

Onrechmatige Daad and Default on Supreme Court Decision Number: Number: 1120 K / Pdt/2022 Jo. Number: 342 / Pdt / 2021 / PT MDN 342 / Pdt / 2021 / PT MDN.

Sigit Purnomo¹ Rilawadi Saputra², Kusbianto^{3*}

Magister Hukum, Universitas Dharmawangsa, Medan, Indonesia.

Abstract

Procurement agreements have a very important function in the development of the country's economy, the amount of state money involved in this agreement is very large. Failure to fulfill this feat is often the basis for the injured party not to execute the agreement. The existence of parties who do not run the agreement often arise disputes because there are parties who feel disadvantaged as a result of this. The purpose of this research is to: 1). Describe the form of unlawful acts and defaults in the implementation of the procurement of goods and services in the decision of the Supreme Court Number: 1120 K/Pdt/2022 Jo. Decision number: 342/Pdt/2021 / PT MDN, 2). Reviewing legal considerations by judges in Supreme Court decision number: 1120 K/Pdt/2022 Jo. Decision number: 342/Pdt/2021 / PT MDN, 3). Reviewing the legal settlement of disputes over the procurement of goods and services that are not in accordance with the agreement on the Supreme Court decision number: 1120 K/Pdt/2022 Jo. No.342 / Pdt / 2021 / PT MDN. This type of research is normative legal research the data source of this research is secondary data, which includes: primary legal materials, secondary legal materials and tertiary legal materials. The method of data collection using the study of literature and documents. Analysis of research data using normative analysis of research results obtained a conclusion that: 1). Form of tort and tort in the Procurement Agreement of goods and services with number: PJJ.04.04.01/05/07/2019/0104 about the procurement and installation of AC (Air Conditioner) at Garbarata Kualanamu Deli Serdang International Airport in the Supreme Court decision number: 1120 K/Pdt/2022 Jo. No.342/Pdt/2021/PT MDN is the plaintiff/comparator/applicant for Cassation I / respondent to Cassation II (CV. Marendal Mas) is considered to have done what was promised, but it is too late and the defendant/compared/applicant Cassation II / respondent Cassation I (PT. Angkasa Pura II Kualanamu Airport Branch) did not immediately make payment for the work that the plaintiff/comparator plaintiff/comparator/Cassation applicant I/Cassation respondent did, as a result CV. Marendal Mas felt aggrieved because he could not pay the working capital of the bank and declared bad loans and collateral threatened with auction.

Keywords: Dispute resolution, procurement of goods and services, Tort

*Email/Corresponding Author: rilawadi.saputra@dharmawangsa.ac.id

1. INTRODUCTION

In fulfilling the obligations that have been outlined in the agreement or contract procurement of government goods/services, often the parties providers of goods/services and the parties of the commitment officer (PPK) are faced with a variety of situations and conditions that are less supportive in fulfilling the obligations stipulated in the contract and potentially cause disputes, one of which is the dispute, not fulfilling its obligations under the agreement or a state of unfulfilled or achievement as stipulated in an agreement . And tort (Onrechtmatige Daad) examples in general are the completion of projects that pass the deadline (deadline) that has been determined and the specification of goods that are not in accordance with the agreement. However, it is not uncommon for the dissatisfaction of the commitment-making officer (PPK) on the fulfillment of the obligations of the provider of goods/services to be caused by deliberate and/or forgetfulness on the part of the provider of goods and/or services.

In the Civil Code in Book III of the engagement mentioned that the engagement can be born because of the law or born because of the agreement. An agreement in the procurement of goods / services is an agreement by which a party carrying out a work for another party with the recipient of a certain price. The subject of law in an agreement or contract is a legal person or entity. A legal entity is represented by a person authorized by a legal entity to enter into agreements with other parties. Government organizations as public legal entities are represented by officials who are authorized on the basis of legislation. The authority of this official is an absolute requirement for the validity of the agreement because it is closely related to the skill requirements set forth in Article 1320 of the Civil Code (Burgerlijk Wetboek). As with agreements in general in procurement agreements for goods and services, validity is important in making such agreements. The validity in this case still follows the terms of the validity of the agreement as stated in Article 1320 of the Civil Code, including: agreement of both parties, skill to act, regarding a particular matter, and a lawful cause.

