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Formulating the Principle of Intermediary Liability Based on John Rawls' Distributive Justice

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Abstract:

The accelerated evolution of the digital economy in Indonesia underscores the limitations of the safe harbor model in intermediary liability regulations, which are presently reactive in nature. The prevailing legal framework, chiefly rooted in the Electronic Information and Transactions Law (ITE Law) and Minister of Communication and Information Technology Regulation No. 5/2020, has a propensity to confer procedural immunity upon marketplace platforms by allocating the risk and the onus of proof to consumers and small traders, thereby engendering a state of structural injustice. The present study identifies the issue of how to reformulate the principle of intermediary liability so as to align with John Rawls' distributive justice, which emphasises active protection for the most vulnerable. Utilising the framework of normative legal research methodologies, a comprehensive examination was undertaken of the pertinent regulations, employing the critical lens of Rawls' theory of justice. The results of the study propose a transformation from a passive notice-and-takedown approach to a proactive model based on five principles: proportional duty of care, public transparency on moderation and algorithms, no-fault recovery mechanisms for risk redistribution, inclusive verification for micro-sellers, and independent audits to prevent algorithmic discrimination. The objective is to transform intermediary liability into a proactive instrument of justice, thereby ensuring that platforms play a role in maintaining a digital ecosystem that is both fair and safe for all.

Keywords: Intermediary Liability, Distributive Justice, Safe Harbour, Digital Ecosystem, John Rawls

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Introduction

The development of the digital economy in Indonesia and globally has resulted

in the creation of an online marketplace ecosystem that has grown exponentially over the past decade. Globally, e-commerce sales are estimated to reach US$6.419 trillion in 2025, representing a 6.8% increase on the previous year, and are projected to continue growing to US$7.886 trillion in 2028. In Indonesia, it is estimated that the value of e-commerce transactions will reach US$94.5 billion in 2025, with an average annual growth rate of approximately 15.5% since 2020. It is evident that leading e-commerce platforms in Indonesia, such as Tokopedia, Shopee, Lazada, and Bukalapak, dominate the national market share. The proliferation of digital payment trends, encompassing electronic wallets such as GoPay, OVO, Dana, and ShopeePay, has been instrumental in propelling the adoption of e-commerce to over 49% of total retail transactions within urban areas (Carballo, 2025)

As transaction volumes escalate, challenges emerge in consumer protection and law enforcement regarding problematic content or practices, including fraud, counterfeit goods, copyright infringement, and the dissemination of misleading information. In response to these challenges, several countries, including Indonesia, have adopted a safe harbour-based intermediary liability model. This model exempts service providers, also known as marketplaces, from liability for third-party content, on the condition that they implement notice-and-takedown mechanisms in accordance with the provisions of the law (Riordan, 2016)

In Indonesia, Law No. 11 of 2008 on Electronic Information and Transactions (ITE Law), as amended by Law No. 19/2016, stipulates three safe harbor criteria for Private Electronic System Providers (PSE LP): the absence of awareness regarding illegal content, the swift initiation of actions to remove content upon notification, and the establishment of mechanisms for user reporting. Regulation of the Minister of Communication and Information Technology Number 5 of 2020 stipulates that PSE LP must establish a designated complaint channel and initiate a response to reports within a maximum timeframe of 124 hours for general content and 14 hours for content deemed to be harmful, including child pornography. Failure to comply with these regulations is subject to the imposition of administrative sanctions. Although safe harbour provides legal certainty for marketplaces, its limitations do not exempt them from contractual liability for consumer losses, such as failed deliveries, fraud, or damaged goods, based on Consumer Protection Law No. 8/1999 (Judijanto & Khuan, 2024)

It is evident that the Republic of Indonesia has formally adopted the safe harbour model, as outlined in Article 15, paragraph 3, of Law Number 11/2008 concerning Electronic Information and Transactions (ITE Law), as subsequently amended by Law 19/2016. This provision exempts electronic system operators, including marketplaces, from civil and criminal liability, on the condition that they are not aware of, and reasonably cannot be aware of, the existence of illegal content, and that they act expeditiously to remove it upon receiving notification. The legality of this approach is further reinforced by Government Regulation 71/2019 and Permenkominfo 5/2020, which delineate the obligations of registration as a Private Scope PSE, the provision of complaint channels, and a deadline of 1×24 hours (or 4 hours for sensitive content) to disconnect access (Kusumawardani et al., 2020)

