

COMPETITION LAW BUSSINES OF TELECOMMUNICATIONS COMPETITION LAW IN INDONESIA

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ABSTRACT

The purpose of this study is to analyze: 1) What is the current competition model of telecommunications business in Indonesia? How is Telecommunications Business Competition in Indonesia Reviewed from Competition Law?. This research is a type of normative juridical research with a legislative approach, a conceptual approach, and a case study.

The results of the study show that: 1) In the application of competition in the telecommunications sector, there are parties who often provide protection or privileges to certain business people, this can cause unfair competition and trigger the emergence of monopoly practices. Judging from the aspect of business competition law in which one of the business actors conducts monopolistic practices and/or unfair business competition, then all of the single economic entities are declared to have violated the business competition law, even though legally the business entities are separate, that is, each has its own legal entity. 2) Effective regulation is needed to ensure dynamism and healthy competition in the mobile telecommunications market. Awareness of the importance of competition or competition itself should be appreciated and the direction towards a healthier business is also starting to run in Indonesia. Improvements in the future are expected to run effectively, both in terms of regulations, practices and healthy cooperation among mobile telecommunication operators, so as to be able to provide maximum service and quality to the community without burdening and harming the community.

Keywords: Competition, Business, Telecommunications, Law, Competition.

INTRODUCTION

Background

The more the economy in Indonesia develops, the more business competition that occurs among business actors. The most important goal of business actors in business competition is to control the market in question. For this reason, business actors develop their businesses both internally and externally. What is meant by internal business development is developing its business by expanding its business activities through opening branches or establishing subsidiaries. Meanwhile, external business development is by taking over shares of other companies either horizontally, vertically or diagonally. ¹ Legally, the legal entity that takes over and the one that takes over still remains with their respective legal entities in the form of a Limited Liability Company (PT). Therefore, each PT has its own freedom and responsibility, because it has the doctrine of Corporate Separate Legal Entity. This means that each legal entity has its own personality that has its own legal responsibilities. However, due to the ownership of shares of a company in several companies, a PT can be formed and become a holding company. A PT can become a holding company when there is share ownership by a legal entity or individual. A holding company is a company that aims to own shares in one or more other companies and/or manage one or more of those other companies. ² The company consists of an interrelated parent company and a subsidiary. However, the relationship between a company and a subsidiary or another company can be economically stated as a single economic entity or what is called *a single economic entity*.¹

In today's era of globalization, telecommunications is one of the most important and strategic roles in human life. With the advancement of information and communication technology today, it makes it easier for humans to be able to exchange information easily, in a relatively fast and efficient time. Along with the changing lifestyle of today's people, people need access to diverse, fast, easy and reliable information, which is an opportunity as well as a challenge for telecommunication service providers to meet the needs of this community.

¹ Munir Fuady. *Corporate Law in the Paradigm of Business Law* (Bandung, Citra Aditya Bakti, 1999), p.84

The increase in the number of internet users in Indonesia from 30 million people in 2009 to 171 million people in 2018 needs to be addressed wisely, especially for companies that want to win business competition. Changes in consumer behavior as a result of the development of information and telecommunication technology must be continuously researched and reviewed so that the decisions taken can meet the desires and needs of consumers. The development of information technology makes it possible to carry out various activities faster, more precisely and more accurately, so that performance and productivity are expected to be improved. The role of information technology is very important now and in the future. The information technology and telecommunications sector is an important sector, those who own and use this technology will become leaders in their fields. The presence of information technology does not only affect individuals but business-oriented organizations (companies) are one of the entities that get a great positive influence from the development of this information technology. Information systems and technology have been used by many parties as a means of supporting to improve company performance from time to time, besides that they are also used further as the main tool or weapon in competition. There are many examples of cases of companies that go bankrupt because they lose out to competitors who use information technology intensively to win the competition. ²

The rapid development of information and communication technology is currently a fundamental thing for the economy in Indonesia, this can be seen from its rapid development which has continued to grow since the 20th century until now. This can spur existing economic and social development. Telecommunication networks have a positive impact on the business world and can boost the economy. Currently, telecommunications can be reached both locally and globally. In this way, the development of the world of telecommunications in Indonesia will be more advanced.³

