

LAW OF THE REPUBLIC OF INDONESIA

NUMBER 36 OF 1999

CONCERNING

TELECOMMUNICATION

BY THE GRACE OF GOD ALMIGHTY

THE PRESIDENT OF THE REPUBLIC OF INDONESIA

Considering:

- a. whereas the objective of the national development is to create a just and prosperous society, materially and spiritually, on the basis of the state ideology of Pancasila and the 1945 Constitution;
- b. whereas the provision of telecommunication has a strategic roles in relation to the efforts for maintaining national unity, improving the government activities efficiency, supporting the establishment of an equal distribution of development along with its results, and improving inter-nations relationship;
- c. whereas the influence of globalization and the rapid progress of telecommunication technology has led to the fundamental changes in the implementation and perceptions towards telecommunications;
- d. whereas with respect to all matters relating to the fundamental changes upon the implementation and concepts of telecommunications, a re-administration and reorganization of the national telecommunication is deemed necessary;
- e. whereas in relation to the subject matters as referred to in the above, Law Number 3 of 1989 concerning Telecommunication is deemed to be no longer suitable and therefore is needed to be amended.

Bearing in mind:

Article 5 Paragraph (1), Article 20 Paragraph (1) and Article 33 of the 1945 Constitution;

With the approval of

THE HOUSE OF REPRESENTATIVES OF THE REPUBLIC OF INDONESIA

DECIDES :

To promulgate: **LAW CONCERNING TELECOMMUNICATION.**

CHAPTER I GENERAL PROVISIONS

Article 1

Reference to the following terms in this Law shall mean:

1. Telecommunication shall mean every means of broadcasting, transmitting, and or receiving all information in the form of signs, symbol, writing, picture, voice and sound through the wire, optic and radio systems, or other electromagnetic systems;
2. Telecommunication Devices shall mean all of the equipments used in telecommunications;
3. Telecommunication Equipment shall mean a set of telecommunication tools that makes telecommunications possible;
4. Telecommunication Means and Infrastructures shall mean all that enables and support the function of telecommunications;
5. Radio Broadcast shall mean a telecommunication device that utilizes and broadcasts radio waves;
6. Telecommunication Network shall mean a chain of telecommunication device and its complementing accessories used in telecommunications;
7. Telecommunication Services shall mean telecommunication provisions to fulfill telecommunicating requirements with the use of telecommunication network;
8. Telecommunication Provider shall mean the individuals, cooperatives, Regional Government Owned Enterprises, State Owned Enterprises, private enterprises, government institutions and the national defense and security institutions;
9. Customers shall mean the individuals, legal entities, government institutions that use telecommunication network and or telecommunication services based on contracts;
10. Consumers shall mean the individuals, legal entities, government institutions that use telecommunication network and or telecommunication services not based on contracts;
11. Users shall mean consumers and users;
12. Provision of Telecommunication shall mean the act of providing telecommunication and its services to make it possible to telecommunicate;

13. Provision of Telecommunication Network shall mean the act to provide and or operate telecommunication network services in order to make the telecommunication service available;
14. Provision of Telecommunication Services shall mean the act to provide and or operate telecommunication services in order to make the telecommunication service available;
15. Provision of Special Telecommunications shall mean the provision of telecommunication with specific nature, intention and operation;
16. Interconnection shall mean the interconnection between different telecommunication networks and telecommunication network providers;
17. Minister shall mean the Minister whose scope of work and responsibility is within the field of telecommunications.

CHAPTER II PRINCIPLES AND OBJECTIVES

Article 2

Telecommunication shall be provided based on the principles of benefits, justice and equity, legal certainty, security, partnership, ethics and self-confidence.

Article 3

Telecommunication shall be carried out with the aim to support national integration and unity, to increase the people's welfare and prosperity in a just and equal manner, to support the economical life and the governance activities, and improve inter-nations relationship.

CHAPTER III DEVELOPMENT

Article 4

- (1) Telecommunication shall be controlled by the State and fostered by the Government.
- (2) The fostering of telecommunication shall be directed to escalate the establishment of telecommunication that includes the stipulation of policies, regulation, supervision and control.
- (3) The stipulation of policies, regulation, supervision and control of the telecommunication sector as referred to in Paragraph (2), shall be carried out in a comprehensive and integrated manner with due regard to the ideas and perceptions that are developing among the public as well as the global development.

Article 5

- (1) Within the framework of fostering the telecommunication sector as referred to in Article 4, the Government shall involve the participation of the public.
- (2) Public participation as referred to in Paragraph (1), is in the form of the conveyance of ideas and perceptions that growing among the public concerning the direction of telecommunication development with regard to the establishment of the policies, regulation, control and supervision in the telecommunication sector.
- (3) The implementation of public participation as referred to in Paragraph (2) shall be organized by an independent organization established for such purpose.
- (4) Members of the independent organization as referred to in Paragraph (3) shall consist of associations engaging in the telecommunication business, the telecommunication professional association, the association of telecommunication equipment producers and telecommunication intellectual communities.
- (5) The provisions concerning the procedures for public participation and the establishment of the institutions as referred to in Paragraph (3) shall be regulated under a Government Regulation.

Article 6

The Minister acts as the responsible authority pertaining to the Indonesian telecommunication administration.

CHAPTER IV IMPLEMENTATION

Part One General

Article 7

- (1) The provision of telecommunication service shall include:
 - a. the provision of the telecommunication network;
 - b. the provision of the telecommunication services;
 - c. the provision of special telecommunications.
- (2) In providing telecommunication services, the following matters should be observed:
 - a. protecting the state's interest and security;
 - b. anticipating technological development and global demand;

- c. professional and accountable implementation;
- d. public participation.

Part Two Provider

Article 8

- (1) The provision of the telecommunication network and or the provision of telecommunication services as referred to in Article 7 Paragraph (1) points a and b may be carried out by a legal body established for such purpose based on the prevailing legislation, namely:
 - a. State Owned Enterprises;
 - b. Regional Government Owned Enterprises;
 - c. Private Enterprises; or
 - d. Cooperatives.
- (2) The provision of special telecommunication services as referred to in Article 7 paragraph (1) point c, may be carried out by:
 - a. individuals;
 - b. government institutions;
 - c. legal entities in addition to telecommunication network providers and or telecommunication service providers.
- (3) Regulations concerning the provision of telecommunication services as referred to in Paragraph (1) and Paragraph (2) shall be stipulated under a Government Regulation.

