Locus Journal of Academic Literature Review
Volume 4 Issue 1, April 2025.
P-ISSN: 2829-4262, E-ISSN: 2829-3827

An Analysis of Alleged Discrimination by Telkom Group Against Netflix in Internet Service Provision

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Abstract: This study analyzes the alleged discriminatory practices by PT Telekomunikasi Indonesia (Persero) Tbk and PT Telekomunikasi Seluler (Telkom Group) against Netflix in the provision of internet access services. The issue arose when Telkom Group blocked access to Netflix in 2016, citing concerns over inappropriate content and consumer protection. However, similar platforms such as HOOQ, Viu, and Iflix were not subjected to the same restrictions, raising concerns about unequal treatment and potential anti-competitive behavior. Using a normative juridical approach combined with statutory, conceptual, and comparative methods, this research examines the case through the lens of Law No. 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition and Law No. 36 of 1999 on Telecommunications. The analysis incorporates the principle of non-discrimination and the "essential facilities" doctrine to assess whether the actions of Telkom Group potentially violated competition law. Although the Indonesian Competition Commission (KPPU) concluded there was no legal violation, this decision remains controversial and highlights the need for stronger regulatory frameworks and clearer enforcement mechanisms in Indonesia's digital economy. Ensuring fair and non-discriminatory access to digital services is vital for fostering innovation, consumer choice, and a competitive ecosystem.

Keywords: Netflix, Telkom Indonesia, Net Neutrality.

Citation: Kurniawan, A., Setiadi, E., Leonardo, L., & Silalahi, U. (2025). An Analysis of Alleged Discrimination by Telkom Group Against Netflix in Internet Service Provision. Locus Journal of Academic Literature Review, 4(1), 9–14. https://doi.org/10.56128/ljoalr.v4i1.409

1. Introduction

Healthy business competition serves as a fundamental pillar in building a dynamic and innovative economic ecosystem. Through fair competition, every business actor is afforded equal opportunities to grow, innovate, and deliver added value to consumers (Rumatiga, 2021). Therefore, the Indonesian government has enacted strict regulations through Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, in order to prevent actions that may harm market competition (Arifin dkk., 2024).

One of the issues that has drawn significant attention is the alleged discriminatory practices by PT Telekomunikasi Indonesia (Persero) Tbk and PT Telekomunikasi Seluler against Netflix in relation to the provision of internet access services. This case began in 2016 when the Telkom Group decided to block access to Netflix on its network. The justification provided was concerns over content deemed inconsistent with Indonesian cultural values and the need to protect consumers. This action sparked controversy among the public and competition law observers. Some viewed the blocking as a legitimate effort to safeguard consumer interests, while others regarded it as a discriminatory act that disadvantaged Netflix as a business actor in the video-on-demand (VoD) service market. Notably, Telkom Group did not impose similar restrictions on other comparable service providers such as HOOQ, Viu, and Iflix, raising concerns about unequal treatmen (Susanto dkk., 2019).

From the perspective of competition law, discriminatory practices may occur when a business entity treats another business actor differently without a legally justifiable basis (Tiara, 2017). In this context, the act of blocking access to Netflix may hinder healthy competition in the video-on-demand (VoD) service market and confer undue advantages to other service providers that remain accessible via the Telkom Group's network. The Indonesian Competition Commission (KPPU) ruled that there was no legal violation committed by PT Telekomunikasi Indonesia (Persero) Tbk and PT Telekomunikasi Seluler. However, this decision has drawn criticism for allegedly failing to provide adequate protection for the principles of fair competition. Given Telkom Group's dominant position in the provision of internet services in Indonesia, the blocking action warrants further evaluation to ensure there is no infringement of non-discrimination principles. In the era of rapid digital transformation, fair and equal access to digital services has become an urgent necessity. Therefore, it is crucial to critically assess this case so that it may serve as a reference for improving regulatory frameworks and ensuring the development of a competitive and inclusive digital ecosystem in Indonesia.

2. Method

This research employs a normative juridical method, which is a legal research approach based on literature review, legal theories, and statutory regulations ranging from the highest to the lowest levels within the legal hierarchy. The study involves examining relevant legal provisions, analyzing them systematically, and identifying applicable legal norms to address the legal issues under review. In addition, the researcher utilizes several approaches: the statutory approach, the conceptual approach, and the comparative approach. The statutory approach involves a thorough examination of all laws and regulations relevant to the legal issue being discussed.

3. Result & Discussion

In the context of competition law, the principle of non-discrimination constitutes one of the fundamental elements that must be upheld. According to Article 19(d) of Law Number 5 of 1999, business actors are prohibited from engaging in discriminatory practices against certain business entities that may lead to monopolistic practices or unfair business competition. (Permana, 2020). This provision aims to ensure that all business actors have equal opportunities to access the market and compete fairly. Discriminatory practices may take various forms, including access restrictions, differential pricing, or unequal treatment in business cooperation. In the case of PT Telekomunikasi Indonesia (Persero) Tbk and PT Telekomunikasi Seluler, the act of blocking access to Netflix may constitute a potential discriminatory practice if it is not accompanied by legitimate and proportionate justification. Although the Telkom Group argued that the measure was taken to protect consumers from content deemed inconsistent with Indonesian cultural values, such reasoning must be thoroughly evaluated in light of applicable legal principles.

The "essential facilities" doctrine is also relevant in this context. This concept refers to the obligation of a business entity that controls essential infrastructure to provide fair access to other parties. Given the dominant position of PT Telekomunikasi Indonesia (Persero) Tbk and PT Telekomunikasi Seluler in the provision of internet services in Indonesia, blocking access to Netflix could be considered a violation of the principle of fair access if not supported by adequate justification. Furthermore, telecommunications regulation in Indonesia, as stipulated in Law Number 36 of 1999 concerning Telecommunications, also underscores the importance of openness and non-discrimination in the provision of telecommunication services. Article 21 of the law prohibits telecommunication providers from engaging in activities that contradict the public interest, including restricting access to services that should be available to the public.

