Self-Preferencing in Digital Platform Markets: Contractual Inequality and Reformulating MSME Protection in Indonesia

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Abstract. Digital platform markets have become a central infrastructure of Indonesia's contemporary economy and transforming contemporary business relations by embedding contractual governance into algorithmic infrastructures. While platforms are commonly perceived as neutral intermediaries, many operate simultaneously as market organizers and competing economic actors. This dual role has facilitated self-preferencing practices, whereby platforms prioritize their own products or services through contractual discretion and algorithmic governance. Against this background, existing legal scholarship in Indonesia has predominantly examined self-preferencing from a competition law perspective, leaving its contractual dimensions and implications for MSME protection underexplored. Responding to this gap, this research employs a normative legal research method with a conceptual approach to analyze self-preferencing as a manifestation of contractual inequality in digital platform markets and examines platform contracts as instruments of private regulation within the Indonesian legal framework, particularly through the principles of freedom of contract, good faith, and contractual balance. The analysis finds that self-preferencing is structurally enabled by asymmetric platform contracts, which are predominantly drafted as standard form agreements. These contracts expose Indonesian MSMEs to economic dependence and market exclusion without any contractual breach. The article concludes that effective MSME protection in Indonesia requires a reformulation of contract law responses through strengthened good faith obligations, limits on unilateral contractual discretion, and explicit recognition of contractual inequality inherent in standard form platform contracts to ensure fairness, legal certainty, and sustainable digital market governance.
Keywords: Contractual Inequality, Digital Platforms, Good Faith, MSME Protection, Self-preferencing.

1 INTRODUCTION

Digital platforms have rapidly evolved into essential economic infrastructures in Indonesia by fundamentally transforming how goods and services are exchanged, markets are organized, and business relationships are governed. Rather than operating merely as transactional intermediaries, platform-based business models integrate technological architecture, algorithmic decision-making, and contractual frameworks into a unified governance system that regulates access, visibility, and participation in digital markets [1]. Through mechanisms such as algorithmic ranking, data-driven recommendations, and standardized contractual rules, platforms actively shape the conditions under which market actors interact [2]. For micro, small, and medium enterprises (MSMEs), participation in digital platforms provides important benefits, including broader market access, lower transaction costs, and greater logistical efficiency [3]. Nevertheless, these advantages are accompanied by standardized contractual terms that significantly constrain bargaining power and limit MSMEs' commercial autonomy within platform-controlled ecosystems.

Despite often being portrayed as neutral facilitators of market exchange, many digital platforms simultaneously operate as market organizers and competing economic actors [4]. This position allows platforms to exercise broad discretionary control over key market parameters, including ranking systems, access conditions, commission

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structures, data use, and the bundling of ancillary services such as logistics and digital payments. Through this control, platforms can shape market outcomes in ways that favor their own commercial interests or affiliated entities [5]. Within this governance structure, platforms systematically engage in self-preferencing as a structural and recurring practice by prioritizing their own products or services over those of independent sellers in the same marketplace [6]. Platforms often embed this preferential treatment in algorithmic processes and contractual arrangements, making it less visible yet highly consequential for competition and market fairness.

In Indonesia, scholarly and regulatory engagement with self-preferencing has predominantly developed within the framework of competition law, particularly through analyses of market dominance, abuse of dominant position, and unfair business practices under Law No. 5 of 1999. This competition-oriented perspective has generated important insights into the structural risks arising from platform concentration, gatekeeping behavior, and exclusionary market conduct. However, it remains insufficient to fully explain how self-preferencing is operationalized and normalized through private contractual arrangements that govern the daily participation of business actors on digital platforms.

