

## Legal Issues of Online Reputation Portability in the Digital Economy

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### ABSTRACT

Reputation influences the level of trust and expectation of others either in social or business interactions. It becomes more important in the digital society, where interactions are often faceless and intangible. However, online reputation systems are usually built within a certain environment, thus locally, and cannot be used beyond that particular environment. A question arises whether such a local online reputation system could lead to lock-in problems that adversely affect competition. This paper begins the analysis by examining the legal aspects of user review as a set of information provided by a reviewer and the reputation as information about the reviewee provided to (other) users. To analyze the legal aspects of online reputation portability, the paper discusses three key issues: first, the legal status of user reviews and addresses the issues of online reputation portability, as recognized under the new Indonesian Data Protection Act, Law No. 27 of 2022, in comparison to the EU General Data Protection Regulation (GDPR), Regulation (EU) 2016/679. Second, it explores whether the limitation of the use of online reputation leads to lock-in problems that might justify the intervention of competition law. Third, it examines online reputation as a reviewee's asset and the impact of its limitation of use to competition in the viewpoint of Indonesian competition law under Law No. 5 of 1999 compared to EU competition law under Article 102 TFEU.

**Keywords:** Online Reputation, Portability, Data Protection, Lock-in, Competition Law

### INTRODUCTION

As defined in *Oxford Dictionary*, reputation is 'the beliefs or opinions that are generally held about someone or something' [1]. Reputation substitutes detailed first-hand knowledge about someone or something with the collective opinions of others. *Jøsang, Ismail, and Boyd* define reputation as 'a collective measure of trustworthiness based on the ratings of community members' [2] which might affect the interacting party's future payoffs [3] [4].

Reputation can be seen as a certain type of information concerning knowledge and experiences about one's interactions with others. A reputation system basically serves a function to allow the exchange of information consisting of a record of the past experiences of others when dealing with the same person or product. The information will help weigh the

trustworthiness of the person or the product quality, based on which a decision can be made to interact with the person or to buy the product.

In the brick and mortar world, a reputation system from what so-called the ‘word of mouth’ has been long recognized. This is basically the idea that has been transformed into an online feedback mechanism [5] in the online environment. Here, reputation becomes more important, because human ‘online’ interactions are often faceless and intangible. The internet has been providing a meeting point for collective opinions where users can easily render, obtain, and exchange information and ideas. This allows the function of online reputation to work.

Strand of research has been conducted to understand the work of online reputation. Scholars emphasized online reputation's importance in building trust for personal interaction or commercial transactions. Research findings by Kim, Ferrin, and Rao concluded that reputation significantly builds consumers’ trust in electronic commerce [6]. Several research studies for developing a centralized or global online reputation system highlight that reputation is essential because any interaction, either interpersonal or business-related may concern the exchange of private information, money, or goods, [7] and undoubtedly require correct and reliable information [8]. Those types of data require trust for their provision and process. Trust is needed to ensure that the information will be used only for the purposes agreed upon between parties and not be made available to third parties without the data subject's consent.

In electronic commercial transactions, the importance of trust for consumers is even higher than in traditional commerce because of the characteristics of cyber transactions described by *Kim, Ferrin, and Rao* [9] as ‘blind, borderless, can occur 24 h a day and 7 days a week’. The transactions could also be ‘non-instantaneous. A payment via bank transfer, or delivery of a product may occur days or weeks before it is completed. These natures may cause uncertainty for the parties involved as regard the performance of the transactional obligations [10]. Trust provides remedies for the uncertainty by creating internal security for the parties before closing the transaction [11].

However, there is a scope of limitation of how online reputation can be used and recognized. In the current state, one’s reputation is only valid within a certain website where the reputation has been built, hence within a certain community. The reputation cannot be used across different websites. It is also not possible in the current state to carry one’s reputation from one website to another. A book seller’s reputation at Amazon cannot be carried to Goodreads, or a buyer review about a seller at eBay cannot be carried to any other auction online platforms. This means that a user has to build a new reputation from zero again each time he starts to use a different website. In other words, the lack of portability makes the current online reputation system a silo, *i.e.* local in nature.

A dependence of user on a certain platform can be resulted from the established reputation built over a long period of time. The use of the platform cannot be easily replaced by another platform, because a different system applies, and it will take time again to build a reputation without a guarantee of the same outcome. However, whether the local nature of a reputation system would create a lock-in problem, needs further assessment.