The development of this industry can be evidenced by the attention and observation of people who get the convenience of communicating and accessing information quickly and

² Udin Silalahi. Supervision of Merger According to Government Regulation No. 57/2010, *Law Review* Vol. X No. 2 November 2010, p. 213

³ Valentine Korah. *An Introductory Guide to EC Competition Law and Practice* (Oxford: Hard Publishing, 2000), p. 38.

practically according to the current conditions. These developments have brought the communication industry to a fast communication that can be done anywhere. The growth of communication tools such as telephones and mobile phones encourages the rapid growth of communication service providers which ultimately leads to competition between communication service providers.⁴

It is undeniable that telecommunications has a very essential role in economic, socio-cultural, political, or hankam activities. For this reason, when telecommunications was regulated in Law No. 3 of 1989, at the beginning of its growth this matter was handled by the government and by the government was handed over to the Telecommunication Service Organizing Agency. The Telecommunication Service Organizing Agency is PT. Telkom for domestic telecommunications affairs (local and SLJJ), as well as PT. Indosat for SLI (International Direct Connection) matters.

The development of the telecommunications industry in Indonesia is currently experiencing growth, besides that there is also pressure on the encouragement from the government to register prepaid cards. Therefore, it was recorded that several large telecommunication companies experienced a decrease in revenue. This was marked by the revenue of PT Indosat Tbk (ISAT) decreased by 26.78% in the first semester of 2018, on an annual basis (YoY) and there was Telkomsel's parent company, PT Telekomunikasi Indonesia Tbk (TLKM), which experienced a decrease in net profit by 28.1% to Rp 8.69 trillion while PT XL Axiata Tbk (EXCL) recorded a growth of 1.03% in the same period to Rp 11.04 trillion.

With the fierce competition between telecommunication companies, the company is spurred to be able to win the competition to stay ahead. This is marked by an increase in the growth of the telecommunications industry.

By looking at the competition that occurs in the Telecommunications industry today, in addition to price, competition also occurs in services. Companies are required to have a competitive advantage to face existing industry competitors by maintaining their market share. To win the competition, both the private and public sectors must have a certain

⁴ Andi Fahmi Lubis et al. Business Competition Law Between Text and Context (Jakarta: GTZ), p. 187.

competitive advantage compared to other organizations. One of them is by analyzing the company's strategy. Strategy is how a company is able to manage the resources and capabilities possessed by the company to be able to be conveyed to consumers.⁵

The survival of a company in today's era of global competition requires management to arrange how the company can compete, including by implementing good strategic planning in the face of all changes that occur. All changes that occur need to be fully responded to by the company, not only focusing on a product produced by the company, but important aspects related to the performance of a company as an entity under the community. Therefore, the performance of a company is considered very important and looks good depending on how a management can manage and carry out these activities.

Problem Formulation

1. What is the current competition model of the telecommunications business in Indonesia?
2. How is Telecommunications Business Competition in Indonesia Reviewed from Competition Law?

THEORETICAL FRAMEWORK

1. *Grand Theory Per Se Illegal*

The Grand Theory used in this study is *the theory per se illegal*. The *per-se illegal* approach was first applied by the U.S. Supreme Court in *United States v. Trans-Missouri Association*, which was later followed in *United States v. Joint Traffic Association*.⁶ The word "per se" in *per se illegal* comes from Latin, meaning *by itself, in itself, taken alone, by means of it self, through itself, inherently, in isolation,, unconnected with other matters, simply as such, in its own nature without reference to its relations*, as stated by Henry Campbell Black in his book *Black's Law Dictionary*.

