JURIDICAL REVIEW OF BUSINESS COMPETITION RELATED TO TELECOMMUNICATION LAW CONCERNING INTERCONNECTION FEE TARIFF

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THESIS ADVISOR RECOMMENDATION LETTER

This thesis entitled **"THE IMPLEMENTATION OF GOVERNMENT REGULATION NO. 29 YEAR 2016 REGARDING THE CHANGE OF AUTHORIZED CAPITAL PROVISION RELATED WITH LIMITED LIABILITY COMPANY ESTABLISHMENT"** prepared and submitted by Lukman Wicaksono in partial fulfillment of requirements for the degree of Bachelor of Law in the Faculty of Humanities has been reviewed and found to have satisfied the requirements for a thesis fit to be examined. I therefore recommend this thesis for Oral Defense.

Cikarang, May 22th 2018

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The Panel of Examiners declares that the thesis entitled **"JURIDICAL REVIEW OF BUSINESS COMPETITION RELATED TO TELECOMMUNICATION LAW CONCERNING INTERCONNECTION FEE TARIFF"** that was submitted by Lukman Wicaksono has been assessed and approved on 2018.

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DECLARATION OF ORIGINALITY

I declare that this thesis, **entitled "THE IMPLEMENTATION OF GOVERNMENT REGULATION NO. 29 YEAR 2016 REGARDING THE CHANGE OF AUTHORIZED CAPITAL PROVISION RELATED WITH LIMITED LIABILITY COMPANY ESTABLISHMENT"** is, to the best of my knowledge and belief, an original piece of work that has not been submitted, either in whole or in part, to another university to obtain a degree.

Cikarang, May22nd 2018

Lukman Wicaksono

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Lukman Wicaksono

ABSTRAK

Nama : Lukman Wicaksono

Program Studi : Ilmu Hukum

Judul Skripsi : Tinjauan Yuridis Terhadap Persaingan Usaha Terkait Undang-Undang Telekomunikasi Mengenai Tarif Biaya Interkoneksi

Skripsi ini membahas persaingan usaha yang dilakukan oleh perusahan operator penyedia jasa kuota internet dengan perusahaan yang sejenis, dengan dalil penurunan tarif biaya minimum interkoneksi yang menyebabkan polemik berkepanjangan diantara para penyedia jasa tersebut. Penelitian ini adalah penelitian yuridis normatif dan hasil penelitian ini dapat menjadi referensi bagi pemerintah agar pemerintah dapat tegas mengeluarkan peraturan atau undang-undang yang mengatur secara khusus dan jelas mengenai tarif biaya minimum interkoneksi ini.

Kemudian diperlukan pihak yang secara tegas bertanggung jawab atas penentuan tarif biaya minimum interkoneksi jasa telekomunikasi beserta pengawasannya. Selain itu juga diperukan perbaikan kinerja terhadap lembaga yang diamanatkan untuk melindungi perusahaan telekomunikasi tersebut atas persaingan usaha yang tidak sehat di Indonesia. Yang kemudian juga dibentengi oleh self regulation yang efektif.

Kata Kunci : Persaingan Usaha, Perusahaan Operator Jasa Telekomunikasi, Tarif Biaya Interkoneksi

ABSTRACT

Name : Lukman Wicaksono

Study Program : Majoring of Law

Thesis Title : Juridicial Review Of Business Competition Related To Telecommunication Law Concernig Interconnection Fee Tarif

This thesis discusses the business competition conducted by internet quota service provider companies with similar companies, with the proposition of reducing the minimum interconnection cost tariff that causes a prolonged polemic among the service providers. This study is a normative juridical research and the results of this study can be a reference for the government so that the government can firmly issue regulations or laws that set out specifically and clearly about the minimum cost tariff of this interconnection.

It is then necessary that the parties are explicitly responsible for the determination of the minimum tariffs for interconnection of telecommunication services and their supervision. In addition, it is also required to improve the performance of the institutions mandated to protect the telecommunication company for unhealthy business competition in Indonesian. Which is then also fortified by an effective self regulation.

Key words : Business Competition, Telecommunication Service Operators Company, Interconnection Cost Tariff

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CHAPTER I

INTRODUCTION

A. BACKGROUND

In improving the economic growth of a country can be done in various ways, one of them by running a business activity that aims to gain profit and income in order to meet the needs of people living individually, both primary, secondary and tertiary needs. As the purpose of the business activities, many people want to also run various types of business activities because the necessities of life must always be met. The growth of various types of business activities is actually giving birth to business competition between business actors, in the form of fair business competition and unfair competition, unhealthy business competition is certainly not desired by the community because it will result in the loss of prosperity and economic justice.

The high demand of the community for the needs of telecommunications, especially cheap ones, causes business actors to compete to gain profit, by utilizing public interest using messager service, free call, internet access with tariff cost zero rupiah and only armed with internet quota package as much as possible. In community life there is usually a presumption that business has no relationship with ethics and morality. Based on this false view the business actors will justify various ways to gain as much as possible. One form of business behavior that is concerned only with the advantages regardless of the quality of service, they flocked to sell a number of internet quota packages very much at a very cheap price.

The Origin of Polemic Business competition related tariff operators decrease the minimum cost of interconnection is currently inseparable from the policy 19 years ago, where the birth of Law (Act) Number 36 of 1999 on Telecommunications.[1] This law was considered important at that time because it ended the era of telecommunication duopoly, because before 1999, Indonesian had two telecommunication operators namely Indosat and Telkom (Indosat as the gateway to foreign countries while Telkom oriented in the country). After the birth of Law (Act) Number 36 of 1999 began the era of liberalization in the telecommunications sector.[2] At that time began many investors who entered so as to bring new telecommunications operators in the country. This era of liberalization has made the telecommunication sector quite significant. Until the beginning of 2016 alone, more than 300 million cards have been sold, this figure exceeds the current Indonesian population, this condition has had a positive impact on Indonesian itself. Because according to the World Bank, every 10% penetration of ICT then there will be additional GDP of 1.38%. "The number is quite large, and this has happened in Indonesian."[3]

It's just that in 1999 Indonesian was in a difficult situation, so bargaining power is very weak, consequently investors who enter Indonesian is not selected properly. Consequently we see the phenomenon of operators just want to build a network in the area that directly bring profits. While areas with low traffic, they are reluctant to build. Based on data from 2005 until now, Telkomsel became a diligent operator to build followed by XL and Indosat. While Ministries of communication and information noted Telkomsel has built nearly 50 thousand broadband BTS, while

[1] Indonesian, Law Number 36 Year 1999 concerning Telecommunication.
[2] *Ibid.,*
[3] Persepsi Konsumen atas Iklan Operator Seluler. *http://forum.detiknet.com/archive/index.php/t-18722.html.* accesed on January 07, 2018.

Indosat as many as 23 thousand broadband base stations and XL as many as 16 thousand broadband BTS.[4] This condition is quite a contrast compared to Europe or some Asian countries. The operators there have the same duty to build networks across the region. As a result, the presentation of the number of BTS owned by each operator is the same.

In Indonesian, not all operators build BTS throughout the region. For high and medium profitable areas, almost all operators are interested. But not so with low profitable. Determination of the price has been set does not match what has been outlined in the legislation.

The government should provide a formula and verify the data, either up or down depending on the number of developments that the operator makes. Currently, the minimum interconnection cost reduction operator fee of 26% which has been proposed by Ministries of communication and information is considered to have violated the spirit of Law Number 36 of 1999 on Telecommunication and Government Regulation Number (PP) 52 Year 2000 regarding telecommunication operation.

"Alex J Sinaga, President Director of PT. Telkom stated substantially the enactment of the minimum interconnection cost reduction operator tariff by the government in order to create a healthy competition climate in the telecommunication industry. However, he argues, the calculation of interconnection tariff reduction that will be determined by the Minister of Communication and Information is 26% at the beginning of September according to Circular Letter Number 1153 / M.Ministries of communication and information / PI.0204 / 08/2016 is considered to harm the

[4] Tarif Murah Bisnis Meriah. *Koran Tempo*. Accesed on January 07, 2018.

telecommunications operators because it uses the calculation pattern of decline symmetrically not asymmetric".[5]

In accordance with Ministerial Regulation (Permen) Number 08 Year 2006 basically calculation of interconnection should be done asymmetric according to cost based every operator. As is known, the decree of the interconnection fee cost incurred by the government through the August 2 circular has set an average decrease of 26% with 18 mobile call scenarios. The local mobile call rate will decrease to Rp.204 from Rp.250.

In response, several cellular operators welcomed the decline that will be done by Ministries of communication and information. However, Telkomsel refuses the new calculation for a number of reasons including the calculation of the rate of reduction made symmetrically, ie generalizing large operators and small operators, not calculated based on the cost incurred by each operator according to DJPPI letter Number: 60 / Ministries of communication and information /DJPPI/PI.02.04/01/2015 dated January 15, 2015 on the request for an opinion on the concept of a public consultation document on improving regulation and interconnection rates (Whitepaper).

"Alex believes that the government's proposal to reduce the tariffs of operators of the minimum interconnection cost reduction is deemed inconsistent with Article 22 paragraph (1) of Government Regulation Number 52 of 2000 on Telecommunication Providers stating that interconnection agreements between telecommunication operators should not harm each other ". "This is not in accordance with the principle of interconnection implementation in legislation."

