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Prohibition of Monopolistic Practices of Television Broadcasting Institutions After Law Number 32 of 2002 concerning Broadcasting

Mohamad Soleh

Law Doctoral Program Student, Padjadjaran University, Bandung, Indonesia

Email: m.soleh260972@gmail.com

Atip Latipulhayat

Padjadjaran University, Bandung, Indonesia

Idra Perwira

Padjadjaran University, Bandung, Indonesia

Yuliandre Darwis

Commissioner of the Indonesian Broadcasting Commission

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Abstract

This paper will describe issues related to the dynamics of monopoly practices in the broadcasting industry in Indonesia. During the Orde Lama government until the beginning of the Orde Baru government until 1989, there was a monopoly practice of the broadcasting industry in Indonesia. Then a private broadcasting institution was born which was founded by people who had personal affinities with President Soeharto. In the reform era, Law Number 32 of 2002 concerning Broadcasting was ratified. However, the practice of centralizing ownership of broadcasting institutions still persists. Consolidation and acquisitions have resulted in television ownership in Indonesia being controlled by only a few legal entities. Revision of Law Number 32 of 2002 concerning Broadcasting by adopting provisions related to administrative sanctions contained in Government Regulation Number 46 of 2021 concerning Post, Telecommunications and Broadcasting may be carried out by the House of Representatives of the Republic of Indonesia together with the President as the legislator. prevent the centralization of ownership of broadcasting institutions.

Keywords

Monopoly, broadcasting, ownership

1. Introduction

The mass media or especially television broadcasting media is media that should need to be regulated systematically. As world history shows its existence as the most regulated or regulated mass media (the most heavily regulated mass medium), and the most systemized (systemized media).¹ Unfortunately, in the history of the journey and development of the media in Indonesia itself, legal instruments in the form of legislation and regulations are often placed at points that are vulnerable to being a subject of tug of interest between parties who are in fact ignorant of the public interest itself. Even though as part of limited natural wealth and resources, the frequency used as a media broadcasting facility is of course bound by Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (1945 Constitution), so that its utilization should be used as much as possible for overall prosperity of the people. Not the other way around, exploited and controlled by a handful of individuals or certain groups.

Structurally, the mass media are required to meet normative standards which can be detailed as follows.² First, media freedom (media freedom). The media must be free from excessive government control or special interest groups. The media are free and independent in reporting news and meeting the needs of audiences. Freedom is seen in the absence of censorship, licensing, or punishment for publication that is considered unlawful (illegal, unlawful).

Second, plurality and ownership. The media should not be dominated by certain interest groups. Citizens are free to access as senders or as recipients of media that depicts ideas and fulfills their interests and needs. Different types of media should be owned differently (eg television broadcasters). Third, differences in channels and forms (diversity of channels and forms). The media structure should have different media types and separate channels to maximize opportunities to satisfy the public's need for communication. Fourth, differences in information, opinion, and culture (diversity of information, opinion, and cultural content). The media should describe the diversity of society in terms of region, politics, religion, ethnicity, culture, and so on. The media should be open to new movements and new ideas and provide sufficient access for minorities.

One aspect that is not in accordance with the Normative Theory is the monopoly practice in the form of centralized ownership of television broadcasting institutions, and content uniformity. The media should prioritize the principles of diversity of ownership and plurality of content. So that individuals and communities have equal access to the media. However, the practice of monopoly, oligopoly,

¹ Alan B. Albarran, *Media Economics; Understanding Markets, Industries and Concepts*, 2002 dalam John D. H. Downing, *The Sage handbook of Media Studies*, London: Sage Publications, 2004 hlm. 291-303.

² Penjelasan Teori Normatif ini dapat merujuk ke buku yang ditulis oleh McQuail, dalam bukunya yang berjudul *Mass Communication Theory 6th Edition*. London: Sage Publication Ltd, 2010 dalam BAB 7 ia secara khusus membahas tentang "Teori Normatif Media dan Masyarakat" dalam Karman, (2014), *Monopoli Kepemilikan Media dan Lenyapnya Hak Publik*, *Jurnal Masyarakat Telematika dan Informasi* Vol. 5 No. 1 Juni, hlm. 69-84.

conglomeration is an obstacle to the implementation of norms by the media. Ideally, in a market created perfect competition market conditions. However, this rarely happens. The mass media integrates its business enterprises (both vertically and horizontally).