The legal terms of the agreement contained in Article 1338 of the Civil Code confirms that all agreements made legally apply as law to those who make them. However, it is in Article 1320 of the Civil Code, which affirms that for an agreement to be valid, four conditions are necessary, namely: a. Agreed those who bind themselves b. Tell me to make a deal c. About a certain thing d. There's a good reason something bad.

The agreement can be said to be valid if it has fulfilled all the conditions stipulated in the aforementioned law. The statement of agreement of those who bind themselves and the ability to make an agreement is classified into subjective conditions or conditions regarding the person making the agreement, while about a certain matter and lawful causes are

classified into objective conditions or objects that are made the object of the agreement.

Procurement of goods and services or better known as auctions, many conducted by government agencies and the private sector. This activity is carried out to obtain goods and services by an agency/institution whose process starts from planning needs until the completion of all activities to obtain goods and services, procurement is a process of activities to meet needs. According to the Indonesian dictionary (KBBI) procurement comes from the word "there" with the addition of PE - at the beginning and late at the end, so it can be interpreted that procurement is a process / action by making something that was not there into something tangible or existing.

Based on Presidential Regulation Number 12 of 2021 concerning amendments to Presidential Regulation 16 of 2018 in Article 1 Paragraph 1, it is explained that procurement of goods/services is an activity of procurement of goods/services by ministries/institutions/regional devices financed by the state budget/APBD, the process of which starts from the identification of needs, to the handover of work results. In Presidential Regulation Number 12 of 2021 concerning amendments to Presidential Regulation 16 of 2018, the purpose of procurement of goods and/or services in Article 4 is the procurement of goods/services aimed at: a. produce the right goods / services from every money spent, measured from the aspects of quality, quantity, time, cost, location, and provider; b. Increase the use of domestic products; c. Increasing the participation of Micro, Small Businesses, and Cooperatives; d. Increasing the role of National Business actors; e. Support the implementation of research and utilization of goods / services research results; f. Increase creative industry participation; g. Realize economic equity and provide expansion of business opportunities; and h. Improve Sustainable Procurement.

One of the disputes that often occur is default, namely not fulfilling achievements at all, achievements that are not perfect, late in fulfilling achievements, and doing what is prohibited in the agreement to do. Default is a term taken from the Dutch wanprestatie with the meaning of non-fulfillment of achievements or obligations in an agreement. Based on the meaning in the Indonesian dictionary (KBBI), default is the state of one of the parties (usually an agreement) performing poorly due to negligence. ontohnya, creditors demand performance to its debtors. Based on Article 1234 of the Civil Code, the achievement demanded is generally in the form of three things, namely giving something, doing something, and not doing something in law, default means failure to fulfill the achievement that has been set. Achievement is something that can be demanded. In an agreement, there is generally one party who demands performance from the other party. Act against the law (Onrechtmatige Daad) is an act or

forgetfulness, which or contrary to the rights of others or contrary sipelaku own legal obligations or contrary to both good morality, as well as with the attitude of caution that must be heeded in the Association of life against other people or objects. Article 1365 of the Civil Code reads that any act that violates the law and brings harm to another person, obliges the person who caused the harm through his fault to compensate for the harm. Which essentially includes two meanings, namely as an act that is the embodiment of doing something and as an act with its negative aspects, namely an act that takes the form of ignoring a necessity.