Article 9

- (1) The telecommunication network provider as referred to in Article 8 paragraph (1) may provide telecommunication services.
- (2) In providing the telecommunication services, the telecommunication service providers as referred to in Article 8 paragraph (1) may utilize and or lease the telecommunication network owned by the telecommunication network providers.
- (3) The special telecommunications providers as referred to in Article 8 paragraph (2) may provide telecommunication services for:
 - a. their own need;
 - b. state defense and security needs;

- c. broadcasting requirements.
- (4) The special telecommunication providers as referred to in Paragraph (3) point a shall comprise the provision of telecommunication services for the purpose of:
 - a. individuals;
 - b. government institutions;
 - c. special official purpose;
 - d. legal entities.
- (5) Provisions on the requirements to provide telecommunication services as referred to in paragraphs (1), (2), (3) and (4) shall be regulated under a Government Regulation.

Part Three Prohibitions of Monopoly Practice

Article 10

- 1. In providing the telecommunication services, it is prohibited to carry out activities that may cause monopoly practices and unfair competition among the telecommunication providers.
- 2. The prohibition referred to in the above paragraph (1) is in compliance with the prevailing legislations.

Part Four Permits

Article 11

- (1) The provision of telecommunication services as referred to in Article 7 may be carried out upon receipt of the permit from the Minister.
- (2) The permit as referred to in paragraph (1) shall be granted with due observance to:
 - a. simple procedures;
 - b. transparent, just and indiscriminative process; and
 - c. completed within a limited time period.
- (3) Provisions concerning permit to provide telecommunication service as referred to in paragraphs (1) and (2) shall be regulated under a Government Regulation.

Part Five
The Rights and Obligations of the Providers and the Public

Article 12

- (1) Within the framework of development, operation and or maintenance of telecommunication network, the telecommunication providers may utilize or cross through state lands and or the buildings owned or controlled by the Government.
- (2) The utilization or crossing through state lands or the buildings as referred to in Paragraph (1) shall also be applicable to rivers, lakes or sea, either on the surface or at the basin.
- (3) The development, operation and or maintenance of telecommunication network as referred to in Paragraph (1) shall be carried out following the receipt of approval from the competent government institution, with due regard to the prevailing legislation.

Article 13

The telecommunication providers may utilize or cross through lands or buildings owned by individuals for the purpose of developing, operating or maintaining the telecommunication network after an agreement has been reached among the parties.

Article 14

Every telecommunication user has the same right to use the telecommunication network and services, with due regard to the prevailing legislation.

Article 15

- (1) With respect to losses incurred due to the error and or negligence of the telecommunication provider, the people suffering from such detrimental impact may demand compensation with respect to the said losses.
- (2) The telecommunication providers shall be obligated to compensate the losses referred to in Paragraph (1), unless the telecommunication provider is able to prove that the damage was not caused by his/her fault or negligence.
- (3) Provisions pertaining to the procedures to submit claims and compensation settlement as referred to in paragraphs (1) and (2) shall be regulated under a Government Regulation.

Article 16

- (1). Every telecommunication network provider and or telecommunication service provider shall be obligated to provide contribution in universal services.
- (2) The universal service contribution as referred to in Paragraph (1) shall take the form of telecommunication facilities and infrastructure and or other compensations.

- (3) Provisions on universal service contributions as referred to in Paragraph (2) shall be regulated under a Government Regulation.

Article 17

The telecommunication network providers and or telecommunication service providers shall be obligated to provide telecommunication services based on the following principles:

- a. Equal treatment and provision of the best service to all users;
- b. increase efficiency in providing telecommunication services;
- c. meet the service standard and standard provision of facilities and infrastructure.

Article 18

- (1) The telecommunication services providers shall be obligated to note/record in detail all of the telecommunication service used by telecommunication users.
- (2) In the event a user requires a record/recording on his/her usage of the telecommunication service as referred to in Paragraph (1), the telecommunication provider shall be obligated to do so.
- (3) Provisions concerning the notation/recording on the telecommunication service usage as referred to in Paragraph (1) shall be regulated under a Government Regulation.

Article 19

The telecommunication network providers shall be required to guarantee their users' freedom to use other telecommunication network to fulfill their telecommunication needs.

Article 20

Every telecommunication provider shall be obligated to prioritize the delivery, transportation and conveyance of important information relating to:

- a. state security;
- b. the safety of a man's life and property;
- c. natural disaster;
- d. danger; and or
- e. epidemic.

Article 21

The telecommunication providers shall be prohibited from carrying out telecommunication business activities that contradicts the public interest, morality, security, or public order.

Article 22

No one shall be permitted to carry out any actions of unrightfully, unlawfully, or manipulating:

- a. access to a telecommunication network; and or
- b. access to a telecommunication service; and or
- c. access to a special telecommunication network.

Part Six Numbering

Article 23

1. In providing telecommunication network and the “9892” telecommunication service, a numbering system shall be stipulated and utilized.
2. The Minister shall stipulate the numbering system as referred to in paragraph (1).

Article 24

The request to obtain a number by a telecommunication network provider and or a telecommunication service provider shall be approved based on the numbering system as referred to in Article 23.

Part Seven Interconnection and Tariffs for the Right to Implement

Article 25

- (1) Every telecommunication network provider shall be entitled to acquire interconnection from other telecommunication network providers.
- (2) Every telecommunication network provider shall be obligated to provide interconnection upon request from another telecommunication network provider.
- (3) The execution of rights and responsibilities as referred to in paragraphs (1) and (2) shall be carried out based on the following principles:
 - a. efficient utilization of the resources;
 - b. harmony between the system and the telecommunication device;
 - c. improvement of the service quality; and
 - d. maintain a healthy competition that will not inflict any detrimental effect.
- (4) The provisions on telecommunication network interconnection, rights and responsibilities as referred to in paragraphs (1), (2) and (3) shall be regulated under a Government Regulation.

Article 26

1. Every telecommunication network provider and or telecommunication service provider shall be required to pay a fee for the right to provide telecommunication services that is based on the percentage of income.
2. The provisions on the fees for the right to provide telecommunication services as referred to in Paragraph (1) shall be regulated under a Government Regulation.