The *per-se illegal* approach means that an act has automatically violated the provisions regulated if the act has met the formulation of the law without justification,

⁵ Kertajaya, Hermawan. 1999, *Marketing Plus 2000, Strategy to Win Global Competition*, PT Gramedia Pustaka Utama, Jakarta. Page 27

⁶ A. M. Tri Anggraini, *Prohibition of Monopoly Practices and Unfair Competition (Per Se Illegal or Rule of Reason)*, (Jakarta: Postgraduate Program, Faculty of Law Indonesia, 2003), p. 80

and without the need to see the consequences of the action taken. Regarding what is meant by illegal *per se*, it can also be interpreted as a terminology that states that an action is declared unlawful and absolutely prohibited, and there is no need to prove whether the act has a negative impact on business competition.⁷

2. *Middle Theory of Legal Protection*

According to Fitzgerald as quoted by Satjipto Raharjo that this Law Protection Theory is sourced from the theory of natural law or the stream of natural law. This school was first initiated by Plato, Aristotle and Zeno (the founder of the Stoic school). According to the natural law school, it is stated that the law comes from God who is universal and eternal, and that law and morality cannot be separated. The adherents of this school view that law and morality are internal and external reflections and rules of human life that are manifested through law and morality.⁸

Fitzgerald explained Salmond's Law Protection Theory that law aims to integrate and coordinate various interests in society because in a traffic of interests, the protection of the interests of certain parties can only be done by limiting the interests of other parties. Legal interests are to take care of human rights and interests that need to be regulated and protected. Legal protection must see the stages, namely the protection of *hukun* born from a provision and all legal regulations given by the community, which is basically the agreement of the community to regulate the behavioral relationship between members of the community and between individuals and the government which is considered to represent the interests of the community.⁹

According to CST Kansil, legal protection is a narrowing of the meaning of protection, in this case only protection by law. The protection provided by the law, is also related to the existence of rights and obligations, in this case what is possessed by human beings as legal subjects in their interactions with fellow human beings and

⁷ Susanti Adi Nugroho, *Business Competition Law in Indonesia*, (Jakarta: Kencana, 2012), p. 711

⁸ Satjipto Raharjo, *Law*. PT. Citra Aditya Bakti, 2000, p. 53.

⁹*Ibid*, p. 54

their environment as legal subjects human beings have the right and obligation to carry out legal actions.¹⁰

Meanwhile, according to Philipus M Hadjon, legal protection is the protection of the dignity and dignity as well as the recognition of human rights owned by legal subjects based on the general provisions of arbitrariness or as a collection of regulations or rules that will be able to protect something else.¹¹

The establishment of the National Police Honorary Assembly is one of the parts of providing legal protection guarantees for the public who receive behaviors/acts of abuse of authority by members of the National Police or legal protection for the members of the National Police themselves when they have problems in their duties. The Honorary Assembly of the National Police has the main task of enforcing internal laws of the National Police, both discipline and code of ethics carried out by professional non-career judges from the National Police so as to provide a guarantee that the decisions taken have the value of justice, certainty and better usefulness.

3. *Applied Theory of Treaty Law*

The theory of agreement according to doctrine (old theory), called agreement, is a legal act based on an agreement to cause legal consequences. According to a new theory put forward by Van Dunne, what is defined by agreement is: "a legal relationship between two or more parties based on an agreement to give rise to legal consequences"

The theory does not only look at the agreement. But it is also necessary to look at the previous deeds or those that preceded them. There are three stages in making a covenant according to the new theory, namely:

1. The *Precontractual* stage is the receipt and offer.
2. The *contractual stage* is the agreement of the statement of will between the parties.
3. The *postcontractual stage* is the implementation of the agreement.

¹⁰ Kansil CST, *Introduction to Indonesian Law and Governance*, Balai Pustaka, Jakarta, 1989, p. 102.

¹¹ Philipus M hadjon, *Introduction to Indonesian Administrative Law*, 2005, p. 25.

The elements of the agreement according to the old theory, namely:

1. There is a legal act
2. Correspondence of statements of intent from several people
3. The conformity of this will must be publicly stated
4. The legal act occurs because of cooperation between two or more people
5. A statement of the will that things must depend on each other
6. The will is intended to cause legal consequences
7. The legal consequences are for the benefit of one over the burden of another or reciprocity.¹²

RESEARCH METHODOLOGY

This research is included in the type of doctrinal research, where the approach method used is juridical-normative. The study method used in this study is normative legal research, which is a study conducted by examining the laws and regulations that apply or applied to a certain legal problem. Research that includes research on legal principles, research on legal systematics, research on legal synchronization, legal history research, and comparative legal research.¹³

