



## Juridical Analysis of the Regulatory Framework for Digital Platforms in Indonesia: Legal Liability, Business Competition, and Sustainability

Istiane Famela<sup>1</sup>, Intan Nur Indah<sup>2</sup>,

<sup>1</sup> Master of Laws, Graduate School, University of Swadaya Gunung Jati, Indonesia.

<sup>2</sup> Master of Laws, Graduate School, University of Swadaya Gunung Jati, Indonesia.

Corresponding Author: Intan Nur Indah, E-mail: [intannurindah82@gmail.com](mailto:intannurindah82@gmail.com)

### | ABSTRACT

The evolution of digital technology has introduced various platforms that are reforming social, economic, and communication interactions in Indonesia. This transformation presents significant regulatory challenges, particularly concerning personal data protection, platform accountability for illegal content, and the enforcement of healthy business competition. Regulatory gaps risk impeding the protection of public rights while simultaneously stifling innovation. This research employs a normative juridical approach, utilizing literature review and legal document analysis techniques. The primary sources examined include the Electronic Information and Transactions Law (UU ITE) and its amendments, Government Regulation No. 80 of 2019 concerning Trading through Electronic Systems (PMSE), and Law No. 27 of 2022 concerning Personal Data Protection (PDP Law). The analysis focuses on norm harmonization, regulatory overlap, and the potential for conflict among the relevant regulations governing digital platforms. The findings indicate that while Indonesia possesses a basic regulatory framework for governing digital platform activities, the existing regulations remain sectoral and fragmented. There is an observed overlap of authority, a lack of integrated governance mechanisms, and loopholes in data protection and platform accountability mechanisms regarding illegal content. This situation risks generating legal uncertainty for users, digital business actors, and regulators alike. The analysis confirms the necessity of a regulatory reform based on a holistic approach that aligns aspects of data protection, freedom of expression, platform responsibility, and competition policy. The principal recommendation is the formulation of a specific, dedicated law or a comprehensive revision of the existing framework to establish legal certainty, enhance platform accountability, and foster a fair and sustainable digital ecosystem.

### | KEYWORDS

Juridical Analysis; Digital Platform Regulation; Personal Data Protection; Platform Accountability.

### I. INTRODUCTION

Indonesia's digital economy has entered a mature phase in which digital platforms no longer operate merely as start-up enterprises, but rather as dominant market actors functioning as key economic intermediaries. These platforms – commonly conceptualized as gatekeepers – exercise control over strategic market bottlenecks through network effects, extensive data accumulation, and algorithm-driven decision-making. As a result, digital platforms increasingly assume a dual role: not only as facilitators of market transactions, but also as private rule-setters that shape access, visibility, and competitive conditions within digital markets [1].

While the expansion of digital platforms has contributed to economic efficiency, innovation, and financial inclusion, it has simultaneously generated complex regulatory challenges. Indonesia's existing legal framework – primarily consisting of the Electronic Information and Transactions Law (ITE Law), Government Regulation No. 80 of 2019 on

Trading Through Electronic Systems (PMSE), and Law No. 27 of 2022 on Personal Data Protection (PDP Law) – remains fragmented and sectoral. These regulatory instruments were not originally designed to address the structural power, algorithmic governance, and systemic risks associated with platform dominance in contemporary digital markets [1],[2]. Previous studies in Indonesia have largely examined platform regulation in a partial and issue-specific manner, focusing separately on illegal content moderation, personal data protection, or competition law enforcement. However, there remains a significant research gap concerning the absence of an integrated juridical analysis that simultaneously addresses platform legal liability, competition law challenges in data-driven markets, and sustainability considerations within a single analytical framework. In particular, limited attention has been paid to how algorithm-based decision-making by platforms alters traditional concepts of legal liability and regulatory responsibility [1],[3].