After the legal reforms that began in 1998, the government finally issued Law Number 32 of 2002 concerning Broadcasting in order to change the face of the Indonesian broadcasting sector so that it is free from monopolistic practices. However, the a quo law does not confirm the intended form of restriction, so the space for the occurrence of public frequency monopoly practices which are the public domain will be wide open. An example is the provisions in Article 18 paragraph (1) of the a quo law which still opens up space for monopoly practices in the broadcasting sector.

After being enacted, Law Number 32 of 2002 concerning Broadcasting received several changes through Law Number 11 of 2020 concerning Job Creation. One of the provisions amended through the omnibus law is related to licensing provisions for private broadcasting institutions. It is hoped that this will make it easier to do business in the broadcasting sector as well as prevent unfair business competition practices, including monopoly in the broadcasting sector.

Broadcasting as a form of labor-intensive business and industry that uses public frequencies as a medium for its distribution must be regulated by stricter legal regulations. This is needed to provide legal certainty to the public and broadcasting business actors so that they are not harmed by monopoly practices. As contained in Article 5 of the law which explains that broadcasting is directed to prevent monopoly ownership and support fair competition in the field of broadcasting.

Based on the background of the importance of the role of television broadcasting institutions as a medium tasked with disseminating information and its role in safeguarding democracy, efforts must be made to prevent monopolistic practices such as concentration of ownership of broadcasting institutions. Therefore, this paper tries to look at broadcasting monopoly practices that have occurred in Indonesia and the efforts made to prevent the recurrence of these practices through the provisions contained in Law Number 32 of 2002 concerning Broadcasting.

2. Broadcasting Monopoly Practices in Indonesia

The first broadcasting institution born in Indonesia was Television of the Republic of Indonesia (TVRI). The presence of National TVRI began with the task of broadcasting the Asian Games IV on August 24, 1962 based on the Decree of the Minister of Information of the Republic of Indonesia No. 20/SK/VII/61.³ After the task was successfully completed, TVRI then obtained a legal basis regarding the legality of its formation through Presidential Decree (Keppres) Number 215 of

³ TVRI, "Sejarah: TVRI dari Masa ke Masa," <http://tvri.go.id/about>, diakses pada tanggal 15 Januari 2022, pukul 21.00 WIB.

1963 concerning the Establishment of the TVRI Foundation. From the status of the TVRI Foundation, to the Television Broadcasting Technical Implementation Unit under the Ministry of Information, a "top down" model of information dissemination policy was implemented.⁴

The existence of TVRI which is only controlled by the state makes the broadcasting institution categorized as a broadcasting institution with sole ownership. The occurrence of a broadcasting monopoly during the Old Order era also cannot be separated from the characteristics of repressive legal products which resulted in an authoritarian political configuration. The monopoly of TVRI as the sole broadcasting institution controlled by the state has become one of the important mediums for channeling information intended only for the interests of President Soekarno's government.

As a medium of communication for President Soekarno's government in the New Order, TVRI's task was to convey information about government policies to the people and at the same time create two-way traffic from the people to the government as long as it did not discredit the government's efforts. In broad outline, the goal of the Government's policies and programs is to build a modern Indonesian nation and state with a safe, just, orderly and prosperous society, with the aim that every Indonesian citizen enjoys physical and mental and spiritual well-being. Unfortunately, this intention was shattered by the practice of monopoly broadcasting which undermined the principles of diversity ownership and diversity of content.

The concentration of ownership of the TVRI broadcasting institution by the Old Order resulted in the closing of space for participation in the broadcasting industry. In addition to the limited access and technology factors, TVRI as the sole broadcasting institution was also used as the sole medium for transmitting information by the Old Order government. Government intervention in closing access for the broadcasting industry resulted in monopoly practices in broadcasting.

The change in the Indonesian government regime that switched from the Old Order to the New Order did not bring any change to the public broadcasting institution in Indonesia, namely TVRI. Through the Decree of the Minister of Information No. 34 of 1966, TVRI remained a government propaganda tool.⁵ This is also related to legal products that were born and implemented during the New Order era which had orthodox/conservative characteristics and made political configurations become authoritarian. These factors make TVRI remain a broadcasting institution that is monopolized by a single owner, without any competitors like private broadcasters.

During the New Order era, TVRI's role was as a medium for conveying the government's voice. This spirit is reflected in the Decree of the Minister of Information Number 34 of 1966, which states that the functions of TVRI are among others:⁶

⁴ Ibid.

⁵ Ibid., hlm. 45.

