

Granting Exclusive Right to Provide the Base Transceiver Station Tower in a Regency Reviewed from The Competition Law

Original Article

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Abstract

The Badung Regency Government in 2007 made an agreement with a company which gave exclusive rights to that company as the only business actor permitted to build and manage Base Transceiver Station (BTS) towers in Badung Regency. This agreement prohibited the Badung Government from granting tower permits to other companies. The action taken by the Badung Government created barriers for other companies attempting to enter the BTS tower industry in Badung Regency. Therefore, the purpose of this research is to analyze barriers to entry in the BTS tower leasing market in Badung Regency. This research will analyze monopolistic practices in BTS tower leasing in Badung Regency based on the provisions regulated in Law Number 5 of 1999 concerning Prohibition of Monopoly Practices and Unfair Business Competition. This research uses normative legal research methods with statute approach, conceptual approach, and case approach. The results of this study indicate that the existence of exclusive rights to provide BTS towers in Badung Regency raised barriers to entry into the BTS tower leasing business. These entry barriers caused the company that was given exclusive rights to have a monopoly position in the leasing of BTS towers in Badung Regency. This condition has negative impacts on other business actors, consumers, and the Badung community.

Keywords: Base Transceiver Station (BTS) Tower, Exclusive Rights, Market Entry Barriers, Monopoly Practices, Competition Law.

1. Introduction

Base Transceiver Station (BTS) is a telecommunications infrastructure that acts as a link between telecommunications equipment and cellular operator networks. One of the BTS components is the antenna which functions as a transceiver and receiver of communication signals (Pusvita, 2018). The signal received by the BTS is converted into a digital signal and then transferred to another terminal. This process results in the exchange of messages or data that can occur in wireless communication. BTS is generally placed on a tower so the signals emitted can cover a wide area. This is what is called the BTS tower (Amar et al., 2022).

BTS tower is provided by tower provider. Based on article 1 point 10 of the Minister of Communications and Informatics Regulation Number 19/PER/M.KOMINFO/03/2009 concerning Guidelines for the Construction and Shared Use of Telecommunication Towers, tower provider can be individual, cooperative, state-owned enterprise, or private business entity. Tower provider then provides the tower for shared use by telecommunications providers. This is in accordance with article 16 of the Minister of Communications and Informatics Regulation which regulates the use of one tower by several telecommunications



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providers together without any discrimination. Telecommunications providers can install their BTS equipment on tower owned by tower provider. Article 22 of Permenkominfo Number 19/PER/M.KOMINFO/03/2009 states that tower provider has the right to charge fees to telecommunications providers who use their tower.

In line with the increasing public need for telecommunications, telecommunications providers are trying to improve the quality of telecommunications networks by increasing quantity of BTS at strategic points so network coverage is wider. Indirectly, this has an impact on the high demand for BTS tower leasing. The level of business competition in leasing of BTS towers is quite tight because there are many business actors in the market and the target market continues to increase. High competition is not a negative thing that must be eliminated. Competition can encourage tower providers to improve quality to be able to compete with other tower providers (Lubis et al., 2017). Moreover, telecommunications providers can get more affordable rates. Therefore, healthy business competition in the tower leasing business must be maintained.

The problem that will be the main focus of this research is the granting of exclusive right to provide BTS towers to one business actor in Badung Regency. Case started with Cooperation Agreement Number 018/Badung/PKS/2007 dated 7 May 2007 between the Badung Government and a company in the field of tower provision. Based on this agreement, the company is the only party given permission to build and manage towers in Badung Regency, Bali for 20 years starting in 2007. The company appointed is the auction winner based on Badung Regent Decree Number 519/02/HT/ 2007 concerning the Appointment of the Winner of the Auction for Business Permits for the Provision of Integrated Telecommunication Tower Infrastructure in Badung Regency. The company received the appointment of the auction winner from the Badung Regency Government as the provider of integrated telecommunications towers in the Badung area.

The granting of exclusive right was due to the fact that the Badung area was already filled with BTS towers. Considering that Badung is a tourist attraction area with natural and cultural beauty, it was feared that the existence of these BTS towers would damage the Badung area. The local government's concern about the potential for Badung Regency to become a "thousand towers area" was reflected in the consideration of Badung Regent Regulation Number 62 of 2006 concerning the Arrangement and Development of Integrated Telecommunication Tower Infrastructure in Badung Regency (Badung Regency Government Communication and Informatics Department, 2022). In these considerations, particularly point a, it is stated that the development of community needs for the use of telecommunications facilities has encouraged an increase in the construction of telecommunications towers in Badung Regency, so that to ensure the comfort and safety of the community and maintain environmental sustainability, it is necessary to organize and build integrated telecommunications tower infrastructure by the Badung Government.

