

# Challenges of the Business Competition Supervisory Commission Competency in the Implementation of an Exclusive Dealing Agreement

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# Challenge to Transforming the Limitation on Overseas Investment in the Business of Internet Protocol TV Due to the Regulation in Indonesia

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**Abstract**—Indonesia has advanced to a new technological development era via digital television. The 15 amended was adopted in 2009 and later on was revised through the Regulation of Ministry of Communication and Informatics Number 6 Year 2017 about the Management of Internet Protocol Television Services (IPTV Regulation). This article discusses about state responsibilities to evaluate and supervise the management of Internet Protocol Television (IPTV) services while on the other hand monitoring 1 restriction on nominee arrangement according to Law of the Republic of Indonesia Number 40 Year 2007 concerning Limited Liability 19 Company as well as Law of the Republic of Indonesia Number 25 Year 2007 Concerning Investment Law, which significantly impacts IPTV management. From a framework perspective, IPTV business requires a consortium comprised of several companies. As such, the business requires massive investment and detailed planning. However, a company interested to obtain license on broadcasting services television must limit its foreign investor participation with the maximum of 20% (twenty percent) from its total capital as regulated under the Negative List Regulation. Meanwhile existing local investors have obstacle to start the business due to the insufficient national funds. Facing this obstacle, foreign investors tend to resort on nominee arrangement to develop IPTV industry captive market in Indonesia. The research of this study focuses on how state can resolve the issue of nominee arrangement by revising the Indonesian Negative List requirement on IPTV industry.

**Keywords:** foreign investment, internet protocol television industry

## I. INTRODUCTION

Indonesia has ushered the era of analogue television broadcasting to the age of digital television broadcasting technology through regulation of Limited Liability Law<sup>[1]</sup>, Investment Law<sup>[2]</sup> and IPTV

Regulation<sup>[3]</sup>. Referring to Ramadhan, the challenge has brought forth radical changes in the advancement of the broadcasting industry<sup>[4]</sup>. Managing business IPTV needs a consortium agreement that consists of minimum 2 (two) companies holding valid licenses. There are three licenses consisted of: first licence, local fixed network operation license/*Izin Penyelenggaraan Jaringan Tetap Lokal*, cellular mobile network operation license/*Izin Penyelenggaraan Jaringan Bergerak Seluler*, or closed fixed network operations license/*Izin Penyelenggaraan Jaringan Tetap Tertutup* (using VSAT Technology); second licence, Internet Service Provider (ISP) License/*Izin Penyelenggaraan Jasa Akses Internet*; third licence, broadcasting services television license/*Izin Lembaga Penyiaran Berlangganan* (KBLI 60202). Referring to Association of Internet Provider Services in Indonesia (APJII), population in Indonesia has reached to 262 million people. However, the population who have been able to get Internet services are more than 54.58 % or 143 million people. 72.41% urban people are using the Internet services. According to the geographical are 8 the areas have obtained the Internet service are Jawa 57.70%, Sumatera 19.09%, Kalimantan 7.97%, Sulawesi 6.73%, Bali-Nusa 5.63% and Moluccas-Papua 2.49%<sup>[5]</sup>. According to the Negative List Regulation, company holding the third license shall have limited not more than 20% (twenty percent) of the total shares of the company Preparing the IPTV business requires enormous capital for company registration, license application and framework setup. Suni and Krismandi stated the establishment of Groovia TV by T11.KOM back in 2011 which required capital between Rp.50.000.000.000 (fifty billion Rupiah) 3 until Rp.100.000.000.000 (one hundred billion Rupiah) to

develop IPTV platform not including investment for true broadband access development and Firstmedia invested more than USD 100.000.000,- (one hundred million United States Dollars) for Lippo Star satellite with 44-KU Band transponder to increase paid TV business in 2012<sup>[7]</sup> and therefore, the IPTV Company will inevitably need to be supported many foreign investments, such as, technology, hardware, substantial amount of capital, and expertise. This article raise the issue of how shall the company be able to align with the IPTV Regulation whilst circumventing the practice of putting the foreign investment on nominee arrangement when it is using the overseas capital through the development of IPTV business?

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## II. RESEARCH METHOD

The research applies the normative-empirical method. The application of the Limited Liability Company Law, Investment Law and Good Corporate Governance (GCG) also apply to review the practices of the company who has the consortium agreement that holds the licence on broadcasting services television (the IPTV Company). The research uses primary and secondary data when analysis the problem. The collecting data used the several techniques, such as, field studies, interviews, and library studies. The data is analysed through qualitative analysis.