[5] Industri Binis. *http://industri.bisnis.com/read/20160825/101/578483/dirut-telkom-penurunan-tarif-interkoneksi-langgar-uu-ppa.* Accesed on January 07, 2018.

President Director of PT. Telkom said it has also sent a letter of protest to Ministries of communication and information related to its policy on August 11, 2016 and August 12, 2016. Nevertheless, Alex said until now Menministries of communication and information Rudiantara still has not responded to the protest letter posted by the group Telkom.[6]

One voice was also conveyed by Telkomsel CEO Ririek Adriansyah assessing the 26% interconnection rate reduction would hurt Telkomsel as a whole. He urged the government to impose the cost of interconnection asymmetrically based on national cost according to the calculation of interconnection cost of each operator. "But in reality, the current interconnect implementation is symmetric, where the operator's dominant interconnection cost becomes the reference of all operators in the same license."

In addition, Ririek also urged the Minister of Communication and Information Rudiantara to apply the principle of transparency and fair to all Article according to Government Regulation Number 52 of 2000 Article 22 paragraph (1) and Article 23 paragraph (2) and Ministerial Regulation Number 08 of 2006 by way of informing all the calculation of interconnection cost of each operator and nothing is covered up. "This must be clear, we ask that the results of the calculations be submitted to be transparent to all operators."

according to Telkomsel's calculation, the interconnection fee should have risen to Rp.285 since this is related to the business plan of the 160 million-strong ruler of the customer. Ririek alludes to other components. "Indeed when viewed,

[6] *Ibid.,*

telecommunications equipment down. But the volume to build is also high, be it coverage or increase capacity."

Ririek also can not understand why Ministries of communication and information like making unilateral decisions. Because he reminded about the Act Number 36 of 1999 on Telecommunications[7], where it is implied that the determination of interconnection fees based on the ability of each operator in building a network. This is inversely related to the decrease in interconnection costs as of September 1, 2016. He gives an illustration, "There are operators having 1,000 BTS and 10,000 BTS. Well, the operator of 1000 BTS make sure to think what to add (BTS) again when issued in the end same."[8]

Meanwhile, XL Axiata CEO Dian Siswarini urged the government to immediately resolve the interconnection cost problem in the near future, so the telecommunication industry of the country get certainty in running its business. "The calculation of interconnection costs is long enough, there must be certainty from the government related to this issue." Nevertheless, Dian decided to continue to support the government's decision to reduce interconnection rates by 26%. He also hopes that the cost of interconnection can go down even more, so as to make the telecommunications industry competition more healthy. "Our proposal will still support the government's decision to implement these interconnection charges."[9]

Separately, Indosat Ooredoo CEO Alexander Rusli insisted that interconnection tariffs remain lowered by 26% so that the telecommunications industry is not dominated by certain operators. He viewed that during this telecommunication

[7] *Op.cit.,* Indonesian, Law Number 36 Year 1999 concerning Telecommunication.
[8] CNN Indonesian. *https://www.cnnIndonesian.com/teknologi/20160824115135-213-153482/telkomsel-tolak-penurunan-biaya-interkoneksi//* Accesed On January 07.2018.
[9] *Ibid.,*

competition is considered unhealthy because Telkomsel controlled the area outside Java and Bali as a single player. "All this time we see the competition is quite open in Java and Bali but not open when outside of Java and Bali."

In addition, with the reduction of interconnection tariff, the community will benefit because there will be an alternative telecommunication operator besides Telkomsel. He also said other benefits of interconnection tariff reductions are healthier running competition and improved customer service. "The opportunity to compete to provide alternative services and through this tariff reduction, service competition to customers will also be better."

The government should reconsider the interconnection tariff reduction decision. When the network is not the same reach, the more intensive investments are given incentives from the government, where the costs are all covered. "Asymmetries are not currently made asymmetric, Telkomsel receives less interconnection cost than cost recovery.Other operators get interconnection fees from Telkomsel more than cost recovery."[10]

To this end, Law Number 5/1999 on Prohibition of Monopolistic Practices and Unfair Business Competition ("Law Number 5 Year 1999"), which entered into force on March 5, 2000, commenced 1 (one) year from the date of promulgation. The purpose of the formulation of this law is to:[11]

1. Maintain the public interest and improve the efficiency of the national economy as one of the efforts to alert the welfare of the people;

[10] *Ibid.,*

[11] Indonesian, Law Number 5 Year 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition, LN Number 33 Year 1999, TLN Number 3817. Article number 3.

2. To create a conducive business climate through the regulation of fair business competition so as to ensure the certainty of equal business opportunity for big business actors, medium business actors, and small business actors;
3. Prevent monopolistic practices and / or unfair business competition that creates by business actors;
4. Creation of effectiveness and efficiency in business activities.

B. RESEARCH QUESTION

From the background of the above problem, the main problem to be studied is how the application of system for business actors in the protection and prevention of unfair business competition as contained in Law (Law) Number 5 Year 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition and how dispute resolution has been done. The formula can be broken down into two basic questions as follows:

1. How is the application of unfair business competition protection system as set forth in Law Number 5 Year 1999 in the case of operator tariff reduction of minimum interconnection fee?
2. How to supervise in the case of operator tariff reduction of minimum interconnection fee?

C. RESEARCH OBJECTIVES

1. To know the regulation of cellular tariff in Indonesian;
2. To know how to monitor the implementation of cellular tariff in Indonesian;

D. USE OF RESEARCH

Usefulness of this paper is expected to bring benefits and usefulness not only besifat theoretical but also practical. The theoretical usefulness of this research is expected to provide input for the development of law science in general and the law Prohibition of Monopolistic Practices and Unfair Business Competition in Articleicular. The practical benefits derived from this study are to obtain a clear picture of unfair business competition law against operator tariffs for minimum interconnection cost reductions in Indonesian.

E. RESEARCH METHODOLOGY

1. Type of Research

This research is normative juridical research, that is research method referring to legal norms contained in legislation, contract, court decision and expert opinion. This research is descriptive, that this research is done where knowledge and or theory about object already exist then used to give description about object of research more complete.

While viewed from the angle of its form, this research includes prescriptive research. This research is shown to get advice on what to do to protect the operator's service provider. Based on the application angle, this study includes research that focuses the problem.

2. Legal Approach

In order to obtain information from the aspects studied, researchers can use several approaches in legal research. The legal research approach used in writing this essay is:

a. Historical Approach

   This approach is done by reviewing the background and development of the arrangements on the issues at hand.

b. Conceptual Approach

   This approach deArticles from the views and doctrines in the science of law.

3. Source of Data

Data sources used by the author in this study are :

Primary data, is data obtained from the descriptions and information from respondents directly obtained through interviews and observation.

Secondary data, is data derived from literature studies, various literature related to the problems studied.

The primary legal materials are binding legal materials, among others, as follows :

a. Code of Civil law;
b. Law Number 5 Year 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition;
c. Other laws and regulations in the field of telecommunications; and
d. Related provisions regarding telecommunications.

Secondary legal materials are materials that provide explanations about primary legal materials, such as :

a. Bill;
b. The result of legal research;
c. The results of scientific work of the law and so on;
d. Tertiary legal material is a supporting legal material that includes materials that provide guidance and explanation of premier and secondary legal material such as dictionaries and scholars opinions.

4. Data Collection Technique

In an effort to collect data required in writing this essay, the author uses data collection techniques, namely:

Library Research

This research is conducted to obtain data in the form of legislation, scientific papers, magazines, books, and other documents related to the issues to be discussed in this thesis.

5. Data Analysis Method

In writing this thesis, the method of data analysis used is a qualitative analysis that is observing the legal symptoms based on the semantic relationship between the variables being studied. The goal is for the authors to get the meaning of the relationship of variables that can be used to answer the problems formulated in

research. The relationship between semantics is very important because in qualitative analysis, the researcher does not use the numbers but in the form of information that can only be scored by using the rules of law, the views of theory and conception, the experts and the logic. The main principle of qualitative data analysis method is to process and analyze the data collected into a systematic, organized, structured, and have meaning.

F. SYSTEMATICS OF WRITING

CHAPTER I	:	Introduction contains backgrounds, problem formulation, research objectives and usefulness of research, theoretical and conceptual bases, research methods, and systematics of writing.
CHAPTER II	:	General review related to law unfair competition
CHAPTER III	:	Special reviews related to law unfair competition
CHAPTER IV	:	Discussion
CHAPTER V	:	Contains conclusions and suggestions, which is the closing chapter.

CHAPTER II

GENERAL REVIEW RELATED TO LAW

UNFAIR COMPETITION

A. DEFINITION AND HISTORY OF COMPANY IN INDONESIAN

DEFINITION

In various literature it is said that the company is an economic term known in the COMMERCIAL LAW and other regulations outside the COMMERCIAL LAW. However, the Minister of Justice of the Netherlands in the memory of the answer to parliament interprets the notion of the company as follows: "Only then can the company say if the interested Article act in an uninterrupted, openly and in a certain position to earn profit for himself."

Clearly the definition of the company can be found in Article 1 of Law Number 3 year 1982 on the Obligation of Company Register which stated as follows:

"The Company is any form of business entity that carries on any kind of business which is permanent and constantly established, works and domiciled within the territory of the State of Indonesian for the purpose of obtaining profit".

From the above understanding, there are 2 basic elements contained in a company, namely:

1. The form of a business entity that carries out any kind of business whether it is a Articlenership or business entity established, working and domiciled in Indonesian;
2. Type of business in the form of activities in the field of business, which is run continuously for profit.