Non-fulfillment or execution of an agreement by one of the parties may be caused by default and unlawful acts (Onrechtmatige Daad). Failure to fulfill this achievement is often the basis for the injured party not to carry out the contents of the agreement or even to break the agreement. As a result of the termination of the agreement, it often causes disputes, and then the party who feels aggrieved tries to resolve the dispute. One example of such a case is the case between CV. Marendal Mas against PT. Angkasa Pura II (Persero) Kualanamu International Airport Branch Office as determined by the Supreme Court Number: 1120 K/Pdt/2022 Jo. Decision number: 342/Pdt/2021 / PT MDN antara CV. Marendal Mas (plaintiff/comparator/petitioner Cassation I/respondent Cassation II) against PT. Angkasa Pura II (Persero) Branch Office Kualanamu International Airport (defendant/compared/applicant Cassation II/respondent Cassation I), because there is a dispute due to the PT. Angkasa Pura II (Persero) Branch Office Kualanamu International Airport (defendant/compared/petitioner Cassation II/respondent Cassation I) does not perform the contents of the agreement that is to make payment for the work that has been carried out by CV. Marendal Mas (plaintiff/comparator / petitioner Cassation I / respondent Cassation II) as stipulated in the agreement between the parties namely the agreement on procurement of goods and services with number: PJJ.04.04.01/05/07/2019/0104 about the procurement and installation of AC (Air Conditioner) in Garbarata Kualanamu Deli Serdang International Airport, North Sumatra province. CV. Marendal Mas (plaintiff/comparator/petitioner Cassation I/respondent Cassation II) argued that he had done a good job by proving the existence of the work handover minutes (BASTP) and there were also work evaluation and technical minutes (BAETP) and there was an integrity pact issued by PT. Angkasa Pura II (Persero) Branch Office Kualanamu International Airport (defendant/compared/applicant Cassation II/respondent Cassation I) and CV. Marendal Mas (plaintiff/comparator / petitioner Cassation I / respondent Cassation II) has repeatedly requested that the PT. Angkasa Pura II (Persero) Branch Office Kualanamu International Airport (defendant/compared/applicant Cassation II/respondent Cassation I) immediately make payment for the work that has CV. Marendal Mas

(plaintiff/comparator/applicant Cassation I/respondent Cassation II) do, but not responded well by PT. Angkasa Pura II (Persero) Branch Office Kualanamu International Airport (defendant/compared/petitioner Cassation II/respondent Cassation I) on the grounds that there are other problems related to the installation of air conditioning (Air Conditioner) in Garbarata Kualanamu International Airport.

CV. Marendal Mas (plaintiff/comparator/Cassation applicant I/Cassation respondent II) conveyed in the lawsuit, his appeal memory and Cassation memory according to court decision number: 1120 K/Pdt/2022 Jo. Number: 342/Pdt/2021/PT MDN. That PT. Angkasa Pura II (Persero) Branch Office Kualanamu International Airport (defendant/compared/applicant Cassation II/respondent Cassation I) does not pay for work that has CV. Marendal Mas (plaintiff/comparator/applicant Cassation I/respondent Cassation II) do that. CV. Marendal Mas (plaintiff/comparator/petitioner Cassation I/respondent Cassation II) suffered a huge loss for the following reasons : 1. Because as an entrepreneur CV. Marendal Mas (plaintiff/comparator / applicant Cassation I / respondent Cassation II) in doing the work there is using working capital where the working capital CV. Marendal Mas (plaintiff/comparator/petitioner Cassation I/respondent Cassation II) obtained from making a credit loan at the Bank. 2. That in connection CV. Marendal Mas (plaintiff/comparator/applicant Cassation I/respondent Cassation II) has not received payment from PT. Angkasa Pura II (Persero) Branch Office Kualanamu International Airport (defendant/compared/petitioner Cassation II/respondent Cassation I), then CV. Marendal Mas (plaintiff/comparator/applicant Cassation I / respondent Cassation II) was not able to make payments also to the bank, so CV. Marendal Mas (plaintiff/comparator/petitioner Cassation I/respondent Cassation II) experiencing bad loans at the bank. 3. CV. Marendal Mas (plaintiff/comparator/applicant Cassation I/respondent Cassation II) argues and believes the PT. Angkasa Pura II (Persero) Branch Office Kualanamu International Airport (defendant/compared/petitioner Cassation II/respondent Cassation I) commit unlawful acts (Onrechtmatige Daad) not default due to difficulty paying to the bank on the loan CV. Marendal Mas (plaintiff/comparator/petitioner Cassation I / respondent Cassation II) do to finance the work of procurement procurement and installation of air conditioning (Air Conditioner) in Garbarata Kualanamu International Airport, then the object of collateral CV. Marendal Mas (plaintiff/comparator/petitioner Cassation I/respondent Cassation II) bail in the bank threatened at auction by the bank. 4. Whereas the difficulty of payment in the bank experienced by the CV. Marendal Mas (plaintiff/comparator / applicant Cassation I / respondent Cassation II) for