To break the silos, a new system is needed, as *Benyoucef and van Bochmann* suggest, that ‘allows users to take their online reputation anywhere they go in the online environment’ so-called online reputation portability [12]. For this end, different algorithms used in each community, *i.e.* online platform, also need to allow the free movement of reputation [13].

While *Aroyo, De Meo, and Ursion* suggested the necessity to comply with the applicable laws on data protection, [14] questions arise with regard to the nature of the data involved in an online reputation system and the legal rights entailed for the parties involved. These implicate complex issues. An online reputation system involves raw data of the review and the aggregated reputation. Such raw data comprises certain types of data, for instance feedback value (rating or recommendation), information on rater credibility, context factor (time and size of transactions), and number of transactions. Further, there are several parties involved in the reputation system: (1) online providers who process the reputation qualification and aggregate user reputation; (2) an entity who makes use of the information concerning the reputation of the user in order to know whether the given user can be trusted (*querying agent*); (3) user who is being rated and thereby, acquires reputation (*ratee* or *reviewee*), and (4) user who gives ratings, reviews, or otherwise any other data to enable online providers to qualify reputation of the acquiring user (*rater* or *reviewer*).

The paper attempts to address the legal issues of online reputation portability by focusing the analysis on the aspects of data protection regarding user reviews and the impact of the local nature of the current online reputation system to competition. The paper will be structured in five parts. After discussing the background and presenting research questions in the *first* part, the *second part* describes how the current online reputation system works. The *third* part examines the legal status of user reviews and addresses the issues of online reputation portability, as recognized under the new Indonesia Data Protection Act, Law No. 27 of 2022, in comparison to the EU General Data Protection Regulation (GDPR), Regulation (EU) 2016/679. The *fourth* part discusses whether the limitation of use of online reputation could lead to lock-in problems that might justify the intervention of competition law. The *fifth* part explores how EU competition law and Indonesian competition law under Law No. 5 of 1999 accordingly respond to online reputation as an asset and the impact of the limitation of use to competition. The *sixth* concludes and proposes recommendations.

## **MATERIALS**

### ***Show Cases of the Current Online Reputation System***

Online reputation has been widely used by prominent online platforms. A study by *Kim, Ferrin, and Rao* discovered that a consumer’s trust positively influences the purchasing intention [15]. Their research finding explains why giving a good review could be useful to promote the selling of a certain product. The better reviews are obtained, the better reputation the reviewer has. For the online platform, this means a better selling of the merchandise offered. Hence, it is in their best interest to have good reviews about the products, the sellers, and the performance of the transactions, for instance, services for customers. A good and user-friendly review mechanism is important to attract users to give reviews.

For non-commercial online platforms, *i.e.*, where users can use the platform without having to pay with money, such as social network sites (SNS), online reputation systems can help attract users with the work of network effects. The more users on the platform, the more attractive the platform is for advertisers, where at least part of the revenue comes from [16].

However, to gain users' trust, online platforms need to create a reliable review system. This can be done, for instance, by enabling evaluations on reviews, by which users can rate the reviews based on their usefulness. The more useful the reviews for users, the more reliable the platform for users would be.

The following are several showcases of how online reputation has been utilized in different online platforms.

eBay's online reputation system is known as one of the best. Although the reputation system works for both sellers and buyers, seller reputation matters more than buyer's because, in most cases, sellers are likely able to require buyers to complete the payment before sending the products, whereas buyers have to rely more on the seller's trustworthiness to make delivery upon the completion of the payment [17]. A study conducted by *Resnick, Zeckhauer, Swanson, and Lockwood* about eBay's reputation system [18] suggests that communication and responsiveness, payment methods, delivery system, accurate product description, pictures, and aesthetical factors influence the willingness of buyers to bid high [19].

Amazon.com uses customer reviews that enable customers to rate and write reviews about the products having been purchased. A study by *David and Pinch* describes how online review and recommendation systems work in the case of book and CD reviews at amazon.com [20]. From the analysis of the cases they discovered in the study, *David and Pinch* proposed six degrees of reputation that reflect the layers of structure in the reputation management system, from which it can be summarized that different parties can benefit from a product review: (1) the reviewee, e.g. book authors, (2) the review users, (3) the online platform that applies and manages the review system, e.g. amazon.com, (4) the reviewer himself, and (5) other products that are advertised in the review space.

