

■ Submitted: : 28 Mei 2022

■ Revised: 07 June 2022

■ Accepted: 21 June 2022

Analysis of Consumer Personal Data Protection for Data Integration: the Gojek-Tokopedia Case

Anisya Humaira¹, Kukuh Tejomurti²

^{1,2}Faculty of Law Sebelas Maret University,

* Correspondence email: humairaanisya@student.uns.ac.id

ABSTRACT This research aims to analyze the regulation of personal data protection and legal protection of consumer personal data from two tech giants, Gojek and Tokopedia, which officially announced the acquisition on May 17, 2021. PT GoTo Gojek Tokopedia combines e-commerce, on-demand, financial services, and financial services. This research is normative or doctrinal research with a statute approach, a conceptual approach, and a case approach. The sources of legal materials used are primary and secondary legal materials. In Indonesia, there is no rigid law governing personal data protection because the regulation of personal data protection in Indonesia is currently still sectoral. In the terms of GoTo Group service users, consumer personal data settings are regulated in the privacy policies of Gojek and Tokopedia. Data integration after the acquisition of PT. Tokopedia by PT. aplikasi Karya Anak Bangsa raises news if there is a data leak and or use of consumer data without the consent of the data owner.

KEYWORDS: Acquisition, Big Data, Personal Data

INTRODUCTION

The development of the industrial sector that develops along with the development of technology certainly has a big impact on the economy of a country which then brings its people towards the era of the digital economy. Indonesia is a country that has a high potential for the development of the digital economy, this is corroborated by data from the 2019 SEA e-Conomy report compiled by Google, Temasek, and Bain&Co in 2019, which shows the trend of rapid digital economy growth in Southeast Asia with Indonesia in first place. Indonesia's digital economy grew more than fivefold from US\$8 billion in 2015 to US\$40 billion in 2019, with an average growth rate of 49% (Davis, et al., 2019).

In the report, it was also conveyed that the e-commerce sector has the fastest growth among other strategic sectors including the ride hailing

sector, financial services, and online media. Indonesia's e-Commerce sector is expected to reach US\$21 billion in 2019, growing 12-fold since 2015 with an average growth rate of 88%. The sector is expected to reach US\$82 billion by 2025 (Davis, et al., 2019). Then in the same report, following the position of the e-commerce sector there is a ride hailing sector as a contributor to the growth of the largest digital economy in Indonesia which reached US \$ 6 billion in 2019, where the figure has increased by an average of 57% since 2015 and the ride hailing sector is estimated to reach US \$ 18 billion in 2025 (Davis, et al., 2019).

One of the pioneers of startups or startups in Indonesia is Gojek which is a digital application under the auspices of PT. Karya Anak Bangsa application that helps its customers order motorcycle taxis and drivers to move from one place to another with fairly cheap rates and more capable facilities compared to conventional motorcycle taxis. Gojek is the first local startup based in Indonesia that offers an online transportation system, so Gojek has high brand recognition and an extensive driver network in various cities in Indonesia, even now it has penetrated to foreign countries. Gojek itself has gradually developed into a giant business network with various types of services that have increased.

The corporate action that has recently been carried out by Gojek and has become a public concern is by acquire PT. Tokopedia. As for PT. Tokopedia is a company that oversees tokopedia digital application, which is an application engaged in the e-commerce sector. Tokopedia is the second largest unicorn in Indonesia which is estimated to have a valuation of US \$ 8 billion to US \$ 10 billion or equivalent to Rp. 112 trillion rupiah (at an exchange rate of Rp. 14,100, -). The two companies then merged under a holding company called "GoTo" which is expected to generate a valuation of US \$ 40 billion or equivalent to Rp. 560 trillion.

The acquisition of Tokopedia by Gojek is still a concern for many parties, the collaboration is claimed to be the largest business collaboration in Indonesia. The presence of a new entity resulting from the merger, GoTo, is considered to give birth to many new challenges, one of which is related to

data security risks which is important to be used as one of the concerns of digital companies such as GoTo.

Based on the background that has been presented above, the formulation of the problem raised by the researcher in this paper is "What are the legal consequences of the acquisition of PT. Tokopedia by PT. Aplikasi Karya Anak Bangsa on consumer privacy rights?".

RESEARCH METHODS

This study uses a normative juridical approach. The normative juridical approach is an approach which is carried out based on the main legal materials by examining theories, concepts, legal principles and laws and regulations related to this research. This approach is also known as the literature approach, namely by studying books, laws and regulations and other documents related to this research.

