

CHAPTER ONE

INTRODUCTION

A. Research Background

The telecommunication industry is engaged in the service industry and is currently the most developed in the last 10 years in Indonesia. Government has regulated telecommunication on Act Number 36 of 1999; this Act gives significant impact on the development of the telecommunications industry in Indonesia. Telecommunication is a strategic industry, and it was instrumental in opening the isolation, improving the quality of education, economic development, social development, environmental conservation, and meeting the needs of modern lifestyles. Nowadays cellular has become a primary need for people because the function is very important, so people are dependent on telecommunication.¹

Since the deployment of GSM technology in 1995, the development of cellular users is growing rapidly. As key drivers, cellular users are able to change direction and to push the economic development of the nation. Cellular users in Indonesia develop continuously. This time the number has exceeded 300 million cellular users. That means the development of the market is already saturated, even exceeding the population. In big cities such as Jakarta,

¹ Uday Rayana, "Data dan Fakta Industri Selular, Kemegahan Vs Kerapuhan" 10 September 2015 09:00, <http://selular.id/kolom/2015/09/data-dan-fakta-industri-selular-kemegahan-vs-kerapuhan/>, Accessed on Mon, Sep 20, 2016, 14:01 WIB.

Medan and Surabaya, the number of cellular user, already exceeds 200 percent.²

Cellular operator has a big impact on the development in Indonesia. The current number of cellular operator companies has been more than one and has possibility to lead competition between other cellular operators. And in 2010, it was known there were 7 cellular operator in Indonesia, namely: Telkom, XL, Indosat, Axis, three 3, Cellular-8 and Bakrie Telecom. And this time there are three major service provider companies (the big three), namely Telkomsel, Indosat and XL Axiata. If compared to other countries, the number of cellular operators in Indonesia is the numerous one.³ Furthermore, in 2014, Alex Sinaga, the President Director of PT.Telkomsel stated that competition in telecommunication industry has reached saturation position, where there was a Zero Sum Game. This is indicated by the amount of penetration of the telecommunication market in Indonesia, which has more than 200 million customers.

In order to get customers, the cellular operator companies should have the creative strategic on marketing programs, starting from the promotion to the addition of innovative features or programs. Moreover, with the number of cellular operator companies in Indonesia, it makes the new operators have spirit to compete with other cellular operator companies. Actually, when compared to other conditions in developed countries, like Australia only has 3

² *Ibid.*

³ Didik Purwanto, "Menkominfo Komentari Antara Telkomsel dan Indosat" www.Tekno.kompas.com//menkominfo-komentari-antara-Telkomsel-Indosat, Accessed on Monday, September 20, 2016, 16:01 WIB.

cellular operators company. It would be more effective than in Indonesia which has more than three cellular operator companies.⁴

The competition between cellular operators will create competition on the market share for all of cellular operator, and there are three (the big three) cellular operator companies which had mastered no less than 75% market share, and now rake in 125 million customer. XL has 50 million customers while Telkomsel and Indosat has 55 million customers. Even per July 2015, Tri Huthcinson the directors of Indosat claimed to have 50 million subscribers.⁵ Because of the number of cellular operator, the governments has made the regulation that can regulate the competition between cellular operator companies and can create healthy business competition.

In the middle of the liberalization of the telecommunications industry, the development of cellular operator companies growing rapidly, and the competition among operator cellular companies become more competitive. This has led to unfair business competition. June 2016, PT Indosat Tbk Ooredoo complaint that PT Telkomsel conduct monopolistic practices in markets outside Java. This potentially serious accusation does not only drop Telkomsel, but can also impact the Indonesian telecommunications industry⁶

⁴ Resty Wahyu Pertiwi, 2015, "Analisis Faktor-Faktor yang Mempengaruhi Ketidakpuasan Pelanggan dan Implikasinya terhadap Minat Churn Indosat" Skripsi Sarjana tidak diterbitkan, Fakultas Ekonomika dan Bisnis Universitas Diponegoro, hlm 1

⁵ Uday Rayana, *Loc.cit*

⁶ Fahmy Radhi, "Monopoli Telkomsel, Benarkah?" <http://koran.bisnis.com/read/20160711/251/564737/monopoli-Telkomsel-benarkah>, Accessed on Fryday, September 22, 2016, 08:35 WIB.