Unlike online sales services such as eBay or online shops like Amazon, online reputation on LinkedIn works differently. LinkedIn users do not rate their connections or write comments on how others behave on the platform. Instead, they can see the reputation from the connection of an individual user in terms of the relevance of the professional circle with the user, sometimes also the number of contacts in the user's connection, and the endorsements from other users, usually those from the work environment.

In Indonesia, the reputation system has been increasingly used by different types of online platforms, mainly for online shopping. As shown in Tokopedia.com, one of Indonesia's most popular online shopping platforms, there are three different mechanisms for reviewing. First, it reviews the performance of an individual seller. Second, the reviewing mechanism is applied to the product and the accuracy of the description of the product by the seller. Here, Tokopedia.com employs user review that comprises two elements: product quality and accuracy of the product descriptions. The first element refers to the product itself, and the second relates the description provided by the seller to the product's real

specifications. Last, under the product's title, the platform also provides an average review of the overall transaction performance. The algorithm is run, resulting in a review summary read as 'x% successful transaction from n transactions.'

In addition, the platform uses information about the number of products sold to help users indicate the trustworthiness of the sellers. In the search result, users can filter the search result order by price or by the number of products having been sold. This information is more detailed in the product description (and seller), which shows how many products have been sold. Tokopedia.com also provides a mechanism for users to review whether the reviews are helpful.

Online reputation in Indonesia is also very prominent in the transportation network industries like GoJek and Grab. The rating system in both online platforms is used not only to safeguard the interest of consumers but also to define whether a service provider, e.g., the driver, is entitled to a bonus or could continue offering the service via the platform. A bad rating could result in a penalty, such as not being allowed to operate via the platform for a certain period or even permanently. Here, the rating mechanism serves as a sanctioning tool. This way, the online reputation system helps ensure the quality of services.

Although online platforms share the view that online reputation is significantly useful for their business and sometimes also share similarities in certain parts of the reputation system, the reputation built by an individual user on a certain online platform is not transferrable to another platform. Hence, every time an individual user starts to use another online platform, he has to build his reputation again, which could take time, with no assurance of gaining the same reputation as the one he has already had in the previous platform.

### ***Online Reputation Portability and User Reviews as Public Goods***

The necessity of online reputation portability entails the need for legal analysis of the rights of the reviewers and of the reviewed, respectively, to avoid violating others' rights when allowing such portability. It is also necessary to examine whether online platforms are obliged to enable reputation portability. Because online reputation requires user reviews to be made publicly available, one might argue that user reviews have the nature of public good. These issues are tackled in the discussions on the nature of online reputation from the perspective of personal data protection and the analysis of the characteristics of user reviews as a public good.

### ***Personal Data Protection, User Review, and Public Good***

#### ***1. Personal Data Protection in Indonesia and the EU***

Do user reviews qualify personal data? I will start the discussion by looking at the definition of personal data according to data protection law. In Indonesia, personal data is protected under the new Data Protection Act, Law Number 27 of 2022 concerning Personal Data Protection (hereafter, DPA) [21]. Personal data protection has been recognized as part of the fundamental right to privacy laid down in the Indonesian Constitution of 1945 [22].

Article 1 lit. 1 DPA defines personal data as ‘any data about a person's life, identified and/or identifiable, be it individually or in combination with other information, either directly or indirectly, using electronic and/or non-electronic system.’ To some extent, the definition adopted is the definition of personal data used in the European Union.

The right to personal data in the EU is protected under the new General Data Protection Regulation (hereafter, GDPR), Regulation (EU) 2016/679 [23] that entered into force on 24 May 2016 to replace EC Directive No. 95/46/EC (Data Protection Directive) [24]. Under EU Law, the right to personal data is acknowledged as a fundamental right and forms part of the right to private and family life, home, and correspondence under Article 8 of the European Convention on Human Rights (ECHR).

Personal data, according to Article 4 lit. 1 of the GDPR 27, is defined as ‘any information relating to an identified or identifiable natural person (‘data subject’). Further, an identifiable natural person is defined as ‘one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person’.

Thus, the term personal data encompasses a wide range of types of information concerning an individual user. A user review might relate to an identified or identifiable person, for instance, the preferences (e.g., what he likes about the product or the transaction methods), the product he bought or is interested in, his view on valuing a product, and so on unless it is given under a pseudo name. Unless a review is given under a pseudo name, it would make sense to treat user reviews as personal data. With a pseudo name, it would be difficult or even impossible to relate the review to the person who gives it. Often, a pseudo name is used on purpose to make the person behind the name unidentified.