Despite the establishment of normative boundaries within Indonesia, empirical evidence demonstrates that the safe harbour does not offer unconditional protection. The South Jakarta District Court's decision No. 465/Pid.Sus/2021, for instance, rejected the safe harbour protection because the panel of judges considered that the

marketplace operator "factually controlled" the recommendation algorithm that expanded the reach of hoax content, thereby failing to fulfil its duty of care. While the majority of marketplaces have implemented a notice-and-takedown mechanism, the transparency of this process and its responsiveness are often lacking. Moreover, the onus of substantiating loss typically falls upon consumers. The process is frequently characterised by an absence of transparency, with response times that do not always meet the stipulated deadline. Furthermore, the onus is often placed on consumers to provide evidence, which can be a significant burden. Consumers are seldom furnished with comprehensive justifications pertaining to the rejection of reports or the reinstatement of content, while marketplaces conveniently assert their role as mere infrastructure providers (Zulfah et al., 2023)

At this juncture, John Rawls' concept of distributive justice (Rawls, 1999) provides a more refined comparative lens. In his work, Rawls sets forth two fundamental principles: It is asserted that all individuals are entitled to fundamental freedoms that are consistent with the freedoms of others, and that socioeconomic inequalities must be regulated in a manner that yields the greatest benefit for those experiencing disadvantage (difference principle). Furthermore, it is argued that such inequalities must be attached to positions that are fairly open to all (fair equality of opportunity). Assuming a "veil of ignorance" in the "original position," stakeholders are considered to lack the knowledge of their future role, whether as users, micro-traders, platforms, investors, or victims of fraud. Consequently, a rational norm design is one that offers maximum protection to the weakest while still respecting business freedom. (Sneddon, 2025)

Furthermore, Rawls proposed that social institutions should be structured to uphold "background justice", thereby preventing the accumulation of inequality in market interactions (Rawls, 2003). When applied to the concept of intermediary liability, the safe harbour principle is insufficient in ensuring the passive requirement of "non-knowledge" and "quick action" (Kinikoglu, 2023). A risk redistribution mechanism is imperative to ensure equal access and protection for vulnerable groups, MSME actors in remote areas, consumers with low bargaining power, and minority groups targeted by hate speech. Marketplaces have evolved from being merely "digital free zones" to entities with affirmative duties to: mitigate algorithmic bias, provide affordable verification for small merchants, simplify the process of compensation for losses, and disclose moderation transparency data.

However, it is important to note that Indonesia's current regulatory approach is predominantly reporting-based (reactive-notice), which places the burden on the aggrieved party. Permenkominfo 5/2020 stipulates the obligation of marketplaces to establish complaint channels; however, it does not explicitly address the disclosure of compliance metrics, such as the number of reports received, the number that have been acted upon, and the number that have been rejected. Consequently, it proves challenging for consumers to evaluate the fairness of the procedures. Elsam's research (2023) also highlights that the cost of verifying seller identities is often transferred to micro-sellers, thereby widening the gap between big brands and long-tail merchants. From a Rawlsian perspective, a situation in which the weak bear the cost of protection clearly contradicts the principle of difference, as the massive profits of platforms are not distributed to empower the most disadvantaged (Elsam, 2023)

Conversely, programmed content models (e.g. recommendation algorithms, live-stream shopping, in-feed ads) introduce an additional layer of active control by the

marketplace. The doctrine of "neutral conduit" has become obsolete; contemporary platforms now proactively sort, elevate, or suppress content for the purpose of monetisation. According to Rawls' theory of justice, any power that influences the distribution of benefits and burdens must be subject to the standard of justificatory public reason (Hayvon, 2024). In other words, algorithms should not be regarded as a "black box" that is immune from public scrutiny, given their direct impact on the economic opportunities of small traders and consumer safety.

It is at this juncture that the paper's problem statement is formulated: The question to be addressed here is how the principle of intermediary liability can be formulated in such a way that it meets the distributive justice criteria proposed by John Rawls, thus ensuring that marketplaces play an active role in ensuring equal access and protection for all parties? In order to satisfactorily address this question, it is necessary to reconceptualise three key aspects.

A comprehensive examination of this issue necessitates an in-depth analysis of the following: The current legal structure of the safe harbour and its implications for access justice are the primary focus of this study. In addition, it explores the application of Rawlsian principles to address disparities, and institutional recommendations and operational policies for marketplaces to fulfil distributive justice (Smit et al., 2023)

The present paper will not discuss non-legal aspects such as platform technical design, except insofar as they are relevant to user access and protection. The focus of the paper is on formulating intermediary liability principles that meet John Rawls' distributive justice criteria. It is anticipated that efforts to formulate distributively fair intermediary liability will serve to bridge the interests of consumers and platforms, as well as encourage the active responsibility of marketplaces in realizing an inclusive and equitable digital economy.