⁶ Ibid., hlm. 32.

item 1: *Providing information as wide as possible and instilling the deepest understanding and awareness regarding Pancasila as the ideology and basis of the state and the State Policy of the Republic of Indonesia to all levels of Indonesian society.*

item 3: *Providing information to the public about Government programs, State Regulations and implementation actions taken either by the Central Government or Regional Governments.*

item 4: *Guiding public opinion towards the realization of positive social support, social control, and social participation in the implementation of government policies in order to shorten the timeframe for achieving a just and prosperous society based on Pancasila and the formation of a new world free from oppression and colonialism.*

The legal product related to the sustainability of the public broadcasting institution was issued in an atmosphere of transition of government which very clearly shows the direction that TVRI must take. These broadcasting institutions are propaganda media, information media to direct the people to accept and support the government's steps. Establishing a television station is certainly much more difficult and more expensive. Therefore, TVRI was in the position of the only broadcasting institution broadcasting in Indonesia at that time.

The 1970-1980 period can also be recorded as the heyday of TVRI because of the space given to TVRI to earn advertising revenue. Thus, even though the funds provided by the State Budget to TVRI are limited, TVRI has the flexibility to take advantage of advertiser funding streams at a time when television broadcasting within national reach appears to be a very effective promotional medium for marketing the consumer goods industry which has just experienced growth.⁷

In the context of organizing television broadcasting during the New Order era, the government made TVRI an information mouthpiece to convey programs and government work activities. TVRI itself is under the control of the Broadcasting Department. The existence of this public broadcasting institution also became a bridge of information between the New Order government and the community.

TVRI at that time was also used to connect President Soeharto with the public through "Klompencapir", an abbreviation for listeners, readers and viewers groups. This klompencapir is used by the President to give advice regarding development, both from the agricultural and livestock sectors directly to groups of farmers or ranchers, such as advice on how to grow rice to milk cows.⁸

Klompencapir also later became a mandatory broadcast program on TVRI which was regularly broadcast every Tuesday and every Sunday. Of course, this shows how the New Order government was very careful in using the media for its interests.⁹ Even though this content has a positive content, the information provided to the community is still single, regardless of the differences in each region of Indonesia.

⁷ Ibid.

⁸ Daniel Dhakidae, *Cendekiawan dan Kekuasaan dalam Negara Orde Baru*, Jakarta: Gramedia, 2003, hlm. 42.

⁹ Ibid.

Apart from these examples of positive programs, shows on TVRI often show contrasts in depicting the situation in Indonesia with that of countries in other parts of the world. While Indonesia is described as being in a very good and prosperous state, the "World in News" program depicts famine in Africa, armed conflict in Afghanistan, and ethnic wars in the Balkans.¹⁰

This was used by the New Order government to make Indonesian people calm and grateful for living in a prosperous country and not trapped by natural disasters or armed conflict. This is a form of propaganda because TVRI is not objective in describing the situation at home and abroad in a balanced way. TVRI was used more as a medium to report the success of the policies to the work of the New Order government.

The role of the state during the New Order era, which was mostly carried out by the government in regulating the media, placed the media as an instrument of government, serving the interests of the government, to be precise the New Order ruling elite. TVRI, for example, is used by the government as a propaganda medium to defend the regime in power.¹¹

The background to the birth of commercial broadcasting institutions in Indonesia was the issuance of deregulation policies and national economic liberalization by the New Order government in the 1980s which aimed at strengthening the national economy as a response to the oil and gas crisis that occurred at that time. In this context, private television was initiated to support industrial development. RCTI (Rajawali Citra Televisi Indonesia), which was launched on August 24, 1989, was the first commercial television to operate in Indonesia. The existence of this television was not long followed by other commercial television, during 1989-1995, successively established SCTV (Surya Citra Televisi), TPI (Indonesian Education Television), ANTEVE (Andalas Televisi) and Indosiar (Indosiar Visual Mandiri).

These private broadcasting institutions were born based on a Decree from the Minister of Information which existed during the New Order era. In fact, at that time there was no legal product in the form of a law that regulated the existence and conditions for being able to establish a private broadcasting institution. Only by using a ministerial decree can a private broadcasting institution be established. This shows the strong centralization of the New Order's power in monopolizing the broadcasting institutions that were born at that time.