Pseudonymization is regarded as a method to secure personal data. The GDPR in its Recital (26) states ‘[t]he principles of data protection should therefore not apply to anonymous information, namely information which does not relate to an identified or identifiable natural person or to personal data rendered anonymous in such a manner that the data subject is not or no longer identifiable. This Regulation does not, therefore, concern the processing of such anonymous information, including for statistical or research purposes.’

However, it is also possible that information could still be attributed to a person despite being pseudonymized. Hence, there is a limitation on whether a pseudonym can be exempted from information relating to an identified or identifiable natural person. Recital (26) GDPR further clarifies that ‘[p]ersonal data which have undergone pseudonymization, which could be attributed to a natural person by the use of additional information should be considered information on an identifiable natural person.’

### ***1.1 User Review as A Public Good***

When somebody writes an online review without pseudonymization (there is also a case where the online platform does not enable pseudonymization) about a hotel where he stayed during his last holidays, other users will be able to know that the opinion about the hotel is his or at least related to him as a person, and further, that he was in the hotel in that

particular period of time as well as his preferences and other information that could be inferred from his review. In the EU, data controllers are encouraged to enable pseudonymization to allow data minimization, which would technically make it difficult to reveal the data subject's identity [25]. Pseudonymization exemplifies the implementation of privacy by design under Article 25 GDPR for preventive protection for minimally invasive data processing [26]. However, in Indonesia, such protection has not yet been governed by a specific regulation. The principle of data minimization has also been recognized under Indonesian DPA.

User reviews contain different kinds of information. Among those is the opinion of the data subject about a particular matter. *Steinbrecher and Schiffner* wrote, '[o]pinion of and about natural persons are personal data and need to be protected.' [27]. As regards an opinion of a natural person, Article 9 par. (1) GDPR prohibits processing personal data that reveals political opinion. The opinion of a data subject in a user review is usually not a political opinion in nature, although it remains possible that a user utters his political opinion in a user review. User reviews normally contain opinions about the quality of services or products or relevant matters concerning a particular transaction, or a commentary about a person in cases of recommendation in a social media like LinkedIn. Hence, the opinion of a natural person in a user review does not fall under the protection in Article 9 par. (1) GDPR, unless it is a political opinion. Even in cases where it is a political opinion, Article 9 par (2) lit. e excludes the prohibition in Article 9 GDPR when 'the processing relates to personal data which are manifestly made public by the data subject'. In a user review, the data subject intentionally makes the opinion public by posting it in a review. Hence, there is a limitation to the protection of opinions made by natural persons in user reviews.

Further, there are two considerations regarding the publication of a user review. First, a reviewer usually writes the review to make it public (otherwise, he could have given his feedback in a more discreet way, such as writing an email or a feedback ticket). Second, a review is information or knowledge about something - in this case, the reviewer's past experiences with the reviewer or the object being reviewed. The questions are: could the two considerations establish a basis to qualify a review as a form of knowledge as a public good and if so, to what extent would it affect the protection of the reviewer's personal data that can be obtained directly (such as reviewer's name) or indirectly (such as reviewer's preference and the details of his transaction with the reviewee) from such information?

*Holcombe* defined a public good as 'a good that, once produced, can be consumed by an additional consumer without any additional cost.' [28]. Further, he added that 'consumers cannot be excluded from consuming the public good once it is produced.' [29]. According to *Fairfeld and Engel*, '[i]n the technical language of economics, a public good is a nonrival and nonexcludable resource.' [30].

As first articulated by *Musgrave*, public goods are characterized by two traits: 1) non-excludability and 2) non-rivalrous consumption [31]. To explain the difference between the two traits, *Stiglitz* wrote that while the non-excludability nature of a public good means that nobody *should be* excluded from enjoying a public good, the non-rivalrous means nobody *can be* excluded. In the first trait, although somebody can be excluded from enjoying a public good, there is no incentive to do it because there is no marginal cost to share the benefit of

using it. The second trait implies that a public good cannot be provided privately [32]. *Drahoš* added by explaining that social norms and technologies influence the degree of the non-excludability of a good [33].