The study carried out is a literature study (*library research*) which uses secondary data. Primary data through field studies, secondary data in this study are obtained through literature studies, by seeking as complete and as much information as possible with journal literature, newspapers, articles, scientific papers and laws and regulations related to online buying and selling in electronic contracts. The use of secondary or literature data is intended to; 1) Inform readers about the results of other research related to the research being conducted; 2) Connecting a research that is carried out on an ongoing basis to fill in the gaps and expand other research; and 3) Provide a framework and reference to compare a study with other findings. The data collected in this study will be analyzed descriptively with a

¹² Sudikno Mertokusumo, *Getting to Know the Law of an Introduction*, Liberty Yogyakarta, Yogyakarta, 2007, 160

¹³ Soerjono Soekanto and Sri Mamudji, *Normative Legal Research, A Brief Review*, (Jakarta: Raja Grafindo Persada, 2011), p. 65.

qualitative approach, namely by providing a thorough and in-depth presentation and explanation (*holistic/verstelen*).¹⁴

RESEARCH RESULTS

Telecommunications Business Competition Model in Indonesia

At this time, telecommunication reform is practically implemented by all countries in the world. This is mainly due to drastic changes in the global economic environment and the rapid advancement of technology and information. The manifestations of these reforms differ from country to country, due to specific differences in the economic, political, and social conditions of each country. This diverse pattern of telecommunications reform is also caused by the different reform strategies that the company wants to target.

In general, telecommunications has a global dimension, even though the weight of its responsibility is in the national scope. This is because the nature of telecommunications itself is inherent in long-range coverage so that it has global implications, while the final form and form are largely determined by the environment and national policies.

Changes in the global economic environment and the dynamic pace of advancement in telecommunications and informatics technology have pushed the telecommunications environment to be much different from the situation that has prevailed so long before. This fundamental change has created a new reality in telecommunications operations around the world

Broadly speaking, the forms of changes and new realities include: the shift of telecommunication functions from utilities to trading commodities; the shift of government functions from owning, building, and organizing telecommunications to determining policies, regulating, supervising and controlling them; increasing the role of the private sector as an investor in infrastructure and telecommunications implementation; transformation of the structure of the telecommunications market from monopoly to competition.

However, the reality that occurs is that there are complaints about the telecommunications industry in Indonesia, when the telecommunications business is increasingly rampant and when people begin to benefit because competition leads to choices,

¹⁴ Sugiyono, "Quantitative, Qualitative and R&D Research Methods," 26th (Bandung: Cv. Alfabeta, 2018), p. 34.

but at that time also concerns begin to arise. The telecommunications industry, whose actors are increasingly pervasive, is increasingly closing the possibility of newcomers to fill the existing market gap. Nowadays there are giants of the telecommunications industry in the fixed telephone business held by PT. Telkom as *the dominant* operator.¹⁵

Based on Information and Communication Technology (ICT) data, Indonesia's network readiness is still in fourth place below several other ASEAN countries in the Network Readiness Index (NRI).

Currently, Indonesia's network readiness is still below Singapore, Malaysia and Brunei. Therefore, there needs to be an effort to increase the NRI of the Indonesian network in increasing Indonesia's readiness to face competition with other countries. The network owned by Indonesia is still insufficient to face future competition. Meanwhile, the existing network is currently controlled by Telkomsel (ranked 1st), XL (ranked 2nd) and Indosat (ranked 3rd).

In determining the market structure¹⁶, one of the important components that must be known is the market share of business actors. The following are the data used to see the market share of each mobile telecommunications business actor. Based on table 1, the market share based on total data production in 2012 is controlled by PT. SmartFren Telecom, which is 33%. The second largest market share is held by PT. Cellular Telecommunications, which is 31%. The third largest control is owned by PT. XL Axiata, with a market share of 14%. Meanwhile, PT. Indosat, ranked fourth with a market share of 9%.

Meanwhile, based on the number of broadband subscribers controlled by PT. Indonesian Telecommunications with a market share of 88.87%. Then the second largest market share is owned by PT. Indosat with a market share of 5.44%. In the third largest position is PT. Bakrie Telecom (BTEL) with a market share of 3.57%.

