[18]

The following regulation states that if there is a change in control, the business entity is required to submit a notification. The explanation of Article 5, paragraph (4), letter b of Government Regulation No. 57/2010 specifies that "control" refers to ownership of shares or control of voting rights exceeding 50% (fifty percent) in a Business Entity, or the holding of shares or control of voting rights of less than or equal to 50% (fifty percent) but which can influence and determine the management policies of the Business Entity and/or influence and determine the management of the Business Entity.

Furthermore, transactions between affiliated business entities such as mergers, consolidations, or acquisitions are not required to be reported to the KPPU. This is in line with the Single Economic Entity Doctrine, whereby affiliated business entities will act as a single economic entity due to the existence of a common controlling party over such affiliated business entities.[19] The affiliation referred to is a controlling relationship resulting from ownership of more than 50% (fifty percent) of shares, or less than 50% (fifty percent) but capable of influencing and/or determining the business entity's management policies, and/or influencing and determining the management of the business entity.

Transactions between Business Entities with Assets and/or Sales in Indonesia: Transactions subject to notification are those between business entities with assets and/or sales in Indonesia. This means that the assets and/or revenue taken into account are those located in Indonesia that are directly or indirectly owned by the business entities involved, whether the acquiring entity or the acquired entity.

[18] Anna Maria Tri Anggraini, "Penerapan Sistem Notifikasi Post-Merger Atas Pengambilalihan Saham Perusahaan Berdasarkan Hukum Persaingan Usaha," *Jurnal Law Pro Justitia* I, no. 1 (2015): 25.

[19] Anna Maria, "Penerapan Doktrin Single Economic Entity Dalam Putusan Putusan Komisi Pengawas Persaingan Usaha," *Jurnal Hukum Pidana Dan Pembangunan Hukum* 2, no. 2 (2020): 1.

Once the notification is submitted to the KPPU, the KPPU will review the documents submitted by the business entity. If the KPPU determines that the documents are complete, the KPPU will then issue a certificate containing the notification registration number along with a statement indicating whether the company is required to file a notification or is exempt from doing so. If the business entity is deemed required to file a notification, the acquisition will proceed to the assessment phase. Pursuant to Article 18(1) of KPPU Regulation No. 3 of 2023, the Assessment Phase for Mergers, Consolidations, or Acquisitions of Shares and/or Assets consists of two stages: the preliminary assessment stage and/or the comprehensive assessment stage. The assessment referred to in paragraph (1) shall be conducted by the KPPU within a maximum period of 90 (ninety) days.

Regulatory Framework for the Acquisition of Digital Sector Companies in Germany

By way of comparison with other civil law jurisdictions, Germany regulates corporate takeovers through the Act on Limited Liability Companies (GmbHG) for corporate matters, and the Act Against Restraints of Competition (GWB) for competition law matters. Recognizing that the old rules were no longer relevant to the times, Germany has undertaken progressive reforms through the 10th Amendment to the GWB in January 2021, specifically known as the GWB Digitalization Act.

In the case of a corporate acquisition, there are several steps that the company must take. The acquisition process typically begins with pre sale agreements, which generally include confidentiality agreements, exclusivity agreements, and letters of intent.[20]

Under the merger control regime, business actors are also required to notify the Bundeskartellamt, Germany's competition authority. Germany follows an ex post notification system, as stipulated in Section 39(1) of the GWB. This provision clearly states that Germany follows an ex-post notification system, under which businesses must report the activity before it is carried out. The review process is divided into two phases: the first phase lasts one month to assess whether any competition issues exist, and if serious indications of competition concerns are found, the authority will initiate a second phase involving an in-depth investigation, extending the review period to a total of five months.

[20] Martin Frohlic, "Mergers And Acquisition In Germany," *Revista Derecho Social y Empresa*, (2014) 107-110, https://doi.org/10.18172/redsye.6071.

Germany has reformed its business competition rules, and one of the changes is the introduction of a transaction value threshold to complement the revenue based threshold. Under Section 35(1a) of the GWB, a transaction must be reported if the consideration for the acquisition (purchase price and other benefits) exceeds EUR 400 million, and the target company has "substantial domestic operations" in Germany.

The transaction consideration is a key factor in addressing cases where the value of the assets and the acquisition price are significantly out of proportion. This criterion refers to the value associated with the purchase price and all benefits related to the acquisition, which will ultimately be determined in euros. This value includes all cash payments, deferred payments, transfers of voting rights, securities, tangible and intangible assets, liabilities assumed by the acquirer, and other forms of consideration related to specific terms.[21] In some cases, the calculation of the transaction consideration may depend on a combination of the parties' internal assumptions and expectations regarding the future.