Under Indonesian contract law, the validity of agreements is primarily assessed through Article 1320 of the Civil Code (KUHPerdata), while Article 1338 affirms the principle of freedom of contract and the binding force of agreements lawfully made. These provisions do not prohibit the use of standard-form contracts, nor do they impose explicit restrictions on unilateral contractual design by economically dominant parties. Consequently, platform contracts which typically drafted as non-negotiable standard-form agreements remain formally valid and enforceable, even when they embed extensive discretionary powers in favor of platform operators [7]. Nevertheless, Article 1338 paragraph (3) introduces the requirement that agreements must be performed in good faith, a principle that Indonesian jurisprudence increasingly understands not merely as subjective honesty, but as an objective standard of fairness, reasonableness, and propriety in contractual relations [8]. Based on this perspective, the exercise of contractual discretion by digital platforms particularly when platforms prioritize affiliated services, adjust ranking systems, or impose unilateral changes that disadvantage MSMEs raises substantive questions regarding compliance with objective good faith. Moreover, the pronounced structural imbalance between platforms and MSMEs may create conditions akin to abuse of circumstances (*misbruik van omstandigheden*), in which platforms exploit economic dependence, informational asymmetry [9], or the absence of reasonable alternatives faced by MSMEs at the stages of contract formation or performance.

Against this background, this article addresses the existing conceptual gap by examining self-preferencing as a manifestation of contractual inequality rather than viewing it solely as an antitrust concern. The central objective of the study is to analyze how platform contracts function as instruments of private regulation that structurally disadvantage MSMEs, even in situations where no contractual breach or explicit unlawful conduct can be established. By situating self-preferencing within the principles of Indonesian contract law, particularly freedom of contract, good faith, and contractual balance, this study seeks to reframe legal responses to platform governance. In doing so, it aims to contribute to the development of more responsive and equitable legal mechanisms capable of protecting MSMEs and ensuring fairness within Indonesia's rapidly expanding digital platform markets.

2 METHOD

This research employs a normative legal research method supported by a conceptual approach to examine the legal dimensions of self-preferencing in digital platform markets. Normative analysis is applied to assess the adequacy of legal principles governing contractual relationships and platform governance within Indonesian law, with particular attention to the doctrinal foundations of freedom of contract, good faith, and contractual balance. Through this method, the study evaluates how existing legal norms structure rights and obligations between platforms and MSMEs, and whether these norms remain responsive to the asymmetries generated by platform-based business models.

The conceptual approach is utilized to identify, define, and systematize self-preferencing as a legal phenomenon that operates primarily through private ordering rather than through explicit violations of public regulatory norms. By conceptualizing platform contracts as instruments of private regulation, this study moves beyond conventional competition-law analysis and highlights the role of contractual design, discretion, and enforcement mechanisms in shaping market outcomes. This approach enables a clearer understanding of how algorithmic governance and standardized contractual terms jointly facilitate preferential treatment within platform ecosystems.

The research relies on secondary legal materials, including statutory provisions, doctrinal writings, judicial interpretations, scholarly literature, and relevant policy documents relating to contract law, competition law, and digital platform regulation. Platform contracts are examined as legal structures that regulate market access, allocate economic risk, and generate conditions of dependency for MSMEs. Rather than employing empirical or econometric methods, the analysis emphasizes legal reasoning and doctrinal evaluation to assess whether existing contractual doctrines are sufficient to address structural inequality and power asymmetry in platform-mediated markets. This methodological framework allows the study to articulate normative implications and propose doctrinal refinements aimed at enhancing legal protection for MSMEs within Indonesia's digital economy.

3 RESULT AND DISCUSSION

3.1 Self-Preferencing as a Structurally Contractual Phenomenon

Self-preferencing in digital platform markets should not be understood merely as the result of isolated anti- competitive behavior or opportunistic market conduct. Instead, it is structurally embedded in the contractual architecture that governs relationships between platforms and MSMEs [10]. Platform operators unilaterally design and impose standard-form agreements that regulate nearly all aspects of marketplace participation, including access to the platform, pricing and commission mechanisms, visibility and ranking systems, data usage, dispute resolution, and termination rights. These contracts are presented on a take-it-or-leave-it basis [11], leaving MSMEs with no meaningful opportunity to negotiate substantive terms. From the perspective of Indonesian contract law, such agreements nevertheless satisfy the formal requirements of contractual validity under Article 1320 of the Civil Code, as they are concluded with consent, capacity, a certain object, and a lawful cause, notwithstanding the absence of bargaining equality.