Furthermore, based on data from the Directorate General of PPI, the current condition of the mobile market is saturated. The relatively large number of organizers and high churn resulted in a price war. As a result of the price war, the quality of products and services has

¹⁵ Ratna Yuliani. *Responsibility of the Parent Company to a Subsidiary in a Group Company* (University of Muhammadiyah Surakarta, 2013), p. 2

¹⁶ Munir Fuady. *Business Law in Theory and Practice, first book* (Bandung: PT Citra Aditya Bakti, 1996), p. 88

also decreased. The availability of services can be described as low availability, and the distribution of coverage to sub-urban and rural arenas is only carried out by one organizer. From the organizer side, EBITDA growth is still occurring, but the growth is starting to decline, even negative EBITDA occurs in non-dominant organizers. In 2012 there was a net loss, both in the dominant and non-dominant organizers.¹⁷

The conditions mentioned above can be seen from the results of research and market analysis conducted by the Directorate General of PPI, which shows that the growth of the performance of the mobile industry is sloping. The results of the research and market analysis show that:

1. The mobile industry revenue is only supported by 2 (two) operators, while the EBITDA margin of other operators is negative
2. The churn rate is estimated to be at the level of 22%;
3. Customer acquisition costs are quite expensive and entry to market costs are getting higher;
4. The dynamics of economic indicators occurred in non-dominant organizers;
5. One organizer encourages a large economy of scale for non-dominant business actors.

As for the condition of the broadband market, based on data from the Directorate of Telecommunications, Directorate General of PPI, the condition of the broadband market can be described as:

1. The market is still controlled by PT. Telkom, with low growth;
2. The low growth occurred as a result of the mobile broadband market not yet being formed as a basis for encouraging the development of fixed broadband;
3. High infrastructure costs and lack of open access for buildings and areas are the main barriers;
4. Market supply is marginally still caused by business actors who are pragmatic in meeting broadband demand.

¹⁷ Udin Silalahi. Single Presence Policy Reviewed from the Perspective of Business Competition Law, *Journal of Business Law*, Vol. 27-No. 2 of 2008, p. 32

Business competition continues to occur until now, it is not a problem if the competition is healthy and consumers are not disadvantaged by the competition. Telecommunication operators are waging tariff war campaigns with promotions that corner neighboring operators. The war occurred and was widely discussed on social media, the operator of Indosat Ooredoo launched a promotion that cornered Telkomsel. Therefore, the purpose of this study is to discuss and further analyze the telecommunication industry tariff war that occurred between Telkomsel operators and Indosat Ooredoo against unfair business competition.

In the application of competition in the telecommunications sector, there are parties who often provide protection or privileges to certain business people, this can cause unfair competition and trigger the emergence of monopoly practices. Cases of unfair competition and alleged monopolies in the telecommunications sector have been proven by the violations committed by the Temasek Group. This guilty statement was read out in the reading session of case No. 7/KPPU-L/2007 concerning alleged violations of article 27 letter 1 of Law No. 5/1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition at the ICC office. In the reading of the case, there were 10 reported parties, all of whom were extensions of Temasek. Reported I : Temasek Holdings Pte.Ltd, Reported II : SingTel, Reported III : STT Communications Ltd, Reported IV : Asia Mobile Holdings Company Pte Ltd, Reported V : Asia Mobile Holdings Pte Ltd, Reported VI : Indonesia Communications Ltd, Reported VII : Indonesia Communications Pte Ltd, Reported VIII : Singapore Telecommunications Pte Ltd, Reported IX : Singapore Telecom Pte Ltd. In this hearing, ICC stated that there is a clear causal relationship between cross ownership Temasek with losses in the mobile industry. ICC revealed that Temasek's cross ownership in Indosatdan Telkomsel had caused consumer losses in the mobile industry of Rp 14.7 trillion-30.8 trillion during 2003-2006.

Telecommunications Business Competition in Indonesia Reviewed from the Competition Law

The role of communication and information technology is increasingly significant in today's economic and business developments, behind these developments there is the role of business actors in the telecommunications industry. The dynamics of business competition

in the telecommunications sector are getting tighter, so mobile operators are competing to create business strategies in order to achieve customer loyalty in a situation that tends to experience market saturation. The increase in the number of subscribers was not followed by an increase in the value of revenue in the mobile operator industry.