Strand of literature has discussed various types of public goods, from clean air and security to knowledge [34], open-source software [35], the internet [36], and privacy [37]. Similar to other types of public goods, user reviews are non-excludable. When explaining knowledge as a public good, as *Stiglitz* wrote, ‘If I teach you the theorem, I continue to enjoy the knowledge of the theorem at the same time that you do. By the same token, once I publish the theorem, anyone can enjoy the theorem.’ However, he further explained that there is a limitation in treating knowledge as a public good, for instance, when knowledge about a certain matter is kept secret. In industries, this could be seen in the use of trade secrets [38]. Even if knowledge is published, a limitation under copyright protection might also apply.

Like knowledge, making user reviews publicly available on an online platform does not exclude a user from benefiting from a review, while at the same time, other users also enjoy such a benefit. They are also non-rivalrous because the consumption by a user does not create any cost for the same consumption at the same time by other users. Neither cost in terms of price, time, nor effort is required for additional use by others.

Considering user reviews as public goods allows the free flow of user reviews from one online platform to another in the concept of reputation portability. However, the next question is, if a reviewer or reputation holder is technically allowed to port the reputation, would the nature of the reviews as public goods mean that no consent of the reviewer is required to enable such portability?

To respond to the question above, I refer to *Stiglitz*’s analysis of knowledge as a public good, in which he also brings to light the necessity of intellectual property rights. While discussing the dilemma of the collective action of knowledge production and its dissemination, *Stiglitz* touched upon the problem of the scarcity of knowledge if there is no sufficient incentive to produce knowledge. To tackle the problem, he suggested the role of the state to encourage the production of knowledge by utilizing issuing intellectual property rights to ensure that by producing knowledge, an inventor will gain benefit in terms of economic return and the exclusive right to limit and allow the use of the knowledge he invented by others [39].

The same way of thinking could be applied to using user reviews as public goods to some extent. To ensure the provision of user reviews, there is a need to incentivize users to provide a review. One of the incentives is to ensure the protection of user personal data in a review.

While user reviews have the traits of public goods and thus can be treated as public goods, this fact should not diminish the reviewer’s right to data. Hence, the use of personal data contained in a review is subject to the prior consent of the reviewer. Having the traits of



public goods should not impair the application of personal data protection in user reviews according to the applicable laws.

In the EU, the processing of personal data is subject to the fundamental principles under Article 6 of GDPR, namely the principles of legality, purpose, legitimacy, and proportionality [40]. According to Article 6 par. (1) lit. a GDPR, the processing of personal data ‘shall be lawful only if and to the extent that... the data subject has given consent to the processing of his or her personal data for one or more specific purposes’. The data subject's consent cannot be assumed from his or her action. In the case of user reviews, the publication of data in the review by the data subject is done merely for the purpose of the review in that particular online platform unless otherwise agreed. It cannot be assumed that the data subject has consented to the review being ported to any other platform. Hence, the portability of user reviews is subject to prior explicit consent by the reviewer.

According to Indonesian laws, the consent of the data subject for the processing of personal data is also subject to the prior consent of the data subject, as governed under Article 26 of the EIT Law. The provision applies to the processing of personal data in general, and it can be inferred that it includes porting user reviews to another online platform. However, due to the lack of specific regulation, the implementation is challenging because it would rely mostly on legal interpretation.

## **2. Reputation and the Right to Portability**

Article 20 GDPR establishes a basis for the right to data portability, in which, under certain circumstances, ‘[t]he data subject shall have the right to receive the personal data concerning him or her, which he or she has provided to a controller, in a structured, commonly used and machine-readable format and have the right to transmit those data to another controller without hindrance from the controller to which the personal data have been provided...’ [41].

The right to data portability is a new right of data subject introduced in the GDPR. The introduction of the right to data portability aims at reinforcing the ability of data subjects to control the processing of their personal data by allowing the data subject to easily switch service providers and transmit their personal data to the new service provider [42].

The new right also entangles another aspect. Apart from benefiting the data subject by strengthening their right to personal data, it also helps promote competition among service providers in two ways. First, it induces competition between service providers to provide user-friendly and interoperable technologies [43]. Second, it facilitates the removal of entry barriers resulting from lock-in problems.

As regards the scope of data, the right to data portability only applies to personal data as defined under Article 4 lit. 1 of the GDPR [44], defined as ‘any information relating to an identified or identifiable natural person...’ Hence, it does not apply to data unrelated to the natural person. It also does not apply to pseudonymized data unless the pseudonymized data can be attributed to a data subject, in which case the data subject is identifiable [45].