Within this contractual framework, platforms retain broad discretionary authority to modify contractual provisions, adjust algorithmic systems, and reshape market conditions over time [12]. Clauses permitting unilateral amendments, opaque algorithmic adjustments, and discretionary enforcement enable platforms to alter competitive conditions without prior notice or consent from MSMEs. This contractual design is further reinforced by Article 1338 paragraph (1) of the Civil Code, which affirms that agreements lawfully made bind the parties as law (*pacta sunt servanda*). As a result, platform operators can lawfully exercise extensive contractual discretion [13], including the ability to prioritize affiliated products or services, as long as such discretion is formally authorized by the contract. Consequently, self-preferencing becomes embedded in the ordinary operation of platform governance rather than appearing as an exceptional or unlawful deviation.

From a doctrinal perspective, self-preferencing is enabled by contractual clauses that legitimize asymmetric control while limiting platform accountability [14]. Provisions mandating the use of platform-affiliated logistics or payment services, allowing unilateral modification of ranking criteria, and imposing broad limitation-of-liability or indemnification clauses significantly restrict MSMEs' legal remedies. These clauses operate within the scope of contractual freedom recognized by Article 1338, normalizing preferential treatment as a contractually authorized outcome rather than a contestable practice. In this sense, self-preferencing is legally internalized within the contractual relationship, blurring the boundary between private contractual autonomy and market regulation [15].

From an economic perspective, self-preferencing reflects the inherent logic of platform-based business models that combine market intermediation, vertical integration, and data-driven optimization within a single ecosystem [16]. Platforms operate multi-sided markets while simultaneously competing within those markets, creating strong incentives to internalize transactions, accumulate data, and reinforce network effects. By controlling ranking systems, default options, and service bundling, platforms can systematically steer demand toward affiliated products or services in ways that enhance efficiency, increase user lock-in, and consolidate market power [17]. These practices are therefore not incidental or opportunistic, but rational responses to platform economics, where scale, data feedback loops, and ecosystem control constitute the primary sources of competitive advantage.

3.2 Contractual Inequality and MSME Economic Dependence

The widespread use of standard-form platform contracts places Indonesian MSMEs in a structurally subordinate position within digital markets. Although participation in digital platforms is formally characterized as voluntary under contract law, the economic realities of contemporary commerce increasingly make platform access indispensable for MSMEs seeking market visibility, consumer reach, and logistical efficiency [18]. In practice, digital platforms operate as essential gateways to consumers and commercial networks [19], transforming contractual choice into a condition of economic survival. This dynamic weakens the substantive meaning of freedom of contract, as consent is reduced to formal acceptance rather than genuine agreement based on relatively equal bargaining power.

This condition of economic dependence significantly intensifies contractual inequality. MSMEs are compelled to accept contractual terms that disproportionately allocate economic risks, restrict access to legal remedies, and confer broad discretionary authority on platform operators, including unilateral modification clauses and algorithmic control over ranking, visibility, and market access [20]. From the perspective of Indonesian competition law, such dependency closely aligns with the concept of market dominance under Law No. 5 of 1999, whereby a dominant business actor possesses the capacity to determine market conditions or influence competitive dynamics. In digital platform markets, however, dominance is exercised less through traditional price-setting or output restrictions and more through contractual and algorithmic control embedded within platform governance structures.

The interaction between contractual dependence and platform market power raises serious concerns regarding abuse of dominant position [21] as prohibited under Law No. 5 of 1999. In digital platform markets, algorithmic adjustments that favor platform-owned or affiliated services can systematically reduce the visibility of independent MSMEs, suppress sales, or lead to de facto market exclusion [22], even where MSMEs fully comply with all contractual obligations. These effects arise not from explicit refusal to deal or direct exclusion, but from the cumulative impact of ranking, recommendation, and access decisions embedded within platform governance. However, because such practices are frequently authorized by contract and executed through automated algorithmic systems, they often evade classification as abusive conduct under conventional competition law analysis [23], which traditionally focuses on demonstrable exclusionary intent, pricing manipulation, or output restriction. As a consequence, competitive harm materializes incrementally through contractual design and discretionary governance rather than through overt acts typically targeted by competition enforcement [24]. This structural mode of exclusion highlights the limitations of existing competition law tools in addressing platform-mediated dominance and underscores the need to consider contractual mechanisms as an integral part of competition assessment.