Cooperation agreement Number 018/Badung/PKS/2007 is contrary to the principles of healthy business competition. This agreement prohibited the Badung Government from issuing telecommunications tower permits to other business actors. Without a permit, other business actors could not enter the BTS tower leasing market in Badung Regency. Recently, the demolition of dozens of BTS towers in Badung Regency was carried out following the issuance of Badung Regent's Order Number: 331.1/519/SATPOLPP dated 6 April 2023 and Number: 180/9145/SETDA/SATPOLPP dated 31 May 2023 (Eka, 2023). The demolition was carried out on the basis of Article 31 of Badung Regency Regional Regulation Number 18 of 2016 concerning the Arrangement and Construction of Telecommunication Towers, states that every tower provider that builds and operates telecommunications towers without

permission must be dismantled. This demolition could not be separated from cooperation agreement No. 018/Badung/PKS/2007 which prohibited the Badung Government from issuing permits to build BTS towers to other entities. As a result, BTS towers that do not have permits are being dismantled in stages (Alfianto, 2023).

The demolition of the tower would certainly be very detrimental to other tower providers. If the tower demolition continues, in the end there will be no more BTS towers belonging to other entities standing so business actor who has partnered with Badung Government will become the sole business actor providing BTS towers in Badung. If this condition occurs, the telecommunications providers will have no other choice so they have lease tower owned by the business actor. Similarly, Badung Regional Secretary, I Wayan Adi Arnawa suggested that telecommunications operators use towers built by business actor who was bound by Cooperation Agreement with the Badung Regency Government. This research aims to analyze the fulfillment of the criteria for an activity can be categorized as Barrier to Entry of the BTS Industry.

2. Method

Based on the background that has been described, this research raises the following issues such as barriers to entry in BTS tower leasing in Badung Regency and monopolistic practices in the BTS tower leasing in Badung Regency based on the provisions regulated in Law Number 5 of 1999 concerning Prohibition of Monopoly Practices and Unfair Business Competition. The type of research used in this article is legal research. Marzuki (2017) stated that legal research is a process of finding legal rules, legal principles, and legal doctrines to answer the legal issues faced. The approaches used in this research are statute approach, conceptual approach, and case approach.

3. Results and Discussion

3.1. Barriers to Entry in the BTS Tower Leasing Industry in Badung Regency

Kagramanto et al. (2015) defined barriers to entry as a situation where business actors cannot enter certain business fields in the relevant market, because of greater market power control exercised by business actors who have a stronger position. William G. Shepherd (Shepherd, 1996) stated that barriers to entry decrease the possibility, scope, or speed with which potential competitors can come into the market. Barriers to entry provide an opportunity for existing players to set high rates without attracting new rivals to enter. Entry barriers provide benefits to existing business actors in the market because they protect the income and profits of these business actors.

According to Thayer & Bain (1957), if the barriers to entry are relatively easy, existing business actors generally set prices at a competitive level, which means that the selling price of the product is set equal to marginal cost so economic profit is zero. This pricing is intended to discourage potential new entrants. On the other hand, if entry barriers tend to be high, existing business actors tend to feel free to determine the selling price of their products because there is no threat of potential new entrants. This is because the market is not easy to enter both legally and economically.

Based on the cause, barriers to entry are divided into 3 (three), namely technical barriers, barriers caused by capital requirements, and legal barriers. The types of entry barriers will be explained in detail as follows.

3.1.1. Technical Barriers to Entry

The inability to compete technically makes it difficult for other business actors to compete with existing businesses. Technical superiority is caused by several things, one of which is the high level of efficiency of company. Companies that produce efficiently will have a decreasing cost curve (average cost). This advantage creates opportunities for these business actors to sell goods and/or services at cheaper prices so they can eliminate other business actors from the market (Ilham, 2008).

