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Legal number inconsistency in Indonesia on radio frequency spectrum

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Abstract
The Telecommunication Law and Broadcasting Law which contain dualism of regulations governing the use of radio frequency spectrum in Indonesia, which have a strategic role in the operation of telecommunications and broadcasting operations, and have very high economic value in the public domain. The formulation of research problems: First, how to regulate and use the radio frequency spectrum according to the Telecommunications Law and the Broadcasting Law. Second, what is the inconsistency of legal norms in radio frequency spectrum regulations according to the Telecommunications Law and the Broadcasting Law. This research type is normative legal research, data analysis is done qualitatively. This study concludes that the regulation on the use of SFR in the telecommunications and broadcasting industry has touched on the scope of the two sectors. The legal norms governing the use of SFR in terms of licensing are inconsistent. The inconsistency of legal norms in the implementation of radio frequency spectrum use according to the Telecommunications Law and the Broadcasting Law is very clear. First, in Law no. 36 of 1999 and PP. 52 of 2005, does not prohibit and / or restrict foreign nationals in the provision of telecommunications, whereas Law no. 32 of 2002 and PP. 50 of 2005, is very clear and firm in explaining the restrictions on foreign citizens in terms of organizing private broadcasting institutions. Second, the difference in fundamental legal norms in the two legal products in translating the higher legal norms regarding SFR as limited natural resources, the norms of Article 33 paragraph (3) of the 1945 Constitution with the norms contained in Article 33 paragraph (4) of Law No. .36 of 1999 has not been consistent, while the norms of Article 33 paragraph (4) letter d of Law no. 32 of 2002 is in sync (consistent).

Keywords: Inconsistencies, legal norms, radio frequency

Introduction
The very rapid development of Information and Communication Technology (ICT) in the last two decades has led to the transformation of human life activities, especially in fulfilling their need to obtain information and communicate using various means and media, including using radio frequency spectrum media which has experienced a very significant increase.
Radio Frequency Spectrum (SFR) is a wireless transmission medium used to transmit information from the transmitter to the receiver. SFR is classified as a limited natural resource which is equally available in every country, in terms of its management it has a strategic and economic value impact on the welfare of the people of that State.
The use of SFR requires coordinating arrangements to prevent interferency (interference). Therefore, the use of radio frequency spectrum must be managed in order to utilize and utilize it properly, effectively, and efficiently so that it is not neglected if it is not used properly [1].
The use of SFR in Indonesia, among others, is for the purposes of providing telecommunications networks, special telecommunications operations, broadcasting, navigation and safety, amateur radio and Inter-Population Radio Communication (KRAP), as well as natural disaster early warning systems. Therefore, it is necessary to protect, regulate and manage any matters that cause the misuse of the use of radio frequency spectrum in any form.
Today's modern life, SFR is used in almost all aspects of life including telecommunications, broadcast media, the internet, education, transportation, defense and security, government, health, agriculture, industry, banking, tourism, and so on[1]. The regulation and use of SFR must be in accordance with its designation and not interfere with each other considering the nature of the radio frequency spectrum that can propagate in all directions without knowing the boundaries of the State territory.
As a limited natural resource, the radio frequency spectrum must be managed effectively and efficiently, through: (a) planning the use of the radio frequency spectrum which is dynamic and adaptive to the needs of the community and technological developments; (b) systematic radio frequency spectrum management and supported by an accurate and up-to-date radio frequency spectrum information system; (c) consistent and effective supervision and control of SFR use; (d) anticipatory regulations and provide legal certainty; (e) a strong SFR management institution, supported by professional human resources [1].
SFR is one of the means or media for telecommunication and broadcasting systems which is limited in existence. This means that a frequency that has been given to certain individuals or business entities, the natural resources cannot be given to other parties, if this happens, eviction will occur. Therefore the policy of regulating the use of frequency spectrum is very important. Given this, the regulation of the use of SFR must be efficient and rational.
The problem that becomes the study in this research is

related to the products of laws and regulations that are inconsistent with the synchronization approach of the two industries which are interrelated in regulating the use of radio frequency spectrum which is the background of Law Number 36 of 1999 concerning Telecommunications (hereinafter referred to as the Telecommunication Law.) and Law Number 32 of 2002 concerning Broadcasting (hereinafter referred to as the Broadcasting Law).