Thus, a company must have elements including:

1. Continuous or uninterrupted;
2. Openly (as it relates to a third Article);
3. In certain qualities (because in the field of commerce);
4. To enter into a trade agreement;
5. Must mean to earn profit.

The Company as a pillar of economic development that has been regulated in the Indonesian Civil Code, COMMERCIAL LAW and Indonesian legislation with various forms of law.

HISTORY

Studying the history of corporate law in Indonesian is not related to the history of Commercial Law which basically has a close relationship with the history of Dutch commercial law. The history of Dutch commercial law certainly has to do with the history of French commercial law. While French trading law can not be separated

from Roman law known as Corpus Iuris Civilis. Corpus Iuris Civilis Roman legacy consists of 4 books:

1. Institutional (institution). Book I contains about the institutions that existed in the Roman Empire, including the Mercatorum Consules (court for the merchants);
2. Pandecta. This Book II contains legal principles and adagium, such as the factual principle of sun servanda (pledge to be fulfilled) the principle of autonomous Article (freedom of contract) unus testis nullus testis (one witness is not a witness), and others;
3. Codex. Contains Article by Article which does not separate civil and commercial law;
4. Novelete. Contains Articles or stories.

The rapid development of the Trade Law has actually begun since the Middle Ages in Europe, sometime from the year 1000 to 1500. The origin of this legal development can be attributed to the growth and development of commercial cities in Western Europe. At that time in Italy and Southern France have been born cities as a trade center, such as Genoa, Florence, Vennetia, Marseille, Bercelona, and others. Roman law (Corpus Iuris Civilis) was not able to solve all cases arising in the field of trade. Hence in the West European cities drafted new legal rules stand alone beside Roman Law This new and stand-alone law applies only to traders and trade relations, so it is more popularly called the "Law of Traders" (Koopmansrecht). Then, in the sixteenth and seventeenth centuries, most French cities began to organize special courts to solve trade matters (merchant courts).

This merchant law was not originally a unification (the enactment of a legal system for the whole region), because the validity is still regional. Each region has its own

law of merchants that are different from each other. Later, due to the rapid development in the world of commerce and the close inter-regional relations, coupled with the many trade conflicts that have reached a dead end in those days, has prompted the desire to form a unified legal entity (unification) in the field of commerce applicable to the whole region.

1. France

In the 17th century in France, the reign of King Louis XIV (1643-1715). King Louis XIV has a Prime Minister named Colber, and Colber is known to have a very high interest with the development of law. Therefore he ordered to create an ordinance governing the trade. The first codification of trading law was made in 1673, known as Ordonance de Commerce. This ordinance contains traders, banks and brokers, records of trade records, business entities, trade deeds, securities (such as money orders), coercion of traders (gijzeling), separation of goods between husband and wife, one of which becomes traders through huwelijk overeenskomst, bankruptcy and judicial statements in trade matters, and so forth.

Then in 1681, a codification of the second trading law known as the Ordonance de la Marine was born. In this ordinance includes all the rules regarding ship and ship equipment, captains and crew, sea trade agreements, port and marine fisheries. In general this ordinance includes all matters relating to codification of the law of the sea or the law of sea trade (to port city traders).

The two books of law are used as sources for the codification of new commercial laws beginning in the early Article of the nineteenth century. The codification of the new trading law was called Code de Commerce which came into force in 1807. A few years before the codification of commercial law came into effect, it was actually

legalized civil Civil Code Code (1804). Thus, in 1807 in France there existed Commercial Code codified in Code de Commerce separated from Civil Code codified in Civil Code. This Code de Commerce contains legal regulations that have arisen in the field of commerce since the Middle Ages.

In Rome, a special court was found for merchants called the Consules Mercatorum, which was subsequently by French trading law taken over by Judge et Consuls. Consumer Mercatorum Judges are taken from the merchants themselves. This judicial body stands alone, separate from other general justice bodies. This trading dispute settlement institution is similar to the "Arbitration" (first introduced in America) which is more popular nowadays applied in international trade or business relations.

Actually, the influx of Roman law in French trading law is called the Roman Legal Reception phenomenon. The separation of civil and commercial law in France is plausible due to different social strata and social groups, which are not quite the same as in the Netherlands.

2. Netherlands

The Netherlands as a former French colony, the condition is somewhat different, where there has been pluralism (diversity) of law in the field of civil law. There are Roman laws, French law, Belgian law, German law, and the rules of the King or Governor. It is conceivable that such legal pluralism has led to the absence of legal certainty.

A year after the Dutch independence from France (1813), taking into account the state of legal pluralism and its effects, and on the mandate of the Dutch Constitution to codify private law (civil and commercial law), King Lodewijk Napoleon ordered

the creation of a Lawmaker Commission. The commission is chaired by a Dutch lawyer (professor) named Van Kemper. The committee was formed in 1814. The following two years (1816), a draft law called "Ont Werp Kemper" (Kemper's draft text) consisting of 4000 Articles, aimed at eliminating the influence of French law. But this bill should be delegated first to the Dutch Paerlemen. As a result, the Dutch Parliament rejected the bill to be passed into law because it was too Dutch. This refusal was made on the initiative of a Belgian Dutch supreme judge named Nikolai, who was unhappy with the bill. Being rejected, the King then returned the bill to the Commission. Furthermore Kemper tried to complete the revision of the bill for 4 years called "Ont Werp Kemper II" (1820). However, the revised bill was rejected for a second time by the Dutch Paerlemen, so the commission's duties were declared unsuccessful. Kemper then frustrated and did not want to be Chairman of the Commission, He then died in 1824.

In the proposal of the Dutch COMMERCIAL LAW 1820 (Ont Werp Kemper II) a planned COMMERCIAL LAW of 3 books has been written, but in it does not recognize any special courts that resolve cases which arise in the field of trade, and the trade case is to be settled in court ordinary. Although Ont Werp Kemper II was rejected, the proposed elimination of special courts for merchants remains an important charge followed up by replacement Kemper.

Kemper's successor as Chairman of the Commerce Law Planning Commission is Nikolai. In his work, the Commission under the leadership of Nikolai was not able to realize his idea in creating a new Trade Law. Finally after going through a Commission meeting, it was decided to conduct a comparative study to France. The Commission decided to take over the Civil Code and the French Code du Commerce to be translated into BW and WvK (1838).

In the late 19th century, Molengraaff planned a Bankruptcy Act that would replace Book III of the Dutch COMMERCIAL LAW. Molengraaff's plan was successfully realized into the Bankruptcy Act of 1893 (entered into force in 1896). Based on the principle of concordance, this change was also done in Indonesian in 1906 known as Failissement Verordenig. 1905 / 217,1906 / 348S. From some of the above, the scholar Van Kant assumes that the commercial law is an additional law rather than a civil law, that is, an additional set of special things.

Due to the existence of special trading law for traders (law merchant or koopmanrecht). Consequently, only traders are able to conduct trade activities such as establishing CV, Fa, NV. For non-merchants, it is only permissible to establish other business entities such as maatschap set forth in the Civil Code. In view of the above circumstances, Molengraff and Van Apeldooren disagree with legal discrimination that distinguishes between merchants and non-traders. The suggestion of two scholars (especially Molengraff) led to the revocation of Article 2 s / d Article 5 of the Criminal Code with stb. 1938/276 dated July 17, 1938. Whereas in the Netherlands the revocation of the paspasal Article was already done on July 2, 1934 through stb. 1934/347.

3. Indonesian (Netherlands Hindi)

When the desire to enforce Dutch law in the Indies (Indonesian), two differences of opinion emerged:

a. Opinion I: Desiring that all Dutch law be enforced in the Dutch East Indies for Dutch colonialism in the Dutch East Indies to last;
b. Opinion II: Disagree the principle of concordance is fully implemented in the Dutch East Indies, because in Indonesian society there is already a living law

and regulate the life of its people better known as customary law (adatrecht). In addition, the reality is a lot of Dutch (European) law that goes against the original Indonesian law (customary law). However, there is no prohibition for Indonesians to submit voluntarily to the laws of Europe. To accommodate this, a Voluntary Vocational Institute was established.

Finally, based on the principle of concordance, both codifications were also applied in Indonesian (formerly Dutch East Indies) under the name of the Civil Code and the Book of Commercial Law. The COMMERCIAL LAW itself was published on 30 April 1847 in Stb.1847 / 23, which entered into force on 1 May 1848.

B. THE UNDERSTANDING AND HISTORY OF COMPETITION COMPETITION IN INDONESIAN

DEFINITION

Regulation of business competition and monopoly acts in some countries have differences and security. The occurrence of similarities and differences due to social and political conditions that occurred at the time of formation of business competition regulation that occurred in the country. As a legal product, business competition regulation can not be separated from the configuration and influence of politics and government policy in power, where in some cases without monopoly and protection facilities, it is difficult for the government to gain investor willingness to invest in the sector. It is in this context that so-called legal politics takes place, because laws are based on the existing political consensus.[12] The World Bank as one of Indonesian's largest creditors, in its report in July 1995, stated that the existence of

[12] Ahmad Yani dan Gunawan Wijaya, *Anti Monopoli*, (JakArticlea: Raja Grafindo Perkasa,1998,page.30.