Data, Instruments, and Data Collection Techniques

Data Collection and Processing Procedures

1. Data Collection Procedure

- a. Primary data

The author collects primary data consist of legislation, official record or treaties in the making legislation and judges' decisions (Marzuki, 2017: 181)

- b. Secondary Data

Secondary legal materials used in this writing are in the form of books, journals, thesis, thesis, legal articles, materials from the internet and other sources related to the problem being studied.

2. Data Processing

After the data has been collected, whether obtained from literature studies, documentation studies or those obtained through field studies, they are then processed with the following method:

- a. The author collects and processes the data through analysis to obtain objective conclusions or research results. The author

also edits and sorts out the data to obtain valid data or facts before carrying out the analysis.

- b. Systematization, the author tries to carry out systematic steps to obtain a conclusion or to formulate the research results, so that the research results will be valid.

Data analysis

The data analysis technique used in this writing is a method of syllogism that uses deductive thinking patterns. According to Philipus M. Hadjon in silogistic logic for legal reasoning which is the premise of the major is the rule of law, while the minor premise is legal fact. Of the two things then drawn conclusion (Marzuki, 2017: 90).

RESULT DISCUSSION

On Monday, May 17, 2021, the two largest technology-based companies in Indonesia, Gojek, officially acquired Tokopedia. Gojek is a transportation-based digital application under the auspices of PT. The Karya Anak Bangsa application, while Tokopedia is an e-commerce-based application under the auspices of PT. Tokopedia. Gojek's acquisition of Tokopedia resulted in a new entity, the GoTo Group.

Two large digital platform companies, Gojek and Tokopedia, officially merged to form a holding company called the GoTo Group on May 17, 2021. The company is expected to combine the three services including Gojek (Ride hailing-on demand), Tokopedia (Marketplace/E-Commerce), and GoTo Financial (financial technology service platform). The merger is also expected to drive more orders and increase income but was observed to have led to the combination of a total Gross Transaction Value (GTV) of more than USD 22 billion which is approximately IDR 314 trillion in 2020. The company has also become increasingly competitive in the non-Indonesian market as evident in the report of Bloomberg (Lee, 2021) that it is considering a dual listing with the Indonesia Stock Exchange and Wall Street Stock Exchange of the United States (Nurhaliza, 2021). The merger of these two companies has two interesting legal issues despite the business development opportunity it provides in this all-digital "World in grab hand" era (Cusumano et al., 2020,

p. 46). These include the allegations of monopolistic practices and unfair business competition as well as consumer data monopoly issues.

PT. GoTo Gojek Tokopedia is considered the largest digital ecosystem in Indonesia and is a leader at the Southeast Asian level, this is based on the company's strong position to optimize digitalization. The merger between the two giant digital companies has added new challenges, one of which is related to data security risks, which is an important thing to become one of the concerns of digital companies such as GoTo.

In the context of the digital business ecosystem, PT. GoTo Gojek Tokopedia as the provider of the electronic system is of course closely related to the regulation of electronic transactions as regulated in Law Number 19 of 2016 concerning Electronic Information and Transactions and Regulation of the Minister of Communication and Information Technology Number 20 of 2016 concerning Protection of Personal Data in Electronic Systems.

In its operations, it is based on the provisions of Article 3 of the Regulation of the Minister of Communication and Information Number 20 of 2016 concerning Information and Electronic Transactions that the protection of personal data in the electronic system is carried out in the process:

1. Acquisition and collection of personal data;
2. Processing and analyzing personal data;
3. Storage of personal data;
4. Appearance, announcement, transmission, dissemination, and/or opening of access to personal data; and
5. Destruction of personal data.

Privacy or privacy according to the Cambridge Dictionary is defined as the right that someone has to keep their personal life or personal information secret (Kukuh Tejomurti, 2018) or know only to a small group of people or it can be interpreted that privacy is a right that a person has to maintain a personal life or confidential information so that it is known only by a small group of people.

Quoting rapoport (1977), in the book Introduction to Social Sciences explains the meaning of privacy as the ability of a person or group of people to control their interactions with others, like visually, audio, and olfactory to get what he wants (Syafrizal et al, 2021: 180).

Article 5 of the Regulation of the Minister of Communication also explains that every electronic system operator must have internal personal data protection rules to carry out the process as referred to in Article 3 (Sinta Dewi Rosadi, 2018). This internal regulation is made as a form of action for every electronic system operator to avoid failures in personal data protection which he manages. The internal rules made by the electronic system operator must consider aspects of the application of technology, human resources, methods, and costs and refer to the provisions stipulated in the Regulation of the Minister of Communication and Information Number 20 of 2016 concerning Information and Electronic Transactions.