The existing Telecommunication Law and Broadcasting Law are based on fundamental differences or inconsistencies. The Telecommunications Law states that telecommunications operators consist of three institutions, namely 1. Telecommunications network operators. 2. Telecommunications service operators and 3. Special telecommunications operators. The state in this case allows the operators of telecommunication networks and / or services to be controlled by foreign citizens or foreign business entities. This regulation clearly allows network operators that have SFR licenses to control, control and operate the telecommunications system.

Regarding foreign ownership in the telecommunications industry, we can study the case that befell PT Indosat, which was originally a state-owned company that ran international telecommunications (known as SLI 001) then sold 40% of its shares to Singapore Technologies Telemedia (ST Telemedia / STT), then STT sold 40% Indosat shares to Qatar Telecom QSC (QTel). This very neat buying operation was carried out by Qtel and STT on 6 June 2008. The market is not at all sniffing about this massive sale. Moreover, several times, STT has emphasized that it will not sell Indosat even though it has been sentenced by KPPU to have monopoly by owning Indosat and Telkomsel. Qtel announced that it has purchased a 40.8% stake in Indosat through the acquisition of Asia Mobile Holdings Pte. Ltd (AMH) [1].

The broadcasting industry sector clearly and firmly states that foreigners may not own, control and control broadcasting institutions. In this case, the Indonesian Telecommunication Law is too liberal, while the Broadcasting Law which is expected to be more pro-national and public interests has not been implemented and enforced properly and maximally.

This situation is contrary to the democratic principles of telecommunications, because telecommunications uses publicly owned frequencies as its transmission medium, but in reality the telecommunications industry is largely left to the private sector, and even foreigners.

Another thing that is not democratic in the Telecommunication Law is the matter of licensing, especially in the use of radio frequency spectrum. Given the strategic importance of these limited natural resources for the national interest, namely to increase efficiency and productivity and to improve the quality of life and welfare of the people of a nation, it is necessary to have regulations that are able to accommodate the needs, especially the management of the use of SFR and provide legal benefits and justice. law, and legal certainty as a means of telecommunications, broadcasting and informatics. Because, its use, the SFR needs to be coordinated to prevent interference and misuse of permits.

This research uses a legal synchronization approach to the Telecommunication Law and Broadcasting Law which contains dualism of regulations governing the use of radio frequency spectrum in Indonesia, which has a strategic role in telecommunications and broadcasting operations, and has a very high economic value in the public sphere. Article 5 of Law No.12 of 2011 concerning the Formation of Legislations explains that in forming laws and regulations, it must be carried out based on the principle of forming good laws and regulations, which include: clarity of objectives; appropriate institutional or forming officials; suitability between types, hierarchy, and content; can be implemented; efficiency and efficiency; clarity of formulation; and openness.

The inconsistency of legal norms contained in the Telecommunication Law and the Broadcasting Law which was written has never been studied before. Although there are, but the substance is different from this research, such as Asril Sitompul once researched legal issues in the use of radio frequency spectrum in Indonesia. The results of his research explain that it is necessary to make changes to the implementing regulations of the Telecommunication Law so that the existing implementing regulations, especially on radio frequency spectrum management, prioritize ideas for public welfare as stated in the purpose of telecommunications and to prevent radio frequency spectrum management from occurring. control by a handful of businessmen who have large capital, and to encourage efficiency in the use of radio frequency spectrum, a change in the regulatory concept of the telecommunications sector is needed, especially those related to the allocation of radio frequency spectrum and use of radio frequency spectrum, either with the concept of LSA or MVNO [1].

Denis Pravita Sari once researched the title Implementation of Article 33 of Law Number 32 of 2002 concerning Broadcasting Related to Radio Frequency Modulation that Does Not Have a Frequency Spectrum Permit (Study at the Communication and Information Office of Madiun Regency). His research concluded that the implementation of Law Number 32 Year 2002 was carried out by the method of monitoring the broadcast frequency of each radio, and it was found that the reluctance for private radios to obtain licenses rests on bureaucratic and administrative reasons [1].