There is a very strong tendency for the media, especially television, to transform into an instrument of political power, and openly turn into partisan media, because it was anti-democratic during the New Order era. Because of that, when it comes to the diversity of ownership, many broadcasting media begin to pose a

¹⁰ Irfan Teguh, "Alat Kekuasaan bernama TVRI," <https://tirto.id/alat-kekuasaan-bernama-tvri-cUvu>, diakses pada tanggal 30 Januari 2022, pukul 21.00 WIB.

¹¹ Rahayu dkk, *Kinerja regulator penyiaran Indonesia: Penilaian atas derajat demokrasi, profesionalitas, dan tata kelola*, Yogyakarta: PR2Media dan Yayasan Tifa, 2014, hlm. 33.

problem because it leads to monopoly.¹² The birth of several private broadcasting institutions during the New Order era was also influenced by the closeness of the founders to the authorities. Among the founders are usually President Suharto's family as well as business people who have connections with him. For example, RCTI is owned by President Suharto's eldest son, Bambang Trihatmojo or SCTV is owned by Sudwikatmono, Suharto's half-brother and Henry Pribadi.

This series of developments must eventually be regulated. The Soeharto government then passed Law Number 24 of 1997 concerning Broadcasting. During the drafting of the bill, the idea of a network-based broadcasting system emerged for the first time. This idea was eventually rejected, so it was never implemented. However, this idea was discussed again in 2001 when drafting Law Number 32 of 2002 concerning Broadcasting. Even so, the reform was a turning point in the world of broadcasting and gave momentum to new television stations to emerge.¹³

Based on this description, at the beginning of the New Order government until 1989, the broadcasting industry in Indonesia still implemented monopoly practices. The opening of access to establish private broadcasting institutions in 1989 could not be considered as breaking monopoly practices in broadcasting, because the institutions that were established during the New Order era certainly had personal closeness with those in power at that time. This means that monopoly practices carried out by a single group in the broadcasting industry are still occurring.

3. Prohibition of Monopolistic Practices in the Law on Broadcasting

Creating fair business competition in broadcasting without monopolistic practices as happened during the Old Order and New Order eras is one of the improvements made after the legal reform in 1999. Law Number 5 of 1999 concerning Prohibition of Monopolistic Practices and Competition Unhealthy Business is one of the progressive legal products that was born after the reformation. There are several characteristics of business practices that are included as monopoly practices. There are two patterns of ownership of television broadcasting institutions in Indonesia. First, the pattern of direct ownership.¹⁴ This pattern of ownership is obtained by a person or legal entity over another legal entity through the mechanism of buying shares either through the stock market (stock exchange) or not. Second, the pattern of indirect ownership.

This ownership pattern is obtained if a holding company buys shares of a company that is under its subsidiary. Article 32 paragraph (3) of Government Regulation Number 50 of 2005 concerning the Implementation of Broadcasting for

¹² Ibid., hlm. 40.

¹³ Yanuar Nugroho dkk, *Memetakan Kebijakan Media di Indonesia*, Jakarta: Ford Foundation, 2012, hlm. 99.

¹⁴ Werner J. Severin dan James W. Tankard, Jr, *Teori Komunikasi: Sejarah, Metode, dan Terapan di Dalam Media Massa*, Jakarta: Kencana Prenada Media Group, 2007, hlm. 434.

Private Broadcasting Institutions explains that commercial broadcasting institutions which have operated up to the number of relay stations they have before the PP a quo is stipulated, can own shares of more than 49% (forty nine percent) and a maximum of 90% (ninety percent) in the second legal entity and so on.

The legal provisions in Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition also apply to broadcasting. Indonesia regulates the operation of broadcasting in Law Number 32 of 2002 concerning Broadcasting (Broadcasting Law). Before the a quo law came into effect, there were other legal regulations governing broadcasting in Indonesia, namely Law Number 24 of 1997 concerning Broadcasting. However, the a quo law holds many problems that cannot fix problems in the broadcasting industry. The provisions in Article 18 paragraph (1) of the Broadcasting Law emphasize that concentration of ownership and control of Private Broadcasting Institutions by one person or one legal entity, both in one broadcasting area and in several broadcasting areas, is limited.

The a quo article only explains that the ownership of a broadcasting institution by one person or one entity only needs to be limited, without any confirmation or explanation that there may not be monopolistic practices in its ownership. This is actually an important thing so that the public frequency which is the broadcasting medium is not only used by one particular group. If the Broadcasting Law does not specify the intended form of restriction, then the space for public frequency monopoly practices which constitute the public domain will be wide open.