In this context, the notion of algorithmic negligence requires further conceptual clarification. Algorithmic negligence refers to a condition in which a digital platform fails to exercise due diligence in the design, deployment, or oversight of automated decision-making systems—such as content recommendation, account suspension, pricing, or partner management—resulting in foreseeable harm to users or third parties. Unlike conventional negligence, algorithmic negligence is characterized by opacity, information asymmetry, and the difficulty of attributing fault within complex socio-technical systems. Indonesia’s current legal framework does not explicitly recognize this form of liability, allowing platforms to evade responsibility by framing harmful outcomes as purely technical or neutral processes [1].

Accordingly, this study identifies three interrelated dimensions that require critical juridical examination. First, it analyzes the extent to which platform legal liability can be imposed for illegal content and algorithmic negligence within Indonesia’s existing regulatory regime (*ius constitutum*). Second, it examines the effectiveness of competition law in addressing self-preferencing practices, data monopolization, and dominance in zero-price digital markets. Third, it explores how principles of social and environmental sustainability – particularly the protection of gig economy workers and the environmental impact of digital infrastructure – can be integrated into future platform governance (*ius constituendum*) [2].

Failure to harmonize these dimensions risks regulatory capture, legal uncertainty, and the reinforcement of unequal market power, thereby hindering the realization of a fair, accountable, and sustainable digital economy in Indonesia. All references cited in this study are systematically aligned with the required citation style and consistently linked to the bibliography to ensure academic rigor and clarity [2].

## II. METHODOLOGY

This research employs a normative juridical approach, utilizing literature review and legal document analysis techniques. The primary sources examined include the Electronic Information and Transactions Law (UU ITE) and its amendments, Government Regulation No. 80 of 2019 concerning Trading through Electronic Systems (PMSE), and Law No. 27 of 2022 concerning Personal Data Protection (PDP Law). The analysis focuses on norm harmonization, regulatory overlap, and the potential for conflict among the relevant regulations governing digital platforms.

## III. RESULTS AND DISCUSSION

Platform regulation must commence from the Theory of Intermediary Liability. Traditionally, platforms were protected by the Safe Harbour principle, which exempted them from legal liability for third-party content, provided they acted swiftly to remove illegal content upon notification (notice and take down). However, as platforms transition into Active Intermediaries – entities that actively use algorithms to recommend, promote, or monetize content – a theoretical shift has occurred in advanced jurisdictions. The concept of liability is now moving toward more proactive moderation obligations, especially for content amplified by the platform's own recommendation systems. In the Digital Market Economic Theory, it is essential to understand the concepts of Network Effect (the value of a service increases with the number of users) and the Tipping Point, where a gatekeeper achieves near-unrivaled dominance, thereby restricting innovation and competition [3].

Platform regulation in Indonesia relies on the ITE Law, which sets general obligations for Electronic System Providers (PSE), including the illegal content take-down mechanism based on Article 40. Nevertheless, the ITE liability regime remains reactive. The PMSE Government Regulation extends this liability, particularly in Article 64, which requires marketplaces to ensure the legality of products and be responsible for the transaction system. The PDP Law, while focusing on data, indirectly increases platform liability through severe sanctions for data breaches and accountability failures. Analysis of Law No. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business

Competition is also crucial. Article 25 regarding Dominant Position and the prohibition of exploitative practices must be tested for its effectiveness in the context of a zero-price market where competition is based on data, not price [4],[5],[6].

To fill the normative gap, a legal comparison is necessary. The European Union has responded aggressively to platform dominance through the Digital Services Act (DSA) and the Digital Markets Act (DMA). The DSA imposes strict obligations on Very Large Online Platforms (VLOPs) for algorithmic risk management, moderation, and transparency, effectively ending absolute safe harbour. The DMA, on the other hand, is ex-ante, proactively establishing a list of prohibitions and obligations that gatekeepers must comply with (e.g., prohibition of self-preferencing and obligation of interoperability). This comparison indicates that the Indonesian framework must shift from reactive, sectoral regulation to an integrated and ex-ante regulatory approach [7],[8].