Dimyati Hartono has written a paper entitled Several Legal Aspects of Frequency Usage in the Operation of Telecommunications in Indonesia. In his writing concludes that there is still a gap between policy and regulatory bases, because a. Implementing policies that favor group interests; b. Inconsistency in the implementation of laws. The strong position of the "incumbent operator" in influencing the process of formulating policies and formulating implementing regulations; c. The application of a non-transparent tender system. According to Dimyati Hartono, the existing institutions have not maximally accommodated the aspirations of frequency users in general. This is based on the lack of implementing regulations that can reduce the practice of radio frequency abuse and the absence of a regulator, in this case the BRTI due to limited authority both in terms of the legal basis for its formation, organizational structure and financial independence [1].

Kurniawan Hendratno and Umar Ma'ruf, have conducted research related to enforcement of telecommunications crimes [1]. Suyanto Sidik, examined the impact of the Law on Information and Electronic Transactions. Previous studies were much different from the substance in this study. Thus, paying attention to these previous studies is clearly different from this research. The focus of this

research is the inconsistency of legal norms in radio frequency spectrum regulations according to the Telecommunications Law and the Broadcasting Law. Therefore, this research has its own uniqueness and is a novelty or original.

In line with this uniqueness, the problems of this research are, First, how are the regulations for the use of radio frequency spectrum according to Law No. 36 of 1999 concerning Telecommunications and Law No. 32 of 2002 concerning Broadcasting? Second, what is the inconsistency of the legal norms for the use of radio frequency spectrum according to Law No. 36 of 1999 concerning Telecommunications and Law No. 32 of 2002 concerning Broadcasting?

Research methods

This type of research is a normative legal research method with a synchronization approach. The research examined is the extent to which written positive laws are synchronous or harmonious with each other horizontally, namely between the Telecommunications Law and the Broadcasting Law.

The data source of this research comes from secondary data. Secondary data can be divided into 3 (three), namely primary legal materials, secondary legal materials and tertiary legal materials. Primary legal materials, namely legal materials that have authority (autorative). Consists of statutory regulations, for example the 1945 Constitution, Law no. 36 of 1999 concerning Telecommunications and Law no. 32 of 2002 concerning Broadcasting. Secondary legal materials, especially from textbooks and classical views of highly qualified scholars. In addition to textbooks, secondary legal material can be in the form of writings on law in the form of legal journals. Tertiary legal materials, namely legal materials used to provide instructions or explanations for primary and secondary legal materials.

Data collection techniques, using the method of literature review or documentary study. Qualitative data analysis, namely describing the data obtained descriptively. In drawing conclusions using the deductive thinking method, is a way of thinking that draws a conclusion from a statement or proposition that is general into something that is specific.

Research result and discussion

Regulations for the use of the radio frequency spectrum according to law no. 36 of 1999 concerning telecommunications and law no. 32 of 2002 concerning broadcasting

The product of legislation regulating the use of radio frequency spectrum in the telecommunications industry is based on Article 33 paragraph (4) of Law no. 36 of 1999 concerning Telecommunications is regulated in a Government Regulation. Government Regulation (PP) which was born after Law no. 36 of 1999, namely PP. 53 of 2000 concerning the Use of Radio Frequency Spectrum and Satellite Orbit. In Article 2 PP No. 53 of 2000 explains that the Minister shall carry out fostering the use of radio frequency spectrum and satellite orbit.

Further regulations on the use of a frequency spectrum for the operation of telecommunications networks and / or for the operation of telecommunications services are regulated in PP No. 52 of 2000 concerning Telecommunications Operations which explains the basic technical plan regulated in a Ministerial Decree. The PP mandate was followed up by issuing a Regulation of the Minister of Communication and Information Technology (Permen Kominfo) No. 30 / PER / M.KOMINFO / 09/2008 concerning Operation of Tele communication Networks as lastly amended by Minister of Communication and Information Regulation No. 01 of 2010 concerning the Operation of Tele communications Networks.