Another technical barrier is the ability and/or special knowledge of business actors that enables them to produce efficiently. Tower providers need to pay attention to tower maintenance if they want to survive in BTS tower leasing business. Knowledge and skills in tower maintenance accompanied by adequate and sophisticated maintenance equipment will be a strength for tower providers. Apart from that, market knowledge and business management are also needed to increase the capacity of BTS tower providers.

3.1.2. Capital Requirement or Cost of Market Entry

Business actors that want to enter a certain market usually have to prepare a certain amount of financial capital. Requirement to invest financial resources on a large scale can be a barrier to entry, especially when capital is used for research and business development activities where the capital does not generate profits. Entry by new firms might be even more difficult because of brand loyalty, so new rivals may need to advertise more than existing firm to attract consumers. It requires advertising costs. This capital is not only for production facilities but also for inventory or to cover losses at the start of the business.

The concept of leasing BTS tower is tower provider build a telecommunications tower to be used share by telecommunications providers. Telecommunications providers will install BTS equipment on tower provided by tower provider. Tower provider need to prepare telecommunications tower first to enter the BTS tower leasing industry. Article 1 number 8 of Permenkominfo Number 19/PER/M.KOMINFO/03/2009 states that a telecommunications tower is a building for the public interest which is erected on land whose physical structure can be in the form of a steel frame tied by various knots or in the form of a single shape without knots, which functions for placing telecommunications equipment. Badung Regency Regional Regulation Number 18 of 2016, especially article 10 paragraph (2), also requires that telecommunications tower must be equipped with supporting facilities such as grounding, lightning rods, power supplies, aviation obstruction lights, aviation obstruction markings and safety fences. This provision must be complied by BTS tower providers in Badung Regency.

The construction of a BTS tower requires large capital. Moreover, capital is also needed to acquire land to build a BTS tower, survey costs, environmental permits and compensation to obtain approval from the surrounding community, costs for processing permits, and tower maintenance costs. Capital requirement to provide a BTS tower is quite large so the barriers to entry into the leasing of BTS tower industry are relatively high. The barriers caused by capital requirement have made business actors think again before entering the BTS tower leasing industry in Badung Regency.

3.1.3. Legal Barriers to Entry

In reality, there are companies that are given monopoly rights by law. As Article 51 of Law Number 5 of 1999 regulates monopolies relating to the production and/or marketing of goods and/or services that affect the livelihoods of many people as well as branches of production that are important for the state, which needs to be regulated by law and managed by State-Owned Enterprises (BUMNs) and/or bodies or institutions formed or appointed by the government. Many BUMNs have monopoly power because the law grants special franchise

to manage certain industries. In addition, monopoly rights are also given to holders of intellectual property rights to exploit and prohibit other parties from exploiting the objects of intellectual property rights they own within a certain period of time. The existence of monopoly rights granted by law to business actors creates obstacles for other business actors to enter the market. This factor is determining for companies because this incentive is considered a way to dominate the market but does not constitute a violation of the law.

Shepherd (1996) stated that barriers to entry can take the form of legal instruments such as permitting that inhibit the desire of new entrants to enter existing markets. For example, tower building permits for BTS tower providers in Badung Regency. As stated in article 20 paragraph (1) and paragraph (2) of Badung Regency Regional Regulation Number 18 of 2016, every construction and operation of a telecommunication tower must have permission from the regent. The permit includes a tower building permit (*Izin Mendirikan Bangunan* or IMB) and a Function Worthiness Certificate (*Sertifikat Laik Fungsi* or SLF). Based on article 12 paragraph (3) Badung Regent Regulation Number 43 of 2017 concerning Implementing Regulations of Regional Regulation Number 18 of 2016, tower building permit is valid indefinitely as long as the tower does not undergo structural or construction changes and the load of the installed devices does not exceed the maximum load carrying capacity of the tower. The IMB nomenclature was changed to Building Approval (*Persetujuan Bangunan Gedung* or PBG) based on PP Number 16 of 2021 concerning Implementing Regulations of Law Number 28 of 2002 concerning Buildings. Meanwhile, the term for Function Worthiness Certificate (SLF) is based on article 13 paragraph (2) Badung Regent Regulation Number 43 of 2017 is 5 (five) years and can be extended again. The existence of permitting procedures certainly hinders the desire of other entrepreneurs to build BTS towers in Badung Regency.