Part Eight Tariffs

Article 27

The composition of the tariffs for the right to provide a telecommunication network and or to provide telecommunication services shall be regulated under a Government Regulation.

Article 28

The range of the tariff for the provision of a telecommunication network and or to provide telecommunication services shall be determined by the telecommunication network provider and or telecommunication service provider based on a formula stipulated by the Government.

Part Nine Special Telecommunications

Article 29

- (1) The special telecommunications as referred to in Article 9 paragraph (3) points a and b shall not be permitted to be linked to other telecommunication network providers.
- (2) The special telecommunication providers as referred to in Article 9 paragraph (3) point c may be linked to other telecommunication network providers provided that it is used for broadcasting purposes.

Article 30

- (1) In the event that a telecommunication network provider and or telecommunication service provider is not yet capable of providing access in a certain area, therefore the special telecommunication provider as referred to in Article 9 paragraph (3) point a may provide a telecommunication network and or telecommunication service as referred to in Article 7 paragraph (1) points a and b upon receipt of a permit from the Minister.
- (2) In the event that a telecommunications network provider and or service provider is capable of providing access in the area as referred to in paragraph (1), then the special telecommunication provider may continue to operate its telecommunication network and or provide its telecommunication services.

- (3) Requirements to obtain a permit as referred to in paragraph (1) shall be regulated under a Government Regulation.

Article 31

- (1) In the event the special telecommunications provider for the purpose of state security defense as referred to in Article 9 paragraph (3) point b is not yet able or incapable to support such activities, the said special telecommunications provider may use or take advantage of the telecommunication network it possesses and or use the ones utilized by other telecommunications providers.
- (2) Further provisions as referred to in paragraph (1) shall be regulated under a Government Regulation.

Part Ten

Telecommunication Equipment, Radio Frequency Spectrum and Satellite Orbit

Article 32

- (1) The telecommunication equipments that are put up for sale, made, assembled, brought into or used within the territory of the Republic of Indonesia must observe the technical rules and regulations based on the permits pursuant to the prevailing legislation.
- (2) The provisions on technical requirements for the telecommunication equipment as referred to in Paragraph (1) shall be regulated under a Government Regulation.

Article 33

- (1) A permit from the Government must be obtained prior to the use of the radio frequency spectrum and satellite orbit.
- (2) The utilization of the radio frequency spectrum and satellite orbit must conform to its designation and shall not disturb one to another.
- (3) The Government shall monitor and control the utilization of the radio frequency spectrum and satellite orbit.
- (4) Provisions on the utilization of the radio frequency spectrum and satellite orbit used in providing the telecommunication services shall be regulated under a Government Regulation.

Article 34

- (1) The radio frequency spectrum users shall be obligated to pay a fee with respect to the usage of such frequency, the amount of which shall be based on the type and width of the frequency band used.
- (2) The satellite orbit users shall be obligated to pay the fee with respect to the rights to use the satellite orbit.

- (3) Provisions concerning the fees as referred to in paragraphs (1) and (2) shall be regulated under a Government Regulation.

Article 35

- (1) The telecommunication equipment used by vessels under foreign flags from and to the Indonesian maritime territories and or operated within the Indonesian maritime territory shall not be required to meet the technical requirements as referred to in Article 32.
- (2) Foreign vessels within the Indonesian territories shall be prohibited to use the radio frequency spectrum outside of its designation, with the following exceptions:
- a. for state security purposes, to save people's lives and properties, national disasters, dangers, epidemic, navigation, and maritime traffic; or
 - b. is linked to the telecommunication network that is being operated by the telecommunication providers; or
 - c. is a part of the satellite communication system that is used in accordance with the prevailing legislation with regard to the provision of mobile marine telecommunication for official purposes.
- (3) Provisions on the use of radio frequency spectrum as referred to in Paragraph (2) shall be regulated under a Government Regulation.

Article 36

- (1) The telecommunication equipments used by foreign civil airlines from and to the Indonesian aerial territories shall not be required to meet the technical requirements as referred to in Article 32.
- (2) It is against the law for foreign civil airlines to use the radio frequency spectrum within the Indonesian territory outside its purpose, unless due to the following:
- a. for state security purposes, to save people's lives and properties, national disasters, dangers, epidemic, navigation, and airway traffic; or
 - b. is linked to the telecommunication network that is being operated by the telecommunications provider; or
 - c. is a part of the satellite communication system that is used in accordance with the prevailing legislation with regard to the provision of mobile air telecommunication for official purposes.
- (3) Provisions on the use of the radio frequency spectrum as referred to in Paragraph (2) shall be regulated under a Government Regulation.

Article 37

The grant of permits to the foreign diplomatic offices in Indonesia to use the telecommunications equipment with radio frequency spectrum shall be carried out with due regard to the reciprocal principle.

Part Eleven
Telecommunication Security

Article 38

Any person is prohibited to carry out an action that may cause physical and electromagnetic disorder on the provision of telecommunication.

Article 39

- (1) The telecommunication providers shall be obligated to secure and protect the telecommunication network installation that is used for the provision of telecommunication.
- (2) Provisions on the security and protection as referred to in Paragraph (1) shall be regulated under a Government Regulation.

Article 40

No one is permitted to tap any information that is transmitted through the telecommunication network.

Article 41

To present an accurate evidence on the utilization of the telecommunication facilities upon request from the telecommunication service user, the telecommunication service provider shall be obligated to prepare a record on the entire utilization of the telecommunication facilities by the user and this recording shall be carried out in accordance to the prevailing legislation.

Article 42

- (1) The telecommunication service providers shall be obligated to maintain the confidentiality of all information sent and or received by telecommunication service customers through the telecommunication network and or telecommunication service available.
- (2) With respect to the criminal justice court process, the telecommunication service providers may record information they sent or received and may present the necessary information, considering there is:
 - a. a written request from the Attorney General and or the Republic of Indonesia's Chief of Police with respect to a certain criminal action;
 - b. a request from the investigator in charge of such particular criminal action that conforms to the prevailing legislations.

- (3) Provisions on the procedures of requesting and submitting information on the recordings as referred to in Paragraph (2) shall be regulated under a Government Regulation.

