

Review of Alleged Abuse of Google Play Billing's Dominant Position in Indonesia: A Study of South Korea's Anti-Google Law

Afifah Afiyani.Y

Universitas Indonesia, Indonesia

Email: afifah.afiyani11@ui.ac.id

*Correspondence

ABSTRACT

Keywords: dominant position; digital platforms; business competition.

The author examines how the Anti-Google Law is implemented in South Korea and whether the law can be a solution for Indonesia in preventing giant digital platforms from abusing their dominant position. To review the alleged abuse of the dominant position of Google Pay Billing in Indonesia and conduct a study of the implementation of the Anti-Google Law in South Korea. This study uses doctrinal legal research methods through document and literature studies. The research results: For now, there have been several cases related to digital platforms that have entered ICC, such as GoTo in 2022, Google, and Shopee, which are about to enter the trial. It can be seen that there has been an increase in incoming cases related to digital platforms in ICC, therefore ICC must issue rules both in the form of laws, or technical regulations in the form of guidelines to regulate digital platforms, so that in the future.



Introduction

Digital platforms have become an integral part of human life in recent years. The emergence of this digital platform also encourages human innovation and creativity, digital platforms become a forum for developers, designers, and creators to create new solutions, applications, and products that enrich human life (Shafa & Haryanto, 2023). Application developers, designers, and app creators compete to innovate in creating applications and distributing their applications on app stores such as the Google Play Store, Mi Store, App Store, and others (Heriyanto, 2016).

Google Play Store is one of the digital distribution services operated and developed by Google that functions as the official app store for the Android operating system, which allows users to browse and download applications developed with the Android software development kit and published through Google (Halidi, 2023).

In 2022, the Business Competition Supervisory Commission (ICC) suspected that Google had abused its dominant position, conditional sales, and discriminatory practices in digital application distribution in Indonesia (Yuti, 2020). This decision resulted from

the ICC Meeting on September 14, 2022, following up on the research on initiatives that have been carried out by ICC. This research is focused on Google's policy that requires the use of Google Play Billing (GPB) in certain applications. GPB is a method of purchase of digital products and services in applications (in-app purchases) distributed on the Google Play Store (Wahyudi, 2022). For the use of GPB, Google charges a service/commission fee to the application of 15-30% of the purchase. The effective GPB usage policy was implemented on June 1, 2022, requiring the use of GPB in certain applications. For the use of GPB, Google charges a service fee/fee to the application of 15-30% of the purchase (Viennot et al., 2014). The GPB usage policy requires applications downloaded from the Google Play Store to use GPB as their transaction method, and content providers or application developers must comply with the provisions in the GPB. Google also does not allow the use of other payment alternatives in GPB (Jaiswal, 2018).

GPB in Indonesia is used by most app developers to sell their digital products. However, some developers and other stakeholders have voiced concerns about Google's practice of requiring the use of their billing system, which they consider to be an abuse of dominant position. This case does not only appear in Indonesia, but in other countries such as the United States, India, and South Korea (Berliana, 2020).

In 2020, Google published the same policy in South Korea, where Google will take a commission of 30% from in-app purchases while after an investigation by the Korean FTC, in 2021 the Korean FTC punished Google with a fine worth nearly 180 million US dollars. This fine was given after South Korea amended the Telecommunications Business Act better known as the Anti-Google Law (Wijaya & Nidhal, 2023). One of the provisions of the Anti-Google Law is a ban on large app store operators such as Google and Apple to force software developers to use their payment systems. This rule effectively states that monopolistic activities through the Play Store and App Store are illegal. This amendment is an important step in promoting fair competition and protecting the rights of app developers (Fauji & Puspasari, 2021).

Departing from this background, the author will research how the Anti-Google Law is applied in South Korea. Is the Anti-Google Law regulated by South Korea one of the solutions for Indonesia to prevent giant digital platforms from abusing their dominant position?

Against this background, the author aims to conduct this research to review the alleged abuse of the dominant position of Google Pay Billing in Indonesia and conduct a study of the implementation of Google Law in South Korea. The results of this research are expected to be a contribution and insight for policymakers, application developers, and other stakeholders in Indonesia.

