

Legal Protection For Contractors With Contract Providers For Procurement Of Goods / Services Due To Covid 19 (Case Study Of PT. Dharma Agung Wijaya)

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Abstract

The covid 19 pandemic influenced the implementation of the agreement experienced between PT. Indo Utama Jaya and PT. Dharma Agung Wijaya where work was hampered due to regulations during the pandemic which required workers from outside the region to be quarantined for 14 days and there was a decrease in economic capacity which affected the implementation of the agreement. Indo Utama jaya?, How is the legal protection of contractors with goods/services contractors in procurement agreements during the covid 19 pandemic?. The research methods used are normative and empirical juridical research. The nature of the research used in this study is descriptive analysis. Based on the results of the study, the conclusion in this study is that delays occur almost in every implementation and have different problems, factors that cause delays in the implementation of contracts that occur in PT. Indo Utama Jaya and PT. Dharma Agung Wijaya explained that both the First party and the second party are exempt from liability for failure or delay in performing their obligations under this contract, caused by things beyond the reasonable ability of the parties and not caused by negligence of the parties. Responsibility of the board of directors for the contractual relationship with the second party where the board of Directors is responsible for controlling and supervising the implementation of the contract in accordance with the scope of work, cost, term and other provisions agreed.

Keywords: Legal Protection, Contractors, Procurement Of Goods/Services

1. INTRODUCTION

Procurement of goods/services is an activity to obtain goods/services by institutions whose process starts from planning needs until the completion of all activities to obtain goods / services. Procurement of goods / services should be based on the Annual Plan which is the elaboration of

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the agency's Strategic Plan, so that goods/services are purchased, because it is needed to support the implementation of the duties and functions of the agency.¹ In order for the nature or essence of procurement of goods/services to be implemented, there must be an agreement on procurement of goods/services that are subject to ethics, norms, principles and methods that govern it, the goal is that the goods/services needed can be met in good quantity, quality, price, time and place, can be accounted for and carried out efficiently, effectively, openly and competitively, transparently, fairly and not discriminatory. Indeed, the legal alliance that is born of a covenant, binds only those who enter into the covenant it self and does not bind others.²

An agreement lays down only the rights and obligations between the parties that make it up. The other persons are third parties who have no connection with the agreement. A legal engagement that is born by an agreement has two angles, namely the angle of obligations assumed by a party and the angle of rights or benefits, obtained by the other party, namely the rights to demand the implementation of something that is undertaken in the agreement. The word binding itself is aimed at the angle of obligations , while the word asking for a promise is aimed at the angle of Rights obtained from the agreement.³

If this is not the case, that is, if the party that acquires the rights of the treaty is not burdened with obligations as opposed to them, or if the party that accepts the obligations does not acquire the rights as opposed to them, then such an agreement, is unilateral or unilateral. However, it should be realized that business activities are experiencing very rapid development, therefore the occurrence of irregularities in the field of law can not be avoided.⁴ As a result there is confusion of interpretation, different opinions, theories built among the business community. This raises the need to examine an institution/institution in the business world and institutions that require in-depth observation to understand it, including institutions, business entities, civil unions, business associations, social institutions, and foundations.⁵

2. RESEARCH METHOD

¹ Nopirin, *Pengantar Ilmu Ekonomi Makro dan Mikro*, Yogyakarta: BPFE, 2000,p.119

² Ricardo Simanjuntak, *Hukum Perjanjian: Teknik Perancang Kontrak Bisnis Edisi Ketiga*, Kontan Publishing, Jakarta : 2018,p.28

³ Agus Yudha Hernoko. *Hukum Perjanjian, Asas Proporsionalitas dalam Kontrak Komersial*. Jakarta: Prenadamedia Group, 2014,p.162

⁴ Mariam Darus Badruzaman, *Aneka Hukum Bisnis*, Bandung: Alumni, 2005,p.35

⁵ Libertus Jehani, *Pedoman Praktis Menyusun Surat Perjanjian*,(Jakarta Selatan: Transmedia Pustaka, 2009, p.15

