

CHAPTER FIVE

CONCLUSIONS AND SUGGESTIONS

A. Conclusion

1. The Provisions and their implementation regarding dispute settlement on unfair business competition of cellular operator

Based on the previous discussion, we may conclude that Telkomsel did not conduct Monopolistic practice. Because regarding on Article 19b Law Number 5 of 1999 on the Prohibition of Monopolistic Practice and Unfair Business Competition, Telkomsel did not fulfill the element of monopolistic practice. Although it is known that Telkomsel has dominated the market share outside of Java by 80%, and it does violate the terms above 50% that has been set by Law No. 5 of 1999 on the prohibition of monopolistic practices and unfair business competition. However, according to the Law, the intended amount of market share of more than 50% is seen overall on the national scale in Indonesia, and it should not be seen from the island of Java or outside Java Island. The fact shows that the market share held by Telkomsel nationally is not more than 50%, but about 45%, and the rest of the market share is controlled by other operators. So, Telkomsel does not comply with the laws on the elements needed to do monopolistic practices.

On the other hand, we also may conclude that Indosat conduct Predatory Pricing practice. Because based on the analysis of the author,

Indosat has done predatory pricing which is prohibited under Article 20 of Law No. 5 of 1999. This is proven by the fact that Indosat Ooredoo applied freedom program with the tariff of Rp1/sec to all providers is indeed far below the production price. This action can be proven by the financial memo which belongs to the three major operators, namely Telkomsel, Indosat and XL, in the first quarter of 2016, which states that revenue per minute of voice services to Indosat is Rp136,7/min. Meanwhile, Telkomsel has amounted to Rp168,5/min, and XL for Rp213,4/min. If Indosat applies the rates of Rp1/sec, it will result in the price of Rp60/minute to other operators (off net), which is also the same for Indosat's call numbers (on net). To apply Rp1 rates to all operators, Indosat is expected to bear the loss of Rp190/minute due to retail tariff under the interconnection charge which is amounted to Rp250/minute.

Furthermore, Negative campaign conducted by Indosat is obviously a very unethical thing to do. And the negative campaign conducted by Indosat is a clear violation of point 1:20 of the Indonesian advertisement Ethics amendment 2014 edition which says that the operator should not degrade competitors' products. In fact, in its campaign, Indosat has clearly degrading the products of Telkomsel, which indirectly said those Indosat products are cheaper than Telkomsel products.

2. The Business Competition Supervisory Commission (KPPU) and Indonesian Telecommunications Regulatory Body (BRTI) settle the unfair business competition case of cellular operator.

Based on the previous discussion, we may conclude that The Business Competition Supervisory Commission has succeeded in calling both parties for investigation. Business Competition Supervisory Commission (KPPU) has investigated Indosat and Telkomsel. In this investigation, the Commission has managed to get information from both sides. Based on preliminary evidence it is known that Telkomsel does not fulfill the elements of Monopoly that has been regulated in article 19b of Law Number 5 of 1999, and Indosat alleged to have committed predatory pricing because it has set tariff below the price of production. However, until the month of November 2016, the Commission has not given the decision on this case yet. Eventhough, the regulation gives mandate to the Business Competition Supervisory Commission to settle the case.

On the other hand, Indonesian Telecommunications Regulatory Body (BRTI) already give decision to respond to the Indosat and Telkomsel cases. According to one member of Indonesian Telecommunication Regulatory Body sees that these cases are mild and do not need to impose serious sanctions. According to the Associated General the sanctions that will be

given for the company is in the form of a warning because Indonesian Telecommunication Regulatory Body sees that this case of negative campaigning does not required severe sanctions, so Indonesian Telecommunication Regulatory Body only give remain letter to Indosat.

B. Suggestion

1. Based on the conclusion as followed, the author will give Suggestion for the dispute settlement on unfair business competition of cellular operator

Based on the conclusion as followed, the authors propose to Amendment an Act or add a new chapter in Law Number 36 of 1999, which contains about limiting the number of cellular operator network construction. If the network construction has been limited by the regulation it is more give legal certainty. So, who has big capital market it does not mean can control the market. This solution can give legal certainty to other cellular operators or competitors to realize the healthy business competition.

Furthermore, the authors propose suggestions to the KPPU to give punishment to the Indosat, which stated on article 48 UU 5 of 1999. Based on the facts that have been found, Indosat is violated Article 20 (predatory pricing) law number 5 of 1999. Thus, it should give the punishment based on provisions contained in Law No. 5 of 1999 Article 48 Paragraph 2 which state that Violations to the provisions

under Article 5 through 8, Article 15, Articles 20 through 24, and Article 26 of this law is subject to a criminal fine in the amount of at least Rp. 5,000,000,000 (five billion rupiahs) and in the amount of Rp.25,000,000,000 (twenty five billion rupiahs) at the most, or imprisonment at a maximum period of 5 (five) months.

Suggestions related to the negative campaign conducted by Indosat are to add a new article about the tariffs. Implementation of tariff Rp1/sec is indeed related to the weakness of law Number 36 of 1999 because not regulate about tariff. Then setting tariff between Cellular Operators must be accommodated in Law No. 36 Year 1999 on Telecommunication. Article 7 of Law No. 5 of 1999 should be amended to add item concerning minimum rates set by the government or through government regulations and other provisions. Similarly, in article 27 or 28 of the Law number 36 of 1999, an item should also be added concerning the minimum rates set by the government or through government regulations and other provisions. It is expected to impact a stronger legal and binding, and ensure the safety of the competition between cellular operators in the market and also protect consumers.

2. The Business Competition Supervisory Commission (KPPU) and Indonesian Telecommunications Regulatory Body (BRTI) settle the unfair business competition case of cellular operator.

Based on the conclusion as followed, the authors give suggestion to both Institutions that they are can give the distinct punishment to both

parties. And also can settle the case on time as decided in the regulation, because as soon as possible is more better to give decision and it can give legal certainty to both of parties.