

CHAPTER THREE

RESEARCH METHOD

A. The Type of Research

This study is normative legal research which focuses on a process to find a legal rule, and doctrines of law in order to address the legal issues. This study explores the literature regarding the factors that cause on unfair business competition of cellular operator case (Telkomsel and Indosat) and the role of KPPU and BRTI to settle unfair business competition of cellular operator case which is in Conformity with Law Number 05 of 1999 on the prohibition of monopoly practices and Law Number 36 of 1999 on Telecommunication.

B. Types of Data and Legal Materials

The types of data of this study or research are secondary data.¹ The data are gathered from library research means of reviewing legal material. Legal materials as research material were taken from the literature in the form of primary legal material, secondary legal material and tertiary legal material.²

1. The primary legal materials are regulations on the telecommunication, Monopoly and healthy business competition. Those regulations are taken from:

¹ Noeng Muhadjir, 2011, *Metodologi Penelitian*, Yogyakarta, Rake Sarasin, P.162.

² Bambang Sugiono, 2015, *Metodologi Penelitian Hukum*, Jakarta, Raja Grafindo Persada, P.52.

- a. Law Number 05 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition
- b. Law No 36/1999 on Telecommunication
- c. The Government Regulation Number 52/2000 on Telecommunication.
- d. The Communication and Information Minister Regulation (Menkominfo) Number 1/PER/M.KOMINFO/01/2010 on the dated 25 January 2010 on Telecommunication Provider.
- e. The Decision from Minister of Transportation Number KM.21/2001 on Telecommunication Provider which was already changed to the Regulation of the Minister of Information and Informatics Number 31/PER/M.KOMINFO/09/2008 on the Third Changes of the Decisions of Minister of Transportation Number KM.21/2001 on Telecommunication Provider
- f. The Decision of the Minister of Transportation Number KM.33/2004 Concerning Supervision of Healthy Competition in the fixed Network and the Basic Telephone Services Provider.
- g. The Decision of the Minister of Transportation Number KM.4/2001 on the dated 16 January 2001 on Determination of the Basic Plant in in 2000 National Telecommunication which was already changed to the Regulation of the Minister of Information and Informatics Number 09/PER/M.KOMINFO/06/2010 dated 9 June 2010 on the six changes of the Decisions from Minister of Transportation

- Number KM.4/2001 on Determination of the Basic Plant in National Technical of 2000 Development of National Technical.
- h. Business Competition Supervisory Commission Decree (KPPU) Number 1 of 2006 Concerning the Guidelines to settle the case in KPPU
 - i. Business Competition Supervisory Commission Decree (KPPU) Number 01 of 2010 Concerning Dispute Settlement Procedure.
 - j. Business Competition Supervisory Commission Decree (KPPU) Number 06 of 2010 Concerning on the Guidelines for the Implementation of Article 25 on Abuse of Dominant Position.
 - k. Business Competition Supervisory Commission Decree (KPPU) Number 03 of 2011 Concerning the Guidelines for the Implementation of Article 19D on Discrimination Practice.
 - l. Business Competition Supervisory Commission Decree (KPPU) Number 04 of 2011 Concerning the Guidelines for the Implementation of Article 5 on price fixing.
 - m. Business Competition Supervisory Commission Decree (KPPU) Number 06 of 2011 Concerning the Guidelines for the Implementation of Article 20 on Predatory pricing.
 - n. Business Competition Supervisory Commission Decree (KPPU) Number 11 of 2011 Concerning the Guidelines for the Implementation of Article 17 on Monopolistic practice.

- o. Business Competition Supervisory Commission Decree (KPPU) Number 1 of 2006 Concerning the Guidelines to settle the case in KPPU
2. Secondary legal materials are materials that are closely associated with the primary legal material which is helpful during the process of analysis³, namely:
 - a. The related scientific books
 - b. journals and related literature
 - c. The results of related studies
 - d. The doctrine, opinions and testimony from legal experts both written and unwritten
3. Tertiary legal materials are in the form of dictionaries and encyclopedias.

C. The Legal Research Approach and the Data Collection

The legal research approach used in this research or study is case approach⁴ namely to analyze the case between Telkomsel and Indosatun unfair business competition case. Another approach used is approach which made to various laws or regulations related to the prohibition of monopolistic practice and unfair business competition. The legal materials

³ Muri Yusuf, 2014, *Metode Penelitian Kuantitatif, Kualitatif dan Gabungan*, Jakarta, Prenada Media Group, P.391

⁴ Mukti Fajar, Yulianto Achmad, 2007, *Dualisme Penelitian Hukum*, Yogyakarta, Fakultas Hukum UMY, P.135

including primary, secondary and tertiary materials in this study are taken from:

1. Various libraries
2. Printed media and electronic media

D. Technique of Collecting Data

Legal materials used in this normative legal research consist of primary, secondary, and tertiary legal materials. The technique used in collecting these legal materials is documentary study. Documentary study is the review of some documents related to the legal rules or documents that already exist.

E. Technique of Data Analysis

In this study, the researcher uses qualitative prescriptive analysis in which the researcher analyzes and gives interpretation or disclosure of subject and object of research undertaken. This study also uses case approach in order to analyze the issues between Telkomsel and Indosat on unfair business competition case, and the role of Commission's (KPPU) in handling the monopoly case which is conformity with the Law Number 5 of 1999 on the prohibition of monopoly case and unfair business competition. In this study, the researcher did not do any justification.