Section 35(1a)(4) of the German Merger Control Act (GWB) regarding significant domestic activities. Pursuant to this provision, a company is subject to merger control if the target company, or a significant part of the target company or the assets to be acquired, has substantial operations in Germany. Domestic activity within the meaning of Section 35(1a)(4) GWB must be measured based on the target company's market-related activities. Measuring domestic activity requires appropriate indicators to determine the extent to which the target company operates in the domestic market. In this context, domestic activity must be measured using indicators other than revenue specifically, indicators that are relevant to the respective industry and not easily manipulated. In the digital sector, referring to user numbers ("monthly active users") or website access frequency ("unique visitors") are examples of possible indicators. In Bundeskartellamt proceedings, other indicators, such as "daily active users" (DAU), have also been used.[22]

Next, the Bundeskartellamt reviews the notification submitted by the business operator within one month. The Bundeskartellamt then decides whether the acquisition requires further review or can be approved immediately (referred to as the first phase). If the transaction does not raise any competition concerns during the first phase of merger control, the companies

[21] OECD, "Start-Ups, Killer Acquisitions and Merger Control – Note by Germany," *OECD Competition Committee Meeting on 10-16 June 2020.*, 2020.

[22] Carsten Koenig, "Competition Law in Germany," *Elgar Encyclopedia of Competition Law* May (2024).

involved will be notified of this via an informal letter. If there are indications that the acquisition may raise competition concerns that cannot be resolved in the first phase, or if the competent decision-making division believes that further investigation is necessary for other reasons, a formal in-depth investigation will commence ("second phase"), extending the review period to a total of five months from the date of notification.

The Bundeskartellamt has broad investigative powers, which enable it to obtain a comprehensive picture of the state of competition in the market. The Bundeskartellamt may, for example, request that companies and business associations provide all relevant business documents and data. The Bundeskartellamt also conducts extensive market surveys on a regular basis and engages in discussions with individual market participants. Following the second phase, the process always concludes with an official decision. The outcome of the review may be a prohibition or approval by the Bundeskartellamt of the acquisition project. The acquisition project may also be approved subject to certain conditions and obligations.

Comparative Analysis: Legal Gaps and the Urgency of Reform.

When examining the regulations of both countries, it becomes clear that they share certain similarities. One such similarity is evident in the administrative procedures that companies must follow under Indonesian and German law. In this regard, companies must first develop a plan, then draft an agreement, which is subsequently notarized and registered with the relevant ministry. However, there are differences in the technical instruments employed, particularly in addressing the characteristics of the digital economy.

There are several differences in how the two countries regulate corporate acquisitions. First, Indonesia's post-merger notification system creates a high risk of legal uncertainty. The post-merger notification model tends to be less effective in providing legal certainty for businesses engaged in acquisitions, because if several companies have already completed an acquisition, there is a risk that the KPPU's notification may reject the transaction even though the acquisition has already been carried out.[23] The KPPU may determine that the outcome of a merger between companies or business entities indicates the creation of a monopoly or unfair competition, thereby requiring the merger to be canceled. Such a cancellation is also detrimental to business entities that have incurred significant costs in preparing for and executing the

[23] Amadea Muljanto dan Kholis Roisah, "Efektifitas Penerapan " Notifikasi Pra *Merger* " Berdasarkan Sudut Hukum Persaingan Usaha", *Notarius*, Vol. 16, No. 2 2023, hlm. 980.

acquisition. Furthermore, such a cancellation could also create uncertainty in the business environment, thereby potentially hindering acquisitions that promote healthy competition.[24] In the context of an acquisition where assets and liabilities do not merge, ownership of the data essentially remains with the target company. The acquirer's right to access such data could be stipulated in an agreement. This would certainly be a weakness of the ex-post system in merger and acquisition oversight, where prohibiting or canceling an acquisition transaction after it has been completed is considered more difficult than preventing it before the transaction takes place.[25]

The implementation of the Pre-Merger Notification system offers the advantages of legal certainty and greater efficiency for businesses and regulatory authorities, as this system serves as an optimal preventive measure to foster healthy competition.[26] Through this mechanism, potential antitrust violations and difficulties in restoring market conditions can be avoided early on, given that the system is designed to prevent complex situations and high costs associated with separating assets that have been integrated, such as real estate, intellectual property, and business operations. From a theoretical jurisprudence perspective, the ex-post system fundamentally contradicts the core objective of competition law to efficiently protect market structures. By applying the *Rule of Reason* after a transaction, authorities face the 'unscrambling the eggs' dilemma, which is technically nearly impossible in digital ecosystems and inherently destroys economic value. Conversely, the ex-ante approach embodies the principle of *Rechtssicherheit* (legal certainty). Through this mechanism, potential antitrust violations and difficulties in restoring market conditions can be avoided early on, given that the system is designed to prevent complex situations and high costs associated with separating assets that have been integrated, such as real estate, intellectual property, and business operations.[27]

Another difference lies in the Mandatory Reporting Threshold. Indonesia bases this threshold on a company's asset value and revenue, where assets are defined as movable or

[24] Muhammad Fadhali Yusuf, "Reformulasi Sistem Post *Merger* Notification Untuk Menghindari Rechtvacuum Pembatalan *Merger* Oleh KPPU", *Jurnal Persaingan Usaha*, Vol. 2, No. 2 2022, hlm. 116.