The alleged discriminatory practices by PT Telekomunikasi Indonesia (Persero) Tbk and PT Telekomunikasi Seluler in the case of blocking access to Netflix have sparked significant debate (Pamungkas, 2021). In the analysis of competition law, several key aspects must be considered to determine whether the action in question constitutes a violation of existing legal provisions or merely represents a legitimate business policy. First, the act of blocking internet access to Netflix can be examined under Article 19(d) of Law Number 5 of 1999, which prohibits discriminatory practices against certain business actors. Such discrimination occurs when a business actor receives differential treatment without a valid basis, thereby impairing its ability to compete in the market. In this case, Telkom Group exclusively blocked access to Netflix, while similar services such as HOOQ, Viu, and Iflix remained accessible on the same network. This unequal treatment serves as an indication of potentially discriminatory conduct. (Karina, 2019). Second, the "essential facilities" doctrine, which is relevant in competition law, emphasizes the obligation of business actors who control essential infrastructure to provide fair access to other market participants. PT Telekomunikasi Indonesia (Persero) Tbk and PT Telekomunikasi Seluler hold a dominant position in the provision of internet services in Indonesia, which imposes upon them a duty to ensure non-discriminatory access to internet-based services such as Netflix. By blocking access to Netflix without sufficient justification, the Telkom Group potentially violates the principle of fair access (Mustamin, 2024).

Third, the Telkom Group's justification that the blocking was carried out to protect consumers from content deemed inconsistent with Indonesian cultural values requires further scrutiny. Such an argument cannot be accepted at face value without a clear and transparent mechanism for determining what constitutes culturally appropriate content. Law Number 36 of 1999 on Telecommunications does mandate telecommunication providers to safeguard the public interest; however, any measures taken must be proportionate and must not unfairly hinder business competition. Furthermore, the absence of an effective communication mechanism between Telkom Group and Netflix in resolving the blocking issue is also a critical concern (Fadhilah, 2019). The breakdown in communication resulted in Netflix lacking clear guidance on the requirements necessary to regain access through the Telkom Group's network. This situation reinforces the perception that the blocking was not solely intended to protect consumers, but may also have served as an attempt to maintain market dominance.

Furthermore, case studies from other countries demonstrate that discriminatory actions by internet service providers can have adverse effects on the digital ecosystem. In the United States, the implementation of the net neutrality principle ensures that internet service providers cannot discriminate against specific content or services. This principle enables innovation in the digital sector to flourish without unnecessary barriers. Indonesia can draw lessons from the application of this principle to ensure that all business actors have equal opportunities to compete. Based on this analysis, the Indonesian Competition Commission's (KPPU) decision stating that no violation occurred in this case warrants reconsideration. There is a strong indication that Telkom Group's blocking of Netflix may have violated the principles of fair competition. Therefore, it is necessary to strengthen regulatory frameworks and enhance oversight to ensure that competition in the digital service sector proceeds in a fair and transparent manner (Mantili dkk., 2016).

Case studies from other countries demonstrate that discriminatory actions by internet service providers can negatively impact the digital ecosystem. For instance, in the United States, the principle of net neutrality serves as a crucial foundation to ensure that internet service providers do not discriminate against specific content or applications. This principle allows innovation in the digital sector to grow without unnecessary barriers. Based on this analysis, it can be concluded that the decision of the Indonesian Competition Commission (KPPU), which stated that no violation occurred in the case involving PT Telekomunikasi Indonesia (Persero) Tbk and PT Telekomunikasi Seluler against Netflix, warrants reconsideration. The legal principles outlined suggest that the blocking action has the potential to harm fair competition and hinder the development of Indonesia's digital ecosystem. Therefore, a more comprehensive analysis is needed to ensure that competition law truly protects the interests of both business actors and consumers in a fair and just manner.

4. Conclusion

The case involving alleged discriminatory practices by PT Telekomunikasi Indonesia (Persero) Tbk and PT Telekomunikasi Seluler against Netflix highlights the critical importance of enforcing fair competition and non-discrimination principles within Indonesia's digital ecosystem. Fair competition not only fosters innovation but also ensures added value for consumers. This reinforces the central role of regulations such as Law No. 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition, and Law No. 36 of 1999 on Telecommunications.

Telkom Group's decision in 2016 to block Netflix—while allowing similar services like HOOQ, Viu, and Iflix to remain accessible—raises questions about unequal treatment. In the context of competition law, such actions may be considered discriminatory if lacking legitimate and proportionate justification. The application of the "essential facilities" doctrine is especially relevant, as dominant providers like Telkom have an obligation to ensure fair access to their infrastructure. Blocking Netflix without sufficient legal basis potentially hinders competition and restricts consumer choice. Although Telkom Group cited cultural and consumer protection concerns, such reasoning must be supported by transparent content standards. Without clear guidelines, such measures can lead to legal uncertainty and reinforce perceptions of market dominance. Moreover, the absence of effective communication between Telkom and Netflix exacerbated the issue, depriving Netflix of a clear path to resolve the dispute.

Comparative studies, especially from the United States, show that net neutrality can prevent similar discriminatory conduct and promote innovation. Indonesia may draw lessons from these practices to ensure a level playing field in the digital sector. While KPPU concluded that no legal violation occurred, the decision remains controversial. It reveals the challenges of regulating digital competition and calls for deeper analysis to uphold the rights of businesses and consumers. Strengthening regulatory and oversight mechanisms is essential to ensure fair, transparent, and inclusive competition in Indonesia's rapidly evolving digital economy.

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