Article practices, monopolies, price controls and exclusive licenses are factually occurring within the Indonesian economy. The birth and enactment of Law Number 5 Year 1999 is also a consequence of ratification of marrakesh agreement[13] by the People's Legislative Assembly with Law Number 7 Year 1974 which requires Indonesian to open up and should not discriminate, such as giving protection to the entry barrier of a company and the existence of the IMF pressure that has become the creditor for Indonesian in order to limit the monetary crisis that has hit and degrade Indonesian's economy at large. So many restrictions and regulations in trade that hamper efficiency and all lead to the creation of high cost economy which has an effect on the occurrence of economic distortion.[14] Government intervention that should be done to change market forces. Conditions that occurred during the new order is due to the still spreading of various laws that regulate the practice of monopoly and unfair business competition, but because it is still Articleial and not comprehensive so as not adequate to sustain healthy business competition climate.[15]

The country that adopts the market economy system is the economic center institution in which the price of the product is determined by the balance of supply-demand. In such an economic system the most important is the price system running effectively. If demand for a product rises the company markets this increased product and builds new product facilities offering production and supply. On the other hand, if decreasing product demand requires more offers. Ideally, competition law can flourish if applied to a market economy system. Philosophically, competition is inherent with market economies that depend on demand and supply. In practice,

[13] Sutan Remy Sjahdeini, *Latar Belakang: Sejarah dan Tujuan UU Larangan Monopoli*, (Jurnal Hukum Bisnis, Mei-Juni, 2002), page.5-9.
[14] Laporan Mingguan Berita Ekonomi dan Bisnis, *WArticlea Ekonomi Number06/VII/3 Juli 1995 dan Number13/VII/21 Agustus 1995*. Accesed on February 05. 2018.
[15] Elyatas Ras Ginting, *Hukum Antimonopoli Indonesian: Analisis dan perbandingan Undang-undang Nomor 5 Tahun 1999, cet.1.,*(Bandung: Citra Aditya Bakti, 2001),page 1-2.

however, virtually no country exists to apply the market system purely. Even in the most democratic countries, not all areas of business are left to the market economy. There are areas that need and should be monopolized by the government.

In a market economy, the individual is in contact with the market voluntarily. The free market eliminates the authority to force the labor system and others. In this context the market is created for individual freedom and self-interest when there is power to the contrary. In the field of economy, as mandated in the 1945 Constitution requires the prosperity of society equally, not individual prosperity. Juridically through the basic legal norms, the desired economic system is a system that uses the principle of balance, harmony, and provide opportunities for joint efforts for every citizen. Based on the basic norms of the country above, then the economic development of Indonesian must be stArticleing point and oriented towards the achievement of prosperity and prosperity of the people. While socio-economic, the birth of Law Number 5 of 1999 on Prohibition of Monopolistic Practices and Unfair Business Competition is in order to create a strong economic foundation to create an economy that is efficient and free from market distortions.

HISTORY

So it can be concluded that the background of the birth of Law Number 5 of 1999 can not be separated from the internal and external impulses of the country. The demand for Indonesian to immediately have the business competition law first appeared in 1990 as Article of competition policy in Indonesian.[16] It also can not be

[16] Pande Radja Silalahi, *Undang-undang Antimonopoli dan Perdagangan Bebas,* (Jurnal Hukum Bisnis, Mei-Juni, 2002), page.14-18.

separated from the social phenomenon in the society where at the moment the happening of unhealthy business practices happened by big companies which have dominant position because of the market share that they control, where the condition is beneficial for one Article and disadvantage the small company and medium and consumers.[17] In carrying out the mandate of Law Number 5 Year 1999 established an institution called the Commission for the Supervision of Business Competition (*KPPU*). This institution has wide authority and has a heavy duty in handling unfair business competition conducted by business actors in Indonesian. This is due to the increasing complexity of the problems in business activities along with the development of globalization that raises various problems. Indonesian has only given attention to unfair business competition since 1999, since the enactment of Law Number 5 Year 1999. For comparison other countries have had regulation in this field since 1900s.

According to Munir Fuady several separate provisions were deemed inadequate, unpopular in society and never applied in reality.[18] The scope of business competition law is limited to regulate the conflict of interests among other business actors. In essence, the law of business competition is a civil matter. Enforcement of competition law between business actors can be done by associations established by the business actors themselves, as long as the issue does not contain the elements of its publication. In its development, competition law enforcement is not merely a civil dispute. Violations of competition law also contain elements of criminal and administrative elements. This is because the violation of competition will ultimately harm the public and the state economy, so law enforcement should also be done in

[17] Elytas Ras Ginting. *Op. Cit.,* page.5-9
[18] Munir Fuady, *Hukum Antimonopoli Menyongsong Era Persaingan Sehat.* (Bandung:Citra Adityabakti, 1999),page.44.

civil and criminal. With the enactment of Law Number 5 Year 1999 which is devoted to regulate unhealthy competition is expected to create justice and legal certainty in the face of monopolistic practices and unhealthy competition.

In essence, Law Number 5 Year 1999 has two objectives, namely competition and non competition. The purpose of competition is the achievement of the efficiency of business activities in order to realize a healthy business climate, while the non-competitive purpose is to safeguard the public interest. According to "Prof. Dr. Sunan Remy Sjahdeini, SH that there are 2 (two) efficiency to be achieved by competition law that is efficiency for producers and for society or productive efficiency and allocative efficiency." What is meant by productive efficiency is efficiency for the consumer society, where it is said that the consumer society is efficient if the producers can make the goods needed by the consumer and sell it at a price that the consumers are willing to pay the price of the required goods.[19] There are three categories of business practices that are deemed to be inhibiting healthy competition as stipulated in Law Number 5 Year 1999 namely: prohibited agreements, dominant positions and prohibited activities, because in principle the objective of the competition law is to create efficiency and justice, especially in a Articleicular market by eliminating market distortions, among others: preventing the domination of a large market share by one or several market Articleicipants, preventing the occurrence of barriers to new entrants market opportunities, and inhibiting or preventing the development of market Articleicipants who become its competitors.[20] The law of fraudulent trading practices as a translation of the word Unfair trade practices law or also the term Fair Competition Law as a translation of

[19] Hermansyah, *pokok-pokok persaingan usaha di Indonesian,* (JakArticlea:kencana prenada media group, 2008),page.14.
[20] *Ibid*.,page.15.

the Fair Competition Law.[21] The difference in terms still occurs in Indonesian, although there are different terms in the mention of the legal instruments governing business competition and monopoly, according to Susanto[22], all of which relate to the following three main points:

1. the prevention or abolition of monopoly;
2. healthy; and
3. prohibits dishonest competition.

The main principle of the formulation of the competition law is economic democracy.[23] The principle is contained in Article 2 of Law Number 5 Year 1999 which reads:

Business actors in Indonesian in carrying out their business activities based on economic democracy by considering the balance between the interests of business actors and the public interest.[24]

Understanding economic democracy according to the Act is the balance and justice in seizing the opportunity of each individual to be involved in the process of production or marketing of goods and services. If connected with the economic system adopted by Indonesian is the economic system of Pancasila, according to Gunawan Sumodiningrat Pancasila economy itself can be equated with a mixed economy.[25] The mixed economic system is essentially a fusion of a socialist economic system characterized by communalism with a liberal capitalist supportive

[21] Susanto, *Komunikasi dalam teori dan praktek.,*(JakArticlea:Refika Aditama,2010),page.24-25.
[22] *Ibid.,*page.25.
[23] Ditha wiradiputra, *pengantar hukum persaingan usaha Indonesian dalam modal untuk retooling program under employee graduates at priority diciplines under TPSDP (technology and profesional skills development sector project),* (Bandung: Nuansa Aulia, 2004),page.10.
[24] Indonesian, Law Number 5 Year 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition, LN Number 33 Year 1999, TLN Number 3817*,* Article number *2.*
[25] Ditha wiradiputra,*Op.cit.,*page.11.

system.[26] The mixed economic system tries to eliminate the negative features of liberalism and socialism.[27]

A mixed economic system requires governments and private sector to work side by side. The government still holds an important role to the economic activities that affect the livelihood and the interests of the people. Because this is a mandate of the 1945 Constitution.[28] The interaction of economic actors takes place within markets with government intervention through various policies. The policy is the form and intervention of the government to the market, so that the allocation of production resources more directed, effective, and efficient. This needs to be done by the government to ensure the interests of society as a whole based on the values of social justice and create economic democracy contained in the Constitution.

There are several objectives to be achieved by Law Number 5 Year 1999 on Prohibiting Monopolistic Practices and Unfair Business Competition. Broadly speaking the objectives to be achieved are two. Efficiency in business activities

[26] The Pancasila economic system takes the positive side of the two systems, so that all activities are carried out by individuals or private and the state takes on the position of a regulator. The role of the state in the administration of activities tends to be smaller and the intervention undertaken by the state is sought to be avoided. This system is commonly referred to as the liberal-capitalistic economic system.

[27] Ahmad yani dan gunawan widjaya,*Op.cit.,*page.4.

[28] Indonesian. Article 33 of the 1945 Constitution :

1. the economy is structured as a joint effort based on the principle of kinship.
2. production branches that are important for the state and which affect the livelihood of the public is controlled by the state.
3. eArticleh and water and the natural resources contained therein shall be used as much as possible for the welfare of the people.
4. the national economy is organized on the basis of economic democracy with the principles of togetherness, fair efficiency, sustainability, environmental insight, independence, and by maintaining a balance of progress and social economic unity.
5. Further provisions concerning the implementation of this Article shall be governed by the Act.