The trend of the telecommunications industry will have many landscape changes. This is due to various developments, namely technological developments, the convergence of telecommunications, broadcasting and computers, the need for large bandwidth towards wideband, and neutral technology that requires *spectrum refarming*.¹⁸

Currently, it can be seen that there is an industry shift from voice and SMS to data. In addition, the use of broadband is also increasing. Therefore, the role of data and broadband in the future will be increasingly important. But unfortunately, even though there is data traffic that continues to increase, there has been a decrease in operator income.

Meanwhile, the Convergence Trend of the Telecommunications Industry in the future is where the telecommunications industry will develop to form a market that is interconnected between telecommunications, broadcasting and computers.

In line with the development of the industry in the future, regulations that support broadband are needed. Law No. 36/1999 and PP 53/2000 that are currently in force are no longer in accordance with the dynamic development of the ICT industry. In addition, to grow content, the concept of intermediary is needed as a platform that is open to the industry.

There are 4 (four) main problems, namely infrastructure and policies that do not support broadband, infrastructure security has not been guaranteed, there is no common mission between sectors, and the problem of efficiency of the telecommunications industry. The government has also prepared a Strategic Development Plan (SDP) for the Telecommunications Industry. SDP which includes a plan for structural changes and their composition, a roadmap plan for telecommunications regulations as a tool in achieving the target of the industrial structure change plan and its composition, and a policy roadmap plan as a facilitation for the movement plan for industrial structure change and its composition.

¹⁸ Gunawan Widjaya. *Individual and Collective Rights of Shareholders*, cet.1 (Jakarta: Forum Sahabat, 2008), p. 14.

Based on data from the Directorate of Telecommunications, Directorate General of PPI, there are several things that need to be considered in the strategy concept, namely:

- a. The "frequency spectrum" placed as "company value" makes it difficult to achieve consolidated repositioning in B2B.
- b. The implementation of flexibility in the use of frequency spectrum is still waiting for changes to PP 53 (or waiting for the new Telecommunications Law),
- c. The implementation of the new Telecommunications Law is likely to be carried out only in 2018,
- d. There is a need for a regulatory and policy roadmap that encourages the repositioning of the industrial consolidation stage by the market.
- e. Operators who supply the market marginally by only supplying certain demand need to be consolidated so that there is market certainty for operators to accelerate broadband growth.
- f. Specialized telecommunications operators are still "reluctant" to use services provided by the industry,
- g. The openness of the broadcasting industry at a time when broadband (both partially and in full) becomes "single access" for the public,
- h. The implementation of convergence services (ecommerce, e-logistics, e-transaction and others) has not been effective,
- i. The consistency of the implementation of the Kominfo roadmap must be maintained,
- j. Realization of the achievement of the KOMINFO RPJM target,
- k. There needs to be a soft approach that encourages the industry to move gradually towards an ideal ecosystem (ideal structure and composition),
- l. The soft approach will be replaced with a hard approach that forces the industry to transform into an ideal ecosystem after it is considered ready.
- m. The existence of an industrial movement facilitated by the implementation of consistent and transparent policies and regulations for industrial business actors.

The mobile telecommunications industry in Indonesia holds a very promising market economy potential for telecommunications sector business actors. Competition is often connoted negatively because it is considered to be self-interested, even though in reality a human being as an individual or a member of an organization economically will still try to get the greatest profit. Competition in the telecommunications sector continues to occur, this should be able to increase the passion for healthy competition among telecommunications entrepreneurs in Indonesia. There is often a fierce competition between Telkomsel's operator and Indosat Ooredoo, whose shares are now owned by Qatar Telecom (Qtel) Q.S.C. (QTEL) on behalf of Ooredoo Asia Pte. Ltd. The war between the two telecommunication operators Indosat Ooredoo and Telkomsel related to the tariff war has recently been in the spotlight of several parties.

Competition that is cared for and maintained will produce positive benefits, and avoid all negative potentials that can damage human resources. It can be concluded that mobile operators in Indonesia benefit greatly from the structure of the mobile phone industry which leads to an oligopoly. Competition can take place directly, it can also be in the form of competition but not directly.