Method

This research will use Doctrinal Law Research, which will be carried out through document studies or literature studies through primary and secondary legal materials. This research focuses on research on the study of principles and developments in the field of

law through literature research obtained from document studies or literature studies (Mamudji et al., 2005).

This data will be presented qualitatively, namely in the form of text descriptions, and analyzed with descriptive and critical analysis techniques. It is said to be juridical because what is studied and researched is the study of the norms that are enforced. The result is in the form of legal arguments to prove (not test) assumptions and theories. The form of the results of this study is descriptive-analytical. The analysis technique of legal materials used in this study uses grammatical, systematic, and comparative analysis techniques where the author processes the meaning of words according to the words in the law, connects one article to another, and compares the legal rules in case examples.

In this study, the author will use primary legal materials, namely Law Number 5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition as amended several times last by Law Number 11 of 2020 concerning Job Creation, Law Number 11 of 2008 concerning Information and Electronic Transactions as amended several times by Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions, Government Regulation Number 80 of 2019 Trade Through Electronic Systems, Korea Telecommunication Business Act, Decrees, and other related regulations. The author also uses secondary legal materials in the form of materials from books, previous research/research results, journals, articles, and news that can be accessed online related to business competition law enforcement in South Korea.

Results and Discussion

Anti Google Law

South Korea became the first country to ban the monopoly carried out by Apple and Google regarding in-app transactions, this decision was taken by the South Korean government to protect app developers and discipline giant technology companies such as Apple and Google. As well as prevent this giant technology company from abusing its dominant position. The Anti-Google Law places restrictions on tech giants by banning those who force users to use in-app payment systems. This will certainly have an impact on the business of this giant technology company, such as a decrease in app store purchases. Other countries such as China have also implemented fines for various antitrust violations.

In app purchase (IAP) which can be translated as in-app purchase, is defined as the purchase of goods and services from an application on a device, such as a smartphone or tablet. IAP gives app developers the right to make their apps available for free. Developers can promote to users to upgrade to the paid version, unlock special features, and special items, or even provide ads for other goods and services for users who are not using the paid version. This can give developers an advantage regardless of whether the application downloaded by the user is free. App marketplace stores like Google Play and iTunes allow users to download apps for free, but it's also these app stores that will later provide payment for IAP. Consumers make payments directly through the app and cannot

use other payment platforms chosen by the developer, even if anyone tries to pay through other platforms, it is considered a violation of the app marketplace store policy. Therefore, IAP has been an issue for some time. Many consumers think that IAP done inappropriately will ruin the application experience and many consumers give bad reviews to applications that are already good because they include IAP. And the amount of commission charged by the application market store is certainly detrimental to developers.

The presence of the Anti-Google Law through the amendment of The Telecommunications Business Act or the Telecommunications Business Act in South Korea, has imposed new restrictions and regulatory supervision mechanisms on application market store business actors, such as the Google Play Store by Google. The law comes after Google's conditional sales practices brought a breath of fresh air to South Korea's competition law, not only in response to pressing issues but also as a greater effort to counter the global tech giant's enormous influence.

The Telecommunication Business Act aims to encourage the healthy development of the telecommunications business and ensure convenience for consumers through proper management of telecommunications business operations. The Telecommunication Business Act has been amended more than twenty times since it was issued, most recently in September and October 2021.

There are several provisions added to this amendment to regulate application market business actors, including:

- a. In Article 22-9 regarding the obligations of application market business actors and fact-finding surveys, as stipulated as follows:

“(1) An app market business operator shall prevent any damage to users and protect the rights and interests of users, as prescribed by Presidential Decree, by such means as stipulating matters concerning the settlement of payment and refund for mobile contents, etc. in its terms of use.

(2)The Minister of Science and ICT or the Korea Communications Commission may conduct fact-finding investigations on the operation of app markets of app marketing business operators, as prescribed by Presidential Decree, if necessary for the protection, etc. of persons (hereinafter referred to as "mobile content provider, etc.") who provide mobile content, etc. to register and sell mobile content, etc. at a space that intermediates the trade of mobile content, etc. (hereinafter referred to as "app market").

Business actors must prevent losses for users and guarantee the rights and interests of users in terms of payment settlements, refunds, and others. The Minister of Science and ICT or the Korea Communications Commission can conduct an investigation for app marketplace stores solely for the benefit of users.