When viewed from its nature, this study categorized types of descriptive-juridical research- normative (descriptive-juridical-normative research).⁶ When viewed from the point of view of the purpose of legal research, first, this study is categorized as normative legal research. Types research is focused or focused on reviewing and reviewing data secondary obtained from research includes research on the principles and principles of law, legal Systematics, synchronization of laws, comparison of laws, law in action, and formation of the legal frame work.⁷

3. RESULT AND ANALYSIS

3.1. Implementation Of Contract Agreement Procurement Of Goods/Construction Services At Pt. Indo Hutama Jaya With PT. Dharma Agung Wijaya

The rights and obligations contained in the letter of agreement must be reciprocal and mutually beneficial agreements of the parties, which have good faith in the achievement of a feat. Procurement of goods/ services involves several parties, namely: the buyer or user, and the seller or provider of goods and services. The buyer or user of the goods/ services is the party that needs the goods/services. In the implementation of the user is the party that asks or gives the task to the provider to supply or make goods, and or carry out certain work. Users of goods/services can be an institution/ organization, and can also be individuals. Classified as institutions, among others: government agencies (Central Government, Provincial Government, District Government, city government), business entities (BUMN, BUMD, private), and community organizations. While classified as individuals are individuals or people who need goods / services.

In the procurement of goods and services between PT. Dharma Agung Wijaya with PT. Indo Hutama Jaya, where PT. Dharma Agung Wijaya as a private company will frame the legal relationship with its goods and services providers in a contract for the procurement of goods or a contract for the procurement of services. In other words PT. Dharma Agung Wijaya became one of the parties to a contract. In this context, PT. Dharma Agung Wijaya can not position itself higher than the provider of goods or services, although PT. Dharma Agung Wijaya is an institution that can perform actions that are regulating (regulator). This is because in the law of the agreement the parties have the same position, as reflected in Article 1338 BW.⁸

⁶ Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif, Suatu Tinjauan Singkat*, PT. Raja Grafindo Persada, Jakarta, 2003, p.13

⁷ Burhan Ashshofa, *Metode Penelitian Hukum*, Jakarta: Rineka Cipta, 1996,p.20-21

⁸ Sarah S Kuahaty., *Pemerintah Sebagai Subjek Hukum Perdata Dalam Kontrak Pengadaan Barang Atau Jasa*. Sasi, 2011,p.56

Although PT. Dharma Agung Wijaya is a private company, the position of PT. Dharma Agung Wijaya in the contract also does not have a special position, and can be a party to civil disputes with the same position as a person or a civil legal entity in the General Court. In this context, PT. Dharma Agung Wijaya as the user of goods and services as well as PT. Indo Hutama Jaya as the provider of goods and services both have an equal position in fulfilling the rights and obligations contained in the agreed contract.

3.1.1. Due to default on the contract procurement of goods and services PT. Dharma Agung Wijaya

Related to the accountability of the board of Directors of goods and services providers is basically limited, after the registration and announcement of the deed of establishment that has been approved by the Ministry of Law and Human Rights. However, in certain circumstances this limited liability may become Unlimited or become personal responsibility or joint responsibility among members of the Board of Directors.⁹ This is related to the responsibility of the Board of Directors of a Limited Liability Company based on the doctrine of piercing the corporate veil. Delay in the implementation of the contract for the procurement of goods and services is categorized as default as stipulated in Article 1243 of the Civil Code in which the provider of goods and services in default must compensate the losses suffered by the other party if the provider of goods and services still does not perform its obligations after being notified that he is in default. Directors who act as representatives of the company if they do not make efforts for the company related to the default that occurs, even the directors can also be charged with Article 1365 and 1366 of the Civil Code. Board of Directors of PT. Indo Hutama Jaya realizes that its authority, obligations, and responsibilities as a board of directors in conducting the company's activities must be in accordance with the Limited Liability Law and the provisions of the articles of association. In the event of delay in the implementation of the contract procurement of goods and Services Board of Directors of PT. Indo Hutama Jaya.¹⁰

That the delay in the implementation of the contract procurement of goods and services that occur at PT. Indo Hutama Jaya does not mean solely the fault or negligence of the board of directors but because of other factors that have actually been accommodated in the contract. It remains the responsibility of the board of directors only to the representative of the

⁹ Sudjana. Akibat Hukum Wanprestasi dan Tanggung Jawab Para Pihak dalam Transaksi Anjak Piutang. *Jurnal Ilmu Hukum Veritas et Justitia VeJ*. Vol.5 Nomor 2, 2019.