Article 43

It will not be deemed as a violation against the provisions of Article 40 if a telecommunication service provider submits a recorded information to a telecommunication service user through the method as referred to in Article 41 and for court process purposes as referred to in Article 42 paragraph (2).

CHAPTER V INVESTIGATION

Article 44

- (1) Other than the Investigating Officers from the Republic of Indonesia's Police Department, certain Civil Officials from the Department which is in charge of the tasks and responsibilities in the telecommunication sector, shall be granted a special authority as the investigator as meant in the Law on Criminal Procedures with respect to investigations on criminal action in the telecommunication sector.
- (2) The Civil Servant Officials as referred to in paragraph (1) shall be authorized to:
- a. carry out an investigation according to the actual report or information relating to illegal acts in the telecommunications sector;
 - b. conduct investigation on a person and or a legal body that is suspected to have committed a crime in connection with the telecommunication sector;
 - c. discontinue the suspect's usage of a telecommunication device and or equipment that has deviated from its course;
 - d. summon a person to a hearing session and examine him/her as a witness or a suspect;
 - e. investigate the telecommunication device and or equipment suspected to have been used or connected to the illegal action in the telecommunication sector.
 - f. inspects the location suspected to have been used to perform illegal actions pertaining to telecommunications;
 - g. seal and or confiscate the telecommunication device and or equipment used or suspected to be related to the criminal activity in the telecommunication sector.
 - h. request professional assistance to conduct an investigation on criminal action in the telecommunication sector.
 - i. terminate the investigation.

3. The authority for investigation as referred to in Paragraph (2) shall be carried out in accordance with the provisions of the Law on Criminal Procedures.

CHAPTER VI ADMINISTRATIVE SANCTIONS

Article 45

Anyone who violates the provisions of Article 16 Paragraph (1), Article 18 Paragraph (2), Article 19, Article 21, Article 25 Paragraph (2), Article 26 Paragraph (1), Article 29 Paragraph (2), Article 33 Paragraph (1), Article 33 Paragraph (2), Article 34 Paragraph (1) or Article 34 Paragraph (2), shall be subjected to an administrative sanction.

Article 46

- (1) The administrative sanction as referred to in Article 45 shall mean the revocation of permit.
- (2) The revocation of permits as referred to in paragraph (1) shall be carried out after provision of a written warning.

CHAPTER VII CRIMINAL PROVISIONS

Article 47

Anyone who violates the provisions as referred to in Article 11 paragraph (1) shall be sentenced by a maximum jail of 6 (six) years and or charged with a maximum fine of Rp.600,000,000.00 (six hundred million rupiahs).

Article 48

The telecommunication network provider who violates the stipulation as referred to in Article 19 shall be sentenced by a maximum jail of 1 (one) year and or charged with a maximum fine of Rp.100,000,000.00 (one hundred million rupiahs).

Article 49

The telecommunication provider who violates the provisions as referred to in Article 20 shall be sentenced by a maximum jail of 2 (two) years and or charged with a maximum fine of Rp. 200,000,000.00 (two hundred million rupiahs).

Article 50

Anyone who violates the provisions as referred to in Article 22 shall be subjected to a maximum jail sentence of 6 (six) years and or charged with a maximum fine of Rp. 600,000,000.00 (six hundred million rupiahs).

Article 51

Anyone who violates the provisions as referred to in Article 29 Paragraph (1) or Article 29 Paragraph (2) will be detained for a maximum period of 4 (four) years and or charged a maximum fine of Rp. 400,000,000.00 (four hundred million rupiahs).

Article 52

Anyone who trades, invents, assembles, brings into or utilize the telecommunication equipment within the territory of the Republic of Indonesia but does not comply with the technical requirements as referred to in Article 32 paragraph (1) shall be sentenced by a maximum jail of 1 (one) year and or charged with a maximum fine of Rp. 100,000,000.00 (one hundred million rupiahs).

Article 53

- (1) Anyone who violates the provisions as referred to in Article 33 paragraph (1) or Article 33 paragraph (2) shall be sentenced by a maximum jail of 4 (four) years and or charged with a maximum fine of Rp. 400,000,000.00 (four hundred million rupiahs).
- (2) In the event the criminal action as referred to in Paragraph (1) caused the death of a person, it shall be sentenced by a maximum jail of 15 (fifteen) years.

Article 54

Anyone who violates the provisions as referred to in Article 35 Paragraph (2) or Article 36 Paragraph (2) shall be sentenced by a maximum jail of 2 (two) years and or charged with a maximum fine of Rp. 200,000,000.00 (two hundred million rupiahs).

Article 55

Anyone who violates the stipulation as referred to in Article 38 shall be sentenced by a maximum jail of 6 (six) years and or charged with a maximum fine of Rp.600,000,000.00 (six hundred million rupiahs).

Article 56

Anyone who violates the stipulation as referred to in Article 40 shall be sentenced by a maximum jail of 15 (fifteen) years.

Article 57

The telecommunication service provider who violates the provisions referred to in Article 42 paragraph (1) shall be sentenced by a maximum jail of 2 (two) years and or charged with a maximum fine of Rp.200,000,000.00 (two hundred million rupiahs).

Article 58

The telecommunication device and equipment that are used for illegal actions as referred to in Articles 47, 48, 52 or 56 will be confiscated by the state and or destroyed according to the prevailing legislation.

Article 59

The actions referred to in Articles 47, 48, 49, 50, 51, 52, 53, 54, 55, 56 and 57 are crimes.

CHAPTER VIII TRANSITORY PROVISIONS

Article 60

Upon enactment of this Law, the telecommunication providers as referred to in Law Number 3 of 1989 concerning Telecommunications may continue to carry out their activities under the condition that after no later than 1 (one) year as of the enactment of this Law, he/she shall comply with this Law.

Article 61

- (1) Upon enactment of this Law, certain rights granted by the Government to the Implementing Body for a certain period pursuant to Law Number 3 of 1989 shall remain effective.
- (2) The validity period of certain rights as referred to in Paragraph (1) may be reduced based on the agreement between the Government and the Implementing Body.

Article 62

On enactment of this Law, all implementing regulations for Law Number 3 of 1989 concerning Telecommunications (State Gazette Number 11 of 1989, Supplementary State Gazette Number 3391) shall remain valid providing that they do not contradict with and or have not been replaced by the new regulations based on this Law.