working capital financing will not occur if PT. Angkasa Pura II (Persero) Branch Office Kualanamu International Airport (defendant/compared/applicant Cassation II/respondent Cassation I) immediately make payment. 5. In addition, the good name of CV. Marendal Mas (plaintiff/comparator/petitioner Cassation I / respondent Cassation II) as entrepreneurs who often make money loans in banks become not good in the eyes of banks because credit payments are not smooth so that in the future if CV. Marendal Mas (plaintiff/comparator/petitioner Cassation I/respondent Cassation II) want to make a loan of money in the bank will be difficult to be granted because of the bank's trust in CV. Marendal Mas (plaintiff/comparator/petitioner Cassation I/respondent Cassation II) reduced even lost. 6. CV. Marendal Mas (plaintiff/comparator/applicant Cassation I/respondent Cassation II) stated that due to the actions of PT. Angkasa Pura II (Persero) Branch Office Kualanamu International Airport (defendant/compared/petitioner Cassation II/respondent Cassation I) is clearly and clearly very detrimental to CV. Marendal Mas (plaintiff/comparator / applicant Cassation I / respondent Cassation II) both material and immaterial and legally justified for PT. Angkasa Pura II (Persero) Branch Office Kualanamu International Airport (defendant/compared/petitioner Cassation II/respondent Cassation I) was sentenced to pay it to CV. Marendal Mas (plaintiff/comparator/petitioner of Cassation I/respondent of Cassation II).

However, the PT. Angkasa Pura II (Persero) Branch Office Kualanamu International Airport (defendant/appellant/petitioner Cassation II/respondent Cassation I) has reasons why it does not immediately make the payment of its obligations and said that the lawsuit made by CV. Marendal Mas (plaintiff/comparator / petitioner Cassation I / respondent Cassation II) is not true and also there is no act against the law (Onrechtmatige Daad) or default. The reasons and arguments against the PT. Angkasa Pura II (Persero) Branch Office Kualanamu International Airport (defendant/compared / petitioner Cassation II / respondent Cassation I) include : 1. There are criminal problems between the CV. Marendal Mas (plaintiff/comparator / applicant Cassation I / respondent Cassation II) as the provider of goods/services with other parties related to the installation of air conditioning (Air conditioner) in Garbarata Kualanamu International Airport. 2. The Presence Of Force Majeure (Covid-19). 3. Lawsuit Less Parties. 4. Premature Lawsuit 5. And quibble AC air conditioner) installed can not be utilized or not functioning.

That the foundation of the implementation of the work between the CV. Marendal Mas (plaintiff/comparator / applicant Cassation I / respondent Cassation II) with PT. Angkasa Pura II (Persero) Branch Office Kualanamu International Airport (defendant/appellant/petitioner Cassation II/respondent Cassation I) is a Procurement Agreement of goods and

services. Procurement Agreement has a very important function in the development of the country's economy the amount of state money involved in this agreement is very large and can be said to be effective as a strategy for organizing economic development . Procurement of goods / services is basically an effort on the part of budget users to realize the desired goods or services by using certain methods and processes that do not violate existing regulations.