From the standpoint of traditional contract law doctrine, these outcomes do not constitute contractual breach, as platform operators act within the scope of discretion granted by formally valid agreements that satisfy the requirements of contractual validity under Indonesian law. The emphasis placed on consent and the binding force of agreements (*pacta sunt servanda*) leads courts to uphold contractual provisions that allocate broad unilateral discretion, even when their exercise produces unequal or exclusionary effects. Nevertheless, the cumulative economic impact of such practices can be substantial, as repeated algorithmic adjustments, unilateral contractual modifications, and preferential treatment of affiliated services progressively entrench MSME dependency and narrow competitive opportunities within platform ecosystems [25]. This condition exposes a fundamental gap between formal contractual validity and substantive contractual justice, where legally enforceable agreements coexist with systemic disadvantage and economic vulnerability. At this point, contract law and competition law reveal complementary limitations [26] in which contract law legitimizes asymmetry by prioritizing formal consent over fairness, while competition law struggles to capture exclusion that operates through private ordering and algorithmic governance rather than through explicit market foreclosure or overt anti-competitive conduct.

In light of these findings, effective protection of MSMEs in platform-mediated markets requires closer integration between competition law enforcement by the Indonesian Competition Commission (KPPU) and the application of contract law doctrines. While Law No. 5 of 1999 equips KPPU to address market dominance and abuse of dominant position, its effectiveness in digital platform markets can be strengthened by recognizing how contractual design and discretionary clauses function as mechanisms of competitive exclusion. KPPU's analytical framework should therefore incorporate assessment of platform contracts, particularly standard-form agreements, unilateral modification clauses, and mandatory service bundling, as contextual evidence of market power and exclusionary effects. At the same time, contract law principles, especially good faith, contractual balance, and abuse of circumstances (*misbruik van omstandigheden*), should be operationalized as corrective tools to scrutinize the exercise of contractual discretion that produces structurally unfair outcomes. This coordinated approach would allow

competition authorities and courts to move beyond formal contractual validity and capture the substantive effects of self-preferencing and dependency, without requiring proof of explicit collusion or overt exclusion. By aligning KPPU's enforcement mandate with contract law's normative safeguards, Indonesia can develop a more adaptive legal framework capable of addressing contractual inequality and competition risks inherent in digital platform governance.

3.3 Platform Contracts as Instruments of Private Regulation

Platform contracts increasingly function as instruments of private regulation, establishing market rules that rival and, in certain respects, exceed the practical reach of public regulatory frameworks [27]. Through standardized contractual terms, digital platforms unilaterally define conditions of market access, allocate economic opportunities, regulate pricing and commission structures, determine dispute-resolution mechanisms, and enforce compliance through automated and algorithm-driven systems. Unlike conventional contractual arrangements that govern discrete bilateral exchanges, this mode of governance operates continuously, dynamically, and at scale, enabling platforms to shape market behavior in real time across entire digital ecosystems [28]. As a result, platform contracts extend beyond their traditional private-law function and operate as quasi-regulatory regimes that structure digital marketplaces without the procedural safeguards, transparency requirements, or accountability mechanisms typically associated with public regulation [29].

Platform contracts most clearly display their regulatory character by actively structuring both inclusion and exclusion within digital markets. Platforms formalize decisions on ranking, visibility, service bundling, data access, and participation thresholds through contractual provisions and enforce them through algorithmic mechanisms [30]. By doing so, platforms determine which sellers gain exposure, which services receive preferential treatment, and which market actors remain commercially viable. MSMEs that experience reduced visibility or exclusion often lack meaningful avenues to challenge these outcomes, particularly when platform contracts restrict liability, limit access to courts, or require arbitration under procedures designed or controlled by the platform. In this setting, platforms exercise private regulatory power unilaterally and without democratic oversight [31], while platform-dependent MSMEs collectively bear the economic consequences in the form of market foreclosure, deepening dependency, and sustained competitive disadvantage.