Article 20 GDPR requires the data shall be ‘provided to a controller.’ It implies that the data subject intentionally takes action to make the data available for the data controller

and that the data controller obtains the data from the data subject, either directly or indirectly. Thus, the right to data portability applies not only to data that is actively provided by a data subject, such as email address or photos, but also to data that is generated from the action of the data subject on an online platform (generated content), such as preferences inferred from the search pattern on a search engine [46].

However, the right to data portability is subject to restrictions. Among others, according to Article 20 par. (4) GDPR shall not impair the rights and freedoms of others. For instance, the transmission of personal data by a data subject might involve the personal data of others, such as a picture of another natural person (s) along with the data subject. According to Article 29 of the Data Protection Working Party, while the data controller is obliged to enable the porting of data, the protection of the affected data subjects is done by requiring the new service provider, i.e., the new data controller, to ensure the compliance to the lawfulness of the processing of the third-party related data [47]. Further, Article 29 of the Data Protection Working Party emphasized that the new controller shall not process the personal data related to third parties ‘for any purposes that would adversely affect those rights.’ [48]. Following the protection concept, upon user request, an online platform will have to port the user’s reputation to another platform under the right to data portability. However, the new online platform shall ensure that the processing of the data ported does not impair the reviewer’s right to his personal data contained in the user review.

The right to data portability, as recognized in the new EU General Data Protection (GDPR), has been adopted under the Indonesian DPA in Article 13. As regards the scope of protection, according to the DPA, users are entitled to the following: (1) obtain information regarding clarity of identity, basic legal interests, the purpose of the request and use data, and accountability of the party requesting Personal Data; [49] (2) complete, update, and/or correct errors and/or inaccuracies in the data with the purpose of data processing; [50] (3) access to and copy of the personal data; [51] (4) terminate processing, delete and/or destroy the personal data; [52] (5) withdraw the consent to the data processing that has been given to the data controller; [53] (6) object to decision-making actions that are based solely on automated processing, including profiling, which give rise to legal consequences or have a significant impact on the data subject; [54] (6) suspend or restrict the processing of personal data appropriately to process the personal data; [55] (7) claim and receive compensation for violations of the processing of his personal data; [56] and (8) use and send personal data to other data controllers, as long as the systems used can communicate with each other securely following the principles of personal data protection (the right to data portability)[57].

Although the right to data portability induces competition between service providers and, thus, shall positively impact competition, there is no obligation under competition law in the EU or Indonesia for online platforms to enable reputation portability.

### ***Lock-In Problems in Online Reputation Systems and the Relevance of Competition Law***

#### ***1. Reputation Lock-In and Fragmented Market***

The problem with a closed online reputation system lies in three issues: the potential to face monopolistic behaviors within the silo, the limited access to entering and exiting a

silo, and the limited freedom of users. These could lead to lock-in problems. However, each issue should be analyzed on a case-by-case basis.

Silo might call for competition law attention [58] because it has the inclination towards creating monopolistic behaviors. Even if there are similar silos in the market that can be included in one relevant market, consumers of a silo cannot, or at least not easily switch to another silo. In this case, the market is fragmented into smaller ones to such a level that each is separated from others and in which there will be only one service provider consumers will have to deal with. This will give the service providers incentives to behave as monopolists because consumers (the users) cannot turn to any other service provider due to the lock-in issue or not without difficulties such a degree that is sufficient to hinder them from switching to or using any other service provider at the same time. However, entry barriers should be considered low, as building a reputation online is very easy, so no significant effort is required to develop a new reputation.

From the user's viewpoint, the silo will lead to the limitation of choices available in the market. In the context of dynamic competition, where price is no longer the most eminent indicator for evaluating market performance, innovation becomes an important proxy along with other elements such as consumer choices, the introduction of new products, and increased product quality using new technologies [59]. In this regard, certain aspects, such as the protection of consumer interests, for instance, the protection of user personal data and privacy, as well as maintaining a market structure that allows a sufficient number of players and choices for consumers, are important to be taken into account. An online reputation system is built and useable only within an online platform, and although the products offered are the same, similar, or substitutable to other products on another platform, the online platform market becomes fragmented into smaller markets.

The question competition law needs to answer is whether entering the market for potential competitors would be expensive enough that consumer choice is limited to services provided by the monopolist or at least the dominant incumbent. An analysis of individual cases is needed to answer the question.