(productive efficiency).[29] Both objectives can be seen in the provisions of Article 3 of Law Number 5 Year 1999 which is translated into:

a. Maintain the public interest and improve the efficiency of the national economy as one of the efforts to improve people's welfare;
b. To create a conducive business climate through the regulation of fair business competition so that there is a certainty of equal business opportunity for big business actors, business actors to prevent and small business actors;
c. Prevent monopolistic practices and / or unfair business competition caused by business actors;
d. Creation of effectiveness and efficiency in business activities.[30]

C. MONOPOLISTIC DEFINITION AND MONOPOLY PRACTICES

As regulated in Article 1 paragraph (1) of Law Number 5 Year 1999,[31] monopoly is a control over the production and / or marketing of goods and / or on the use of certain services by one business actor or a group of business actors. Etymologically, the word monopoly comes from the Greek word consists of two words: monos which means self and polein meaning seller. Monopoly can be interpreted as a single seller. Simply put, the meaning of monopoly can mean as a condition where there is only one seller who offers a good or service. The term monopoly is often used to describe a market structure, as Meiners' definition implies that "monopoly is a market

[29] Linda Soliha, *indikasi pelanggaran hukum persaingan usaha dalam kepemilikian silang termasuk holding company pada PT. Telkomsel tbk dan PT. Indosat Tbk.* (skripsi fakultas hukum Universitas Indonesian, Depok,2007),page.41.
[30] Indonesian, Law Number 5 Year 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition, LN Number 33 Year 1999, TLN Number 3817. *Op.cit.,* Article number 3.
[31] *Ibid.,* pasal 1 angka 1.

structure in which the output of an industry is controlled by a single seller or a group of sellers making joint decisions regarding production and price."[32]

Definition of monopoly in general:

"If there is one business actor (seller) turned out to be the sole seller for a Articleicular product and service, and in that market there is no substitution product.[33] However, due to the development of the times, eating the number one (in the only sentence) is less relevant to the real conditions in the field, as it turns out that many industrial businesses consisting of more than one company have behaviors such as monopoly."[34]

In the Black's Law Dictionary provides the definition of monopoly in terms of juridical as follows:[35]

"Monopoly is a privilege or peculiar advantage vested in one or morepersons or companies, consisting in the exclusive right (or power) to carry out on a Articleicular business or trade, manufacture a Articleicular Article, or control the sale of the whole supply of a Articleicular commodity. A Form of market structure in which on or only a few firms dominate the total sales of a product or service."

The word monopoly is usually contrasted with the term competition. Competition which in English means competittion by Merriam Webster[36] is defined as "a struggle or contest between two or more person s for the same object".

[32] Susanto, *Op.cit.,*page.19.
[33] Hermansya, *Op.cit.,*page.18.
[34] Monopoly does not only happen on the supply side, but there is also a monopoly on the demand side which is then called monopoly of demand (monopsoni), and monopoly of demanding is only available to the recipient of goods and services or the recipient of supply / buyer single. In addition monopoly can also be done by a group of business actors (a group of sellers) who together make decisions about production and price. In the further development of this monopoly understanding can be seen from various perspectives, monopoly as a market structure, monopoly can also be used to describe a position of business actor and monopoly is used to describe the power of business actors to master the bid, determine and manipulate the price.
[35] Henry campbell black, *monopoly, black's law dictionary, ed.6,* (minesota: west publishing Co,1990),page.52.

Under the terminology, it concludes that in every competition there are two or more Article involved in mutual excellence and there is the will of the Article to achieve the goal.[37] There are several classifications or differences of monopoly. From the circumstances that cause it, monopoly can be distinguished into natural monopoly and social monopoly. From the state of who holds its power, monopoly is divided into private monopoly and public monopoly. Monopoly can also be distinguished between legal monopolies and illegal monopolies. Simply put, according to Arie Susanto[38], a legal monopoly is a monopoly that is not prohibited by law in a country and vice versa, a monopoly is said to be illegal if prohibited by law. Law Number 5 Year 1999 does not expressly prohibit monopoly, but if there is a tendency to become a monopoly, it should be monitored.

The definition of monopoly is different from the notion of monopolistic practice. According to Article 1 paragraph (2) of Law Number 5 Year 1999, the definition of monopolistic practice is:[39]

"A concentration of economic power by one or more business actors resulting in the control of the production and or marketing of certain goods and / or services, resulting in an unfair business competition and may harm the public interest."[40]

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[36] Encyclopedia britannica inc., *merriam-webster's dictionary, competittion, http:www.merriam-webster.com/*. accesed on febuari 15. 2018.
[37] Susanto, *Op.cit.,*page.13.
[38] *Ibid.,*page.22.
[39] Indonesian, Law Number 5 Year 1999. *Op.cit.,* Pasal 1 angka 2.
[40] There are various types of monopoly, the natural monopoly which is actually economies of scale is very difficult to enter the market, so it takes a monopoly of this type where there is a concentration on one hand business actor. This monopoly arises naturally without aa engineering due to the development and demands of a free / open market and is born from the advantages of objective comparative, facility action and special treatment of the ruler so that the resulting product can compete and control the market up to 100%., TD / RBP / CONF. 4/2, 26 May 1995, page.25-31.

While monopoly under the law (monopoly b law) is usually very beneficial to the state / government because its implementation is supported by the rules of law-invitation. Monopoly by law is more widely used to regulate the interests of the people, such as infrastructure managed by SOEs. Law Number. 5 of 1999 it is

Understanding of monopoly practice also differs from the notion of unfair business competition. In Law Number 5 Year 1999, the definition of business competition is:

"Competition among business actors in carrying out production and or marketing activities of goods and or services conducted by dishonest or unlawful or inhibiting business competition."

possible to establish monopoly by law. Compare to Article 51, para. 5. There is also a pure monopoly, a monopoly which is in the hands of producers of goods and services under a well-known trademark, carried out through halal, fair and able to determine trends in certain markets and other competing producers forced follow the trend. This monopoly may also be referred to as a monopoly opinion, which is not included in the meaning of Article 1 paragraph (1) of Law Number 5 Year 1999.

CHAPTER III

SPECIAL REVIEWS RELATED TO LAW

UNFAIR COMPETITION

A. ECONOMIC CONCEPT IN COMPETITION LAW

ECONOMICS UNDER COMPETITION LAW

Since the birth of competition law, economic theory has become increasingly important in shaping competition policy and law. Economists who were initially shunned or indifferent to the development of competition law, then they joined the debate about the economic implications of competition law. Even today, competition law has begun to use concepts and theories developed by economists.

The premise of competition law is that a company is considered to have the best contribution to social welfare if the company is competitive. In a competitive market, consumers seek to maximize satisfaction by allocating expenditures between diverse goods and services. On the other hand, producers need to direct resources into goods and services that consumers can value highly (allocative efficiency) and produce products at the lowest cost per unit (productive efficiency). By theory, the theories underlying economic models in competition law are price theory or microeconomics, the study of economic markets, including how prices and quantities are determined and how products and resources are allocated.[41] Posner argues that the industry with

[41] E. Thomas Sullivan dan Jeffrey L. Harrison, *Understanding Antitrust and Its Economic Implication, Second Edition,*(New York: Matthew Bender&Co.,1994),page.9.

the price of monopolized goods will not produce any allocative efficiency, since public resources are not allocated in an efficient way.[42]

Traditional economic theory concludes that industrial (market) structure influences corporate behavior, and ultimately affects corporate behavior. Although only theoretical ideas, the model of economic structure produces predictions about the possibility of corporate and market behavior. This economic model is an analytical tool, although it certainly will not be able to explain the full reality of the market.[43]

The difference in market structure is due to the difference in "degree of market power", ie the ability of one firm to influence the equilibrium price (market price). The difference is due to differences in characteristics found in each market structure.[44] The real market lies between the extreme poles of perfect competition and monopoly and that is influenced by many forces. Nevertheless, understanding this economic model is important because it helps in looking at the way markets work, interpreting business competition decisions (which often base on economic models and related economic concepts), and evaluating competition law enforcement.[45]

[42] Terry Calvani dan Jhon Siegfried, *Economic Analysis And Antitrust Law, Second Edition*, (Boston and Toronto: Little, Brown and Company,1988),page.5.
[43] Ernest Gellhorn, William E. Kovacic, *Antitrust Law and Economic,* (St. Paul, MN: West Publishing Co.,1994),page.52.
[44] Andi Fahmi Lubis dan Ningrum Natasya,ed., *Hukum Persaingan Usaha Antara Teks dan Konteks,* (Indonesian: Deutsche Gesellschaft Fur Technische Zusammenarbeit (GTZ) GmbH, Oktober 2009),page.29.
[45] Ernest Gellhorn, William E. Kovacic, *Op.cit.,*page.52-53.

1. Perfect Competition

The level of competition can be described continuum, stArticleing from the so-called "perfect competition" to "pure monopoly".[46] Perfect market competition describes the market, where the interests of consumers are in control. Manufacturers respond to consumer desires by producing what consumers want, and in perfect competition, the goods are sold at the lowest price. The perfect competition market is efficient in the sense that there is no reorganization of production or distribution that can make consumers or producers feel better without making others feel worse (pareto efficiency). Social welfare is maximized because resources are placed at the highest use value and output is at optimal levels.[47]

In order for the market to compete perfectly, then the market must have the following characteristics:[48]

a. many sellers and buyers.