## III. RESULTS AND DISCUSSION

According to the Article 6 of the IPTV Regulation, the foreign investment stipulates that the television's company of broadcasting services license must adhere to the Negative List Regulation that is not exceeding 20% of the total shares of the company. Moreover, the services providers for IPTV are in the form of pushed services, linier, non-linier, and pay per view, pulled services and interactive services electronic transaction, and ISP. The IPTV business requires primary head-end and secondary head-end hardware which is costly; TV contents; device system for security and protection; device system for network management and supervision; system of devices for complaints/supervision of content by customers interactively; device system for managing customers and bills. All hardware calls forth substantial amount of capital from foreign investment<sup>[8]</sup>. In practice, the limitation of foreign investors on the IPTV Company has led to nominee arrangement since they are prohibited to put their name on the company's list if the composition of the overseas shares has reached 20% (twenty percent)

of the total shares<sup>[9]</sup>. These practices cannot be avoided, although, the Investment Law has clearly forbid such practice in conflict with Article 33 (1) of the Investment Law, the legal consequences is the nominee agreement becomes null and void. However, this practice has generated less protection to the nominee shareholders. This practice is not in accordance with the principle of Good Corporate Governance (GCG).

The article analyses the IPTV business through the Corporate Governance and Complexity Theory of corporate governance<sup>[10]</sup>. It has placed shareholders at the centre of corporate governance. This principle is adopted under the Company Law. All shareholders, under the authority of General Meeting of Shareholders (GMS), shall have the power that not granted to the Board of Directors (BoD) or Board of Commissioners (BoC). All shareholders who have been listed on the Company Shareholder List have the rights to attain on the GMS. The problem is shareholders who have a share under the nominee arrangement may not allow attaining the GMS unless the BoD or BoC permits them to present on the GMS. In case of BoD or BoC has no information about the nominee arrangement, they may not agree on their attendance at the GMS. This situation can be considered as an action that is not appropriate or does not meet at the principle of GCG. The Company shall carry out the principles of GCG, under the Article 15 of the Investment Law such as fairness, accountability, responsibility, and transparency, in running the business<sup>[11]</sup>. The GCG principles are protecting not only the company but also all stakeholders of the company. In case of the shareholders are not allowed to attend the GMS how can the company do the principle of fairness, accountability and transparency? Moreover, for the shareholder, how they fight for their rights as owners of the company's shares in accordance with the number of shares they have.

The practical difficulty of the IPTV Company is how to connect between the request from the IPTV customer and demand of huge amount of investment fund and maintaining overseas shareholding not more than 20% (twenty percent) of the total company capital.

Observing the reality that business IPTV consumes considerable amount of capital and it cannot rely on the national investment along, consequently, the foreign investment is necessary to be considered. In order to comply with GCG, the Investment Law, and the Company Law, the Negative List Regulation of not exceeding 20% (twenty percent) should be revised. If the policy is not reviewed, many foreign investments that are interested in investing and involving in the IPTV business cannot be protected under the national

regulation. They most likely will lose their investment if their investment must be arranged under the nominee agreement. Since the Investment Law, Article 33 (2) prohibited the application of nominee arrangement. Thus, the government credibility' is being tested by the international investors. Many of these foreigner are unaware the prohibition and the regulation, specifically on IPTV which is notoriously difficult to obtain. Indonesia is large consumers of using the IPTV. Of the 262 million Indonesian Citizens, only 4 million people are served by IPTV through PT Telkom in 160 cities in Indonesia<sup>[12]</sup>. Many regions in Indonesia, such as, East Indonesia and Central Indonesia have large number of demand on getting the IPTV service. The Government of Indonesia (GoI) and business sectors have to utilize the infrastructure of IPTV in those areas; however, they have to deal with the limitation of overseas funds. The GoI, in order to, install the networks and provide IPTV business should collaborate with the overseas private sectors, therefore, the GoI should revise the Negative List regulation for the broadcasting TV and increase the limitation of foreign investments into more than 70% of the total company capital. By intensifying the limitation of foreign investment, the GoI can carry out the installation of IPTV throughout many provinces in Indonesia in collaboration with the international business communities. In line with that the GoI is ensuring the legal certainty to the international business communities.

#### IV. CONCLUSION

IPTV business considers as subscription broadcasting agency. Accordingly, to do the business that obeys with the requirement of the Laws and GCG<sup>[13][14]</sup>, the Government of Indonesia should revise the Appendix III, page 33 No. 298, Presidential Regulation of the Republic of Indonesia Number 44 Year 2016 concerning Lists of Business Fields That Are

Closed to and Business Fields That Are Open With Conditions to Investment, maximum foreign capital ownership of 20% ("the negative lists regulation"). The limitation of maximum 20% should be increased into more than 70%.

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