CHAPTER IX CLOSING

Article 63

Upon enactment of this Law, Law Number 3 of 1989 concerning Telecommunications shall be declared no longer effective.

Article 64

This Law shall enter into force 1 (one) year as of the date of its enactment.

For everyone to take cognizance thereof, this Law shall be promulgated by placing it in State Gazette of the Republic of Indonesia.

Ratified in Jakarta.
Dated: September 8, 1999
THE PRESIDENT OF THE REPUBLIC OF INDONESIA,

(signed)
BACHARUDDIN JUSUF HABIBIE

Promulgated in Jakarta.
On September 8, 1999
STATE SECRETARY
THE REPUBLIC OF INDONESIA,
(signed)
MULADI

STATE GAZETTE OF THE REPUBLIC OF INDONESIA NUMBER 154 OF 1999.

**ELUCIDATION
ON THE
AMENDMENT OF
THE LAW OF THE REPUBLIC OF INDONESIA
NUMBER 36 OF THE YEAR 1999
ON
TELECOMMUNICATIONS**

GENERAL

Since the declaration of the Law Number 3 of 1989 on Telecommunications, the development and provision of telecommunication services has shown a strong increase in significance with regard to its role and strategy in supporting and encouraging the activities of economy, stabilizing defense and security, enhance the people's intelligence, provide efficiency to government activities, strengthen national unity pertaining to the Archipelago concept, and stabilizing national protection while improving international relationships.

Global environmental changes and the technological progress of telecommunications that occurs extremely rapid has driven towards fundamental transitions, creating new telecommunication environments, and has changed the perceptions in provision of the telecommunication services, including the convergences of technology on information and broadcasting, thus making it essential to rearrange the process of national provision of the telecommunication service.

Adjustment in providing telecommunication services at the national level has already become an apparent necessity, considering the rise of the capacity of private sectors in providing telecommunication services, comprehending the technical know-how of telecommunications, and the competitive accomplishments in fulfilling the needs of society.

The technological development of international telecommunications that is followed by the boost of its use as a business commodity, which possesses a high commercial value, has encouraged the emergence of various multilateral agreements.

As a nation active in developing relationships with other nations based on its national importance, Indonesia's participation in several multilateral agreements initiates a number of consequences that need to be faced and followed. Since the signing of the "General Agreement on Trade and Services" (GATS) in Marrakech, Morocco, on 15th April 1994, which has been ratified by Law Number 7 of 1994, the execution of national telecommunications has become a part that cannot be separated from the global trade system.

Coinciding with the global trade principle that emphasizes on independent trade and indiscrimination, Indonesia must prepare itself to adapt to this method in executing telecommunication.

Taking the above matters into account, therefore the role of the Government is stressed on the development of telecommunications that covers issues on policies, regulation, control and supervision with the people's participation.

Increasing public participation in providing telecommunication services does not decrease the basic principles that is contained in Article 33 Paragraph (3) of the 1945 State

Constitution, i.e. that land and water and the riches of nature it possesses is owned by the nation and is used completely for the welfare of the people. Hence, matters that relate to the use of radio frequency spectrum and satellite orbit are limited resources owned by the nation.

By constantly stepping toward the direction and policies of national development and by observing the national and international progress growing, particularly concerning telecommunication technology, the legal norms for the development and execution of telecommunication arranged in Law Number 3 of 1989 regarding Telecommunications need to be amended.

ARTICLE BY ARTICLE

Article 1

Sufficiently clear.

Article 2

The provision of telecommunication services attentively observes the principle of national development by putting into priority the principle of utilization, the principle of justice and equity, the principle of legal certainty and the principle of self confidence, while paying attention to the principles of security, partnership and code of ethics.

The principle of utilization means that telecommunication development, specifically the provision of telecommunication services, will become more useful and effective as an infrastructure for development, a means for managing a government, a means for education, a means for communication, and also as an economical commodity that can elevate the people's welfare both physically and psychologically.

The principle of justice and equity is that provision of the telecommunication service provides similar opportunities and treatment for all who fulfill the demanded requirements and all members of society may equally enjoy its outcome.

The principle of legal certainty signifies that telecommunication development, specifically the provision of telecommunication services, must be based on legal terms that guarantee legal certainty, and that it provides legal protection for the investors, the telecommunication providers and the telecommunication users. Utilizing the nation's natural resources to its ultimate limit performs the principle of self-confidence.

The principle of partnership implies the meaning that provision of the telecommunication service must be capable of building a harmonic atmosphere and reciprocal relationship, in addition to synergy in the provision of telecommunication services. The principle of security is intended so that the provision of telecommunication services will be based by with the spirit of professionalism, honesty, good moral conduct and openness.

Article 3

The objective of provision of the telecommunication service in this resolution may be achieved, among others by way of reforming telecommunications to improve the work performance of the telecommunication providers with regard to confronting globalization, prepare telecommunication sectors to enter appropriate and professional business competition through a transparent regulation, and to open more business opportunities for small and middle class entrepreneurs.

Article 4

Paragraph (1)

Considering telecommunications is one of the branches of an important and strategic production in national life, therefore it is controlled by the state where its execution is aimed largely for the significance and welfare of the people.

Paragraph (2)

The function of setting down the policies, which are among others formulating the fundamental strategic schemes and the basic technical plans for national telecommunications.

The arrangement function embraces the activities that are common in the manner and or technical operational that, among others, reflect from the procedures of obtaining permits and the requirements for providing telecommunication services.

The control function is conducted by means of guidance and counseling on provision of the telecommunication service.

The function of monitoring and control over the provision of telecommunication services includes comprehension, business, input, assembling, frequency usage and satellite orbit, plus telecommunication devices, equipments, methods and infrastructure.

The Minister carries out the functions of policy-making, regulation, control and supervision. Corresponding with the development situation, these functions can be delegated to a certain regulation board.

With regard to the effectiveness of development, the Government performs coordination with relevant institutions, the telecommunication providers and the participating members of society.

Paragraph (3)

Sufficiently clear.

Article 5

Paragraph (1)

Sufficiently clear.

Paragraph (2)

Sufficiently clear.