Legal provisions in Indonesia provide arrangements regarding the separation of broadcasting institutions in Indonesia, including public broadcasting institutions, private broadcasting institutions, community broadcasting institutions and subscription broadcasting institutions which in carrying out their duties, functions and responsibilities are guided by various laws and regulations as contained in Law Number 32 of 2002 concerning Broadcasting and Law Number 11 of 2020 concerning Job Creation.

Law Number 32 of 2022 Concerning Broadcasting

Prior to the enactment of Law Number 32 of 2002 concerning Broadcasting, there were no concrete rules prohibiting the monopoly practice of broadcasting in Indonesia. Legal provisions in existing legal regulations, such as Law Number 1 of 1995 concerning Limited Liability Companies and Law Number 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition only prohibit monopolistic practices in general.

Broadcasting as a form of labor-intensive business and industry that uses public frequencies as a medium for its distribution must be regulated by stricter legal regulations. This is needed to provide legal certainty to the public and broadcasting business actors so that they are not harmed by monopoly practices. As contained in Article 5 of the law a quo which explains that broadcasting is directed to prevent monopoly ownership and support fair competition in the field of broadcasting.

Article 13 paragraph (2) of Law Number 32 of 2002 concerning Broadcasting describes four broadcasting service providers in Indonesia, namely: a) Public Broadcasting Institutions; b) Private Broadcasting Institutions; c) Community Broadcasting Institutions; and c) Subscription Broadcasting Institutions. Broadcasting institutions that have the potential to carry out broadcasting monopoly practices are Public Broadcasting institutions and Private Broadcasting Institutions.

Public Broadcasting Institutions are broadcasting institutions in the form of legal entities established by the state, which are independent, neutral, non-commercial, and function to provide services for the public interest. TVRI is included in this broadcasting institution. Public broadcasting institutions such as TVRI were once monopolized for the benefit of the ruling group before the birth of private broadcasting institutions.

Private Broadcasting Institutions referring to Article 16 paragraph (1) of Law Number 32 of 2002 concerning Broadcasting are broadcasting institutions that are commercial in nature in the form of Indonesian legal entities, whose business field is only providing radio or television broadcasting services. There are regulations used to prevent monopolistic practices from occurring by private broadcasting institutions. As contained in Article 17 of the a quo law which strictly regulates ownership by Indonesian citizens and/or Indonesian legal entities and limits the amount of capital.

In more detail, the Government Regulation concerning the Implementation of Broadcasting for Private Broadcasting Institutions Number 50 of 2005 regulates the division of business areas based on zones or broadcast areas and restrictions on ownership. For example, Article 32 Paragraph (1) of the a quo Government Regulation states:

"The concentration of ownership and control of Private Broadcasting Institutions for television broadcasting services by 1 (one) person or 1 (one) legal entity, both in one broadcast area and in several broadcast areas, throughout Indonesia is limited as follows:

- a. 1 (one) legal entity with a maximum of 2 (two) licenses for the operation of broadcasting television broadcasting services, which are located in 2 (two) different provinces;*
- b. owns at most 100% (one hundred percent) shares in the 1st (first) legal entity;*
- c. owns at most 49% (forty nine percent) shares in the 2nd (second) legal entity;*
- d. owns a maximum of 20% (twenty percent) shares in the 3rd (third) legal entity;*
- e. owns a maximum of 5% (five percent) shares in the 4th (fourth) legal entity and so on;*
- f. legal entity as referred to in letter b, letter c, letter d, and letter e. located in several provinces spread throughout Indonesia..."*

Even though there are clear regulations regarding business ownership and restrictions, in practice there is still business concentration. Consolidations and acquisitions have resulted in the ownership of television in Indonesia being controlled by a few groups, namely: MNC (PT Media Nusantara Citra Tbk), EMTEK (PT Elang Mahkota Teknologi Tbk.), VIVA Group (PT Visi Media Asia), and CT Corp..¹⁵

¹⁵ Rahayu dkk, Menegakkan Kedaulatan Telekomunikasi dan Penyiaran di Indonesia, Yogyakarta: PR2Media, 2015, hlm. 125.

Law Number 32 of 2002 concerning Broadcasting clearly prohibits monopolistic practices by limiting the ownership of broadcasting institutions in Indonesia. This is expected to be able to prevent the occurrence of monopolistic practices that had occurred during the New Order era. The a quo law also aims to create fair business competition.