## ***2. Reputation as A Tool to Compete***

Whereas one might argue that not all businesses depend (strongly) on an online reputation system, online reputation becomes increasingly important as user awareness grows about the vital role of reputation in estimating the risks of making a transaction. A positive reputation is a powerful tool for a reputation holder to compete.

For an online service platform, for instance, a good reputation system and having users with positive reputations could bring a better selling of the services offered on the platform, which in turn would attract more users. The online reputation system built by the platform is also a useful tool for them to compete in the relevant market. The more reliable the reputation system is, the more attractive it will be for users. Online transportation networks, such as Uber or, in Indonesia, GoJek, exemplify online platforms that rely strongly on their reputation system.

As a tool to compete, online platforms are inclined to keep their system closed and transfer a reputation between platforms, which is, until today, not visible. This inclination could affect the interests of the reputation holders, who might prefer to carry their reputation wherever they go, for which purpose a certain degree of interoperability is required. However, the absence of interoperability does not automatically shut the competition down; for instance, if the reputation system is very user-friendly, building a reputation on the platform becomes easy for the users.

## ***Competition Law Intervention***

### ***1. EU Competition Law***

With its nature to apply an *ex-post* approach, there is no obligation under competition law for online platforms to enable porting user reputation to any other platform. However, competition law might intervene when there is an abuse of dominance, for instance, in the reputation management policy. While to be dominant as such is not prohibited, Article 102 of the Treaty on the Functioning of the European Union (TFEU) prohibits companies from abusing their dominance in the market. To qualify for abuse, certain elements must be present. Art. 102 TFEU presupposes a dominant position in the market 59, and for this purpose, a relevant market shall be defined.

Relevant product market, as defined by the European Commission, encompasses ‘all those products and/or services which are regarded as interchangeable or substitutable by the consumer, because of the products’ characteristics, their prices and their intended use.’ [60], A relevant market for online platforms built their business based on a reputation system might cover a large market and, hence, needs to be defined on a case-by-case basis.

### ***2. Indonesian Competition Law***

Similar to the EU competition law, Indonesian competition law has no obligation to allow online reputation portability. Under certain circumstances, a refusal to provide interoperability information to enable such portability could qualify as a refusal to deal prohibited under Indonesian competition law.

Depending on the case, refusal to deal under Indonesian competition law could be tackled in two ways: Article 19 of Law No. 5 of 1999 deals with the prohibition of anticompetitive market controlling, or Article 25 of Law No. 5 of 1999 prohibits abuse of dominance. Article 19 lit. (a) prohibits companies from refusing or preventing other companies from conducting the same business activities in the relevant market. [61] The commentary of the Law explains that companies are prohibited to refuse or prevent other companies from conducting the same business for unjustified or non-economical reasons, such as differences in tribes, race, and social status. Although the prohibition seems to lead only to the prohibition of discriminatory conduct [61], the provision encompasses all forms of barriers to entry [62].

Unlike the prohibition of dominance abuse in Article 25 of Law No. 5 of 1999, the prohibition in Article 19 lit. (a) Law No. 5 of 1999 does not require dominance to qualify as abuse. However, the placement of the prohibition under the chapter on market control implies that the company should possess a certain level of market control to enable it to influence the market. It is sufficient for the application of Article 19 lit. (a) that the company can carry out monopoly practices and/or unfair competition. Such ability can result from dominance or superior bargaining power. In the latter case, a company might not be dominant; however, it has strong market power relevant to or compared with its business counterpart in the market [63].

Article 19 lit. (a) also covers the prohibition of refusal to deal. In case laws, refusal to deal is usually included in terms of conditions when dealing with other companies. Until today, there is no competition law case dealing with infringements of the provision of online services. However, the way in which competition law authorities apply the prohibition of refusal to deal can be seen in several cases [64].

Until today, there has been no competition law case about online reputation yet. However, it is necessary to consider online reputation as an innovative and useful competition tool with the rapid growth of online platforms in the country. With that in mind, it would be worth considering how competition law would respond to cases dealing with online reputation portability and to sufficiently equip the competition law authority with adequate analysis tools as time comes.

### ***3. Self-Regulation in Online Reputation System***

Innovation is challenging to regulate, particularly disruptive innovation, because it is difficult to anticipate. If at all, the role of regulations regarding innovation would be to encourage and provide incentives to innovate. On the other hand, leaving innovative products unregulated might also create legal uncertainty.