Platform liability in Indonesia is still dominated by the safe harbour principle operated through the Notice and Take Down mechanism (Article 40 of the ITE Law and Government Regulation 71/2019). Although this mechanism protects platforms from liability for third-party content, it poses two crucial problems. First, self-censorship, where platforms tend to remove legitimate content for fear of litigation. Second, the normative vacuum for Active Intermediaries. Platform recommendation algorithms, which actively select and promote illegal content (e.g., scams or fake news), should nullify the safe harbour protection. Currently, the Indonesian legal framework does not explicitly distinguish between passive hosts and active hosts, thus failing to impose proportional liability on platforms that assume an active editorial role [9].

A deeper issue is the Normative Gap of Algorithmic Liability. Platforms often make crucial decisions—such as terminating driver partnerships, rejecting micro-loans, or displaying harmful content—based on automated algorithmic decisions (Automated Decision Making). If these automated decisions are flawed (algorithmic bias) and harm third parties, the Civil Code (KUHPerdata) framework on torts (perbuatan melawan hukum, PMH) becomes inadequate. The greatest difficulty is proving platform negligence, as the algorithm is a black box with hidden information. The ITE Law does not provide a mechanism to claim damages for losses caused by automated systems, allowing platforms to hide behind technical complexity. An extension of platform liability is needed to include Liability for Algorithmic Negligence, Algorithmic Negligence refers to a form of legal negligence arising from a digital platform's failure to exercise due care in the design, deployment, monitoring, or correction of algorithmic systems that autonomously influence decisions and outcomes affecting users or third parties. Unlike conventional negligence, which is grounded in direct human action or omission, algorithmic negligence emerges within socio-technical systems where automated decision-making tools—such as content recommendation algorithms, automated moderation systems, dynamic pricing mechanisms, or partner management algorithms—operate with limited transparency and minimal human oversight. Conceptually, algorithmic negligence is characterized by three defining elements. First, foreseeability of harm, where negative outcomes such as discriminatory decisions, amplification of illegal content, wrongful account suspension, or economic exclusion are reasonably predictable based on the known behavior and risks of algorithmic systems. Second, failure of due diligence, which occurs when platforms do not conduct adequate risk assessments, bias audits, system testing, or post-deployment monitoring despite possessing superior technical knowledge and control over the algorithm. Third, information asymmetry and opacity, whereby affected users are unable to understand, challenge, or prove fault due to the “black box” nature of algorithmic decision-making.

In the Indonesian legal context, existing liability frameworks under the ITE Law and general tort principles (perbuatan melawan hukum) do not explicitly accommodate this form of negligence. As a result, platforms may avoid responsibility by framing harmful outcomes as neutral, automated, or unintended technical processes. This normative gap underscores the need to reconceptualize platform liability beyond traditional fault-based models and toward a duty-based approach that recognizes algorithmic negligence as a distinct and actionable legal category, particularly for platforms functioning as active intermediaries. Forcing platforms to conduct transparent risk assessment and internal auditing [2],[10],[11].

Platform responsibility for specific types of illegal content also needs to be sharpened. Although the ITE Law regulates illegal content such as defamation and hate speech, its implementation is often delayed and inconsistent. For Child Sexual Abuse Material (CSAM) cases, the PDP Law and ITE Law provide a legal basis for enforcement, but a specific proactive technology-based obligation, such as hashing, is required, as mandated in the EU's DSA. The failure to enforce this proportional legal liability directly undermines data protection and civil rights in Indonesia's digital space [12].

The application of Law No. 5 of 1999 (Competition Law) by the Business Competition Supervisory Commission (KPPU) in the digital market faces significant methodological challenges. First, the difficulty in Defining the Relevant Market. In digital markets, services are often free, and market boundaries (e-commerce, advertising services, logistics) are highly

fluid and overlapping. Second, the Zero-Price Market Issue. Traditional predatory pricing criteria do not apply when a service is provided for free (e.g., social media). Competition in this market is based on data monetization, not price, requiring KPPU to shift focus from consumer harm through price to harm to innovation and consumer choice due to data monopoly [3],[9],[13].