Law Number 11 of 2020 Concerning Job Creation

In its development, Law Number 32 of 2002 concerning Broadcasting became one of the laws that was amended in Law Number 11 of 2020 concerning Job Creation. The a quo law is a legal product that changes several laws at once by using the omnibus legislative technique method. The amendments to several articles in Law Number 32 of 2002 concerning Broadcasting aim to provide convenience for the public, especially Business Actors, in obtaining Business Permits and facilitating investment requirements from the broadcasting sector.

One of the amended articles is the provision regarding licensing for private broadcasting institutions. These provisions are contained in the amendment to Article 33 of Law Number 32 of 2002 concerning Broadcasting contained in Law Number 11 of 2020 concerning Job Creation which explains that:

- (1) Broadcasting can be carried out after fulfilling a Business Permit from the Central Government.*
- (2) Broadcasting institutions are required to pay the Business Licensing fee as referred to in paragraph (1) which is regulated based on regional zones for broadcasting operations determined by the parameters of the economic level of each regional zone.*
- (3) Further provisions regarding Business Licensing as referred to in paragraph (1) are regulated in Government Regulations with the scope of broadcasting broadcasting operations covering the whole of Indonesia.*

The provisions regarding licensing provide significant changes when compared to Article 33 of the law a quo before the amendment. Initially, the mechanism for granting broadcasting licenses involved the Indonesian Broadcasting Commission (KPI) and applicants for broadcasting licenses had to go through several stages in order to obtain a license to broadcast. However, the provisions of this article have been amended through Law Number 11 of 2020 concerning Job Creation. Through the a quo law, broadcasting industry business actors only need to obtain business licenses from the central government. This is a step to cut the flow of bureaucracy and permit processing which is often convoluted, not substantive, and makes it difficult for business actors.

Apart from cutting the licensing bureaucracy, which often makes it difficult for entrepreneurs, the provisions related to broadcasting that have been amended in Law Number 11 of 2020 concerning Job Creation have also created firmer anti-monopoly legal products. One of the implementing regulations of Law Number 11 of 2020 concerning Job Creation prohibits the practice of sole control of broadcasting institutions. It is intended that the government can ensure the implementation of healthy and fair competition for every business actor.

4. Preventing the Centralization of Ownership of Broadcasting Institutions

The development of the broadcasting industry towards an increasingly rapid business requires an appropriate regulatory model in accordance with the existing state conditions. This regulatory model relates to the rules regarding ownership of broadcasting institutions. There are two regulatory streams in the field of broadcasting, the first is the market model. This school argues that regulations in the field of broadcasting must comply with the rules and business principles in general. The second is the Public Space Model, this school actually reminds that broadcasting is a public resource and its arrangement must be subject to the public interest. This provision applies in general, both to commercial broadcasting institutions and non-commercial broadcasting institutions.¹⁶

The regulation of the public sphere model is the most commonly used flow of legal regulation in the world, countries with a liberal market economy such as the United States even use this model of regulation and do not fully surrender the broadcasting industry to market mechanisms. In general, the countries of the world are of the opinion that regulation of broadcasting and mass media cannot be treated the same as products or services of other models. The free market model can be used to organize other business models, but not for broadcasting.

The flow that adheres to the public space model argues that broadcasting has an important role for society, one of which is its role in developing democracy. Broadcasting institutions have an important role as a watchdog of government which is a means of social control over the government.¹⁷ Due to the vital role it has, broadcasting institutions cannot be controlled by one person or one particular group, because this will create a broadcasting monopoly and undermine the main aim of the existence of the broadcasting institution itself.

The regulation of the public space model has a close relationship with Joseph R. Dominick's theory, namely the scarcity theory which states that electromagnetic waves are limited and can only be utilized by certain people. The state must be able to manage, select and choose frequency users who are considered to have the most potential and are able to manage them professionally. Then, the pervasive presence theory assumes that broadcasting institutions have a dominant influence on society so that they need to be regulated in a certain legal regulation so that they are able to accommodate and protect the interests of the community. This requires the role of the state through a democratic process in making regulations governing broadcasting.¹⁸ Furthermore, Dominick explained that there are three models of broadcasting institution ownership with different characteristics, namely:

1) Ownership by the authorities (government agency). The purpose of broadcasting institutions controlled by the state is to carry out political mobilization; strict regulation; sources of funds from the government as well as broadcast

¹⁶ Ade Armando, *Televisi Jakarta di Atas Indonesia*, Jakarta: Bentang Pustaka, 2011, hlm. 1.