This issue has the damage among the parties of cellular operator companies, and the consumers would get the impact too.⁷

The complaint of Indosat to Telkomsel is very serious, because Telkomsel assume conducts monopolistic practice. The complaint can be proved by the data obtained in 2012; it is known that Telkomsel which dominate the market amounted to 48.10% and followed by Indosat amounted to 21.55%, while in the following year, in 2013 Telkomsel is still the market leader.⁸ In 2016 it is known that Tekomsel still dominates the market outside of Java amounted to 80%. Based on the data that is the foundation of Indosat to propose that Telkomsel has conducted monopolistic practice. And Indosat assume that Telkomsel has violated Article 17 and 19b of Law Number 5 of 1999 on the prohibition of monopolistic practices and unfair business competition. Articles 17 paragraph 1 stated that, “Entrepreneurs are prohibited from controlling any production and/or marketing of goods and/or services that can cause monopolistic practices and/or unfair business competition”, meanwhile article 19b explains “the prohibition for businessman does not allow some action that could lead to a monopoly practice and unfair business competition”. If proven, it will be penalized in accordance with the Act Number 5 of 1999 on the prohibition of monopolistic practices and unfair business Competition.⁹

⁷Herning Bany Restu, “Tanggapan Pakar tentang Tudingan Monopoli Telkomsel”, <http://swa.co.id/swa/trends/tanggapan-pakar-soal-tudingan-monopoli-Telkomsel>, Accessed on Fryday, September 22, 2016, 08:35 WIB.

⁸ *Ibid.*

⁹ *Ibid.*

On the other hand, Indosat issued a new product that is called Freedom Tariff Rp1/second to all operators, and the tariffs are set below the market price that has been determined by the government. Because of that, Indosat is assumed to have violated Article 20 Law Number 5 of 1999, by conducting predatory pricing practiced.¹⁰ Indosat is doing campaign with an intention to promote the freedom tariff Rp1/s program, but the campaign injured Telkomsel. This negative campaign has been successful to make Telkomsel has angry because Indosat has put the name of Telkomsel in their promotional banner. This negative campaign action is violating the advertisement ethic.

So, Muhammad Syarkawi Rauf, the Business Competition Supervisory Commission (KPPU) Chairman, explained both operators are violated the ethics of competition. So the Commission will schedule to call both parties, to then conduct an investigation into the case. Business Competition Supervisory Commission (KPPU) is an independent agency that regardless of the influence and power of the Government and other parties,¹¹ and the function is to oversee the implementation of Law Number 5 of 1999 concerning the prohibition of monopoly practice and unfair business competition. Therefore when there are some cases related to business competition, the commission which has been mandated by law can settle the case.

¹⁰ Priyanto Sukandar, "Tarif Rp1/detik Murah atau Predatory Pricing", http://www.kompasiana.com/psukandar/tarif-rp-1-detik-murah-atau-predatory-pricing_576b669164afbdbf04d8f892, Accessed on Friday, Oktober 14, 2016, 09:35 WIB.

¹¹ Article 30 point (2) of law Number 5 of 1999 on the Prohibition of Monopolistic Practice and Unfair Business Competition

Those cases have led to the attention of the researcher to conduct further study regarding “the dispute settlement on unfair business competition case of cellular operator: a case study between Telkomsel and Indosat”.

B. Research Problems

Considering the research background above, the writer has formulated two questions to be answered; namely:

1. How are the Provisions and their implementation regarding dispute settlement on unfair business competition of cellular operator?
2. How does the Business Competition Supervisory Commission (KPPU) and Indonesian Telecommunications Regulatory Body (BRTI) settle the unfair business competition case of cellular operator?

C. Research Objective

The objective of this research is to know the regulations regarding dispute settlement on unfair business competition of cellular operator and to know the role of Business Competition Supervisory Commission (KPPU) settle the unfair business competition case.

D. Research Benefits

The advantages which could be taken from this research are:

1. Theoretical Benefits

This research gives benefits to the theoretical testing on the dispute settlement on unfair business competition of cellular operator case regarding Law Number 5 of 1999 on the prohibition of monopolistic practice and

unfair business competition and regarding law Number 36 of 1999 on telecommunication.

2. Practical Benefits

This research develops the understanding on how the KPPU and BRTI settle the unfair business competition of cellular operator case.