The implementation policies in the telecommunication industry and broadcasting industry are managed by the Directorate General of Post and Information Technology Empowerment (Ditjen PPI). Historically, the Directorate General of PPI together with the Directorate General of Resources for Post and Information Technology Equipment (Ditjen SDPPI) is a fraction of the Directorate General of Post and Telecommunications (Postel) based on the establishment of a new structure of the Ministry of Communication and Information based on the Minister of Communication and Information Regulation No. 17/2010 (SDPPI, 2015).

The complexity of managing the telecommunication and broadcasting sector, both administratively and technically, the government has produced several legal products and laws and regulations which are expected to accommodate the need for telecommunications and broadcasting in Indonesia, as well as to adapt to the dynamics of ever-evolving technology. In regulating and using the radio frequency spectrum in the telecommunication industry and broadcasting industry, it is explained as follows.

Regulations for the use of radio frequency spectrum according to Law No. 36 of 1999 concerning Telecommunications

The Telecommunication Law was born at the end of the New Order government and the beginning of the Reform Order, in 1999. Initially, Indonesia used Law no. 3 of 1989 concerning Telecommunications, over time it is deemed that it has not contributed to comprehensive governance in the telecommunications sector towards the development of times, technology, and the investment climate in the telecommunications sector, therefore Law no. 36 of 1999 concerning Telecommunications to replace the previous Telecommunications Law.

The provisions of Article 33 paragraph (1) of Law no. 36 of 1999 concerning Telecommunications and Article 17 paragraph (1) PP No. 53 of 2000 concerning Use of Radio Frequency Spectrums and Satellite Orbit, explains that every use of radio frequency spectrum must obtain a permit from the Minister of Communication and Information Technology whose management is carried out by the Director General of Resources and Equipment of Post and Information Technology [1].

Normatively based on Article 1 paragraph (2) Law no. 12 of 2011 concerning the Formation of Legislative Regulations, statutory regulations are written regulations that contain legally binding legal norms and are established or stipulated by state institutions or authorized officials through procedures stipulated in statutory regulations.

The operation of telecommunications includes the operation of telecommunications networks, the operation of telecommunications services and the operation of special telecommunications. In the operation of telecommunications, the following should be considered. (a) protect the interests and security of the State; (b) anticipating technological developments and global demands; (c) conducted in a professional and accountable

manner; (d) community participation.

Observing the Telecommunication Law clearly does not limit the ownership of telecommunication network operation and / or telecommunication service operation by foreign nationals in Indonesia. Article 8 paragraph (1) clearly states that the operation of telecommunications networks and / or the operation of telecommunications services as referred to in Article 7 paragraph (1) letter a and letter b can be carried out by a legal entity established for this purpose based on the prevailing laws and regulations. namely a. State Owned Enterprises (BUMN), b. Regional Owned Enterprises (BUMD), c. private business entity, or d. cooperative.

It should be emphasized that if a legal entity obtains a telecommunications operation license, it is entitled to use the radio frequency spectrum that has been granted by the regulator (government) which is divided into channels or radio frequency channel channels for a certain period of time. Only this legal entity may use the frequencies for its telecommunications channels. Should not be disturbed and intervened by other parties for violating the law. That means, the legal entity fully controls the frequency for a certain period. Thus, considering the current problems of the telecommunications industry, it should prioritize the mandate of laws and regulations in the telecommunications sector. Article 3 of the Telecommunication Law states very clearly that: "Telecommunications is carried out with the aim of supporting national unity and integrity, increasing the welfare and prosperity of the people in a just and equitable manner, supporting economic life and government activities, and improving relations between nations".

Legal norms in statutory regulations are the basis for their implementation, this is in line with the opinion of Jimmly Asshidiqie, who states that "norms or rules are the institutionalization of good and bad values in the form of rules containing permissions, suggestions or orders. Both suggestions and commands can contain positive or negative rules, ... " [1].

Regulations for the use of a radio frequency spectrum according to Law No. 32 of 2002 concerning Broadcasting

The radio frequency spectrum allocated for broadcasting is mapped into small parts known as frequency bands, then from that frequency band the frequency channels are determined based on the license submitted by the broadcasting organizing institution to the Minister through the Indonesian Broadcasting Commission (KPI) based on the mandate of Article 33 paragraph (4) letter d Law no. 32. Year 2002.