In fact, it is not easy for business actors to obtain permits for BTS towers in Badung Regency. It is due to cooperation between the Badung Regency Government and a business actor in the field of providing towers. This cooperation agreement gave exclusive rights to the business actor as the only party given permission to build and manage a telecommunications tower in Badung Regency for 20 years from 2007. The granting of exclusive right could be seen in the provision of article 10 point 2 of this cooperation agreement which states that "The first party (Badung Regency Government) guarantees that will not issue telecommunications business permits or other business permits with the same or similar purpose and use until the end of this agreement as long as the business permit in the name of the second party is not terminated based on this agreement". The provisions of article 10 strictly prevented other business actors from entering the BTS tower leasing industry in Badung Regency.

One of these permitting obstacles was experienced by PT. Dayamitra Telekomunikasi as stated in Decision Number: 9/G/2023/PTUN.DPS. PT. Dayamitra filed a lawsuit against the Regent of Badung regarding the Badung Regency Government Letter from the Public Works and Spatial Planning Office of the Mangupraja Mandala Government Center Number: 640/2182/PUPR regarding notification. The object of this lawsuit was issued by the defendant through the Head of the Badung Regency Public Works and Spatial Planning Service with the aim of rejecting 29 (twenty-nine) applications for function worthiness certificate (SLF) and approval for tower buildings (PBG) submitted by the plaintiff. The rejection was based on the reason that the Badung Regency Government was still tied cooperation with one of the tower providers.

Based on the judge's considerations in Decision Number: 9/G/2023/PTUN.DPS, the plaintiff's application was declared complete and in accordance with the procedures as stipulated in Government Regulation Number 16 of 2021 concerning Implementing Regulations of Law Number 28 of 2002 concerning Buildings, so the application submitted by

the plaintiff should already be at the stage of issuing a functional worthiness certificate (SLF) and building approval (PBG). Furthermore, the panel of judges considered that there were no provisions governing the rejection of SLF and PBG applications due to the fact that there was still cooperation with other parties, so the panel concluded that the defendant's action was contrary to statutory provisions or against the law. Therefore, the panel of judges declared the object of the lawsuit issued by the defendant as null and void.

Not only that, the cooperation agreement between the Badung Regency Government and a business actor in providing towers also had an impact on BTS towers that existed before the agreement was formed. Permits for existing towers no longer have renewal rights from the Badung government so they are considered to have strong enough reasons to demolished and then replaced it with new towers belonging to the appointed work partner. Based on article 31 paragraph (1) of Badung Regency Regional Regulation Number 18 of 2016, tower providers who build and operate a telecommunications tower without a tower permit must have their tower demolished. As a result, the BTS tower leasing industry in Badung Regency is currently only controlled by a few business actors, they are business actor in partnership with the Badung Regency Government and other business actors whose tower permits are still valid.

3.2. Monopoly Practice in Leasing of BTS Towers in Badung Regency

The term monopoly comes from the Greek, namely "*monos polein*" which means selling alone. The general definition of monopoly is if one business actor turns out to be the only seller of certain goods and services and has no close substitutes (Posner, 1969). However, due to developments over time, the definition of a sole seller is less relevant to real conditions in the field, because many industrial businesses that consist of more than one company have monopoly-like behaviour. Based on the Collins Economics Dictionary, monopoly is a type of market structure that has the characteristics of one company with many buyers, a lack of substitute products and a market blocking that cannot be entered by other business actors. It can be seen that the cause of monopoly is the existence of obstacles to entering the market.

Meanwhile, the normative definition of monopoly can be found in Article 1 paragraph 1 of Law number 5 of 1999, that is control over the production and/or marketing of goods and/or the use of services. Through market control, monopolist has the ability to set prices in the market (price setter). Monopolist controls market demand so he has an advantage compared to other business actors. With these advantages, monopolist has the ability to affect the opportunities of other business actors to become his competitors. The ability of monopolist to control prices in the market and limit/eliminate his competitors is called monopoly power.

Monopoly is not actually a violation. Monopolies that occur because of product superiority, good business planning and management, or occur due to statutory or legal provisions resulting in strong and large companies that control market share are certainly not prohibited monopolies. In line with the provisions of Section 2 of the Sherman Act 1890 which states that not all monopolies are prohibited, what is prohibited is monopolization or monopoly practices. Monopoly practices according to the meaning of the Sherman Act are actions carried out by business actor using monopoly power over a relevant market (Lerner, 1934). A company has carried out monopoly practices if the business actor has the power to exclude other companies and the business actor has done so or has the intention to do so.