Act against according to state there are 4 (four) conditions of an act can be qualified as an act against the law (onrechmatige daad), namely : 1. Contrary to the legal obligations of the perpetrator; 2. Contrary to the subjective rights of others; 3. Contrary to decency; 4. Contrary to propriety, thoroughness and prudence; Rosa Agustina in her book tort, also explains “losses in tort according to the Civil Code, The applicant may ask the perpetrator to compensate for real losses that have been suffered or profits that will be obtained in the future”.

2. RESEARCH METHOD

This type of research is empirical juridical research. Empirical juridical research is a research method that combines elements of law (juridical) with the scientific method (empirical) in conducting research. Empirical juridical research aims to answer a legal problem by collecting empirical data, such as primary and secondary data, and analyzing them quantitatively and qualitatively. In this empirical juridical Research, researchers will collect data through interview techniques and document studies, then analyze the data using qualitative analysis methods. Qualitative research is a research procedure that produces descriptive data, namely what is stated by the informant in writing or orally, and real behavior. The research method used in this study is to observe, learn, and understand the situation and activities that occur in the field through interviews with resource persons.

3. RESULT AND ANALYSIS

Before discussing the form of unlawful acts (onrechtmatige daad) in the Supreme Court decision Number: Number: 1120 K/Pdt/2022 Jo. Decision number: 342/Pdt/2021 / PT MDN, which is the basis for the issue in the dispute, namely the Goods and Services Procurement Agreement with number: PJJ.04.04.01/05/07/2019/0104 between the CV. Marendal with PT. Angkasa Pura II (Persero) Branch Kualanamu International Airport is the procurement and installation of air conditioning (air conditioner) in Garbarata Kualanamu International Airport, Deli Serdang, North Sumatra. To decipher the meaning of the agreement Kamus Besar Bahasa Indonesia interprets the agreement is an agreement (written or oral) made by two or more parties, each agreed will obey what is mentioned in the agreement.

Agreement and consent mean the same thing. If interpreted, agreements and agreements are legal events in which two or more parties bind themselves to do or not do something that gives birth to a legal relationship. According to the Legal Dictionary, an agreement is an agreement made by two or more parties, written or oral, each agreeing to obey the contents of the agreement that has been made together. The term "agreement" in treaty law is the equivalent of "overeenkomst" in Dutch, or "agreement" in English.

A covenant is an event in which one person makes a promise to another or in which two people make a promise to each other to do something. From this event, there arises a relationship between the two people called the alliance. This agreement publishes an alliance between the two people who make it. In its form, a covenant is a series of words that contain promises or abilities that are spoken or written. The definition of an agreement is also regulated in Chapter II of Book III of the Civil Code on commitments born from contracts or agreements from Article 1313 to Article 1351. Article 1313 of the Civil Code states that an agreement is an act by which one or more persons bind themselves to one or more other persons.

Regarding these limitations, civil law scholars generally argue that the definition or limitation or can also be called the formulation of the agreement contained in the provisions of Article 1313 of the Civil Code is incomplete and even said to be too broad contains many weaknesses. As for these weaknesses, among others: a. The formulation is only suitable for unilateral agreements because the word 'binding' only comes from one of the parties; b. The definition is too broad, because there is no mention of binding limited in the field of property law, so it can also include marriage agreements in the field of family law; c. Without mentioning the purpose, so it is not clear to what the parties bind themselves. So from these shortcomings, he completes the definition of an agreement is an agreement by which two or more people who bind themselves to carry out a matter in the field of property law.