Methods

The present study employs a doctrinal approach (Negara, 2023), or what is termed normative legal research, to explore, analyse and formulate the principle of intermediary liability in accordance with John Rawls' distributive justice principles in the Indonesian digital marketplace. The doctrinal method is predicated on a profound comprehension of legislation, judicial decisions, pertinent legal doctrines, and a selection of academic literature. In this case, the doctrinal approach will enable researchers to systematically inventory, interpret, and construct legal norms related to intermediary liability as regulated in the ITE Law, PP 71/2019, Permenkominfo 5/2020, and other related provisions regarding the obligations of platform operators, the notice-and-takedown mechanism, and safe harbor limitations.

In addition to primary sources in the form of legislation and jurisprudence, which are analysed textually and contextually, this doctrinal research also uses secondary sources in the form of Rawls' distributive justice doctrine or theory. This theory functions as a "critical lens" for evaluating the fairness of positive norms, particularly in terms of the redistribution of responsibilities and the protection of the rights of all parties equally within the marketplace ecosystem. A primary function of the doctrinal method is to identify normative gaps, ambiguities, or disharmonies in rules that may impede the realisation of substantive justice (Budianto, 2020). Such issues may include limitations in reporting procedures, unequal access to protection, and the impact of platform policies that have not been thoroughly evaluated on the most vulnerable stakeholders.

In addition to primary and secondary reviews based on doctrinal studies, this research is supported by systematic interpretations (Suryana, 2025). The purpose of these interpretations is to establish a link between normative aspects and the social, economic and technological environments that are developing in the digital era. Consequently, the findings of this study are anticipated to embody a dualistic character, encompassing both a descriptive-analytical dimension concerning the legislation's phrasing and an evaluative and prescriptive dimension. This evaluative and prescriptive dimension is expected to propose a model of intermediary liability principles that not only serves to minimise the responsibility of marketplaces, but also formally acknowledges their active role as institutions that are obliged to contribute to the achievement of justice distribution in the digital commercial space, as envisioned by John Rawls.

Results

Research Results

In the digital era, characterised by rapid growth in electronic transactions, marketplaces have become a major pillar of the digital economy in Indonesia. These platforms, which act as intermediaries between millions of sellers and buyers, create a dynamic yet complex trading ecosystem in terms of legal liability. The fundamental question that emerges pertains to the extent of responsibility that these digital platforms should bear for the content or transactions facilitated on their platforms. This concept is known as intermediary liability (Grad-Gyenge, 2024).

This principle is of crucial importance as it seeks to achieve a balance between two opposing interests: firstly, the encouragement of innovation and freedom of expression without the imposition of undue restrictions on platforms; and secondly, the protection of consumers and the public from illegal content and harmful trading practices. The Indonesian legal framework has endeavoured to adopt and adapt this principle through a series of interrelated laws and regulations, thus forming a unique legal architecture (Prahassacitta, 2023).

However, the practical application of this regulatory framework in the field often gives rise to discourses on the effectiveness, fairness and transparency of the process, which require a more in-depth analysis to understand the real dynamics between law, technology and public interest.

The foundational principles for the implementation of intermediary liability in Indonesia are established within Law No. 11/2008 concerning Electronic Information and Transactions (ITE Law), as subsequently amended by Law No. 19/2016. This legislative initiative can be regarded as a proactive response on the part of the government, with a view to establishing a legal foundation for activities in cyberspace.

The ITE Law adopts the safe harbour model as a legal framework, providing conditional legal immunity to Electronic System Operators (ESOs), including marketplaces. Article 15, paragraph (3) of the ITE Law constitutes the fundamental basis of this framework, stipulating that Public Service Entities (PSEs) cannot be held legally responsible for third-party content that they transmit or store, provided that the PSE meets a set of predetermined criteria (Zulfah et al., 2023).

The aforementioned criteria stipulate that the PSE, in its capacity as an intermediary, must not possess any actual or constructive knowledge of the existence of such illicit content. Furthermore, in the event of an ISP receiving a report or notification regarding the existence of illegal content, it is required to act quickly and

decisively in blocking access to or removing such content (Simanjuntak, 2018).

Finally, as a proactive measure, ISPs must provide accessible mechanisms for users to report problematic content. Consequently, the ITE Law does not provide absolute immunity, but rather "earned immunity" through compliance with the relevant procedures. The underlying philosophy of the safe harbor model is to safeguard Public Sector Entities (PSEs) from the potential risk of extensive litigation arising from the actions of millions of users, which could otherwise impede digital economic growth. This equilibrium is maintained by attributing to platforms the role of responsive "gatekeepers", as opposed to their functioning as proactive editors or curators of all content. The discourse surrounding this matter can be further explored in the analysis provided by ELSAM (Elsam, 2023).