The government has prepared various strategies to achieve a healthy mobile and broadband market. The strategy has been prepared in detail that covers various important issues, such as technology, the number of business actors (market structure), licensing, and the role of the government. The strategy is intended to produce better performance of the telecommunications industry in the future. Improvements in the performance of the telecommunications industry in the future will be seen from the growth in the availability of telecommunication networks and services for users, both in terms of quality and quantity.¹⁹

Business competition continues to occur until now, it is not a problem if the competition is healthy and consumers are not disadvantaged by the competition. Telecommunication operators are waging tariff war campaigns with promotions that corner neighboring operators. The war occurred and was widely discussed on social media, the operator of Indosat Ooredoo launched a promotion that cornered Telkomsel.

¹⁹ Dimas Eko and Teddy Anggoro. *Juridical Analysis of the Abuse of Dominant Position through Share Ownership* (Depok: University of Indonesia, 2013), p. 11.

It is realized by the government that competition between operators can trigger unfair competition, therefore as a form of seriousness from the government in creating a healthy business climate, efforts have been made, among others, by making a legislative product on the prohibition of monopolistic practices and unfair business competition. The prohibition of monopoly technology is affirmed in Law No. 5 of 1999 which began to be enforced in Indonesia on September 5, 2000. This law is the result of the economic and political reform process which is expected to be able to create healthy business competition. According to Muladi, the Anti-Monopoly Law can be said to be comprehensive, because in fact, pragmatically, juridical restrictions on unhealthy or fraudulent business practices can be found scattered in various positive laws, but because of its sectoral nature, the legislation is very ineffective to (conceptually) meet the various target indicators that the fair competition law wants to achieve.²⁰

The purpose of the Business Competition Law is Law No. 5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition (Law No. 5/1999) which aims to maintain the competitive market from the influence of agreements and conspiracies that tend to reduce and/or eliminate competition. The main concern of the Business Competition Law is promoting competition and strengthening consumer sovereignty. The essence of Law No. 5 of 1999 is to prohibit agreements, activities and abuse of market dominance carried out by one or several companies. Prohibited agreements include oligopoly, price determination or discrimination, predatory pricing, market sharing, group boycotts, cartels, alliances between companies, oligopoly, vertical integration, exclusive dealing and agreements with foreign parties that may result in unfair business practices. Prohibited activities include: monopoly, monopsony, market control, predatory pricing, conspiracy in bidding and obtaining competitor secrets.²¹

Increasing the market share of mobile telecommunication services certainly requires a foundation and scope of industry regulations that are not only adequate, but can also cover product and process innovations that often occur in this industry. In other words, effective

²⁰ Sabeth Abilawa. *Analysis of Cross Ownership Cases and Business Competition Violations Committed in the Mobile Industry in Indonesia*, <https://www.academia.edu/Download>, accessed on November 28, 2015.

²¹ Salim H.S. and Budi Sutrisno. *Investment Law in Indonesia* (Jakarta: Raja Grafindo Persada, 2008), p. 38.

regulation of the mobile telecommunications industry is needed in addition to ensuring efficient pricing and consumer protection on the one hand. On the other hand, effective regulation is also needed to ensure dynamism and healthy competition in the mobile telecommunications market. Awareness of the importance of competition or competition itself should be appreciated and the direction towards a healthier business is also starting to run in Indonesia. Improvements in the future are expected to run effectively, both in terms of regulations, practices and healthy cooperation among mobile telecommunication operators, so as to be able to provide maximum service and quality to the community without burdening and harming the community.