The acquisition of Tokopedia by Gojek can have an exclusionary conduct impact on access to consumer big data mastery. Big data is a general term that refers to large and growing digital data along with the use of digital devices. Prof. Ningrum Natasya Sirait defines big data as a very large data set that computing can analyze to reveal patterns, trends, and associations, relating to human behavior and interaction (Sirait, 2019). Regarding exclusionary conduct is discussed specifically in section 2 of the Sherman Act which is interpreted as the behavior of creating and maintaining a monopoly position by undermining competition and harming competitors (Steven C. Salop, 2006).

In this case, even though Gojek and Tokopedia are now under the same holding company, namely PT GoTo Gojek Tokopedia, the Gojek and Tokopedia applications regulate the personal data of their service users through different internal regulations, because basically Gojek and Tokopedia are two different applications. which has different users too. The settings regarding personal data are regulated internally by Gojek and Tokopedia through their respective privacy policies.

Access and control of consumer data play an important role in expanding market power to companies. Ownership of data without the ability to process and utilize data can result in losses for data owners and related companies, such as damage to company image. Asep Irawan (2020) states that the market owned by big data-based companies will significantly benefit the company because of its high bargaining position, both in negotiating cooperation to corporate action (Kurniawan & Yun, 2018, p. 66-67). Companies with a lot of data will provide sales benefits and attract many parties to cooperate, such as advertising, marketing certain products, or collaborating with other parties.

The increase in market power can increase the company's ability to coordinate, either implicitly or explicitly. Mastery of market share is related to the dominant position. Based on the structure conduct and performance (SCP), the percentage of the market share becomes a reference in determining the dominant position of a company. Merged companies will strengthen their dominant position, opportunities to abuse their dominant position will automatically form after the merger.

In enforcing the law on business competition, we can analyze that access to significant data impacts exclusionary conduct or a form of behavior that inhibits competitors. Exclusive conduct is explicitly discussed in section 2 of the Sherman Act, which is defined as behavior to create or maintain a monopoly position by damaging competition and harming competitors. Single-Firm Conduct under section 2 of the Sherman Act: Chapter 1 (Justice, 2015) mentioning that competitive behavior and exclusionary conduct can be considered the same because both behaviors have beneficial and exclusionary effects. It is hard to distinguish between behavior that violates and does not violate competition law. That is why the court or law enforcement is said to require precise handling from the side of under deterrence and overdeterrence.

We can note that Microsoft's acquisition of LinkedIn in 2016 has made Microsoft successful in processing personal data of LinkedIn users to increase the productivity of Microsoft products because Microsoft gives

users a choice "can the LinkedIn user data be partitioned to Microsoft?" [Nur Insani, 2020]. This decision provides convenience for users so that many LinkedIn users initially want to switch platforms but continue to use LinkedIn.

Facebook's acquisition of Whatsapp in 2014 also succeeded in accessing and utilizing all personal data of WhatsApp users for business purposes. On the other hand, many merged companies fail to integrate data, resulting in companies' business failures and losses. We can notice that Verizon acquired Yahoo, which is known to have suffered data leaks twice. Yahoo, which will be sold expensively, but in the end, Yahoo had to agree with Verizon's offer with a discount of up to 350 USD in 2017 (Doyle, 2015, p. 55-56). The cancellation of Facebook's plan to acquire Tiktok in 2016 because of Tiktok's application base in China and Tiktok's activities potentially against the law in the United States, such as many users are considered immature, and the data can not be partitioned.

To prevent privacy protection failures in post-merger data integration, we recommend at least the following references: first, risk prevention. Companies need to assess data sharing that may be carried out as part of a risk assessment. Companies must determine what data will be transferred and identify the purpose of data sharing. Second, the rights of data subjects. The company needs to provide notification to the data subject regarding the Merger and Acquisition (M&A) given the data subject's right to refuse and guarantee that every M&A process will not violate the right to privacy of the customer's data.