The ITE Law establishes a philosophical framework and general principles; the technical regulations that are derived from it provide more concrete operational guidelines. Regulation of the Minister of Communication and Information Technology Number 5 of 2020 concerning Private Electronic System Providers (Permenkominfo 5/2020) is a key instrument that details the notice-and-takedown mechanism. This regulation specifically requires Private Electronic System Providers, a category that covers most marketplaces in Indonesia, to establish and operate an effective content complaint system. This obligation extends beyond the provision of a reporting channel, encompassing stringent response deadlines (Rani et al., 2025).

In instances where content is deemed to be in violation of established regulations (for instance, copyright infringement, defamation, or the dissemination of false information), platforms are allotted a maximum duration of 24 hours to remove access following the receipt and verification of a report. However, for content that is considered to have an urgent and very high level of danger, such as child pornography, terrorism, or other content that can cause massive unrest, the deadline is drastically accelerated to only 1x4 hours. Failure to comply with this deadline can result in severe administrative sanctions, ranging from written warnings and fines to the ultimate sanction of blocking access to the platform. This provision is indicative of the government's commitment to addressing the proliferation of negative content in the digital domain (Zulfah et al., 2023).

The regulatory dynamics of the digital sector are subject to constant evolution, with significant updates being introduced through Government Regulation No. 71 of 2019 concerning the Implementation of Electronic Systems and Transactions (PP 71/2019). This regulation replaces PP 82/2012 and introduces several significant clarifications that serve to reinforce the intermediary liability ecosystem. A pivotal change is the requirement for each Private Scope PSE to formally register with the Ministry of Communication and Information Technology. It is evident that the present registration constitutes more than a mere administrative procedure; rather, it is an indispensable prerequisite for any platform to be able to take shelter under the umbrella of the safe harbour (Haikal & Mahmudah, 2024).

In other words, unregistered platforms automatically forfeit their immunity rights and can be held fully responsible for third-party content. It is evident that PP 71/2019 also serves to reinforce the notion of "control", which is predicated on the assumption that platforms possess a certain degree of authority over the content that is uploaded by their users. This fundamental principle undergirds the argument that digital platforms cannot be considered entirely passive entities and must implement effective moderation mechanisms (Liu, 2025).

It is evident that, concomitantly with the provision of clarification, this regulation introduces a degree of flexibility in several aspects. This is exemplified by the establishment of a more contextual take-down time limit, which allows for a more thorough consideration of the matter before access is terminated.

The protection provided by the safe harbour mechanism in the ITE Law is subject to clear limitations. This immunity is specifically limited to liability for illegal content; it does not exempt marketplaces from other legal responsibilities, especially those related to consumer protection. It is evident that Law No. 8 of 1999 on Consumer Protection continues to serve as a legal safeguard for purchasers. In the event of a breach of contract, such as the failure to deliver goods, the goods not matching the description provided, or damage to goods during delivery, consumers can still hold the business operator liable (Parmadi, 2024).

In the context of marketplaces, this responsibility can be complex, involving sellers, platforms, or even both. Marketplaces may be held jointly liable, especially if they play an active role in the transaction process, for example through an escrow system, or if they are proven to have been negligent in verifying sellers. It is important to note that Safe Harbor protection will lapse if the marketplace no longer acts as a neutral intermediary but takes an active role in curating, creating, or moderating content that ultimately misleads consumers. This limitation underscores the fact that intermediary liability is not intended to engender a legal vacuum in the contractual relationship between sellers and buyers (Kusumawati & Achjari, 2019).

The application of intermediary liability is also subject to the influence of case law and court decisions. A pertinent case in point is the South Jakarta District Court Decision No. 465/Pid.Sus/2021, wherein the manager of a marketplace was indicted under Article 28 paragraph (1) in conjunction with Article 45A paragraph (1) of the ITE Law. The present case concerns the dissemination of false or misleading information that is detrimental to consumers. In its deliberations, the panel of judges contended that the marketplace exercised control over the content on its platform. In instances where the platform has been demonstrated to have been negligent in its efforts to prevent the propagation of hoaxes or systematic fraud, the safe harbour protection may no longer be applied automatically (Ali et al., 2021).

This ruling signalled a shift in the court's interpretation of the concept of "control", requiring platforms to adopt a more proactive stance. This shift signifies a transition from perceiving platforms as rudimentary digital 'bulletin boards' to entities that bear greater curation and oversight responsibilities, particularly when their business models result in consumer detriment. The ramifications of such a ruling are substantial, with marketplaces being encouraged to allocate greater resources to content moderation technology and verification teams with a view to mitigating legal risks (Afriani & Hidayati, 2024).