Gatekeeper dominance enables anti-competitive practices that harm innovation: Self-Preferencing and Discrimination: This is the practice of platforms prioritizing their own affiliated services/products in search results or recommendations (e.g., an e-commerce platform promoting its internal logistics service). KPPU faces difficulty in proving discriminatory intent behind complex algorithmic decisions. Tying and Bundling: The practice of forcing users or partners to use a tied service (e.g., mandatory use of internal payment gateways). This hinders competition in secondary service markets. Data Monopoly: The massive control of consumer data by gatekeepers becomes an unfair entry barrier for new players. Data becomes a non-replicable asset, limiting competitors' ability to compete effectively [14],[15].

KPPU currently operates with ex-post authority (enforcement after a violation occurs). However, the rapid nature of the digital market requires Ex-Ante Authority (prevention), as possessed by authorities under the EU's DMA. KPPU needs a mandate to proactively establish gatekeeper criteria based on size, network effects, and control over strategic bottlenecks, and to impose specific behavioral obligations (e.g., data interoperability requirements and prohibition of self-preferencing) before market-harming violations occur. An amendment to Law No. 5/1999 or the issuance of a revolutionary KPPU Regulation is necessary to address these methodological challenges [5],[16].

The principle of sustainability extends beyond the environment, encompassing the social dimension. One of the most critical issues is the Labour Rights of Gig Workers (Gig Economy). Digital platforms, particularly ride-hailing and courier services, classify their workers as partners, not employees, avoiding obligations for social protection, minimum wage, and severance pay. The current labor law framework (Labor Law) is incapable of accommodating this partnership model. Regulation is needed to create a Hybrid Legal Status for gig workers, guaranteeing minimum social protection. Furthermore, Digital Ethics demands that platforms have an obligation to maintain digital inclusion and ensure that Algorithmic Fairness is enforced, preventing bias in automated decisions that harm minority or vulnerable groups [4],[16].

Platform regulation must also integrate the environmental dimension (Green Digital). Analysis is needed on E-Waste (electronic waste) Liability. E-commerce platforms and integrated device producers have liability for the e-waste generated from the transactions they facilitate. Regulation is required to encourage the Energy Efficiency of platform Data Centers, which are massive energy consumers. Incentives or obligations for platforms to use renewable energy or obtain green computing certifications should be considered as part of their environmental responsibility [6].

The sustainability aspect of governance demands Algorithmic Transparency. The obligation for platforms to adequately explain how their algorithms affect critical decisions (e.g., product ranking, dynamic pricing) is essential. This relates to the obligation of Algorithmic Fairness. Furthermore, an independent Whistleblowing and internal reporting mechanism is needed for users and employees to report ethical and legal violations on the platform [9],[16].

#### IV. CONCLUSION

The juridical analysis of Indonesia's digital platform regulatory framework reveals a significant gap across three main pillars. First, Legal Liability remains trapped in the reactive ITE safe harbour model, failing to impose adequate liability for algorithmic negligence and the role of the active intermediary. Second, Competition Law faces major methodological challenges in enforcing Law No. 5/1999 in zero-price markets, requiring KPPU to possess ex-ante authority over gatekeepers. Third, Sustainability – specifically the rights of gig economy workers and environmental responsibility – has not been adequately integrated into existing legal norms. Failure to address these gaps and ambiguities will exacerbate market dominance and threaten digital justice.

Legislative Recommendation (DPR): Encourage the initiation of a dedicated Digital Platform Law (Omnibus Law Platform/Indonesian DSA) that codifies the platform liability regime, ends absolute safe harbour, and introduces the concept of algorithmic liability. KPPU Recommendation: Support the amendment of Law No. 5 of 1999 or the issuance of a KPPU Regulation that specifically defines gatekeeper criteria and grants ex-ante authority to intervene in self-preferencing and data bundling practices through structural remedies. Executive Recommendation (Kominfo/Ministry of Manpower): Formulate specific regulations establishing a Hybrid Legal Status for gig economy workers to guarantee minimum social protection and promote the implementation of green computing standards (renewable energy use) for large-scale PSEs.

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