Monopoly is regulated in article 17 of Law Number 5 of 1999. Article 17 paragraph (2) of Law Number 5 of 1999 determines that business actor should be considered to control the production and/or marketing of goods and/or services if there are no substitutes for the goods and/or services or causes other business actors to be unable to enter the relevant market or the business actor controls more than 50% of the market share. This provision regulates 3 forms of monopoly position. These forms of monopoly position are alternative, if a business

actor fulfills only one of the forms, he can be categorized as holding a monopoly position in the relevant market. The forms of monopoly positions are explained as follows.

3.2.1. No substitute for the good and/or service

Monopoly is a condition where a seller produces/sells a product that has no close substitutes. This item is the only type of item like that. There is no similarity in terms of use at all. This situation requires consumers to use good and/or service from the seller.

The BTS tower leasing in Badung Regency is only controlled by 5 (five) business actors, including, PT. Bali Towerindo Sentra Tbk, PT. Dayamitra Telekomunikasi, PT. Telekomunikasi Selular, Li Wan Wang Eric, and PT EPID Menara Assetco. The existence of several business actors in the relevant market shows the availability of BTS tower leasing options for consumers. Consumers can look for substitute tower leasing services if the required tower leasing service is not available on the market. However, the availability of this substitute service is limited due to the small number of business actors in the BTS tower leasing sector in Badung Regency. Moreover, the cooperation agreement between the Badung Regency Government and a business actor in the field of providing BTS towers has resulted in the majority of licensed BTS towers in Badung Regency being owned by this business actor. Therefore, there are very few choices of tower leasing services from other tower providers.

3.2.2. Causing other business actors to be unable to enter into business competition for the same goods and/or services.

Company that has a monopoly position will have monopoly power. Monopoly power is not only limited to the ability to determine prices, but also has the ability to reduce/eliminate competitive pressure. This ability is obtained because the monopolist is protected by entry barriers that can prevent the entry of new companies into the market. With these barriers, a monopolist has no real or potential competitors.

Cooperation agreement Number 018/Badung/PKS/2007 between the Badung Regency Government and a business actor in the field of providing BTS towers gave the business actor exclusive right as the only party given permission to build and manage towers in Badung Regency, Bali for 20 years since 2007. The existence of this cooperation agreement prevented new rivals from entering the BTS tower leasing industry in Badung Regency. Additionally, BTS towers that existed before this cooperation agreement was made no longer have the right to extend permits from the Badung government. The entry barriers created by the cooperation agreement reduce/eliminate competition in the BTS tower leasing in Badung Regency. With these barriers to entry, tower provider who partner with the Badung Government has no real competitors or significant potential competitors.

3.2.3. A business actor or a group of business actors controls more than 50% (fifty percent) of the market share of a particular type of goods or services.

Monopoly position is defined based on the market share a company has. If a business actor controls more than 50% (fifty percent) of the market share of a particular type of goods or services, it can be said that the business actor has a monopoly position. Monopoly power does not have to arise because the company is the only seller in the market, but can arise if the company holds a dominant position in the market.

According to article 1 paragraph 2 of Law Number 5 of 1999, monopoly practice is the concentration of economic power by one or more business actors which results in control of the production and/or marketing of certain goods and/or services, resulting in unhealthy business competition and harming the public interest (Armentano, 2023; Karakaya & Stahl,

1989; Widiyanto, 2006). Based on the description above, it can be seen that the elements of monopolistic practice are:

- a. the concentration of economic power in one or more business actors;
- b. there is control over the production or marketing of certain goods or services;
- c. unfair business competition occurs, and;
- d. this action is detrimental to the public interest.

Basically, monopolistic practice behavior can be divided into two parts, behavior that has a direct negative impact on real or potential competitors and behavior that has a direct negative impact on transaction partners.

Cooperation Agreement Number 018/Badung/PKS/2007 has appointed a company as one sole tower provider in Badung Regency because it guaranteed that tower permits would not be given to other companies. It meant that other business actors couldn't enter the BTS tower business competition in Badung Regency. The agreement not only had an impact on new entrants but also experienced by existing tower providers. Article 10 paragraph 5 of the agreement stated that "Party I (Badung Regency Government) guarantees that after the realization and commercial operation of integrated telecommunications towers, within 1 (one) year the existing telecommunications towers will be dismantled in accordance with the regulations" (Case No. 3042 K/PDT/2011). This provision stipulated that telecommunications towers that existed before the agreement was formed would be demolished. As a form of commitment to the agreement that has been made, the Badung Regency Government intensively carried out the demolition of towers belonging to other entities.