Various countries already have laws and regulations that regulate the creation and maintenance of healthy business competition. The definition of a competitor is a company that produces or sells goods or services that are the same or similar to the products we offer²². Healthy business competition is competition in which business actors are not concentrated in certain hands and are centralized in a few parties, but run according to a healthy market mechanism, namely in the economic world all business actors have the same rights and obligations. Healthy business competition is where if there is an agreement in the form of an agreement that does not unilaterally harm other parties who are not involved in the agreement.²³

²² Cashmere. *Entrepreneurship*. Jakarta: PT. King Grafindo Persada. (2007). p. 54

²³ Siswanto, *Business Competition Law*. Jakarta: Ghalia Indonesia. (2002). p. 64

CONCLUSION

The results of the study show that;

1. In the application of competition in the telecommunications sector, there are parties who often provide protection or *privileges* to certain business people, this can cause unfair competition and trigger the emergence of monopoly practices. Judging from the aspect of business competition law in which one of the business actors conducts monopolistic practices and/or unfair business competition, then all of the single economic entities are declared to have violated the business competition law, even though legally the business entities are separate, that is, each has its own legal entity.
2. Effective regulation is needed to ensure dynamism and healthy competition in the mobile telecommunications market. Awareness of the importance of competition or competition itself should be appreciated and the direction towards a healthier business is also starting to run in Indonesia. Improvements in the future are expected to run effectively, both in terms of regulations, practices and healthy cooperation among mobile telecommunication operators, so as to be able to provide maximum service and quality to the community without burdening and harming the community.

BIBLIOGRAPHY

- A. M. Tri Anggraini, *Prohibition of Monopoly Practices and Unfair Competition (Per Se Illegal or Rule of Reason)*, (Jakarta: Postgraduate Program, Faculty of Law, Indonesia, 2003).
- Andi Fahmi Lubis et all. *Business Competition Law Between Text and Context* (Jakarta: GTZ).
- CST Kansil, *Introduction to Indonesian Law and Governance*, Balai Pustaka, Jakarta, 1989.
- Dimas Eko and Teddy Anggoro. *Juridical Analysis of the Abuse of Dominant Position through Share Ownership* (Depok: University of Indonesia, 2013).
- Gunawan Widjaya. *Individual and Collective Rights of Shareholders*, cet.1 (Jakarta: Forum Sahabat, 2008).
- Cashmere. *Entrepreneurship*. Jakarta: PT. King Grafindo Persada. (2007).
- Kertajaya, Hermawan. 1999, *Marketing Plus 2000, Strategy to Win Global Competition*, PT Gramedia Pustaka Utama, Jakarta.
- Munir Fuady. *Corporate Law in the Business Law Paradigm* (Bandung, Citra Aditya Bakti, 1999).
- Munir Fuady. *Business Law in Theory and Practice, first book* (Bandung: PT Citra Aditya Bakti, 1996).
- Philipus M hadjon, *Introduction to Indonesian Administrative Law*, 2005.
- Ratna Yuliani. *Responsibility of the Parent Company to a Subsidiary in a Group Company* (University of Muhammadiyah Surakarta, 2013).
- Sabeth Abilawa. *Analysis of Cross Ownership Cases and Business Competition Violations Committed in the Mobile Industry in Indonesia*, <https://www.academia.edu/Download>, accessed on November 28, 2015.
- Salim H.S. and Budi Sutrisno. *Investment Law in Indonesia* (Jakarta: Raja Grafindo Persada, 2008).
- Satjipto Raharjo, *Law*. PT. Citra Aditya Bakti, 2000.
- Siswanto, *Business Competition Law*. Jakarta: Ghalia Indonesia. (2002).
- Soerjono Soekanto and Sri Mamudji, *Normative Legal Research, A Brief Review*, (Jakarta: Raja Grafindo Persada, 2011).
- Sudikno Mertokusumo, *Getting to Know the Law of an Introduction*, Liberty Yogyakarta, Yogyakarta, 2007.

Sugiyono, *"Quantitative, Qualitative and R&D Research Methods,"* 26th (Bandung: Cv. Alfabeta, 2018), p. 34.

Susanti Adi Nugroho, *Business Competition Law in Indonesia,* (Jakarta: Kencana, 2012).

Udin Silalahi. Single Presence Policy Reviewed from the Perspective of Business Competition Law, *Journal of Business Law,* Vol. 27-No. 2 of 2008.

Udin Silalahi. Supervision of Mergers According to Government Regulation No. 57/2010, *Law Review* Vol. X No. 2 November 2010.

Valentine Korah. *An Introductory Guide to EC Competition Law and Practice* (Oxford: Hard Publishing, 2000).