The formulation of Article 1313 of the Civil Code in addition to being incomplete is also very extensive. It is incomplete because it only mentions unilateral approval. It is very broad because with the use of the word 'deed' also includes voluntary representation and unlawful acts. Therefore, it is necessary to make improvements regarding the definition, namely: the Act must be interpreted as a legal act, that is, an act that aims to cause legal consequences and add the words "or bind themselves together" in Article 1313 of the Civil Code. Thus, a covenant is a legal form in which one or more persons bind themselves or bind themselves to one or more persons.

Regarding agreements or agreements, the provisions of Article 1338 of the Civil Code explain that all agreements that are legally made are valid as law for those who make them. An agreement is irrevocable except by agreement of both parties or for such reasons as the law provides are

sufficient for it. An agreement must be executed in good faith. The law as a source of engagement is divided into two, namely the law alone and the law in relation to the actions of people. An alliance born of law is merely an alliance whose obligations are directly ordered by law. An engagement born of the law as a result of the actions of people is an engagement that arises because of an act committed by a person and then the law establishes the existence of rights and obligations arising from the act. The act is divided into two kinds of acts according to the law (*rechtmatige daad*) and acts against the law (*onrechtmatige daad*). An example of an engagement arising from the law due to an act in accordance with the law (*rechtmatige daad*) is the person performing the so-called debt-free payment (*onverschuldigde betaling*) mentioned in Article 1359 of the Civil Code. In addition to the law, there is also an act against the law (*onrechtmatige daad*). This act *apapbila* done by someone, on the provisions of the law there is an engagement between the perpetrator of the unlawful act with the person who was harmed as a result of the act as asserted in Article 1365 of the Civil Code. In other words, every unlawful act that brings harm to another person creates an obligation on the perpetrator of the act due to whose fault the loss has arisen to provide compensation for the loss.

Based on the opinions of the experts above, it can be understood that an agreement is a legal act carried out between one or more legal subjects and one or more other legal subjects who agree to bind themselves to one another about certain things in the field of property. An event in which a person undertakes to bind himself to another person, the agreement contains previously agreed promises, that is, in the form of rights and obligations inherent in the parties who made it in written or oral form. Tort or *onrechtmatige daad* in Dutch translates as " *torf onrecht* " in English and refers to tort. In Indonesian, " *torf onrecht* " can be interpreted as a legal act committed by a legal subject and having legal consequences. In the legal field " *torf* " is often defined as a civil tort that does not originate from a breach of contract. According to Article 1365 of the Civil Code (Civil Code), an unlawful act is defined as an act that harms another person and requires the perpetrator responsible for the harm to compensate him. So an unlawful act is an act that causes harm to another person, so the victim can bring charges against the offender. These losses can be material or non-material losses.

Article 1365 of the Civil Code establishes four requirements that must be met in a lawsuit based on an unlawful act. Here is an explanation of the elements:

1. Unlawful acts Acts considered against the law are based on written rules and legal principles in force in society, such as the principle of speed or propriety.

2. Error There are errors that are committed intentionally or negligently, that is, the perpetrator violates applicable legal obligations.
3. Disadvantages Losses occur either materially (losses that can be measured in real terms) or immaterial (losses to benefits or profits that can be obtained in the future).
4. Causal relationship between tort and harm. The harm suffered must be directly caused by the unlawful act committed by the perpetrator. The plaintiff filing a lawsuit on the basis of an unlawful act must prove all four requirements. If one of the requirements is not met, the court may reject the lawsuit.

Indemnity in this legal context represents compensation given to the victim in an amount that exceeds the actual harm suffered. Indemnity in this legal context includes several forms, namely:

1. Nominal compensation When a serious unlawful act occurs, such as a deliberate act, but does not cause tangible harm to the victim, then the victim can receive a certain amount of money as a form of justice, without taking into account the actual harm. This is known as nominal compensation.
2. Compensation compensation Compensatory damages are payments to the victim in proportion to the losses actually suffered as a result of the unlawful act. It is also called actual indemnity. Examples are compensation for expenses that have been incurred by the victim, loss of income or salary, medical expenses, and suffering, including mental suffering such as stress, shame, damaged reputation, and so on.
3. Compensation Punitive damages are forms of compensation that amount greater than the actual loss. This amount of compensation is intended as a punishment for the offender. This punitive indemnity is applied to severe and sadistic cases involving intentional acts.