Paragraph (3)

Sufficiently clear.

Paragraph (4)

Sufficiently clear.

Paragraph (5)

Sufficiently clear.

Article 6

In accordance with the decree of the International Telecommunications Convention, reference to Telecommunication Administration is a Nation that is represented by its government. In this case, Telecommunication Administration performs the rights and obligations of the International Telecommunication Convention, as well as the rules and regulations that go along with it.

Indonesian Telecommunication Administration also carries out the rights and obligations of other international regulations such as the regulations declared by INTELSAT (International Telecommunication Satellite Organization) and INMARSAT (International Maritime Satellite Organization) and also other international agreements on telecommunications that Indonesia has ratified.

Article 7

Paragraph (1)

Point a

Sufficiently clear.

Point b

Sufficiently clear.

Point c

The execution of special telecommunications is, among others, required for meteorology and geophysical affairs, television and radio broadcasting, navigation, flights, search and rescue teams, radio amateurs, radio communication among citizens and for the execution of special telecommunications for certain government or private institutions.

Paragraph (2)

Sufficiently clear.

Article 8

Paragraph (1)

Sufficiently clear.

Paragraph (2)

Sufficiently clear.

Paragraph (3)

Sufficiently clear.

Article 9

Paragraph (1)

Sufficiently clear.

Paragraph (2)

Telecommunication service providers who require telecommunication networks may use their own network and or rent it from another telecommunication network provider.

A rented telecommunication network is essentially used for individual need, however if it is leased to another party, thus the leasing party must acquire a permit to become a telecommunication network provider.

Paragraph (3)

Sufficiently clear.

Paragraph (4)

Point a

What is meant by executing special telecommunications for individual use is providing telecommunication services to fulfill the need of one separate person alone, for instance radio amateurs and citizens as radio communicators.

Point b

The definition of executing special telecommunications for certain government or private institutions is providing telecommunication services to support the general duties of the institution, for example the communication system of the ministry or provincial government communication.

Point c

Reference to executing special telecommunications for specific official use is providing the telecommunication system for its execution to support relevant official activities, among others navigation activities, flights or for meteorological affairs.

Point d

The definition of the term executing special telecommunications for legal entities is the provision of telecommunication services by State Owned Enterprises, Regionally Owned Enterprises, private enterprises or cooperatives, for instance banking telecommunication, mining telecommunication or railway telecommunication.

Paragraph (5)

Sufficiently clear.

Article 10

Paragraph (1)

This article is meant to activate healthy competition among the telecommunication providers in carrying out their activities.

The prevailing legislation referred here is Law Number 5 of 1999 that Prohibits Monopoly Practices and Inappropriate Business Competition along with the rules of its implementation.

Paragraph (2)

Sufficiently clear.

Article 11

Paragraph (1)

Granting permits to provide telecommunication services indicates efforts from the Government to encourage the growth of positive provision of the telecommunication service correlating to its development.

The Government shall be obligated to regularly publicize the regions/districts that are open for executing networks and or telecommunication services.

Provision of the telecommunication service should fulfill the requirements arranged in permits. A permit is also given to provide telecommunication services for experimental needs.

Paragraph (2)

Sufficiently clear.

Paragraph (3)

Sufficiently clear.

Article 12

Paragraph (1)

The intention of permitting the utilization or traversing state lands and or buildings owned or controlled by the Government is to simplify procedures for the telecommunication providers.

Paragraph (2)

Sufficiently clear.

Paragraph (3)

The definition of the government institution here is the institution that owns, utilizes the land and or building or has direct authority over it.

Article 13

What individuals mean here is a person and or legal body that has direct authority over the land and or building that is utilized or crossed over, in addition to owning and or personally uses it.

In order to provide legal protection on a person's right of ownership, thus to be able to use the land and or building, an approval from the owner must be obtained.

Article 14

Sufficiently clear.

Article 15

Paragraph (1)

The telecommunication provider gives an exchange of loss to the user or any member of society who somehow suffers loss due to the fault or negligence of the telecommunication provider.

Paragraph (2)

Sufficiently clear.

Paragraph (3)

Settling the exchange of loss is handled by a mediator, arbitrator or a conciliator. This method is meant as an effort for all parties to attain an immediate completion. Should the above method be unsuccessful in achieving a settlement, the matter may then be brought to court.

Article 16

Paragraph (1)

Universal service obligation is an obligation to provide a telecommunication network so that the need of the people, particularly those in remote areas and or undeveloped regions, may have access to telephones.

In determining the universal service obligation, the government focuses on the principle of the availability of telecommunication services that can reach the people in the regions while concentrating on good quality and reasonable tariffs.

Universal service obligation is provided particularly for regions that are geographically in remote locations and have not yet economically developed yet requires excessive development funds, including in pioneer areas, hinterlands, suburbs, isolated and or zones that are not economically advantageous.

The obligation to build telecommunication facilities for universal services is allocated to the permanent telecommunication network providers who have acquired permits from the government by providing Direct Long Distance Call services and or local connection services. Telecommunication network providers receiving other types of these two services shall be obligated to pay contributions.

Paragraph (2)

Other compensations stated in the universal service obligation are contributions for development that is allocated through interconnection fees.

Paragraph (3)

Sufficiently clear.

Article 17

Sufficiently clear.

Article 18

Paragraph (1)

Noting down the usage of telecommunication services is an obligation for the providers and it is to be done in stages, while also being applicable for Direct Domestic Long Distance Calls and Direct International Calls whenever requested by the telecommunication service user.

Recordings of the telecommunication service usage are detailed billing data that are used to prove the usage of the telecommunication service.

Paragraph (2)

Sufficiently clear.

Paragraph (3)

Sufficiently clear.

Article 19

When a telecommunication network is connected with several other networks that provide the same services, then the network user must guarantee the freedom to choose any one of the networks connected through the numbering system that has been confirmed.

Basically the user shall be entitled to choose the network provider and or the telecommunication service provider to deliver the telecommunication connection. In its implementation, the network provider and or telecommunication service provider could change the connection route from the user to another network provider without the knowledge of the user.

If this occurs, this is against the principles of healthy competition and would cause loss to both the provider and the user.