It is evident that the majority of prominent marketplaces in Indonesia have adapted and implemented the principles of intermediary liability in accordance with prevailing legal regulations. They have registered themselves as Private Scope PSEs with the Ministry of Communication and Information Technology, provided complaint channels for users, and established standard operating procedures (SOPs) for notice-and-takedown mechanisms to comply with the stipulated deadlines. By adhering to these procedural obligations, they effectively utilise the safe harbour provisions to mitigate their exposure to legal risks arising from third-party content (Chow & Triana, 2025).

However, a more subtle question is whether this formal implementation has fully satisfied the sense of justice for the wider community. A review of current practices in the field reveals a number of challenges. A significant concern is the absence of transparency, which is characterised by the failure to provide adequate explanations for decisions regarding rejected reports or problematic content (Hidayati & Suartini, 2024).

Furthermore, despite the presence of stringent deadlines, the management of intricate cases necessitating meticulous investigation, such as large-scale fraud syndicates, is occasionally perceived as languid. Moreover, the onus is frequently placed on consumers to provide evidence, while marketplaces often employ the defence that they are merely acting as platforms. The discrepancy between formal compliance and substantive justice demonstrates that, despite the adoption of the principle of intermediary liability in a structural sense, the realisation of a sense of justice for users remains an ongoing process requiring continuous enhancement. It is imperative that clearer compensation mechanisms are established, that report handling processes are made more transparent, and that a fairer balance is achieved between user rights and platform responsibilities (Dzuhriyan et al., 2024).

Discussion

The rapid development of the digital economy in Indonesia over the past five years has resulted in the emergence of marketplaces as the primary hub for the exchange of goods and services. Concurrently, this period has seen an escalation in the issue of legal responsibility for all content, transactions, and algorithms conducted within these marketplaces (Sapulette & Muchtar, 2023). The question of how to formulate the principle of intermediary liability that embodies distributive justice, as proposed by John Rawls, becomes crucial when the current safe harbour practice functions more as a minimal shield of procedural compliance than as an active instrument to protect the most vulnerable parties (Faiz, 2009).

It is an established norm that Indonesia's safe harbour model requires three fundamental elements to be present. These elements can be summarised as follows: the presence of reasonable ignorance of illegal content, the prompt removal of content after notification, and the provision of a complaint channel. Despite the fact that this model appears to be in accordance with global practices, it nevertheless places the initial burden on the aggrieved party to detect and prove violations. As marketplaces have evolved from "passive bulletin boards" to algorithmic architects that regulate the visibility of merchandise, a purely reactive approach reproduces information and bargaining power imbalances. This is the point at which Rawls's theory (Rawls, 1999) returns us to the concept of the "original position": if all actors, including major capitalists, micro-traders, consumers in remote areas, and even victims of fraud, are assumed to be behind a veil of ignorance, what design would be rational to choose? According to Rawls, the solution to this issue is the establishment of a system of rules that ensure uniform basic freedoms, while simultaneously ensuring that the weak are not placed at a disadvantage and that economic opportunities are distributed fairly (Sneddon, 2025).

The principle of intermediary liability in the context of the digital marketplace in Indonesia reflects the fundamental tension between creative freedom and collective security. This necessitates a restructuring of the liability scheme to be in line with John Rawls' principle of distributive justice. In his theory of justice, Rawls posits that the

fundamental question of social justice is to be measured by the manner in which institutions organise the distribution of rights and obligations. This is done so as to guarantee the basic rights of every individual, create equal opportunities, and maximise the welfare of the least fortunate through the difference principle (Zwolinski, 2017). By establishing digital platforms as the primary subjects of legal responsibility, intermediaries facilitating economic interaction, Indonesia is confronted with a philosophical dilemma: to what extent can the burden of responsibility be allocated to entities with different capacities without compromising the principle of justice for all parties, particularly small traders and vulnerable consumers?

In Rawls' scheme, distributive justice is rooted in two main principles. Firstly, it is crucial to acknowledge that every individual possesses an equal right to the most extensive set of fundamental freedoms that are compatible with the freedoms of others. Secondly, the acceptability of social and economic inequality is contingent upon the fulfilment of two criteria: The aforementioned standpoint is predicated on two fundamental principles: firstly, the guarantee of equal opportunities for all individuals to access social positions and roles; and secondly, the principle of conferring benefits upon those members of society who are most disadvantaged (Lindblom, 2018). The notion of fair equality of opportunity necessitates that both public and private institutions ensure equitable access for all individuals to participate in the market, encompassing access to legal protection and economic incentives.