In contrast to the spirit in the previous Broadcasting Law, namely Law no. 24 of 1997 Article 7 which states that "Broadcasting is controlled by the State whose guidance and control is carried out by the government", this indicates that broadcasting at that time was part of an instrument of power that was used solely for the benefit of the Government.

Other products of legislation regarding broadcasting regulating broadcasting operations have been issued by the Government in the form of PP which are adjusted to the broadcasting organization, namely (a) Public Broadcasting Organization Broadcasting Operations; (b) Private Broadcasting Organizations; (c) Community Broadcasting Organization Broadcasting; (d) Broadcasting Operations for Subscribed Broadcasters.

The provisions stipulated in Article 3 PP No. 50 of 2005 concerning Private Broadcasting Organizations, explains that private broadcasting institutions must meet the following requirements: (a) to be established by Indonesian citizens; (b) established in the form of an Indonesian legal entity in the form of a limited liability company; (c) its line of business only provides radio or television broadcasting services.

Preamble to Law no. 32 of 2002 letter b emphasizes that the radio frequency spectrum is a limited natural resource and constitutes a national asset that must be safeguarded and protected by the State and used for the greatest prosperity of the people in accordance with the ideals of the Proclamation of 17 August 1945. The content of nationalism in the Broadcasting Law is also defines that broadcasting is carried out based on Pancasila and the 1945 Constitution with the principles of benefit, fairness and equality, legal certainty, security, diversity, partnership, ethics, independence, freedom and responsibility. This principle is a premise for the attainment of the objectives of broadcasting itself, namely to strengthen national integration, develop a nation's character and identity that is faithful, pious, educates the nation's life, advances public welfare, in building an independent, democratic, just and prosperous society. as well as growing the Indonesian broadcasting industry.

The operation of broadcasting is based on guarantees from the State on the broadcasting activity itself, namely to carry out broadcasting for the greatest welfare of the people. To achieve this, the public must have adequate access to be involved, take advantage of, receive protection and benefit from broadcasting activities. The methods of realizing this guarantee are then called the principles of open access to participation, protection and public control.

In order to achieve the success of this principle, another principle that is embedded to support it is also needed, namely the principle of diversity of ownership and diversity of content of broadcasting institutions. With these two principles of diversity, it is hoped that the State can guarantee the public by creating a competitive climate between broadcasting institutions to compete fairly in providing the best information services to the public.

The use of radio frequency spectrum for broadcasting purposes, apart from being regulated in Law No.32 of 2002 and PP concerning broadcasting operations of broadcasting institutions, also refers to the definition of Broadcasting Services in ITU Radio Regulations, Broadcasting services according to ITU-R, is defined as "a radiocommunication service in which the transmissions are intended for direct reception by the general public. This service may include sound transmissions, television transmissions or other type of transmissions ". That definition when translated into: a radio communication service in which the transmission is intended for direct reception by the general public. These services may include voice transmission, television transmission or other types of transmission.

The Broadcasting Law explicitly regulates the role of foreign nationals in broadcasting, both in terms of limiting the presence of foreign workers and foreign ownership and capital in Indonesia, as regulated in Articles 16, 17 and 30. Article 16 paragraph (2) states that foreign citizens are prohibited from becoming administrators of private broadcasting institutions, except for the financial sector and technical sector. Then, Article 17 paragraph (1) states that Private Broadcasting Institutions as referred to in Article 16

paragraph (1) shall be established with initial capital wholly owned by Indonesian citizens and / or Indonesian legal entities. Then, in relation to foreign capital participation, paragraph (2) states that Private Broadcasting Institutions can make additions and developments in the context of fulfilling capital originating from foreign capital, which amounts to not more than 20 percent (twenty percent) of all capital and is minimum owned. by 2 (two) shareholders.

Not only restrictions on Human Resources (HR) and share ownership, the Broadcasting Law strictly prohibits the establishment of foreign broadcasting institutions in Indonesia. This is confirmed in Article 30 paragraph (1) that foreign broadcasting institutions are prohibited from being established in Indonesia. These very strict rules make it difficult for foreign broadcasters to enter Indonesia.