[25] Yoana Theresia and Siti Nurbaiti, "Kewajiban Notifikasi *Akuisisi* Oleh Perusahaan (Studi Perbandingan: Indonesia Dengan Republik Rakyat Tiongkok)", *Amicus Curiae*, Vol. 2, No. 1 2025, hlm. 238.

[26] Novia Khoirunnisa, "The Implementation Of Pre *Merger* Notification In The Law Concerning Prohibition Of Monopolistic Practices And Unfair Business Competition", *Jurnal Ilmiah Indonesia*, Vol. 8, No. 11 2023, hlm. 6864.

[27] Marco Ottaviani dan Abraham L Wickelgren, "International Journal of Industrial Organization Ex Ante or Ex Post Competition Policy ? A Progress Report", *International Journal of Industrial Organization*, Vol. 29 2011, hlm. 357.

immovable property whether tangible or intangible that holds economic value. Big data, however, is intangible, non-financial, and generated at little or no cost. Accounting standards themselves have not yet accurately recognized big data in financial statements. Given that big data is a unique asset, a fair valuation is required to determine its value. Moreover, International Financial Reporting Standards ("IFRS") are unable to report big data as an asset in financial statements.[28] As a result, "killer acquisition" strategies where a dominant company acquires a startup with minimal physical assets and low revenue but massive data can easily evade KPPU notification requirements. When an asset cannot be valued in standard monetary units, it becomes difficult to determine the value threshold for such an acquisition. It can therefore be concluded that this parameter fails to detect acquisitions of digital sector companies with business models that have few assets and have not yet generated significant profits, even though they possess extremely high data valuations. Theoretically, this regulatory gap highlights a clash between conventional antitrust doctrines and modern digital economics. Traditional theories rely on physical assets or current market share, however, in multi-sided digital markets, market power is driven by indirect network effects and control over Big Data, which functions as an essential facility.

In contrast, Germany has successfully closed this loophole by implementing a Transaction Value Threshold as set forth in Section 35(1a) of the GWB. This provision reflects Germany's focus on the digital economy. The mandatory notification threshold in Germany includes a limit on the purchase price (transaction value) of the company. A high purchase price reflects the acquirer's expectations regarding the target's strategic assets (such as Big Data and technology), even if the target's revenue remains small.[29] This new provision introduced in Germany complements the existing merger control system, particularly regarding markets driven by technology and innovation, with the aim of preventing potential market foreclosure and barriers to market entry, and protecting innovation potential. By implementing this threshold, German law conceptually shifts from an asset-based paradigm to a value-and-data-driven perspective. It theoretically acknowledges that a high acquisition price for a low-revenue startup serves as a quantifiable economic proxy for the startup's future disruptive potential,

[28] Susanne Leitner-hanetseder, "AI-Powered Information and Big Data : Current Regulations and Ways Forward in IFRS Reporting", *Journal of Applied Accounting*, Vol. 24, No. 2 2025, hlm. 290.

[29] Antonio Robles Martin, "*Merger* Control and Online Platforms: The Relevance of Network Effects A", *Market and Competition Law Review*, Vol. 1, No. 2 2016, hlm. 2017.

effectively addressing 'killer acquisitions' and preventing dominant platforms from preemptively stifling future innovation.

CONCLUSION

A comparison of regulatory frameworks for corporate takeovers in the digital sector between Indonesia and Germany reveals fundamental differences in legal responses. The principal finding of this study is that Indonesia’s conventional post-merger notification system, which relies strictly on physical asset and revenue thresholds, possesses a critical structural weakness, it fails to detect "killer acquisitions" of asset light digital startups whose true value lies in intangible assets like Big Data. Consequently, this regulatory vacuum allows the formation of data driven market barriers to go unchecked. In contrast, Germany has successfully addressed this issue through the 10th Amendment to the GWB by implementing a pre-merger system and a "transaction value threshold." This threshold serves as an effective economic proxy to capture high-value acquisitions driven by strategic data control and future innovation potential, thereby preventing anti-competitive market foreclosure.

Based on these findings, it is recommended that the Indonesian government and the House of Representatives immediately revise Law No. 5 of 1999 by adopting the "Transaction Value" parameter as a mandatory notification requirement. Furthermore, transitioning the notification regime from a post-merger to a pre-merger system is essential to enhance the effectiveness of oversight, protect future innovation, and provide legal certainty for businesses in the digital economy era.

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