¹⁰ Salim, H.S, *Hukum Kontrak, Teori, & Teknik Penyusunan Kontrak*, Jakarta, Sinar Grafika, 2009,p.45

company to make settlement efforts with the users of goods and services by conducting mediation or renegotiation efforts. As for the obstacles that occur related to the implementation of the contract for the procurement of goods and services, as the board of directors must respect the contracts and provisions that have been regulated by service users in the second book of regulations on guidelines for the procurement of goods and services which are the basis and reference in the procurement of goods and services. Based on the research, there are no mistakes and omissions made by the board of directors. The board of Directors is only responsible for resolving obstacles that occur by conducting mediation and/or renegotiation efforts to reach new agreements in an effort to achieve achievements. The responsibility of the board of Directors is to maintain contractual relations with the users of goods and services and maintain the good name of the company in the future. In addition to default, disputes occur due to unlawful acts.¹¹

The contract for the procurement of goods and services is generally made by the parties based on the principles in the agreement and based on the legal terms of the agreement for the implementation of an achievement in the agreement. In its implementation, not all agreements can work well, many problems occur that can cause problems that can result in the parties not exercising some or all of their rights and obligations.¹²

3.1.2. Legal Protection For Contractors By Granting Goods/Services Contracts In Procurement Agreements During The Covid 19 Pandemic

In the implementation of chartering agreements, there are several problems that often occur in the field related to the responsibilities and risks of the contractor or contractor. These problems are matters relating to the existence of sub-contractors in the implementation of the work, deviation of work from planning and delay in completion of the project.¹³

In the procurement agreement of PT Indo Hutama Jaya and the service provider or contracting party, it is possible that the contractor hands over the chartering of the work to another contractor who is a sub-contractor based on a special agreement between the contractor and the sub-contractor.¹⁴

¹¹ Ifada Quratta A'yun Amalia. Akibat Hukum Pembatalan Perjanjian Dalam Putusan Nomor 1572 K/PDT/2015 Berdasarkan Pasal 1320 dan 1338 KUH Perdata. *Jurnal Hukum Bisnis Bonum Commune*. Vol.I No 1, 2018.

¹² Subekti, *Hukum Perjanjian*, Intermasa, Jakarta, 1990, p.1

¹³ Jamin Ginting, *Hukum Perseroan Terbatas (Undang-Undang Nomor 40 tahun 2007)*, PT.Citra Aditya Bakti, Bandung, 2007, p.85

¹⁴ Kartini Muljadi dan Gunawan Widjaja, *Perikatan Yang Lahir dari Perjanjian*, PT. Raja Grafindo Persada, Jakarta, 2004, p.31-21

The existence of such sub-contractors in the procurement agreement must be with the written permission of the service user in this case PT Indo Hutama Jaya, because basically the agreement between the contractor and the sub-contractor is outside the master procurement agreement made between the service user and the service provider.¹⁵

The contracting party shall not sub-contract all or part of its principal work to any other party or contractor, unless sub-contracted to a specialist service provider. And if this provision is violated, then the provider of goods or services will be given a written warning by the employer to re-follow the provisions in accordance with the agreement and may be subject to sanctions in the form of fines or compensation in the form and amount in accordance with the provisions set forth in the employment agreement. Contractors who transfer jobs or who accept the transfer of jobs will be excluded from the list of capable partners.¹⁶