- b. Addition of article 45-2 concerning the Establishment and Organization of the Communications Dispute Mediation Committee. The Korea Communications Commission may establish a Communications Dispute Mediation Committee to mediate disputes between telecommunications business actors and users. The disputes in question include compensation for losses experienced by users, disputes arising

because the services provided are not in accordance with the terms and conditions of use, disputes related to agreements on the use of telecommunication services, the use of services, or contract cancellation, disputes related to the quality of telecommunication services, failure of business actors to notify important matters such as service prices, terms and conditions of agreements, discounts, etc. or errors in explanation in notifications, settlement of user fees, revocation of settlement, or refund of user fees in the application market and other disputes related to telecommunication services stipulated by the Presidential Decree.

c. Addition of Article 92 provisions regarding corrective orders

The Minister of Science and ICT or the Korea Communications Commission may issue a remedy order to telecommunications business actors or facility operating authorities in their jurisdiction that commits actions that violate Article 22-5 concerning the obligations of application market business actors and fact-finding surveys.

Addition of Article 50 (Prohibited Acts) or prohibited acts

Application market operators may engage in any of the prohibited actions that weaken or may harm healthy competition or the interests of users, or allow other telecommunications businesses or third parties to engage in such actions, including:

1. forcing the use of a particular means of payment by taking advantage of its dominant position in a transaction when intermediary in a mobile content transaction, etc.
2. unfairly delay the examination of the application; and
3. unfairly remove the app from the app market store.

This amendment to the law is not just a one-time response to an urgent policy issue. In the context of South Korea, this refers to a greater effort by Korea to exert greater influence over giant tech companies. The Korean government is trying to understand new technologies and establish a governance framework on these issues. South Korea in this case introduced a law that has the potential to become a 'limit' or 'landmark' for other countries to regulate giant technology companies such as Google, or Apple.

d. Anti-Google Law as a solution for regulating Digital Platforms in Indonesia

Digital platforms in Indonesia are regulated in various forms of regulations, the main one is regulated by Law Number 11 of 2008 concerning Information and Electronic Transactions as amended several times recently by Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Electronic Information and Transactions (UU ITE). Indonesia also has Law Number 36 of 1999 concerning Telecommunications, but in this law which is regulated is limited to the implementation of telecommunication networks; the implementation of telecommunication services; and the implementation of special telecommunications. As well as the implementing rules of the ITE Law, namely Government Regulation Number 80 of 2019. Trade Through Electronic Systems (PP PMSE). Provisions regarding the obligations of application market business actors have not been regulated in this law. If you look at the derivative rules of the ITE Law, namely PP PMSE, there are several obligations for Business Actors, namely to protect the rights of Consumers by the provisions of laws and regulations in the field of Consumer Protection and comply with the provisions of laws and regulations

in the field of business competition. In this provision, there are no acts that are specifically regulated, while if referring to Law 5/1999, there is no provision regarding the prohibition for digital platforms regarding the limitation of commission fees that can be charged to application developers. If you look at the guidelines published on the ICC website, there are no provisions regarding this, especially the regulation regarding the abuse of dominant positions by digital platforms. At this time, the guidelines that regulate digital platforms regulated by ICC are only limited to determining the relevant market, as stipulated in the Regulation of the Chairman of ICC Number 4 of 2022 concerning the Determination of the Relevant Market.

The provisions regulated by ICC have started an investigation into alleged violations of Law 5/1999 committed by Google and its subsidiaries in Indonesia. ICC suspects that Google has abused its dominant position, conditional sales, and discriminatory practices in digital application distribution in Indonesia. The decision was made at the Commission Meeting on September 14, 2022, in following up on the results of the initiative research conducted by the ICC Secretariat.

For information, ICC has over the past few months been researching initiatives related to Google, a multinational company from the United States that specializes in Internet services and products. The research focused on Google's policy that requires the use of Google Pay Billing (GPB) in certain applications. GPB is a method of purchase of digital products and services in applications (in-app purchases) distributed on the Google Play Store. For the use of GPB, Google charges a service fee/fee to the application of 15-30% of the purchase.