   The large number of sellers and buyers contains the implicit assumption that the company's output is relatively smaller than the market output. All companies in the industry (the market) are considered to be efficient (lowest average cost), both in the short and long term. However, the number of outputs of individual firms is considered relatively small compared to the total output of all firms in the industry.

b. homogenous product.

   What is meant by a homogeneous product is a product capable of providing satisfaction (utility) to the consumer without the need to know who the

[46] E. Thomas Sullivan dan Jeffrey L. Harrison, *Op.cit.*,page.10.
[47] Ernest Gellhorn, William E. Kovacic, *Op.cit.,*page.52-53.
[48] Andi Fahmi Lubis dan Ningrum Natasya,ed., *Op.cit.,*page.30-31.

producer. Consumers do not buy the brand of goods but the usefulness of the goods. Therefore all companies are considered capable of producing goods and services with the same quality and characteristics.

c. Free entry and free exit.

The thoughts underlying this assumption are in perfect competition markets, production factor mobility is unlimited and there is no cost to move production factors. Understanding mobility includes geographic and work sense. That is, production factors such as labor are easily transferred from one place to another, at no cost. This makes it easy for the company to enter the market. If the company is interested in one industry that generates profits, it can immediately enter. If you are no longer interested or fail, you can get out soon.

d. Perfect information.

Economic actors (consumers and producers) have perfect knowledge of the price of products and inputs sold. Thus, consumers will not experience the treatment of different selling prices from one company to another company. From whomever the product is purchased, the prevailing price is the same. Likewise with the company, it will only face the same price of the various factor owners of production.

2. Monopoly Market

The perfect form of competition as the end of a continuum that describes the level of competition. At the other end of this continuum is a monopoly. Perfect rivalry and pure monopoly is the construction of theory, which rarely happens in practice.

Although not a pure monopoly, a company sometimes has monopoly power. In monopoly condition, there is one seller of goods with goods without substitution. Although the basic process of pricing and output under monopoly conditions is equal to under perfect competition, the results differ significantly.

In a monopoly market, companies do not have competitors because of barriers to entry for other companies to enter the industry. Judging from the causes, entry barriers are grouped into:[49]

a. technical barrier to entry.

   The inability to compete technically makes it difficult for other companies to compete with existing companies. This technical advantage is due to several things:

   1) The Company has the capability and / or special knowledge that enables efficient production.
   2) The high level of efficiency allows the monopolist to have a declining cost curve (MC and AC). The bigger the production scale, the lower the marginal cost, so the production cost per unit (AC) is lower (decreasing MC and AC).
   3) The company has the ability to control the source of production factors, whether in the form of natural resources, human resources and production sites.

b. legal barrier to entry.

   1) Laws and Special Rights Not all companies have power;
   2) Patent or Copyright Right.
      a) One seller in the market;

[49] *Ibid.,* hlm.32.

b) The seller's product is unique, ie no substitute goods;

c) There are barriers to entry and exit of the market.

3. Monopolistic Competition

Monopolistic competition market theory developed because of dissatisfaction with the power of analysis of perfect and monopoly model of competition. The economy first proposed dissatisfaction with the two models in peirro sraffa (Cambridge University), followed by Hoteling and Zeothen. In the late 1920s and early 1930s, monopolistic competition model was developed intensively mainly by joan robinson (English economy) and Edward Chamberlain (united states economy).[50]

The characteristics of the monopolistic competition market are as follows:[51]

a. There are many buyers and sellers;
b. All buyers and sellers have perfect information on market prices and the nature of the goods sold;
c. Free entry and exit markets;
d. The product sells is heterogeneous, there are substitute goods.

[50] Prathama rahardja dan mandala manurung, *Teori Ekonomi Mikro, suatu pengantar, edisi ketiga,* (JakArticlea : Lembaga Penerbit Fakultas Ekonomi Universitas Indonesian, 2006), page.215.
[51] Ernest Gelhorn, William E. Kovacic, *Op.cit.,*page. 71.

4. Oligopoly Market

Oligopoly is a root structure characterized by few manufacturers. Because of their small numbers, the sellers in the oligopoly understand that their joint actions will be more profitable. Interdepension shows that every seller considers the actual market reaction or potential competitors before the output price or decision is made.

If one of the sellers intends to increase output and reduce the price in order to sell more, other manufacturers in order to sell more, other manufacturers in oligopoly will follow, and if the first price change is clear, the reaction will be fast. Thus, price competition incentives are reduced. The price increase is always coordinated among all members of the oligopoly, and there is no rational incentive to do that. reactions, coordination, and strategic behavior are important elements of oligopolistic behavior.

Characteristics of the oligopoly market as follows:[52]

a. few seller;
b. interdepenence.

B. LEGAL TELECOMMUNICATION AND APPLICATION OF PROTECTION SYSTEMS

DEFINITION

Tele has a long-distance meaning, communication is an activity to convey information. Telecommunications is the activity of conveying information remotely. The term telecomunication means the transmission between or among the points of the user information. Telecomunication means as any transmission emmission or

[52] Andi Fahmi Lubis dan Ningrum Natasya,ed.,*Op.cit.*, page. 36.

reception of signal by means as of telecommunication infrastructure). The definition of juruidis: telecommunications is any transmission, transmission and reception of any information in the form of signs, signals, writings, drawings, sounds and sounds through wire systems, radio optics, or other electromagnetic systems. Telecommunication is two-way so that television can not be said as one-way telecommunication. Content (entertainment, publishing, information, provider), Communication (telephone, Cable, satelite, Radio), Computing (Computer, Hardware, Software).[53]

TELECOMMUNICATIONS IN INDONESIAN

Prior to the enactment of Law Number 36 Year 1999 on telecommunications, the telecommunications regulatory conditions are more nuanced monopolistic, anti-competition, business and operator orientation, the state dominates the role of regulator and operator. Act Number 3 Year 1989, there is only one organizer that is a SOE licensed to operate basic telecommunication as an exclusive right. Changes in the global environment, environment and way of looking at telecommunications in a new way, the realignment of national telecommunications. GATS, Marrakesh Morocco dated April 15, 1994, ratified by Law Number 7 Year 1994, that the implementation of national telecommunications is an integral Article of the global trading system. The role of the government ultimately focuses on the guidance that includes the determination of policies, arrangements, supervision and control by involving the role of the community by not reducing the basic principles of Article 33 of the 1945 Constitution, so that matters concerning the utilization of radio

[53] Dr. Danrivanto Budhijanto, *Hukum Telekomunikasi, Penyiaran & Teknologi Informasi,* (Bandung : Refika Aditama, 2013), Page 5.

frequency spectrum and satellite orbit which is a limited natural resources controlled by the state.[54]

MANAGEMENT OF TELECOMMUNICATION BUSINESS IN INDONESIAN

The legal basis of Law Number 36 Year 1999 Regulation Number 52 Year 2000 on telekkomunikasi, and Government Regulation Number 53 on the Use of Radio Frequency Spectrum and Satellite Orbit.[55]

1. the operation and operation of telecommunications;
2. business competition in the telecommunications business;
3. community Articleicipation in telecommunication business;
4. protection of consumer telecommunication users;
5. tariffs for telecommunication operations;
6. interconnection and operating rights fees;
7. licensing in the operation of telecommunications;
8. security and protection of telecommunication operators;
9. Frequency of orbit and satellite.

[54] *Ibid.,*
[55] *Ibid.,*

Operation & Telecommunication Provider.

In Law Number 36 Year 1999:

1. Article 1 Paragraph (12) definition of telecommunications operation;
2. Article 1ayat (13) definition of telecommunication network implementation;
3. Article 1 paragraph (14) definition of telecommunication service provision;
4. Article 1 paragraph (15) definition of the operation of special telecommunications;
5. Article 2 principle of telecommunications operation;
6. Article 3 purposes of telecommunication network;
7. Article 7 paragraph (1) and paragraph (2) concerning the implementation;
8. Article 8 of the Organizer.

In Government Regulation Number 53 Year 2000 regarding telecommunications operation. In Government Regulation Number 53 Year 2000, paragraph (8), definition of telecommunications operation. Telecommunications is telecommunication provision and service provision to enable telecommunication, divided into 3 categories:[56]

1. Operation of telecommunication network is the provision and service of telecommunication network that enables telecommunication to be operated;
2. The operation of telecommunications services shall be the activities of telecommunication provision and services that enable the operation of telecommunications;
3. the operation of special telecommunication shall be the telecommunication operator whose nature of its designation and its special operation.

