

**LEGALITY OF STATE-OWNED ENTERPRISES IN CONDUCTING
MONOPOLY AND DOMINANT POSITION: CONSTITUTIONAL AND
ADMINISTRATIVE LAW PERSPEECTIVE IN INDONESIA AND
GERMANY LAWS**

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ABSTRACT

The purpose of this Legal Research is to analyze and determine the appropriateness of the legality of State-owned Enterprises in conducting practice of monopoly and usage of dominant position in Indonesia and Germany based on Constitutional and other laws and regulations, which in this context is Business Competition Law.

This Legal Research is conducted through a comparative approach with using normative method that analyzes German Business Competition Law, available literature and data to be the indicator of the appropriateness of the State-owned Enterprises in conducting practice of monopoly and usage of dominant position according to Constitutional and Administrative Law perspective. Not only that, since State-owned Enterprises is not only established to merely gain profit and preserve national economy, but also to implement public service obligation, therefore State-owned Enterprises also has administrative function, hence, administrative law approach is necessary to be conducted

Based on this research, the Author has discovered and concluded that the most striking difference that exist is that the State-owned Enterprises in Germany are being subjected entirely to the Business Competition Law without any exception, whereas in Indonesia the State-owned Enterprises are getting exclusivity right and not being subjected to the Business Competition Law in certain situation based on the 1945 Constitution of Republic of Indonesia, and related Laws. The similarity from Indonesia and Germany regarding the legality of State-owned Enterprises is that both states allow State-owned Enterprises to be actively involved in not only national economy, but also importantly to implement public service obligation.

Keywords: State-owned Enterprises, Public Service Obligation, Position of State-owned Enterprises in Constitutional Law, Business Competition Law.

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LEGALITAS BADAN USAHA MILIK NEGARA DALAM MELAKUKAN MONOPOLI DAN POSISI DOMINAN: BERDASARKAN HUKUM TATA NEGARA DAN HUKUM ADMINISTRASI NEGARA MENURUT HUKUM INDONESIA DAN JERMAN

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INTISARI

Penelitian hukum ini dilakukan bertujuan untuk menganalisa kesesuaian legalitas Badan Usaha Milik Negara dalam melakukan praktik monopoli dan penggunaan posisi dominan di Indonesia dan Jerman berdasarkan perspektif Hukum Tata Negara dan juga Hukum Administrasi Negara.

Penelitian hukum ini dilakukan melalui pendekatan komparatif yang bersifat normatif, dengan juga menganalisa Hukum Persaingan Usaha di Jerman, literatur yang tersedia, dan data untuk menjadi indikator kesesuaian legalitas Badan Usaha Milik Negara, terutama penerapan hak eksklusif bagi Badan Usaha Milik Negara dalam melakukan praktik monopoli dan penggunaan posisi dominan menurut hukum tata negara dan administratif. Tidak hanya itu, dikarenakan BUMN tidak hanya berfungsi untuk mencari keuntungan dan menjaga perekonomian negara, tapi BUMN juga diwajibkan untuk menjalankan fungsi pelayanan umum publik. Oleh karena itu, BUMN juga menjalankan fungsi pemerintah. Maka dari itulah mengapa pendekatan Hukum Administrasi Negara sangat diperlukan.

Berdasarkan penelitian ini, penulis telah menemukan dan menyimpulkan: Perbedaan yang paling mencolok antara Indonesia dan Jerman adalah Badan Usaha Milik Negara milik Jerman tetap menjadi subyek dari hukum persaingan usaha di Jerman tanpa terkecuali, dimana di Indonesia Badan Usaha Milik Negara nya mendapatkan hak eksklusif dan tidak menjadi subyek hukum di beberapa situasi tertentu menurut Undang-Undang Dasar, Undang-Undang, dan Peraturan terkait. Kesamaan antara Indonesia dan Jerman terkait legalitas BUMN ini terletak di keaktifan BUMN dalam menjalankan fungsi pelayanan publik, dan juga membantu perekonomian negara masing-masing.

Kata Kunci: Badan Usaha Milik Negara, Obligasi Pelayanan Publik, Kedudukan BUMN dalam Hukum Tata Negara, Hukum Persaingan Usaha.

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