The various types of applications that are subject to the use of the GPB include (i) applications that offer subscriptions (such as education, fitness, music, or video); (ii) applications that offer digital items that can be used in games/games; (iii) applications that provide content or benefits (such as ad-free versions of the application); and (iv) applications that offer cloud software and services (such as data storage services, productivity applications, and others). The GPB usage policy requires applications downloaded from the Google Play Store to use GPB as their transaction method, and content providers or application developers must comply with the provisions in the GPB. Google also does not allow the use of other payment alternatives in GPB. The policy on the use of GPB was effectively implemented on June 1, 2022.

From the research, ICC found that Google Play Store is the largest application distribution platform in Indonesia with a market share of 93% (ninety-three percent). Several other platforms also distribute apps (such as the Galaxy Store, Mi Store, or Huawei App Gallery), but they are not a perfect replacement for the Google Play Store. For application developers, the Google Play Store is difficult to substitute because the majority of end users or consumers in Indonesia download their applications using the Google Play Store.

ICC also found that Google imposed a policy to require the use of GPB for the purchase of digital products and services in applications distributed on the Google Play Store. Apps that are subject to this obligation cannot refuse the obligation, because

Google may impose sanctions to remove the application from the Google Play Store or not allow updates to the application. This means that the application will lose its consumers.

This obligation was found by ICC to be very burdensome for application developers in Indonesia because of the imposition of high tariffs, namely 15-30% of the price of digital content sold. Before the obligation to use GPB, application developers could use other payment methods with rates below 5%. In addition to increasing production costs and prices, this obligation also results in a disruption of the user experience of consumers or end users of the application.

In addition, ICC also suspects that Google has carried out conditional sales practices (tying) for services in two different business models, namely by requiring application developers to buy by bundling, Google Play Store applications (digital application marketplaces), and Google Play Billing (payment services). It was also found that for in-app purchases, Google only cooperates with one of the payment gateway/system providers, while several other providers in Indonesia do not get the same opportunity to negotiate the financing method. In contrast to the treatment aimed at global digital content providers, where Google opens providers to cooperate with alternative payment systems.

Thus, based on ICC's analysis, Google's various actions can have an impact on local content development efforts that are being promoted by the Indonesian government. In the research process, ICC has listened to opinions from various parties and can conclude that Google's policy is a form of unfair business competition in the digital application distribution market. ICC suspects that Google has carried out various forms of monopolistic practices and unfair business competition in the form of abuse of dominant positions, conditional sales (tying in), and discriminatory practices. Therefore, based on the Commission Meeting on September 14, 2022, ICC decided to continue the research in the form of an investigation into alleged violations of Law Number 5 of 1999.

On the one hand, Anti-Google Law may be able to increase business competition in the app market, by preventing giant digital platforms such as Google from monopolizing the distribution of applications and payment systems used. According to the author, this benefits consumers because there will be many payment methods that consumers can choose according to their preferences, and application developers will not hesitate to enter their applications into the application store and provide a choice of payment methods according to their preferences. On the one hand, with the enactment of this provision, digital platforms can become an obstacle for them to provide their services to consumers. This also draws attention to the existence of security risks that are not by the standards of this digital platform.

For now, there have been several cases related to digital platforms that have entered ICC, such as GoTo in 2022, Google, and Shopee which are about to enter the court. It can be seen that there has been an increase in incoming cases related to digital platforms in ICC, therefore ICC must issue rules both in the form of laws, or technical regulations in the form of guidelines to regulate digital platforms, so that in the future.

Conclusion

South Korea is amending the Telecommunication Business Act or Anti-Google Law in the hope of creating a competitive but still fair app market ecosystem. This amendment is made to accommodate the rights of developers and creators as well as consumers to get the best prices and services. The action of a giant digital platform like Google, by imposing in-app-purchase is an act of abuse of the dominant position. Users also have the right to get a variety of applications at competitive prices guaranteed by law. Digital platforms like Google have legal responsibilities that they must fulfill. Indonesia can apply the same provisions as Anti-Google, if you want to apply the same provisions, the PP PMSE needs to be readjusted, it needs to be detailed about the extent to which giant digital platforms can act. It is also necessary for the ICC to provide clear guidelines when dealing with business competition cases with this giant digital platform so that later disputes that already exist in the ICC can be decided fairly.

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