It is proven to deliberately hand over work that is not in accordance with the collective agreement. If in the future it is proven that the work is not in accordance with the required or there is a hidden defect or damage, then the provider of goods and services is obliged to repair or replace it. The contractor as the executor is responsible for completing the work on the date specified in the chartering agreement.¹⁷ If the chartering work is divided into different parts, the contractor must also submit the work on each date that has been agreed. If there is a delay in the completion of the project, the contractor will be charged a penalty of 1/1000 of the contract value for each day of delay and a maximum of 10% of the contract value.¹⁸

As a result of the termination of the agreement, the chartering service user is obliged to pay for the works that have been done well by the contractor. After the termination of this agreement, the service user is authorized to continue the work that has not been completed by the contractor concerned by being carried out by himself or continued by a third party appointed by the service user. Sanctions for delays for contractors are also applied if the sub-contractor is unable to complete the work in accordance with the established schedule. In other words, the contractor remains responsible for the subcontractor's delay in completing the work transferred to him. If in force, the contractor will be exempt from fines for late completion of the work. What is considered a forced situation is all events beyond the ability of the contractor that affect the course of the

¹⁵ Wirjono Prodjodikoro, *Asas-asas Hukum Perjanjian*, Mandar Maju, Bandung, 2000,p.56

¹⁶ Satjipto Rahardjo. *Ilmu Hukum*. Bandung: PT. Citra Aditya Bakti, 2000,p.42

¹⁷ Raffles, *Tanggung Jawab dan Perlindungan Hukum Direksi dalam Pengurusan Perseroan Terbatas*. Undang: Jurnal Hukum, Vo.3. NO.1. 2020

¹⁸ Munir Fuady, *Kontrak Pemborongan Mega Proyek* , Bandung : Citra Aditya Bakti, Cetakan ke-2, 2002, p.12

implementation of the work, namely: a. Natural disasters, namely earthquakes, hurricanes, landslides, floods and fires;¹⁹

4. CONCLUSION

Delays occur in almost every implementation and have different problems, factors that cause delays in the implementation of contracts that occur at PT. Indo Hutama Jaya includes force majeure, unavailability of construction equipment at the project site, lack of expert labor, and finance. This is because the time of execution of the contract coincides with the corona virus disease pandemic which hinders the execution of the contract. Based on Article 15 points in the contract agreement between PT. Indo Hutama Jaya and PT. Dharma Agung Wijaya explained that both the First party and the second party are exempted from liability for failure or delay in carrying out their obligations under this contract, caused by things beyond the reasonable ability of the parties and not caused by negligence of the parties, hereinafter referred to in the contract as force majeure, except for the obligation to carry out payments arising before the occurrence of such force majeure. From the points of the agreement, it can be seen that the legal protection obtained from PT. Indo Hutama Jaya due to the involvement in the completion of the work is not solely due to negligence on the part of PT. Indo Hutama Jaya except from the covid 19 pandemic. Responsibility of the board of directors for the contractual relationship with the second party where the board of Directors is responsible for controlling and supervising the implementation of the contract in accordance with the scope of work, cost, term and other provisions agreed. The board of Directors is responsible for resolving obstacles that occur by conducting mediation and/or renegotiation efforts to reach new agreements in an effort to achieve achievements. The responsibility of the board of directors to maintain contractual relations with the users of goods and services and maintain the good name of the company in the future. Based on the contract clause that in the event of a dispute the parties agree to resolve it by deliberation, by upholding business ethics, but if it cannot be resolved by deliberation it will be taken through the district court (litigation). The position of the parties to the contract is also unbalanced because the type of contract for the procurement of goods and services is a standard contract that is unilaterally designed by the service user and must be approved by the service provider. Based on the addendum of Procurement Agreement between PT Indo Hutama Jaya and PT. Dharma Agung Wijaya contained in Article 1 points 3, 4 and 5.

¹⁹ Gemala Dewi. *Aspek-aspek Hukum dalam Perbankan dan Peransuransian Syariah*. Jakarta: Kencana, 2004, p.166

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