Legal norms contained in Law no. 32 of 2002 as a representation of the mandate of the 1945 Constitution Article 33 paragraph (3), According to Maria Farida, legal norms play a role in the relationship of state and social life, meaning that laws and regulations that are under the 1945 Constitution must be sourced from and under the UUD. The year 1945, both in terms of procedures and in terms of content, must be in harmony [1].

Inconsistency of legal norms regulations for radio frequency spectrum usage according to law no.36 of 1999 concerning telecommunications and law no. 32 of 2002 concerning broadcasting

Several legal norms are inconsistent between Law no. 36 of 1999 concerning Telecommunications with Law no. 32 of 2002 concerning Broadcasting is presented in the following matrix table.

Table 1: Matrix of Regulations for Radio Frequency Spectrum Usage According to Telecommunication Law with Broadcasting Law

UU No. 36 of 1999	UU No. 32 of 2002
Article 33 paragraph (4), Provisions for the use of a radio frequency spectrum and satellite orbit used in the operation of telecommunications are regulated by a Government Regulation.	Article 33 paragraph (4) letter d, Permit to allocate and use a radio frequency spectrum by the Government at the recommendation of the KPI.

***Source*:** Secondary legal materials, processed in 2019.

Based on the synchronization matrix table above, the explanation can be described as follows.

1. Article 33 paragraph (4) Law no. 36 of 1999 explains that "... regulated by Government Regulation". From this phrase, it can be described:

a. UU no. 36 of 1999 does not involve independent institutions or bodies as representatives of the people as partners of the Government in regulating the telecommunications industry, considering that the telecommunications industry uses radio frequency spectrum which is the public domain. It is different from the Broadcasting Law which clearly states that KPI as the people's representation becomes the partner of the Government in regulating broadcasting.

b. Government Regulation (PP) which was born after Law no. 36 of 1999 is PP. 53 of 2000 concerning Use of Frequency Spectrum and Satellite Orbit, Article 2 explains: "Fostering the use of radio frequency spectrum and satellite orbit is carried out by the Minister".

c. Legal norms of Article 33 paragraph (4) of Law no. 36 of 1999 and Article 2 of PP. 53 of 2000, contains principles which have the same meaning in terms of provisions for the use of radio frequency spectrum which do not touch or state that radio frequency spectrum is the public domain, thus further emphasizing that legal norms contained in the Telecommunications Law make the telecommunications sector in Indonesia appear to be private areas, which do not involve representatives of the people as partners of the Government in managing limited natural resources that should be for the greatest welfare of the people.

d. According to Sudikno Mertokusumo, norms or rules are defined as rules of life that determine how humans should behave and behave in society so that their interests and the interests of others are protected, which in the narrow sense of legal norms or legal rules is the value contained in a concrete legislation [1].

2. In contrast to Article 33 paragraph (4) letter d of Law no. 32 of 2002 which explains that "... the use of radio frequency spectrum by the Government at the recommendation of the Indonesian Broadcasting Commission (KPI)". From this phrase, it can be described:

a. There are 2 (two) authorizers regulated in Law no. 32 of 2002, namely the Government and KPI as representatives of the people who based on the mandate of the Broadcasting Law have the authority to regulate broadcasting operations and grant licenses for the use of radio frequency spectrum.

b. Preamble to Law no. 32 of 2002 letter (b): Letter (b) "that the radio frequency spectrum constitutes a limited natural resource and constitutes a national asset which must be guarded and protected by the State and used for the greatest prosperity of the people in accordance with the ideals of the August 17 1945 Proclamation". Maria Farida stated that the preamble in a statutory regulation contains a brief description of the main points of thought which are the background and reasons for making the statutory regulation. Furthermore, according to Maria, the main idea of the preamble of laws and regulations contains philosophical, juridical, and sociological elements which are the background of their creation [1].

3. Several products of laws and regulations issued by the Government to regulate broadcasting explicitly and clearly involve the role of independent institutions, namely KPI as people's representation in guarding public ownership that partners with the Government in regulating broadcasting, including regarding the license to use radio frequency spectrum. This is different from the Telecommunications Law which does not involve independent regulators in regulating the telecommunications sector or industry. According to Hans Kelsen in Farida, he explained that in the legal norm system in Indonesia, the prevailing legal norms are in a multi-layered system, a norm originating from and based on higher norms and so on until a basic norm of the State (staatsfundamentalnorm) [1].