CONCLUSION AND SUGGESTION

Conclusion

PT. GoTo Gojek Tokopedia is a company and digital platform provider that integrates on demand services, e-commerce and digital products, as well as financial technology services, directly or indirectly through entities within the company. As regulated in article 5 of the Regulation of the Minister of Communication Number 20 of 2016 concerning Electronic Information and Transactions, every electronic system operator must have internal rules for

protecting personal data. In this case, even though Gojek and Tokopedia are now under the same holding company, namely PT GoTo Gojek Tokopedia, the Gojek and Tokopedia applications regulate the personal data of their service users through different internal regulations, in which the settings regarding personal data are regulated internally by Gojek. and Tokopedia in different privacy policies or use their respective privacy policies. Perkominfo Number 20 of 2016 stipulates that the protection of personal data in electronic systems is carried out in the process of acquisition and collection; processing and analysis; storage; appearance, announcement, delivery, dissemination, and/or opening of access; and extermination.

Suggestion

Given the importance of personal data protection in the midst of the rise of digital crime, the Government which in this case is represented by the Ministry of Communication and Informatics together with the DPR, must be more alert in dealing with developments in information technology by making and implementing laws related to personal data protection. So that the protection of personal data becomes effective, timely, and on target.

REFERENCES

- Davis, S., Saini, S., Sipahimalani, R., Hoppe, F., Lee, W., Girona, I. M., . Smittinet, W. (2019). e-Conomy SEA 2019 report. Google; Temasek; Bain & Company.
- Law Number 19 of 2016 concerning Electronic Information and Transaction
- Marzuki, M. (2017). Penelitian Hukum: Edisi Revisi. Prenada Media.
- Ningrum Natasya Sirait. 2018. "Tantangan Hukum dalam Era Analisis Big Data: Implikasi Pemanfaatan Analisis Big Data terhadap Hukum Persaingan". Yogyakarta: Fakultas Hukum, Universitas Gadjah Mada.
- Regulation of the Minister of Communication and Information Technology Number 20 of 2016 concerning Protection of Personal Data in Electronic Systems

- Steven C. Salop, S. 2005. "Exclusionary Conduct, Effect on Consumers, and The Flawed Profit-Sacrifice Standard". *Antitrust Law Journal*.
- Syafrizal, dkk. 2021. *Pengantar Ilmu Sosial*. Medan: Yayasan Kita Menulis.
- Doyle, K. (2015). Facebook, Whatsapp and the commodification of affective labour. *Communication, Politics & Culture*, 48(1), 51. <https://search.informit.org/doi/pdf/10.3316/ielapa.383824705363393>
- Rosadi, S. D. (2018). Protecting Privacy On Personal Data In Digital Economic Era : Legal Framework In Indonesia. *Brwajiaya Law Journal*.
- Tejomurti, K., Hadi, H., Imanullah, M. N., & Indriyani, R. (2018). Legal Protection for Urban Online-Transportation-Users' Personal Data Disclosure in the Age of Digital Technology. *Padjadjaran Journal of Law*, 5(3). DoI: 10.22304/pjih.v5n3.a5 .
- Insani, Nur. [2020]. "Legal Rights Of Consumer Finance Agreement Related To Fidusian Guarantee Settings In The City Of Gorontalo". *Indonesian Journal of Law and Policy Studies*, Vol. 1(2). DoI: 10.31000/ijlp.v1i2.2845
- Mutiara, Upik. [2020]. "Perlindungan Data Pribadi Sebagai Bagian Dari Hak Asasi Manusia Atas Perlindungan Diri Pribadi". *Indonesian Journal of Law and Policy Studies*, Vol. 1(1). DoI: 10.31000/ijlp.v1i1.2648
- Justice, T. U. S. D. of. (2015). *Competition And Monopoly: Single-Firm Conduct Under Section 2 Of The Sherman Act : Chapter 1*. USA. <https://www.justice.gov/atr/competition-and-monopoly-single-firm-conduct-under-section-2-sherman-act-chapter-1>
- Kurniawan, A., & Yun, Y. (2018). Pengaruh Kompetensi Kewirausahaan dan Kelanggengan Usaha Terhadap Keunggulan Bersaing. *Jurnal Inspirasi BBSnis Dan Manajemen*, 2(1), 65–78. <https://doi.org/http://dx.doi.org/10.33603/jibm.v2i1.998>
- Nurhaliza, S. (2021). *Siap Dual Listing, Tokopedia Bakal IPO Tahun Ini*. IDX. <https://www.idxchannel.com/market-news/siap-dual-listing-tokopedia-bakal-ipo-tahun-ini>

Cusumano, M. A., Yoffie, D. B., & Gawer, A. (2020). The future of platforms. MIT Sloan Management Review, 61(3).
<https://www.proquest.com/openview/44a07bb4f8723757bbf28ef48af62eb8/1?pq-origsite=gscholar&cbl=26142>