

**THE ABUSE OF DOMINANT POSITION IN THE CASE OF THE  
DEPARTMENT OF JUSTICE V. GOOGLE FROM THE PERSPECTIVE OF  
SHERMAN ACT SECTION 2 AND INDONESIAN COMPETITION LAW  
ARTICLE 25**

By:

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**ABSTRACT**

This research attempts to compare the difference between how the Sherman Act and the Indonesian Competition Law regulate matters related to abuse of dominant position, and whether the lawsuit between D.O.J. v. Google fulfil the elements of violation under the said law. Ultimately, this research aims to answer who should the U.S. District Court decision be in favor of.

This research employs a normative legal framework that mainly relies on case laws to solve the legal problem at hand. The data is gathered from primary, secondary, and tertiary legal sources, such as articles, books, and judicial decisions. This research provides an analysis by looking at the normative and comparative aspects.

This research concludes that Section 2 of the Sherman Act and Article 25 of the Indonesian Competition Law regulate abuse of dominance differently. The elements of violation in the U.S. requires monopolization to be proven through monopoly power over the relevant market. Whereas, in Indonesia, the market share of 50% for a single corporation is sufficient to indicate a starting point of monopoly. The U.S. mainly use the rule of reason approach whilst Indonesia uses the per se illegal approach. Moreover, Google's anticompetitive conduct fulfils the elements of a violation under both laws. However, Indonesia has to exercise its extraterritoriality principle to adjudicate Google. Google's abuse of dominance had benefited themselves denied their rivals the scale to compete effectively, which resulted in their unlawful monopoly. The lawsuit should rule in favor of the U.S. D.O.J. and award them the remedies in the form of conduct and monetary remedies.

**Key words:** Google, Monopoly, Dominant Position, Sherman Act, Indonesian Competition Law.

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## **PENYALAHGUNAAN POSISI DOMINAN PADA KASUS *DEPARTMENT OF JUSTICE V. GOOGLE* BERDASARKAN SHERMAN ACT BAGIAN 2 DAN HUKUM PERSAINGAN USAHA INDONESIA PASAL 25**

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### **INTISARI**

*Penelitian ini mencoba membandingkan antara Sherman Act dan UU Persaingan Usaha Indonesia dalam mengatur hal-hal yang berkaitan dengan penyalahgunaan posisi dominan, dan apakah gugatan antara D.O.J. v, Google memenuhi unsur-unsur pelanggaran dalam undang-undang tersebut. Pada akhirnya, penelitian ini bertujuan untuk menjawab siapa yang harus didukung oleh keputusan Pengadilan Distrik AS.*

*Penelitian ini menggunakan kerangka hukum normatif yang bertumpu pada kasus hukum untuk memecahkan masalah hukum yang dihadapi. Data dikumpulkan dari sumber hukum primer, sekunder, dan tersier seperti artikel, buku, dan keputusan pengadilan. Penelitian ini memberikan analisis dengan melihat aspek normatif dan komparatif.*

*Penelitian ini menyimpulkan bahwa Bagian 2 dari Sherman Act dan Pasal 25 UU Persaingan Usaha Indonesia mengatur penyalahgunaan dominasi secara berbeda. Unsur pelanggaran di AS mengharuskan monopoli dibuktikan melalui kekuatan monopoli atas pasar bersangkutan. Di sisi lain, Indonesia menganggap 50% pangsa pasar untuk satu korporasi sudah cukup untuk menunjukkan titik awal monopoli. AS terutama menggunakan pendekatan rule of reason sedangkan Indonesia menggunakan pendekatan per se illegal. Selain itu, perilaku anti persaingan Google memenuhi unsur pelanggaran menurut kedua undang-undang tersebut. Namun, Indonesia perlu menggunakan prinsip ekstrateritorialitas untuk mengadili Google. Gugatan tersebut seharusnya dimenangkan oleh D.O.J dan mereka patut diberikan ganti rugi dalam bentuk tindakan dan pemulihan moneter.*

**Kata kunci: Google, Monopoli, Posisi Dominan, Sherman Act, Hukum Pesaingan Usaha Indonesia.**

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