While proposing principles and norms for the foundation of global internet governance, *M Mueller, J Mathiason, and H Klein* suggested that ‘governmental forms of supervision and oversight must be strategically placed but also carefully limited and lawful’ to legitimate and maintain multi-stakeholder governance [65]. Although this view seems to favor limited governmental intervention in internet governance, it should be understood in the context of the internet’s global nature (i.e., the non-territorial characteristic) that involves necessary detachment from the traditional approach of a top-down regulating mechanism based on territorial state(s) interests.

There are matters that still require state involvement in the form of regulation. JP Kesan and AA Galo proposed a mixed model of a bottom-up and top-down regulatory approach in utilizing self-regulation [65]. Tax compliance, security measures on the internet and online transactions, and consumer protection issues still require state intervention regarding the provision of the guiding principles and supervision. Also, law enforcement is needed when self-regulation is not enforced on a free will or voluntary basis.

An online reputation system is a good example of self-regulation of the internet. For instance, online transportation networks like Uber (worldwide), Grab (in South East Asia), and GoJek (in Indonesia) show how an online reputation system serves as a regulating mechanism to ensure the best services for users: both the passengers and the drivers.

The concept of self-regulating the Internet allows room for parties to secure their interests in their transactions through private contracts. Hence, settling problems occurring from the lack of portability of an online reputation system could theoretically be done utilizing a contract, for which each party involved could negotiate their interests. However, in practice, this method could apply with limitations mainly due to the risk of the imbalance of bargaining power between the online platform and the individual user. To keep the balance of protecting both interests, state intervention is needed using state regulations, such as personal data protection and consumer law protection. Meanwhile, competition law intervention would be needed only when there is a potential threat to competition in the market.

## **CONCLUSION**

In this paper, I have discussed that despite the recognition that online reputation is significantly useful for online platform business and some similarities existing in different reputation systems, user reputation built on an online platform is currently not portable. While allowing online reputation portability could benefit users, the reviewers in particular, and induce competition between online platforms; the paper proposes the following considerations.

In the EU, under the new GDPR, the term personal data encompasses a wide range of different types of that are related to an identified or identifiable natural person. Hence, any personal data contained in a user review should fall under the same protection as any other type of personal data. This principle could be considered in the drafting of the data protection law in Indonesia, despite a rather vague definition of personal data in the current applicable laws in Indonesia, while the derivative EIT regulations and their implementation are unclear. Further, the paper also proposes to consider user reviews as public goods based on the traits of non-excludability and non-rivalrous consumption. Considering user reviews as public goods would allow the free flow of user reviews from one online platform to another in the concept of reputation portability. However, the trait of user review as a public good should not diminish the right of the reviewer to access his personal data. The right to data portability is subject to restrictions. According to Article 20 par. (4) GDPR shall not impair the rights and freedoms of others. Hence, while the data controller is obliged to enable data porting, the new data controller shall ensure compliance with the lawfulness of processing the third party-related data. A user might port his reputation to another online platform, but the new online platform shall ensure that the processing of the data does not impair the reviewer's right to his personal data contained in the user review. The right to data portability has been recognized in Indonesia under the new DPA.

The problem with a closed online reputation system lies in three issues: the potential to face monopolistic behaviors within the system where the reputation has been built, the limited access to entering and exiting the system, and the limited freedom of users. These

could lead to lock-in problems. From the user's viewpoint, this would result in limited choices of products or services available in the market. However, entry barriers should be considered low, as building a reputation online is very easy, so no significant effort is required to develop a new reputation. Hence, the closed nature of online reputation does not always create lock-in problems.

With its nature to apply an ex-post approach, there is no obligation under competition law for online platforms to enable porting user reputation to any other platform. However, competition law might intervene when there is an abuse of dominance, for instance, in the reputation management policy. While to be dominant as such is not prohibited, Article 102 of the Treaty on the Functioning of the European Union (TFEU) prohibits companies from abusing their dominance in the market. Like the EU competition law, Indonesian competition law is not obligated to allow online reputation portability. Under certain circumstances, a refusal to provide interoperability information to enable such portability could qualify as a refusal to deal prohibited under Indonesian competition law. The concept of self-regulating the Internet allows room for parties to secure their interests in their transactions using private contracts. However, state regulation is still needed to address the imbalance of bargaining power between the online platform and the individual user, such as personal data protection and consumer law protection. Competition law intervention could be justified in cases where a potential threat to competition in the market exists.

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