[56] *Ibid.,*

BUSINESS COMPETITION IN TELECOMMUNICATION BUSINESS

The prohibition of monopolistic practices and unhealthy competition is intended to occur a healthy competition among telecommunication operators in conducting their activities. The 1999 telecommunications law is provided for in Article 10 in accordance with Law Number 5 Year 1999 on Prohibition of Monopolistic practices and unhealthy competition (Anti-monopoly Law), and its implementation. Telecommunications Act 1989 certain rights to (telkom, indosat, and satelindo). Certain rights are the right of exclusivity to provide fixed telecommunications of local long-distance connections and international direct connections provided by the government to the governing body. The government can shorten the time (the right) by agreeing on the principle of honesty and fairness and fairness, eg by compensation.[57]

CONSUMER PROTECTION OF TELECOMMUNICATION USERS

any telecommunications network and telecommunications service providers shall contribute to universal service (Article 16) in the form of provision of telecommunication facilities and other compensation. (Article 16 paragraph (2) Universal service obligation) so that the needs of the community, especially in remote areas to get telephone access to be fulfilled. The operation of telecommunication networks and telecommunication services shall provide telecommunication services based on the following principles:[58]

1. equal treatment and the best service for all users;
2. Increased efficiency in telecommunication and operation;

[57] *Ibid.,*
[58] *Ibid.,*

3. The fulfillment of the standard of facilities and infrastructure (Article 17).

TARIFF OF TELECOMMUNICATION OPERATION

the tariff arrangement shall be regulated by PP (Article 27). The tariff consists of telecommunication network tariffs, including network lease rates and interconnection tariffs for telecommunication services, including:[59]

1. Distributed through a fixed network consists of;
    a. tariffs for basic local call services, long distance (LD), international direct connection (IDC);
    b. Tariffs of value added and telephone services;
    c. tariff of multimedia services.
2. channeled through the mobile network consists of:
    a. tariff air time;
    b. roaming rates and;
    c. tariff of multimedia services.

The tariff structure of telecommunication service providers consists of:

1. activity costs;
2. monthly subscription fee;
3. cost of use and;
4. additional facility fee.

[59] *Ibid.,*

INTERCONNECTION AND COST OF OPERATING RIGHTS

Interconnection is the interconnection between telecommunication networks of different telecommunication network providers. Each telecommunication network operator is entitled to obtain interconnection from other telecommunication network providers (Article 25 paragraph (1)) and shall provide interconnection if requested by other telecommunication network providers (Article 5 paragraph (2)) based on the principle:[60]

1. Efficient utilization of resources;
2. The compatibility of telecommunication systems and devices;
3. Improvement of muutu services and;
4. Fair competition which is not mutually harmful (Article 5 paragraph (3)).

Each telecommunication network / service provider shall pay the telecommunication service rights fees derived from the percentage of revenue (Article 26 paragraph (1)).

LICENSING IN TELECOMMUNICATION OPERATION

Licensing of telecommunication operation is given by paying attention to:[61]

1. simple ordinances;
2. transparent, fair and non-discriminatory process;
3. Completion in a short time.

[60] *Ibid.,*
[61] *Ibid.,*

any person shall be prohibited from acts which may cause physical and electromagnetic interference to the operation of telecommunications (Article 38). The operation of telecommunications shall be required to secure and protect the installation of telecommunication networks used for telecommunication operations (Article 39 paragraph (1)). Everyone is prohibited from intercepting information transmitted through telecommunication networks of any kind (Article 40). Recording may be made at the request of the service user for verifying the use of the usage, the operator may also record the information in accordance with the laws and regulations (Article 41). The telecommunications service provider shall keep information confidential, and may be subject to criminal proceedings of:[62]

1. The written request of the Attorney General and / or the Chief of Police of the Republic of Indonesian for certain criminal offenses;
2. The request of the investigator for a specific offense in accordance with applicable law (Article 42 paragraph (2)).

[62] *Ibid.,*

CHAPTER IV

DISCUSSION

A. INTERCONNECTION TARIFFS

Theoretically, simultaneous interconnection costing will achieve efficiency in the market, only if the network coverage requirement reaches all regions of a country and achieves a balance of network among operators.

The Government issued Circular Letter on Implementation of Interconnection Costs in 2016. Circular Letter Number 1153 / MINISTRIES OF COMMUNICATION AND INFORMATION / PI.0204 / 08/2016 signed by Plt. Director General of Post and Information Implementation, Geryantika Kurnia ensures interconnection cost is reduced from Rp 250 / minute to Rp 204 / minute, and the application of symmetric pattern calculation or not based on network deployment cost which has been invested by each operator.

If that condition is not met, the interconnection costing policy symmetrically will cause a "blunder" for the Telecommunications industry.

"Not only impedes the construction of networks, but also creates unfair competition, so it is not in line with the Government's objectives in determining interconnection fees,"

In Indonesian, the coverage gap between telecommunication operators is still very sharp. Data show that the total BTS that has been operated by telecommunication operators in Indonesian is only 249 thousand BTS, among them owned Telkomsel about 46.6%, XL 23.7%, Indosat 21.3%, and SmArticle 6.02%.

In the presence of this sharp coverage of GAP, Indonesian should implement asymmetric policies, namely the costing of different magnitudes among operators. If the simestris policy is forced to be worried it will cause adverse impact to the development of Telecommunication industry in Indonesian.

Furthermore, the decision to calculate the interconnection cost of the symmetrical pattern used by Ministries of communication and information is very unwise.

Because until now the interconnection cost in Indonesian amounting to Rp 250 permenit is one of the cheapest interconnection costs compared to other countries let alone has now been reduced to Rp 204 per minute.

For example, in Japan and the Philippines whose geographical conditions are not much different from Indonesian. Japan imposed interconnection fees ranging from Rp. 1.447 to Rp. 2.108 per minute. As for the Philippines set Rp. 1.184 per minute.

"Based on the price comparison, is there any urgency for the Government to reduce interconnection costs in Indonesian?"

The decline in interconnection costs has the potential to create unhealthy competition and hinder the growth of telecommunication network development in Indonesian.

In addition to GAP coverage of uneven network telecommunication development, the price set by the government is below the cost of goods sold of telecommunication operators. Of course this government move will hurt the operators of telecommunication network providers.

1. Interconnection Pricing in Symmetrical Competition

   In a symmetrical competition it is assumed that the number of customers remains, the customer will choose the operator closest to where he lives, and the

cost structure is considered the same. The nearest example of this assumption is the equivalent inter-state telephone service, in which the status of rich and poor countries is important. The telephone subscriber is a service user of the telephone company in his country. A recent example of this assumption is that even a slight modification is the mobile phone market. When someone chooses a Articleicular carrier will tend to remain loyal and difficult to switch operators.[63] The initial choice of an operator is due to the influence of its environment.

In a linear competition among operators, the equilibrium of the selling price of telecommunication services to end users depends on two things: the degree of substitution between operator services and interconnection rates among operators. The degree of substitution in question is how much interchangeability of services each telecommunications company.[64] The degree of substitution is too great will make the market in a condition of price competition so that the final sale price approaches its marginal cost.[65] because the same telecommunication product is the same, telecom customers will choose the product with the cheapest price.

But if the degree of substitution is small, the price of telecommunications services will be higher than the marginal cost. Customers see telecommunication products each company has its own uniqueness and will choose according to its preference. This led to a monopoly market for each company and an opportunity for the company to determine the final product price higher than the marginal cost. In reality, the telecommunication service products of each company

[63] In order to avoid the hassle of friends or colleagues to change the record cell phone number continuously.
[64] A large degree of substitution with an A company's product can easily be replaced by company B product because it is very similar.
[65] Additional costs caused by a customer increase the cost of charges due to use of telecommunications services.

resemble each other but do not trigger a price war.[66] This seemingly contradictory thing can be solved by assuming that the customer will select the nearest operator in order to reduce the transaction cost.[67] For the mobile phone case, the customer chooses a carrier that provides more comfort like the carrier of his or her Articlener's choice or ease of connecting with the carrier. The second influence on final product pricing is the interconnection tariff. Naturally, telecommunications communications companies will set competitive prices to end users (in this case phone subscribers), but will set interconnection rates monopolistic for competitors who use their networks. Low price for end users but high interconnection rates for competitors. Nevertheless, in symmetrical competition, where every telecommunication company has the same market power as its competitors. However, in symmetrical competition, where every telecommunication company has the same market power as its competitors, that output price and interconnection tariff will be ama for each company. This is caused by the impetus for telecommunication companies to do tacit collusion?. It is recognized by operators that retaliation from competitors will be too high and will also reduce operators' liabilities if they encounter high interconnection rates. Consequently uniform interconnection tariff but not necessarily low. With its uniform interconnection tariff, the space enlarges the profits into a narrower one through the end-user market. There are two main alternative strategies that can be done on the end user market, cournot strategy (quantitative strategy). And strategy bertrand (pricing strategy). In the broadest sense is to master the market with the product as the main tool. Tasting consumer tastes through the creation of preferred products. It's just that in the telecommunications industry, services

[66] Faulhaber dan hogendorn (2000), Nunn dan Sarvary (2004), Loomis dan swann (2005).
[67] This assumption refers to the hotelling (1929) model of the influence of location on demand.

offered to end users can be said to be similar. Despite the cournot strategy used, the quantitative increase of services to the end user will be more effective if the firm lowers its selling price.

2. Interconnection Pricing In Asymmetric Competition

The determination of interconnection tariffs in asymmetric competition occurs when in the market there are two types of operators: the incumbent and the new operator (entrants). Incumbent had previously enjoyed the monopoly given by the previous government. Given monopolistic rights because it is considered the telecommunications business is categorized as goods that must naturally monopolized (naturaly monopoly). However, the right has been abolished following numerous studies on the feasibility of a unified naturaly monopoly telecommunications industry. Their big investments were long-held and claimed that they had not yet worked out. Having long dominated the market then the incumbent has advantages over peaingnya that is knowledge of the market and better capitalization because the initial investment is back.

Surely there will be unbalanced competition between incumbent and entrants because the cost of incumbent production has reached its economical scale while new entrants begin to run their business. In winning two stages of strategy (two stage game). The first stage is to determine how the interconnection fee, then in the second stage determines the selling price to the end user. Intuitively, the incumbent will determine a low final price and a high interconnection fee. It is aimed at eliminating its rivals so that monopoly power goes back to the incumbent.