Quoting from the 2009 Business Competition Supervisory Commission (KPPU) report, the KPPU saw the potential for unhealthy business competition based on policies through the process of demolishing several towers which was solely based on the presence of an agreement that gave exclusive right to one business actor in Badung Regency. Furthermore, KPPU provided suggestions and considerations regarding the BTS tower policy in Badung Regency, that was revoking article 10 paragraphs 2 and 5 in the cooperation agreement between the Badung Regency government and a business actor in the field of providing BTS towers because it was not in accordance with the principles of business competition. The KPPU also suggested that the Badung Regency Government could immediately revoke the exclusive right of this business actor and allow other business actors to participate in establishing and managing telecommunications towers in Badung Regency as long as they comply with the provisions of the applicable laws and regulations. Regarding this suggestion, Badung Government remained determined to implement the regulations they have made. However, the demolition of the BTS tower was finally stopped because it received a lot of criticism from several parties and institutions. The demolition also gave rise to a lawsuit against the Badung Government because of the losses caused by the tower's demolition.

The case of demolition of BTS towers occurred again in mid-April 2023. The demolition of 38 towers was carried out after the issuance of Demolition Order Number: 331.1/519/Satpol PP dated April 6, 2023. This was then continued with the demolition of 31 towers on the basis of Badung Regent's Order Number: 180/9145/SETDA/SATPOLPP dated 31 May, 2023. The demolition of towers was carried out based on Article 31 of Badung Regency Regional Regulation Number 18 of 2016 which states that every tower provider who builds and operates a telecommunications tower without a permit must have it demolished. Cooperation Agreement Number 018/Badung/PKS/2007 clearly prohibited the Badung Regency Government from issuing tower business permits to other business actors. With this cooperation agreement, the demolition was indicated as an effort to get rid of other business actors in Badung Regency.

Demolition of BTS towers belonging to other entities certainly resulted in losses for the business actors concerned and telecommunications providers. Business actors who experienced forced demolition of tower suffered losses considering that the capital required for the BTS Tower business was quite large. The tower demolition was preceded by bringing down the BTS from the top of the tower. This action resulted in the loss of the network of telecommunications providers. Director & Chief Technology Officer of XL Axiata, I Gede Darmayusa, explained that the demolition of BTS towers caused the XL Axiata network in Badung area could only be used for making calls. The loss of the XL Axiata network as a result of the demolition caused XL Axiata users to complain to the company. In several reports, there are people who have moved to other operators and this is clearly very detrimental to the company.

If the demolition of BTS towers in Badung Regency continues, in the end there will be no more BTS towers belonging to other entities standing in this area so business actor in partnership with the Badung Regency Government will become the sole business actor providing BTS towers in Badung. The monopolist usually tends to fix the price at the level at which he makes the greatest profit. If this condition occurs, it is feared that cost of tower leasing will be higher than the reasonable price and telecommunications service providers will have no other choice so they will have to comply with the prices given by the monopolist. The effect of charging monopoly price is to transfer wealth from the consumers of the product to the producers. This condition will certainly be very detrimental to consumers.

The Badung Regency Government's policy of granting exclusive right in the field of providing BTS towers has caused the business actor to exercise a monopoly. The monopoly carried out by business actor in fact gave rise to unhealthy business competition and was detrimental to the public interest so the business actor has fulfilled the elements of monopolistic practice as stated in Article 17 of Law Number 5 of 1999.