¹⁷ *Ibid.*, hlm. 4.

¹⁸ Joseph R. Dominick, *Broadcasting. Cable, The Internet and Beyond, An Introduction to The Modern Electronic Media*, Singapura: McGrawhill Book&Co, 2001, hlm. 204.

programs or content containing ideological or cultural programs. This kind of ownership tends to occur in authoritarian countries. This ownership model has similarities with the existence of a public broadcasting institution, namely TVRI during the Old Order to New Order governments.

2) Ownership by the public (government corporation). The aim of broadcasting is more directed at educational, cultural and public awareness content through regulations in laws and regulations. Sources of funding for this broadcasting institution come from taxes, fees and government funds. Ownership of broadcasting institutions like this is found in liberal, more democratic countries.

3) Private sector ownership. The aim of broadcasting is to make a profit with weak legal regulation. The source of funding for the broadcasting institution comes from advertising and the content of the broadcast is only in the form of entertainment programs. Media ownership like this is found in capitalist countries.

Based on this description, it can be seen that broadcasting legal arrangements in Indonesia use the public space model. This can be seen from the provisions contained in Law Number 32 of 2002 concerning Broadcasting. The a quo law provides for restrictions on ownership and exercises control over broadcasting by providing directions and guidelines for broadcasting. However, the provisions contained in Law Number 32 of 2002 concerning Broadcasting have not been able to stem the monopolistic practice of centralizing ownership of broadcasting institutions.

Legal arrangements related to the issue of concentration of ownership of broadcasting institutions are contained in Article 18 paragraph (1) of Law Number 32 of 2002 concerning Broadcasting which states that the concentration of ownership and control of private broadcasting institutions is carried out by one person or one legal entity, whether in one area broadcast as well as in some broadcast areas, is restricted. The provisions contained in the a quo article do not explicitly prohibit broadcasting monopoly in the form of centralized ownership of broadcasting institutions. This is due to the fact that the legal provisions contained in the law are still unclear and do not clearly provide boundaries for the ownership of broadcasting institutions. In practice, arrangements related to the concentration of ownership of existing broadcasting institutions have led to concentration of ownership, and on the other hand citizens can no longer establish broadcasting institutions with national scale coverage due to the limited broadcasting frequencies available.

One of the legal regulations that has been amended through Law Number 11 of 2020 concerning Job Creation is Law Number 32 of 2002 concerning Broadcasting. As previously explained, there are several provisions that have been amended in the a quo law relating to licensing and broadcasting operations. So that the provisions regarding broadcasting are in Law Number 11 of 2020 concerning Job Creation

Regarding the implementation of the amended article regarding broadcasting in Law Number 11 of 2020 concerning Job Creation, Government Regulation Number 46 of 2021 concerning Post, Telecommunications and Broadcasting was enacted. The a quo government regulation is stricter in prohibiting and preventing monopolistic practices in the broadcasting industry. As

explicitly regulated in Article 74 paragraph (2) and paragraph (3) of Government Regulation Number 46 of 2021 concerning Post, Telecommunications and Broadcasting which states that:

(2) Changes in the share ownership of Broadcasting Institutions are prohibited from causing violations of the following provisions:

- a. foreign ownership;*
- b. concentration of ownership; or*
- c. cross ownership.*

(3) Changes in LPB share ownership are prohibited from causing violations of the following provisions:

- a. foreign ownership; or*
- b. cross ownership.*

Explicitly, Article 74 paragraph (2) letter b Government Regulation Number 46 of 2021 concerning Post, Telecommunications and Broadcasting prohibits the concentration of ownership of private broadcasting institutions. The nomenclature of this article actually has the ability to become a supporting reason for enforcing anti-monopoly legal regulations in the broadcasting industry. However, there are still deficiencies in the a quo government regulation that should be able to provide technical arrangements related to efforts to create fair business competition without centralized ownership.

Regarding sanctions, the practice of concentration of ownership can be subject to administrative sanctions based on Government Regulation Number 46 of 2021 concerning Post, Telecommunications and Broadcasting. The forms of administrative sanctions that can be imposed by the minister for these violations are contained in Article 86 of the a quo government regulation, namely: a) written warning; b) the imposition of administrative fines; c) temporary suspension of business activities; d) Police coercion; and/or e) revocation of Business Permit.