Within this governance framework, self-preferencing should be understood not merely as a market strategy aimed at efficiency or innovation, but as a deliberate regulatory choice embedded in contractual design. By contractually authorizing discretionary control over ranking systems, service integration, commission structures, and market access, platforms actively institutionalize preferential treatment as an ordinary feature of market governance. For example, contractual requirements mandating the use of platform-affiliated logistics or payment services, or clauses allowing unilateral modification of ranking criteria, enable platforms to steer demand toward affiliated services while formally remaining within the bounds of contractual authorization. Indonesian contract law, which traditionally prioritizes formal consent and the binding force of agreements (*pacta sunt servanda*), exhibits structural limitations in responding to these dynamics. Although such platform contracts remain formally valid under Articles 1320 and 1338 of the Civil Code, their regulatory effects extend well beyond bilateral contractual relationships and generate systemic consequences for market structure, competition, and MSME participation.

To treat platform contracts as instruments of private regulation within contract law, legal analysis must move beyond formal validity toward functional assessment of how contractual powers are exercised. Contract law principles, particularly good faith, contractual balance, and the prohibition of abuse of circumstances provide doctrinal entry points to scrutinize whether discretionary contractual powers are exercised in a manner consistent with fairness and reasonableness. When platforms rely on formally valid clauses to unilaterally alter rankings, restrict access, or privilege affiliated services in ways that exploit MSMEs' economic dependence and lack of alternatives, such conduct may violate the objective standard of good faith, even in the absence of contractual breach. Viewed in this way, platform contracts operate not merely as private agreements, but as governance instruments whose exercise must be evaluated against normative limits inherent in contract law itself.

The lack of explicit doctrinal recognition of contractual inequality and private regulatory effects substantially constrains the capacity of courts and regulators to respond when formally lawful contracts produce substantively unjust outcomes. Courts tend to prioritize contractual validity and freedom of contract, while competition authorities often encounter difficulties in addressing exclusionary effects that arise through contractual authorization and algorithmic governance rather than through overt market foreclosure or explicit abuse of dominance. This

disconnect between contract law's formalism and competition law's enforcement thresholds weakens the overall effectiveness of legal protection in platform-mediated markets. Addressing self-preferencing and MSME vulnerability therefore requires a recalibration of contract law doctrines to acknowledge the regulatory function of platform contracts and their interaction with market power. Such recalibration would enable legal assessment to move beyond formal validity toward a substantive evaluation of fairness, accountability, and market integrity within Indonesia's digital economy.

4 CONCLUSION

This study has examined self-preferencing in digital platform markets by shifting the analytical focus from competition law alone to the contractual foundations that enable preferential treatment and market steering. As digital platforms increasingly govern access, visibility, and participation through standardized contracts and algorithmic systems, traditional legal frameworks grounded in assumptions of bilateral equality and transparent market conduct reveal significant limitations. By analyzing platform contracts as instruments of private regulation, this article demonstrates that self-preferencing and MSME vulnerability arise not only from market dominance, but from structurally asymmetric contractual arrangements that remain formally lawful under Indonesian contract law. Therefore, it can be concluded that Self-preferencing in digital platform markets constitutes a manifestation of contractual inequality rather than merely an anti-competitive practice. Platform operators embed preferential treatment within standard-form contracts that satisfy the formal validity requirements of Articles 1320 and 1338 of the Civil Code, while simultaneously granting broad discretionary powers over ranking systems, service bundling, commissions, and market access. These contractual arrangements normalize self-preferencing as part of ordinary platform governance, even when they systematically disadvantage MSMEs and reinforce economic dependence. As a result, competitive harm emerges incrementally through contractually authorized and algorithmically enforced decisions, escaping both traditional breach-based contract law scrutiny and intent-focused competition law enforcement under Law No. 5 of 1999.

Effective protection of MSMEs requires a recalibration of contract law doctrines to recognize the private regulatory function of platform contracts and their interaction with market power. While Indonesian contract law emphasizes freedom of contract and the binding force of agreements, its corrective principles, particularly good faith, contractual balance, and the prohibition of abuse of circumstances provide doctrinal entry points to assess how discretionary contractual powers are exercised. Integrating these principles into legal analysis, alongside competition law enforcement by the KPPU would allow legal assessment to move beyond formal contractual validity toward substantive evaluation of fairness, accountability, and market integrity. Such an approach does not displace competition law, but complements it by addressing exclusionary effects that arise through private ordering and algorithmic governance rather than overt market foreclosure or explicit abuse of dominance.

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