On The Decision Of The Supreme Court Number: 1120 K/Pdt/2022 Jo. Number: 342/Pdt/2021 / PT MDN PT. Angkasa Pura II (Persero) Branch Kualanamu International Airport is a state-owned enterprise (SOE) which as the defendant/defendant/respondent Cassation I/applicant Cassation II against CV. Marendal Mas as plaintiff/comparator / petitioner of Cassation I / respondent of Cassation II. In memory of Appeals and Cassation memory CV. Marendal Mas as plaintiff/comparator / petitioner of Cassation I / respondent of Cassation II, postulated, among others :

1. That PT. Angkasa Pura II (Persero) Branch Kualanamu International Airport defendant/compared/respondent Cassation I/petitioner Cassation II has committed unlawful acts (onrechtmatige daad) due to his actions did not immediately carry out its responsibilities to CV Marendal Mas.
2. That it was delivered because CV. Marendal Mas had difficulty paying to the bank for a loan made to finance the procurement work of

procurement and installation of air conditioning (air conditioner) at garbarata kualanamu International Airport, then the collateral object that had been pledged at the bank was threatened at auction by the bank.

3. That whereas the difficulty of payment in the bank for working capital financing will not occur if PT. Angkasa Pura II (Persero) immediately make payments.
4. That in addition CV. Marendal Mas also said that his good name as a company that often loans money in banks is not good in the eyes of banks, because credit payments are not smooth so that in the future it will be difficult to get credit because the bank's trust in it is lost.

That in the Supreme Court decision number: 1120 K/Pdt/2022 Jo. Number: 342/Pdt/2021 / PT MDN PT. Angkasa Pura II (Persero) argued and delivered a rebuttal that never did anything against the law (onrechtmatige daad) and default and said that no payment was made, among others : a. That because in the implementation of the work, the fact is that CV Marendal Mas cooperates with other parties represented by someone named Ronni Paska Hutahaeen, which then between CV Marendal Mas and Ronni Paska Hutahaeen is involved in a dispute in the work referred to by the alleged non-conformity of the technical specifications of the goods installed. b. That where CV. Marendal Mas then reported Ronni Paska Hutahaeen to the police based on a police report number LP/1225/V/2020/SPKT Restabes Medan, dated May 16, 2020 an. Rapporteur Syamsul Chaniago (director of CV Marendal Mas). c. That there are unforeseen circumstances (Force Majeure) based on Presidential Decree of the Republic of Indonesia number 12 of 2020 dated April 13, 2020 concerning the determination of Non-natural disasters for the spread of Corona Virus Disease 2019 ("COVID 19") as a national disaster.

Presidential Regulation Number 12 of 2021 concerning amendments to Presidential Regulation 16 of 2018 describes in Article 27 other types of goods/services procurement contracts consisting of : a. Lump sum It's a contract with R.the scope of work and the amount of the price are fixed and fixed within a certain time limit. b. Unit Price Is a contract of procurement of goods/works Constmksi / other services with a fixed unit price for each unit or element of work with certain technical specifications upon completion of all work within a predetermined time limit. c. Combined lump sum and unit price Is a contract for the procurement of goods/construction work / other services combined Lumsurm and unit price in 1 (one) work aan promised d. Umbrella Contract In the form of a unit price contract within a certain period of time for goods and services that cannot be determined by the volume and/or delivery time at the time the contract is signed. e. Cost Plus Rewards Is a type of contract used for the procurement of

goods/construction work/other services in the context of emergency handling with the value of the contract is a calculation of the actual cost search ditambah rewards with a fixed percentage of the actual cost or rewards with a fixed amount.