There are two alternative ways for entrants to negotiate the interconnection tariff with the incumbent or ask the government for help in determining the interconnection tariff. The first option depends very much on the incumbent's willingness to negotiate. Difficult for incumbent, negotiable rejection will attract the attention of anti-monopoly commission. Accepting negotiations, however, can mean two things: helping to raise the competition or as a stArticleing point for conspiracy to build new monopoly power. If negotiations are successful, entrants have a chance to invest a great deal in order to catch up with the incumbent. This is certainly not favored by the incumbent but beneficial for improving the welfare of the community. Furthermore, negotiations can also result in a telecommunications Article that can ultimately reduce the welfare of society. Article can be done through division of territories where the incumbent operational blood does not cover certain areas to be mastered entrants.

For non-linear pricing (two Article tariff) on asymmetric competition has another interesting language. The Incumbent will determine the interconnection fee as low as its marginal cost as it avoids the problem of double marginalization. Entrants will determine the interconnection rates greater than the incumbent rates and determine the price of services to end users not lower than the incumbent. The incumbent will experience an interconnection cost deficit but get more customers. For entrents, the customer deficit but earn more than the interconnection tariff. For both, the deficit of this relationship will benefit both sides. Article entrents get a surplus of interconnection rates difference and the incumbent Article gets a surplus from the end user. The existence of F element in two Article tariff can be used to cover the losses that

come from the element of PQ. But for consumers, this has a negative effect on wellbeing because the final price is not low reduces consumer surplus.

B. CONTROL OF SUPERVISION

INDONESIAN TELECOMMUNICATION REGULATORY AGENCY *(BADAN REGULASI TELEKOMUNIKASI INDONESIAN / (BRTI))*

The Indonesian Telecommunication Regulatory Body abbreviated as BRTI is an institution that functions as a telecommunication regulatory body in Indonesian. The BRTI was established through Law 36 Year 1999 on Telecommunications. BRTI consists of the Ministry of Communications and Information Technology as an element of government and Telecommunication Regulatory Committee as an element of society. Director General of Post and Informatics Delivery, Ministry of Communications and Information Technology also served as Chairman of BRTI.

Telecommunication has a constantly changing, almost unbounded nature and is capable of changing the world's facial order, altering the human mindset, influencing the behavior and life of mankind. Telecommunications today has become a necessity of life that is aligned with human rights.

Seven years ago Indonesian telecommunications entered a new history. Through Law Number 36 Year 1999 on Telecommunications, this sector officially abandoned its monopoly privilege to immediately transition into the era of competition. New competitors are invited to enter into network operators and services in this sector. Many circle the Articles welcome the birth of the telecommunications law. Moreover,

that year was born also Law Number 5 Year 1999 on Prohibition of Monopolistic Practices and Unfair Business Competition.

But it turns telecommunications competition away roasted from the fire. Many Article have called for the establishment of an independent regulatory body. An Independent Regulatory Body (IRB) is expected to protect the public interest (telecommunication users) and support and protect the competition of telecommunication business so that it becomes healthy, efficient and attracts investors. On July 11, 2003, the government finally issued a Decree of the Minister of Transportation Number 31 Year 2003 on the establishment of the Indonesian Telecommunication Regulatory Body (BRTI). The BRTI is a government version of the IRB translation which is expected to eventually become an ideal Regulatory Body.

A lot of comments came after the government was considered halfheArticleed because one of the BRTI personnel as well as the Chairman was the Director General of Post and Telecommunication. Ministry of Transportation Decree Number 31 Year 2003 has been amended by Minister of Communication and Information Technology Regulation Number 25 / Per / Ministries of communication and information / 11 / 2005 on First Amendment to Decree of the Minister of Transportation Number KM.31 Year 2003 on Stipulation of Indonesian Telecommunication Regulatory Body also does not authorize executor to BRTI. It is contained in the Minister of Transportation Decree Number 67 Year 2003 on the Working Relationship between the DeArticlement of Transportation and the Indonesian Telecommunication Regulatory Body so it is questionable the effectiveness of the BRTI in overseeing the telecommunication competition.

However, a Article from the above polemic, it is a common task to encourage the established BRTI to work optimally so as to spur the development of the

telecommunication industry through a competitive climate, increasing efficiency and protecting the public interests de facto and de jure.

FUNCTIONS AND AUTHORITIES

Corresponding KM. 31 Year 2003

1. Arrangements, including the preparation and stipulation of telecommunications networks and the provision of telecommunications services, namely:
   a. Licensing of telecommunication network and telecommunication service provision;
   b. Standard operating performance;
   c. Service quality standards;
   d. Interconnection charges;
   e. Standard telecommunication tools and devices.
2. Supervision of telecommunication network and telecommunication service provision, namely:
   a. Operating performance;
   b. Business competition;
   c. Use of telecommunication tools and devices.
3. Control over the operation of telecommunication networks and the provision of telecommunications services, namely:
   a. Settlement of disputes between telecommunication network providers and telecommunication service providers;
   b. Use of telecommunication equipment and equipment;
   c. Implementation of service quality standards.

FUNCTION SETTINGS

Corresponding KM. 67 Year 2003

1. Prepare and stipulate provisions on licensing of telecommunication networks and services that are competed in accordance with the Minister of Transportation Policy;
2. Prepare and stipulate provisions on performance standards for the operation of telecommunication networks and services;
3. Prepare and stipulate provisions on interconnection charges;
4. Prepare and stipulate provisions on standardization of telecommunication equipment and equipment.

OVERSIGHT FUNCTION

1. pervise the operational performance of the provision of telecommunication services and networks that are competed;
2. Supervising the competition for the operation of telecommunication services and networks that are competed;
3. Supervise the use of telecommunication services and equipment and the provision of telecommunications networks that are competed.

CONTROL FUNCTION

1. Facilitating dispute settlement;
2. Monitor the implementation of service quality standards;
3. report any issues appropriate to service quality.

COMMISSION FOR THE SUPERVISION OF BUSINESS COMPETITION *(KOMISI PENGAWAS PERSAINGAN USAHA (KPPU))*

Business Competition Supervisory Commission or KPPU is an independent institution established to oversee the implementation of Law Number 5 Year 1999 on Prohibition of Monopolistic Practices and Unfair Business Competition. KPPU is responsible to the President. Commissioner KPPU totaling 7 people, appointed President based on parlement approval.

DUTIES AND POWERS

Task (Article 35)

1. to conduct an appraisal of agreements which may result in monopolistic practices and or unfair business competition as stipulated in Article 4 through Article 16;
2. conduct an assessment of the business activities and / or acts of business actors which may result in monopolistic practices and or unfair business competition as provided for in Articles 17 to 24;

3. to assess the presence or absence of abuse of dominant position which may result in monopolistic practices and or unfair business competition as regulated in Article 25 through Article 28;
4. take action in accordance with the competence of the Commission as regulated in Article 36;
5. to advise and consider the Government's policies relating to monopolistic practices and or unfair business competition;
6. to develop guidelines and / or publications related to this Law;
7. to provide periodic reports on the work of the Commission to the President and the House of Representatives.

Authority (Article 36)

1. to receive reports from the public and or from business actors on the alleged occurrence of monopolistic practices and or unfair business competition;
2. conducting research on the alleged existence of business activities and or actions of business actors which may result in monopolistic practices and or unfair business competition;
3. conduct investigations and / or examination of cases of alleged monopolistic practices and or unfair business competition reported by the public or by business actors or found by the Commission as a result of its research;
4. to conclude the investigation and / or examination of the presence or absence of monopolistic practices and or unfair business competition;
5. to call a business actor alleged to have violated the provisions of this law;

6. to summon and present witnesses, expert witnesses, and any persons deemed aware of violations of the provisions of this law;
7. requesting the assistance of the investigator to present the business actor, witness, expert witness, or any person referred to in letter E and letter F, who is unwilling to fulfill the Commission's call;
8. requesting information from Government agencies in relation to the investigation and or examination of business actors in violation of the provisions of this law;
9. obtain, examine, and or appraise letters, documents or other evidence for investigation and or examination;
10. to decide and determine whether or not there is a loss on the Article of another business actor or community;
11. notify the Commission's decision to business actors suspected of monopolistic practices and or unfair business competition;
12. impose sanctions in the form of administrative measures to business actors in violation of the provisions of this Law.

CHAPTER V

CLOSING

A. CONCLUSION

Firstly, that the regulation concerning the application of the minimum interconnection cost reduction operator tariff is subject to several laws, namely Law Number 5 Year 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition, Law Number 36 Year 1999 on Telecommunications and some implementing regulations of each Law besides the issue of interconnection tariff is also subject to the manners and procedures as self regulation.

Second, that the various forms of interconnection decline informed to the public can be a means for mobile operators as telecommunication service providers to attract consumers as much as possible, resulting in a war between cellular operators. However, it leads to unhealthy competition among operators. And these circumstances cause a lot of harm to consumers.

B. SUGGESTION

An interconnection law is required that can be more detailed and decisive about interconnection. This is because it can harm many people and also disrupt the business climate in Indonesian (the existence of fraudulent competition).

The absolute liability of interconnection is detrimental to the consumer and contrary to the applicable regulations to the business actor, because the business actors who finance and have the highest interest in interconnection.

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