Marketplaces, as contemporary economic institutions, fundamentally facilitate open access to millions of businesses and consumers. However, the inequality in financial and technical capacity among actors, ranging from large corporations to micro-traders, creates a gap of injustice when the regulatory burden is applied equally. For instance, if large platforms and micro-traders are required to verify all transaction content identically, the cost and resource burden that micro-traders must bear far exceeds their capabilities. Conversely, large platforms possess the financial resources to invest in automated detection technology, compliance staff, and legal resources to address these demands. This position stands in clear opposition to the principle of fair equality of opportunity propounded by Rawls, which posits the ideal of equitable terms for competition among all actors (Mason, 2006).

From the perspective of the difference principle, the fairness of unequal burdens is contingent upon their benefiting the weakest traders and vulnerable consumers. For instance, if platforms are subject to heightened obligations to filter out prohibited content, such as dangerous goods, fraud, or copyright infringements, consumers are better protected, and micro-traders can take advantage of a safer market environment without being burdened by intensive verification. It has been demonstrated that even when platforms incur higher costs, this can stimulate innovation in detection systems. Consequently, such innovation can then be accessed by micro-merchants at reduced costs through automatic integration in the same interface. Consequently, the phenomenon of burden inequality, in which platforms assume a greater proportion of responsibility, has been demonstrated to be conducive to the enhancement of the welfare of the economically disadvantaged (Khatun, 2024).

However, it should be noted that the imposition of unlimited obligations on large platforms can also engender paradoxical negative effects. Should the compliance burden be perceived as excessive, platforms may decide to limit their intermediary functions defensively, for example by restricting the types of products traded or increasing service fees for merchants. It is argued that, in the long term, this could have

deleterious consequences for micro-merchants and consumers, who would be subject to increased costs or experience restricted access. From the standpoint of Rawls, policies that ostensibly enhance protection yet compromise the economic well-being of the most vulnerable groups must be scrutinised, as they contravene both principles of justice (Ouwerkerk, 2022).

In addition, it is imperative that large platforms are incentivised to disseminate filtering technology through licensing or open source models, thereby enabling micro-merchants to access verification features at a reduced cost. This is not merely a matter of burden, but of opportunity distribution, an aspect of crucial importance in Rawls's framework. Consequently, the minimisation of technical access inequality, which in turn engenders economic opportunity inequality, is a potential outcome. Government policies, in the form of fiscal incentives or free digital infrastructure support for MSMEs, will serve to strengthen this equal access (Panduwinata et al., 2025).

Philosophically, efforts to design fair intermediary liability are predicated on the premise that platforms, as socio-economic institutions, must contribute to the structure of justice. This step must be considered not merely an allocation of technical burdens, but rather a reconfiguration of power relations in the digital realm. The state should regulate the level of responsibility based on two of Rawls' criteria: capacity and impact. Consequently, the responsibility of a given platform is directly proportional to its ability to produce public goods and the potential for causing harm. Consequently, legal provisions are established not solely for the purpose of punishment, but also as instruments of benefit redistribution. Large platforms that demonstrate excellence in technology function as catalysts for greater justice, while small traders are able to enhance their productivity without being encumbered by disproportionate administrative costs (Kuch, 2024).

This Rawlsian distributive approach is also conducive to the periodic evaluation and revision mechanisms. Digital market conditions are inherently dynamic, and regulatory imperfections invariably emerge in the course of technological development, from artificial intelligence to NFTs. It is incumbent upon the government to engage in regular consultations with the representatives of micro-traders, consumers, and platforms in order to ensure that policies remain responsive to change. This evaluation is a manifestation of Rawls' principle of "fairness as a methodology of justice," in which rules are not dogmatic but are continually adjusted in the "original conditions" of the real market (Jamnik, 2022).

The principle of equal basic freedoms in the marketplace demands non-discriminatory access rights to digital infrastructure, personal data protection, and freedom from harmful content. Nevertheless, it is imperative to ensure that this commitment is not merely a formal promise; rather, it should be operationalised in practice. The existence of disparities in purchasing power, digital literacy, and bargaining position renders specific groups, such as micro-merchants who rely on recommendation algorithms, susceptible to exclusion. The difference principle is invoked here: the inequalities inherent in technology are permissible only to the extent that they improve the conditions of those who were originally most disadvantaged. It is therefore incumbent upon marketplaces that benefit greatly from network scale to reduce search bias, provide inexpensive verification, and ensure that escrow protection features are truly accessible to small-capacity merchants (Custers, 2022).