Furthermore, inconsistencies in legal norms relating to the operation of spectrum use in the telecommunications and

broadcasting industry are presented in the following matrix table.

Table 2: Matrix for Implementation of Radio Frequency Spectrum Usage According to Telecommunication Law with Broadcasting Law

UU No. 36 of 1999	UU No. 32 of 2002
Article 8 1. The operation of telecommunications networks and / or the operation of telecommunications services as referred to in Article 7 paragraph (1) letter a and letter b, may be carried out by a legal entity established for this purpose based on the prevailing laws and regulations, namely: (a). BUMN; (b) BUMD; (c) private business entities; or (d). Cooperative	Article 16 1. Private Broadcasting Institutions as referred to in Article 13 paragraph (2) letter b are commercial broadcasting institutions in the form of Indonesian legal entities, whose business sector is only to provide radio and television broadcasting services. 2. Foreign nationals are prohibited from becoming administrators of private broadcasting institutions, except for the financial and technical sectors

Source: Secondary legal materials, processed in 2019.

Based on the synchronization matrix table above, the explanation can be described as follows.

1. Law No. 36 of 1999 concerning Telecommunications

a. Article 8 paragraph (1) only describes legal entities that can operate telecommunications without explaining in more detail the prohibitions or limitations on management and / or ownership by foreign citizens or foreign business entities in operating telecommunications. The content of legal norms in this article in the Telecommunication Law provides free space for foreign citizens or foreign business entities to operate telecommunications in Indonesia.

2. PP No. 52 of 2000 concerning the Operation of Telecommunications

a. Article 4: explains that the operation of telecommunications networks and / or the operation of telecommunications services as referred to in Article 3 letter a and letter b can be carried out by a legal entity established for this purpose based on the provisions of the prevailing laws and regulations, namely BUMN, BUMD, Private Business Entity, The cooperative.
b. Legal norms contained in Article 8 paragraph (1) of Law no. 36 of 1999 and Article 4 of PP. 52 of 2000 in regulating the operation of telecommunications has the same principle, namely that there are no restrictions or restrictions on foreign citizens in terms of the management and/or ownership of foreign business entities in the operation of telecommunications in Indonesia, this further confirms that the telecommunications sector in Indonesia adheres to liberalism. or freedom, both in its administration and in terms of ownership. This affirmation is strengthened by quoting Maria Farida's opinion again, which states that the preamble in a statutory regulation contains a brief description of the main points of thought that constitute the background and reasons for making the legislation [1].

Different regulations are formulated in the statutory norms governing the broadcasting industry, namely.

(1). UU no. 32 of 2002 explains, that:

a. Article 16 paragraph (1), Private Broadcasting Institutions as referred to in Article 13 paragraph (2) letter b are commercial broadcasting institutions in the form of Indonesian legal entities, whose business sector only provides radio or television broadcasting services.
b. Article 16 paragraph (2), foreign citizens are prohibited from becoming administrators of private broadcasting institutions, except for the financial and technical sectors.
c. Based on the explanation of Article 16 paragraph (1) and paragraph (2) of Law no. 32 of 2002 above contains very clear legal norms in forcing and / or regulating, this is in accordance with Purnadi Purbacaraka's opinion which explains that the imperative nature of legal norms can be called compulsion (dwingenrecht), while legal norms that are facultative have legal norms regulating (regelendrecht) and legal norms add (aanvullendrecht), there are also legal norms that are mixed or which simultaneously force and regulate [1].

Conclusion

The legal products regulating the use of SFR in the telecommunications and broadcasting industry have touched on the scope of the two sectors, but there are fundamental differences. The legal norms governing the use of SFR in terms of inconsistent licensing, licensing mechanisms, in the Telecommunication Law go directly to the Minister, while in the Broadcasting Law it must go through KPI and / or KPID with the government.