Article 20

Sending information is the first stage of the telecommunication process, which is followed by the action of forwarding through channels as the mid process, and finally the action of delivering information for intended recipients. The priority of sending, forwarding and delivering information that will be determined by the government is among others news of catastrophes.

Article 21

After receiving information that a telecommunication provider is strongly and convincingly suspected of having upset the public, conduct immoral activities, disturb peace and security, the government may cease the operations of that telecommunication provider's business.

Article 22

Sufficiently clear.

Article 23

Paragraph (1)

This order is meant for the requirement of the numbering system for the telecommunication network providers and service providers, so that its use may be accomplished justifiably and coinciding with the international decree. These numbers are a series of characters in the form of figures comprised of access codes and customer registration numbers that are used to identify an address of a telecommunication network or service.

Paragraph (2)

Numbering is a limited resource, which is why the Minister arranges it and distributes it evenly.

The numbering of telecommunication network is connected with technology and the international regulations.

Article 24

Sufficiently clear.

Article 25

Paragraph (1)

Sufficiently clear.

Paragraph (2)

Sufficiently clear.

Paragraph (3)

Sufficiently clear.

Paragraph (4)

Sufficiently clear.

Article 26

Paragraph (1)

The fee for the right to provide telecommunication services is an obligation that must be paid by the telecommunication network provider or service provider as a compensation for the permit obtained to carry out their activities. The amount is determined based on the percentage of income and is a Non-Tax Government Income that is deposited to the State Treasurer.

Paragraph (2)

Sufficiently clear.

Article 27

Tariff categories for the telecommunication networks and or services cover the structures and types of tariffs, whereas the government determines tariffs. Based on the structures and types, telecommunication network providers and service providers are able to calculate the amount of their tariff.

Tariff structures comprise of the fee for installation (activation), customer's monthly fee, usage fee and additional service fee (feature).

Tariff types consist of the domestic telephone call tariffs, the direct long distance call tariffs, direct international call tariffs and airtime for mobile telephones.

Article 28

The formula stated in this clause is a calculation technique to determine the amount of a tariff.

The tariff formula consists of the beginning tariff formula and the modification tariff formula.

In concluding the beginning tariff formula, the cost component must be focused on; meanwhile for the modification tariff formula we must also note other factors such as inflation, people's capacity and the continuance of telecommunication development.

Article 29

Paragraph (1)

The prohibition for special the telecommunication providers to be connected to other telecommunication network providers is meant to uphold legal certainty for the range of the special telecommunication provider that actually only need it personally.

Paragraph (2)

Sufficiently clear.

Article 30

Paragraph (1)

This clause is meant overcome the problem of needing a telecommunication service provider in an area that due to some reason cannot yet be reached by the telecommunication service providers. Therefore, this law finds it necessary to give opportunity to special the telecommunication providers who actually operate for themselves to then provide telecommunication services for the people residing within that area.

Paragraph (2)

Special the telecommunication providers who provide telecommunication network and or services may continue operating their telecommunication network and services considering the investment they have made and the continuation of services for the users.

In this case, the relevant special telecommunication provider shall be obligated to fulfill all existing rules for a telecommunication network provider and or service provider.

Paragraph (3)

Sufficiently clear.

Article 31

Paragraph (1)

For state defense and security requirements, the telecommunication facilities owned by other the telecommunication providers may be used.

Utilizing a telecommunication network as referred to in this passage is conducted as long as it is for the purpose of state security defense, the Indonesian National Armed Forces in this case. This is applicable when the telecommunication facility of the Indonesian National Armed Forces does not function or is not available.

This clause is not applicable when the country is in a dangerous situation.

Paragraph (2)

Sufficiently clear.

Article 32

Paragraph (1)

Proper technical qualifications of a telecommunication device/equipment are obligations required for the telecommunication device/equipment so that it does not disturb other telecommunication devices/equipments and or networks when operated.

The technical qualifications stated in the paragraph above is more intended for the function of telecommunication devices/equipments, such as electric/electronic parameters while also observing other aspects in addition to electric/electronic parameters according to existing rules and other aspects, for instance the environment, safety and health conditions.

To guarantee that required standards of the telecommunication devices/ equipments are fulfilled, every telecommunication device and equipment must be examined by the test center that has been approved by the government or an authorized institution. These rules concerning the technical qualifications must also bear in mind the technical standards justified internationally, consider public importance, and must be based on open technology

Paragraph (2)

Sufficiently clear.

Article 33

Paragraph (1)

Granting a permit for the use of the radio frequency spectrum and satellite orbit is based on the availability of the radio frequency spectrum that has been allocated for the purpose

of provision of the telecommunication service including broadcasting that are suitable for it. The radio frequency allocation table is distributed out and thus transparently acknowledged by the public. Whenever the availability of radio frequency spectrum and satellite orbit does not fulfill the demand or need for provision of the telecommunication service, then acquiring a permit among others is possible by way of performing an auction.

Paragraph (2)

Radio frequency is the total number of electromagnetic vibrations for 1 (one) period; meanwhile the radio frequency spectrum is an accumulation of the radio frequency.

The use of radio frequency is based on the space, number of vibrations and the bandwidth that can only be used by one party. Using it collectively in a certain space, the total vibrations and a similar band or nearby will mean disturbing one another.

Frequency in telecommunications is used to convey or deliver information. Hence, in order to convey or deliver information in good condition without any disturbance, then the use of the frequency must be arranged. The arrangement of frequencies is among others the allocation of frequency band and its allotment.

Satellite orbit is a passage in the skies that is passed by a certain satellite mass center. The satellite orbit consists of the geo-stationer satellite orbit, the low satellite orbit and the middle satellite orbit.

The geo-stationer satellite orbit is a passage that is passed by a certain satellite mass center caused by earth's gravitation power and possesses a permanent position above earth. This geo-stationer satellite orbit is located at a height of 36,000 km above the equator.

The low and middle satellite orbits are passages passed by a certain satellite mass center with temporary positions above the planet earth. The height of the low satellite orbit is approximately 1,500 km away while the middle satellite orbit is about 11,000 km away.

Paragraph (3)

Sufficiently clear.

Paragraph (4)

Sufficiently clear.

Article 34

Paragraph (1)

The fee with respect to the rights to use the radio frequency spectrum is the compensation on the use of the frequency according to the permit in hand. In addition to that, the costs for the use of the frequency are also a means to control and coordinate radio frequencies, being a limited resource, to be used to its maximum capacity.