A thorough examination of the ITE Law and its associated regulations reveals several distributional discrepancies. Firstly, the obligation to disclose moderation

metrics has not been regulated; as a result, it is difficult for the public to assess how consistently platforms act on reports or how much problematic content is actually removed. Secondly, the financial burden of verifying seller identities is often transferred to merchants, thereby creating barriers to entry that stand in contrast to the concept of fair equality of opportunity. Thirdly, the compensation mechanism is contingent upon closed negotiations between sellers and buyers, with platforms maintaining a distance from the sphere of contractual responsibility, unless there is evidence to suggest that they exercise direct control over the process. The aforementioned lacuna must be addressed by invoking the Rawlsian principle of intermediary liability (Febryani, 2025).

The primary principle that is put forward is a proactive duty of care that is proportional to the platform's capacity and influence. It is imperative that marketplaces transition from a reactive notice-and-take-down model to a proactive notice-and-action paradigm. This transformation involves the implementation of early detection mechanisms, such as algorithmic audits, vendor curation, and the integration of cross-sector complaint data. This principle encapsulates the spirit of the difference principle, which posits that the greater the market power and profits of the platform, the greater the onus to protect the most vulnerable parties. Proportional adjustments have been shown to prevent over-deterrence of small start-ups. However, they require giant corporations to allocate significant resources to prevent uneven socio-economic losses (Price, 2021).

The second principle is that of transparency, which is to be achieved through public accountability. In this sense, Rawls underscores the significance of "public reason" in substantiating the utilisation of power that influences the distribution of benefits. It is therefore incumbent upon platforms to publish regular reports containing the volume of complaints, response speed, content removal ratio, and recommendation algorithm policies that affect the visibility of small merchants. It is imperative that these reports are presented in an easily comprehensible format, thus enabling the community, regulators and independent researchers to assess compliance with substantive justice. In the absence of transparency, the difference principle risks being reduced to a mere slogan, as there is no social mechanism to evaluate claims of equality (Urman & Makhortykh, 2023).

The third principle under discussion here emphasises risk redistribution through a no-fault recovery mechanism for consumers and micro-sellers. In the event of structured fraud or defective goods, victims are entitled to initial compensation from the platform's compensation fund, without having to prove individual fault. This approach is consistent with Rawls' concept of institutional responsibility for maintaining background justice. The marketplace, as an institution that imposes a fee on every transaction, must assume the risks inherent in the ecosystem it fosters. The no-fault scheme does not negate the platform's right of recourse against fraudsters; rather, it ensures that the initial cost burden does not fall on victims with low bargaining power (Loi et al., 2023).

The fourth principle demands inclusivity in verification and the empowerment of small-scale sellers. Within the framework of fair equality of opportunity, it is essential that all individuals have equal access to economic positions. It is imperative that marketplaces provide low-cost verification channels, digital literacy assistance, and display algorithms that avoid self-preferencing towards major brands alone. It is important to note that the utilisation of fairness-oriented algorithms does not

inherently guarantee an equal distribution of visibility. However, these algorithms do ensure that success is not solely determined by advertising capital, but rather by reputation, product quality, and valid consumer reviews (Fazriati et al., 2025).

The fifth principle pertains to the concept of algorithmic non-discrimination. Algorithms now determine who sees what, and potential biases – whether inherent in training data or in profit optimisation parameters – have the capacity to diminish access for minority groups or disadvantaged regions. In the philosophical system of Rawls, the fundamental structure of society is conceived in such a manner that any inequalities that emerge can be justified to those who are most adversely affected by them. Consequently, the necessity for regular, independent audits to detect and eliminate bias on the basis of race, gender, region or business scale has been established as a prerequisite for the new safe harbour. It is imperative to note that legal immunity is exclusively granted to platforms that can demonstrate the absence of systemic injustice caused by their algorithms (Živković & Ducato, 2023).

The five principles under discussion are intertwined to form a framework of intermediary liability that meets the demands of Rawlsian theory. This framework guarantees basic digital freedoms, prioritises benefits for the weak, and opens up fair competitive opportunities. From a dogmatic perspective, these principles can be incorporated into executive regulations without the necessity of altering the structure of the ITE Law. A sufficient measure would be to revise Permenkominfo No. 5/2020, adding articles on transparency reporting obligations, no-fault compensation schemes, independent algorithmic audits, and inclusive verification standards. The strengthening of cross-ministerial supervisory institutions, such as a task force involving Kominfo, KPPU, and OJK, is also essential so that enforcement extends beyond administrative sanctions to encompass structural improvements to the platform.