The inconsistency of legal norms in the implementation of radio frequency spectrum use according to the Telecommunications Law and the Broadcasting Law is very clear. First, in Law no. 36 of 1999 and PP. 52 of 2005, does not prohibit and / or restrict foreign nationals in the provision of telecommunications, whereas Law no. 32 of 2002 and PP. 50 of 2005, is very clear and firm in explaining the restrictions on foreign citizens in the implementation of private broadcasting institutions. Second, the difference in fundamental legal norms in the two legal products in translating the higher legal norms regarding SFR as limited natural resources, the norms of Article 33 paragraph (3) of the 1945 Constitution with the norms contained in Article 33 paragraph (4) of Law No. .36 of 1999 has not been consistent, while the norms of Article 33 paragraph (4) letter d of Law no. 32 of 2002 is in sync (consistent).

The author needs to convey suggestions that the Government together with the DPR in making regulations on the telecommunications and broadcasting industry should accommodate: First, the radio frequency spectrum for the greatest prosperity of the people. Second, it must be firm and clear in regulating telecommunications and broadcasting operations on basic matters such as human resources for foreign citizens, ownership by foreign citizens and/or foreign-owned enterprises. The government, DPR and academics jointly carry out in-depth research needed to make a comprehensive academic study in order to create a Draft Law (RUU) to unify the Telecommunications Law and the Broadcasting Law into the Telematics Law (Telecommunications, Media and Informatics) as a form of adjustment. on the development of ICT towards

convergence, namely the integration of telecommunications, broadcast media, and information technology supported by internet technology.

References

1. Asril Sitompul. Masalah Hukum dalam Penggunaan Spektrum Frekuensi Radio di Indonesia, Jurnal Hukum dan Peradilan. 2013; 2(3):405-426 DOI http://dx.doi.org/10.25216/jhp.2.3.2013.405-426.
2. Denis Pravita Sari, 2014, Implementasi Pasal 33 Undang-Undang Nomor 32 Tahun 2002 Tentang Penyiaran Terkait dengan Modulasi Frekuensi Radio yang Tidak Memiliki Izin Spektrum Frekuensi (Studi di Dinas Komunikasi dan Informasi Kabupaten Madiun), Jurnal Hukum, 2014, 2.
3. Denny Setiawan. Alokasi Frekuensi, Kebijakan dan Perencanaan Spektrum Indonesia, Departemen Komunikasi dan Informatika Direktorat Jenderal Pos dan Telekomunikasi, Jakarta, 2010, 1.
4. Dimyati Hartono. Beberapa Aspek Hukum Penggunaan Frekuensi Dalam Penyelenggaraan Telekomunikasi di Indonesia, Makalah yang disampaikan pada Lokakarya Frekuensi Nasional : Pembinaan Frekuensi Radio untuk Menunjang Pembangunan, Jakarta, 1993, 89. https: //finance.detik.com/bursa-dan-valas/d-952177/stt-jual-seluruh-saham-di-indosat-ke-qatar-telecom accessed on April 4, 2019 at 09:19 WIB. https://www.postel.go.id/artikel-ketentuk-pengaraan-spektrum-frFrequency-radio-7-2160 accessed on 23 April 2019 at 11:25 WIB.
5. Jimmly Asshidiqie, Perihal Undang-Undang. Rajawali Pers, Jakarta, 2011, 21.
6. Kurniawan Hendratno dan Umar Ma'ruf. Penegakan Hukum Terhadap Tindak Pidana Telekomunikasi di Wilayah Hukum Kepolisian Daerah Jawa Tengah, Jurnal Hukum Khaira Ummah. 2017; 12(2):257-264.
7. Maria Farida Soeprapto, Ilmu Perundang-Undangan I, Kasinius, Yogyakarta, 2007, 21.
8. Ilmu Perundang-undangan: Jenis, Fungsi, dan Materi Muatan, Kanisius, Yogyakarta, 2007, 21.
9. Maria Farida Indrati Soeprapto, Ilmu Perundang-Undangan: Proses dan Teknik Pembentukannya, Kanisius, Yogyakarta, 2007, 108.
10. Purnadi Purbacaraka dan Soejono Soekanto, Perihal Kaidah Hukum, Alumni, Bandung, 1982, 14.
11. Sudikno Mertokusumo, Penemuan Hukum (Sebuah Pengantar), Liberty, Yogyakarta, 2006, 11.