However, in this case, we cannot blame it entirely on the business actor concerned. On the business actor's side, he, as the winner of the auction for the provision of telecommunications towers based on Badung Regent's Decree Number 519/02/HT/2007 only accepted the contract that had been offered by the Badung Regency Government. In this case, the Badung Regency Government should pay attention to the principles of healthy business competition in regulating BTS towers in its area. The basic rule for telecommunications towers in Indonesia, Permenkominfo Number 19/PER/M.KOMINFO/03/2009 tends to apply the principle of open access. As article 5 paragraph (1) in conjunction with article 1 number 10 Minister of Permenkominfo Number 19/PER/M.KOMINFO/03/2009 regulate that tower provider can be individual, cooperative, State-Owned Enterprise or Private Enterprise. Similarly, former chairman of KPPU, Benny Pasaribu said that the tower must be open access and not exclusive. Tower provision should be open access, business actors have the same opportunity to build BTS towers in the Badung area as long as they comply with the provisions of the regulations. Then article 15 of Permenkominfo Number 19/PER/M.KOMINFO/03/2009 regulates that local governments are obliged to pay attention to statutory provisions relating to the prohibition of monopolistic practices and unfair business competition in granting tower permits in their administrative areas. By making agreement Number 018/Badung/PKS/2007, the Badung Regency Government clearly did not pay attention to the provisions of Law Number 5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition in regulating BTS towers in its area.

4. Conclusion

Barriers to entry into the BTS tower leasing market in Badung Regency include technical barriers, capital requirements and legal barriers. Technical barriers in the form of special abilities and/or knowledge, especially in the field of tower maintenance, which must be possessed by business actors before entering the BTS tower leasing market. Moreover, the BTS tower leasing business requires a large amount of capital, including the costs of providing the BTS tower and the costs of maintaining the tower. The Badung Government also made an agreement with a company which gave an exclusive right to the company as the only business actor given permission to build and manage the BTS tower in Badung Regency. This agreement prohibited the Badung Government from issuing tower permits to other business actors. Based on these facts, the barriers to entry into the BTS tower leasing market in Badung Regency are relatively high.

In summary, the analysis of the BTS tower leasing market in Badung Regency reveals several critical points. The barriers to entry for businesses seeking to participate in this market are significant, encompassing technical, capital, and legal obstacles. Technical barriers include the necessity for specialized knowledge and skills, particularly in tower maintenance, which can be a hurdle for new entrants lacking established expertise. The substantial capital requirements, covering the costs of constructing and maintaining BTS towers, further compound these challenges. Moreover, the exclusive agreement established by the Badung Government with a specific company has created a legal barrier, effectively preventing other business actors from obtaining the necessary permits to operate in the region. This exclusivity has led to a highly restrictive environment, making it exceedingly difficult for new competitors to enter the market. The consequence of these barriers is the establishment of a monopoly position by the company granted exclusive rights. This dominant position is characterized by the control of a large market share and the ability to limit market entry for other businesses. Such a monopoly structure not only stifles healthy competition but also poses a threat to the public interest. Therefore, business actors who cooperate with the Badung Government in the field of providing BTS towers have violated monopoly practices as regulated in Article 17 of Law Number 5 of 1999.

The study's conclusion carries broader implications for promoting healthy business competition in Indonesia. It underscores the critical need to dismantle entry barriers, whether technical, capital-related, or legal, to cultivate a competitive market environment across various sectors. The findings serve as a cautionary reminder of the detrimental effects of exclusive agreements, exemplified by the Badung Regency case, which can distort markets and impede fair competition; thus, policymakers and government bodies should avoid such practices. Furthermore, the study reinforces the importance of robust antitrust laws, such as Law Number 5 of 1999, and their vigorous enforcement to prevent monopolistic practices and ensure a level playing field. Ultimately, the research advocates for open market principles, granting all businesses equitable opportunities to compete, thereby fostering innovation, efficiency, and enhanced consumer welfare, and it calls for diligent government oversight to prevent regulatory or contractual actions that could inadvertently foster monopolies.

To build upon this research and further contribute to the understanding of competition within Indonesia's telecommunications infrastructure sector, several avenues for future inquiry present themselves. A comparative study analyzing BTS tower leasing markets across different Indonesian regions could offer valuable insights into the diversity of challenges and monopolistic tendencies nationwide. Furthermore, an in-depth economic impact analysis of monopolistic practices within the BTS tower industry would be beneficial, assessing the consequences for telecommunications providers, consumers, and the broader economy.

Concurrently, an evaluation of the efficacy of Law Number 5 of 1999 and related regulations in curbing monopolistic practices in the telecommunications sector is warranted, potentially identifying areas for regulatory enhancement. Exploring alternative BTS tower provisioning models, such as diverse public-private partnerships or community-driven initiatives, could also yield valuable insights. Finally, investigating the influence of technological advancements on the BTS tower leasing market, including the emergence of innovative tower technologies and infrastructure solutions, represents a pertinent direction for future research.

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