The implementation of these principles should be accompanied by fiscal incentives for marketplaces that achieve certain moderation and fairness scores, as well as a progressive penalty regime for serious violations. The state has been observed to utilise a graduation mechanism in order to cultivate an environment of innovation, whilst simultaneously underscoring the notion that substantial profits are accompanied by significant responsibilities. Furthermore, civil society participation in monitoring platform transparency portals needs to be facilitated through open data access, without violating user confidentiality, so as to create the continuous social correction that is essential for the health check of distributive justice.

Consequently, marketplaces are no longer regarded as passive observers awaiting reports; rather, they are recognised as institutional actors cognisant of their redistributive function within the digital economic structure. This perspective aligns with the concept of social institutions as mechanisms for the continuous enhancement of the distribution of benefits and burdens among members of society, as proposed by Rawls. When these principles of justice are woven into the design of intermediary liability regulations, the digital market landscape will be better able to avoid the accumulation of extreme inequality, while still providing room for innovation.

The formulation of principles of liability that are distributively just is not a matter of endlessly adding legal burdens. Rather, it is a matter of restructuring the architecture of responsibility to make it relevant to technological realities that amplify power asymmetries. Marketplaces are known to accrue substantial rents from their networks; therefore, it is an inherent aspect of the legal framework, as delineated by

the principles of justice as expounded by Rawls, to mandate their active involvement in the promotion of equitable access, the safeguarding of consumer interests, and the empowerment of small-scale vendors. When responsibility is articulated through proactive obligations, transparency, risk redistribution, verification inclusivity, and non-discrimination audits, the safe harbour is no longer a safe haven that pushes victims aside; rather, it becomes a bridge to a fair digital ecosystem. The realisation of this scheme will result in a transformation of the marketplace into an institution that genuinely maintains background justice, as demanded by Rawls. Consequently, every participant will be granted equal opportunities and protection in the 21st-century commercial arena, regardless of their original position.

Conclusion

The rapid growth of the digital economy has given rise to significant challenges regarding intermediary liability in the marketplace ecosystem. In this regard, Indonesia's safe harbour framework, as outlined in Article 15 paragraph 3 of the ITE Law and the derivative regulations of Permenkominfo No. 5 of 2020, provides conditional immunity to platforms, contingent upon their ability to meet the criteria of passive notice-and-takedown. The burden of proof and risk is placed on consumers and micro-businesses in this reactive model, resulting in unequal access to and protection from risk. The principles of fair equality of opportunity and the difference principle demand an intermediary liability scheme that actively distributes benefits to the most vulnerable parties, rather than merely reducing the burden on large platforms.

The research results identify five key principles: The following five principles should be observed in order to ensure an effective and fair online environment: (1) Proactive duty of care (notice-and-action) proportional to platform capacity (2) Public transparency on moderation metrics and algorithms (3) No-fault recovery mechanism (4) Verification and empowerment of micro-sellers through low costs and literacy assistance (5) Independent audits to prevent algorithmic discrimination. The discussion highlights the importance of implementing these principles, in conjunction with the revision of Permenkominfo No. 5/2020, the strengthening of inter-ministerial supervisory agencies, and fiscal incentives, to achieve a balance between freedom of innovation and consumer safety.

In an ideal scenario, intermediary liability in Indonesia would be transformed from a procedural safety net into an instrument of distributive justice. This would empower small traders, protect vulnerable consumers, and regulate platform responsibility based on capacity and impact. It is only in this manner that marketplaces will function as inclusive conduits, ensuring equal access and protection in 21st-century digital commerce.

Suggestion

Based on the findings and discussion of this study, it is recommended that Indonesian policymakers promptly reformulate the intermediary liability regime by shifting from a predominantly reactive safe harbour approach toward a proactive and distributively just regulatory framework, particularly through revising Minister of Communication and Information Technology Regulation No. 5 of 2020 without altering the core structure of the ITE Law. Such reform should explicitly establish a proportional duty of care aligned with platform capacity and economic impact, mandate public transparency regarding content moderation practices and

recommendation algorithms, and introduce a no-fault recovery mechanism to protect consumers and micro-sellers from systemic risks. Furthermore, the state should ensure inclusive, low-cost verification mechanisms and digital empowerment for small-scale sellers, alongside institutionalised independent algorithmic audits to prevent structural discrimination. Through these measures, intermediary liability can evolve from a procedural shield for platforms into a legal instrument that actively realises distributive justice in accordance with John Rawls' theory, while simultaneously strengthening a fair, secure, and sustainable digital marketplace ecosystem in Indonesia.

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