The amount of the fee for the use of the frequency is based upon the type and bandwidth of the frequency. The frequency type will affect the capacity/amount of information that can be conveyed/delivered.

Paragraph (2)

Sufficiently clear.

Paragraph (3)

Sufficiently clear.

Article 35

Paragraph (1)

The Indonesian ocean territories as referred to in this passage refer to the entire seawaters within the boundaries of the Republic of Indonesia, including inland waters.

In connection to this, the meaning reaches the concept of an archipelago as accepted in the United Nations Convention regarding International Ocean Law that was further ratified with Law Number 17 of 1985.

Since these foreign vessels are already supplied with telecommunication equipments where its installation and operation abides by the laws valid in their country, consequently the resolutions on technical requirements declared by the Minister cannot apply to them.

The use of their telecommunication equipment within Indonesia's ocean territory must, in any case, practice the existing international laws, i.e. not disturb one another and concur to its purpose.

Paragraph (2)

The prohibition to use the radio frequency spectrum of the satellite orbit within the ocean territories of Indonesia is meant to protect the security of the nation and to prevent any loss or harm upon the provision of telecommunication services.

The maritime mobile service is a telecommunication system between coastal stations and vessel telecommunication stations, among ship stations, among ships' supplement communication stations, rescue vehicles' stations or buoy stations with radios for emergency positions.

This clause is only valid for civilian vessels and not for ships owned by the Indonesian Armed Forces.

Paragraph (3)

Sufficiently clear.

Article 36

Paragraph (1)

The technical rules on telecommunication equipment resolved by the Government cannot be applied to foreign airliners because the foreign aircrafts abide the laws valid in their country.

The use of their telecommunication equipment must, in any case, practice the existing international laws, i.e. not disturb one another and concur to its purpose.

Paragraph (2)

The prohibition to use the radio frequency spectrum of the satellite orbit within the aerial territories of Indonesia is meant to protect the security of the nation and to prevent any loss or harm upon the provision of telecommunication services. Aeronautical mobile service is a telecommunication system between the airport station and the airplane station, among the airplane stations that also could include rescue vehicle stations, and radio marker stations for emergency positions.

Paragraph (3)

Sufficiently clear.

Article 37

The principle of reciprocal relationships meant in this article is the principle in international relationships which is to furnish the same treatment to foreign diplomatic offices in Indonesia as is offered to Indonesia's diplomatic offices in relevant countries.

Article 38

Actions that may cause disorder upon provision of the telecommunication service could be by way of the following:

- a. physical action that leads to the damage of a telecommunication network until it cannot function as it should;
- b. a physical action that causes the telecommunication connection to malfunction;
- c. the use of a telecommunication device that is no longer suitable with the existing rules on technical requirements;
- d. the use of a telecommunication device that works with radio waves that are inappropriate, subsequently causing disorder upon other the telecommunication providers; or
- e. the use of a non-telecommunication device that is improper, thus creating negative technical effects on a provision of the telecommunication service.

Article 39

Paragraph (1)

Telecommunication security actions are performed by the telecommunication provider beginning from development planning until the end of operation period. The scope of the development plan among others includes the designs and construction, which has to take into account protection and security from electromagnetic disturbance, nature and environment.

Correlating to the security and protection of installation, the provider invites the peoples' participation and coordinates with the authorities.

Paragraph (2)

Sufficiently clear.

Article 40

Reference to tapping (bugging) in this article is the act of attaching a device or supplementary gadget onto a telecommunication network for the purpose of obtaining information by means of an illegal procedure. Basically information possessed by someone is his/her private right to confidentiality that must be protected, therefore tapping is prohibited.

Article 41

Recording information, among others, is recording a conversation between parties telecommunicating.

Article 42

Paragraph (1)

Sufficiently clear.

Paragraph (2)

Reference to a criminal justice court process in this clause includes investigating, suing and putting to trial.

Point a

What is meant by a certain criminal action is an illegal action with a sentence of imprisonment for a period of 5 (five) years or more, a lifetime or the death penalty.

Point b

An example of a certain criminal action according to the prevailing legislations is an illegal action applicable to the Laws on Narcotics and a crime as referred to in the Laws on Psychotropic.

Paragraph (3)

Sufficiently clear.

Article 43

Sufficiently clear.

Article 44

Paragraph (1)

Sufficiently clear.

Paragraph (2)

Sufficiently clear.

Paragraph (3)

Sufficiently clear.

Article 45

Penalizing administrative sanctions in this clause is meant as the Government's effort to control and coordinate provision of the telecommunication service.

Article 46

Paragraph (1)

Sufficiently clear.

Paragraph (2)

Sufficiently clear.

Article 47

Sufficiently clear.

Article 48

Sufficiently clear.

Article 49

Sufficiently clear.

Article 50

Sufficiently clear.

Article 51

Sufficiently clear.

Article 52

Sufficiently clear.

Article 53

Paragraph (1)

Sufficiently clear.

Paragraph (2)

Sufficiently clear.

Article 54

Sufficiently clear.

Article 55

Sufficiently clear.

Article 56

Sufficiently clear.

Article 57

Sufficiently clear.

Article 58

Sufficiently clear.

Article 59

Sufficiently clear.

Article 60

Sufficiently clear.

Article 61

Paragraph (1)

The telecommunication providers Organization is the Providers Organization as referred to in Law Number 3 of 1989.

Paragraph (2)

The definition of certain rights in this clause is the exclusive rights to execute permanent telecommunication services for local connections, Direct Domestic Long Distance Calls and Direct International Calls provided by the Government and the Organization of The telecommunication providers.

Parallel to the nature of this Law that will end monopoly in the field of telecommunications, the Government can reduce the period of effectiveness of those certain rights.

To quickly end the period of effectiveness of the certain rights, a certain process and conditions agreed by all has been achieved, i.e. by focusing on the code of honesty and fairness along with openness, for instance by furnishing compensation.

Article 62

Sufficiently clear.

Article 63

Sufficiently clear.

Article 64

Sufficiently clear.

SUPPLEMENTARY STATE GAZETTE OF THE REPUBLIC OF INDONESIA NUMBER 3881.