The a quo government regulations are more stringent in imposing sanctions on monopolistic practices in the form of concentration of ownership of private broadcasting institutions. This can actually be a complement to the deficiencies contained in Law Number 32 of 2002 concerning Broadcasting and the changes contained in Law Number 11 of 2020 concerning Job Creation. The most important thing to pay attention to is the law enforcement mechanism so that it can actually prevent the concentration of ownership of private broadcasting institutions in order to create fair business competition.

Law Number 32 of 2002 concerning Broadcasting clearly prohibits monopolistic practices by limiting the ownership of broadcasting institutions in Indonesia. This is expected to be able to prevent the occurrence of monopolistic practices that had occurred during the New Order era. The a quo law also aims to create fair business competition.

5. Conclusion

Based on what has been explained in the discussion section, it can be concluded that, at the beginning of the New Order government until 1989, there

was a monopoly practice of the broadcasting industry in Indonesia. Then, the establishment of a private broadcasting institution in 1989 could not be considered as breaking the monopoly practice in broadcasting, because the institutions that were born during the New Order era had personal closeness with the government of President Soeharto.

Monopoly practices did not occur like during the Old Order and New Order eras where it was clear that TVRI was the only broadcasting institution at that time. However, after the reform, there are still problems in the form of control of broadcasting institutions by a certain group of people through their legal entities. This will still cause problems because the principles of diversity content and diversity ownership are not fulfilled. There was a process of consolidation and acquisition which resulted in the ownership of television in Indonesia being controlled by only a few groups, notably MNC (PT Media Nusantara Citra Tbk), EMTEK (PT Elang Mahkota Teknologi Tbk), VIVA Group (PT Visi Media Asia), and CT Corp. Even though it is not monopoly like what happened during the New Order government, space is still open for unfair business competition in the broadcasting sector. However, private broadcasting institutions that are only owned by a handful of groups or legal entities are an indication of oligopoly. This means that efforts to push broadcasting from monopoly to competition cannot be carried out perfectly because there are still indications of oligopoly in the broadcasting industry in Indonesia.

Oligopoly itself is a market condition in which unfair or perfect competition is formed due to the supply of one or several types of goods that are controlled by only a few companies. In this condition, each of the companies referred to, positions itself as a part that is tied to the market game, where the profits they get depend on the actions of their competitors. there is a tendency for conglomeration of private broadcasting institutions or concentration of ownership and cross-ownership in an oligopoly manner among a handful or only a few people.

The development of the broadcasting industry eventually gave birth to Law Number 24 of 1997 concerning Broadcasting. However, the a quo law was not implemented in the end. Until finally in the reform era Law Number 32 of 2002 concerning Broadcasting was passed. However, the practice of centralizing ownership of broadcasting institutions still occurs. Consolidations and acquisitions have resulted in the ownership of television in Indonesia being controlled by only a few legal entities.

Law Number 11 of 2020 concerning Job Creation, which also contains amendments to several articles of Law Number 32 of 2002 concerning Broadcasting, eventually gave birth. Government Regulation Number 46 of 2021 concerning Post, Telecommunications and Broadcasting. The a quo government regulation is stricter in prohibiting and preventing monopolistic practices in the broadcasting industry.

The a quo government regulations are more stringent in imposing sanctions on monopolistic practices in the form of concentration of ownership of private broadcasting institutions. This can actually be a complement to the deficiencies contained in Law Number 32 of 2002 concerning Broadcasting and the changes contained in Law Number 11 of 2020 concerning Job Creation. The most important

thing to pay attention to is the law enforcement mechanism so that it can actually prevent the concentration of ownership of private broadcasting institutions in order to create fair business competition.

Changes in legal regulations so as to be able to prevent and overcome monopoly issues such as the concentration of ownership of broadcasting institutions is something that needs to be done to create fair business competition. In addition, this step is also able to provide justice and legal certainty to the public in the broadcasting industry in Indonesia.

Law Number 32 of 2002 concerning Broadcasting clearly prohibits monopolistic practices by limiting the ownership of broadcasting institutions in Indonesia. However, confirmation is needed in the form of arrangements related to administrative sanctions for parties who centralize ownership of broadcasting institutions which are part of broadcasting monopoly practices in Indonesia. Revisions to Law Number 32 of 2002 concerning Broadcasting by adopting provisions related to administrative sanctions contained in Government Regulation Number 46 of 2021 concerning Post, Telecommunications and Broadcasting can be carried out by the House of Representatives of the Republic of Indonesia together with the President as the legislator.

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