Procurement of goods / services through providers, especially goods/construction works/other services has a way of implementation in accordance with Presidential Regulation Number 12 of 2021 concerning amendments to Presidential Regulation 16 of 2018 in Article 1, among others, namely: a. Electronic purchases, hereinafter referred to as E-purchasing, are procedures for purchasing goods/services through electronic catalog systems or online stores. b. Tenders are a selection method for obtaining providers of goods/construction works/other services. c. Selection is a method of selection to obtain consulting service providers. d. International Tender / selection is the selection of providers with the selection participants can come from national business actors and foreign business actors. e. Direct appointment is a method of selection to obtain a provider of construction work Goods/Consulting Services / Other Services under certain circumstances f. Direct procurement of goods/construction works/other services is the method of selection to obtain providers of goods/construction works / other services that are worth at most Rp. 200,000,000.00 (Two Hundred Million rupiah). g. Direct procurement of Consulting Services is a method of selection to obtain consulting service providers worth at most Rp 100,000,000.00 (One Hundred Million rupiah). h. E-reverse Auction is a method of repeated bidding.

On The Court Decision Number: 1120 K/Pdt/2022 Jo. Number: 342/Pdt/2021 / PT MDN PT. Angkasa Pura II (Persero) Branch Kualanamu International Airport is a state-owned company where as the defendant/defendant/respondent Cassation I/applicant Cassation II against CV. Marendal Mas as plaintiff/comparator / petitioner of Cassation I / respondent of Cassation II. That on July 29, 2019 between CV Marendal Mas and PT. Angkasa Pura II (Persero) entered into a Procurement Agreement for goods and services with number : PJJ.04.04.01/05/07/2019/0104 about the procurement and installation of air conditioning (air conditioner) in Garbarata International Airport Kualanamu Deli Serdang, North Sumatra province. Where PT. Angkasa Pura II (Persero) as a state-owned enterprise, every agreement for the procurement of goods/services must remain subject to and refer to the Civil Code and regulation of the Minister of State-Owned Enterprises number 8 of 2019 concerning general guidelines for the implementation of the procurement of goods and services of state-owned enterprises (SOEs), Presidential Regulation Number 16 of 2018 as amended by Presidential Regulation of the Republic of Indonesia (PERPRES) number 12 of 2021 concerning government procurement of goods/services.

4. CONCLUSION

Providers of goods and services need to make more mature considerations and calculations on the project to be implemented, both from tools, materials, estimates of the cost, so that the project can be completed on time in accordance with the value of the contract even though the agreement does regulate the penalty for delay. There is also a need for supervision and participation of community members in the implementation of goods and services procurement agreements to prevent irregularities in their implementation. Procurement of goods and services in the state-owned enterprises (SOEs) is a common thing to be able to support the company's operational performance. However, in terms of procurement of goods and services that are bound in the agreement sometimes there is a dispute between the provider and the user of the goods/services, one of which is a dispute between CV. Marendal Mas with PT. Angkasa Pura II (Persero) branch of Kualanamu Airport in terms of procurement and installation of air conditioning (Air Conditioner) at Garbarata Kualanamu International Airport is a case of unlawful acts (Onrechtmatige Daad). Where CV. Marendal Mas believes that he has done the work in accordance with the agreement even though there is a delay in work, but PT. Angkasa Pura II (Persero) Kualanamu Airport Branch did not immediately carry out the payment resulting in CV. Marendal Mas took the legal step of the lawsuit to the court until the Cassation legal effort stage to the Supreme Court.

REFERENCE

- Absori. *"Penyelesaian Sengketa Lingkungan Hidup: Sebuah Model Penyelesaian Lingkungan Hidup dengan Pendekatan Partisipatif"*. Surakarta, Muhammadiyah University Press, 2014
- Achmad Rifai, *Menggapai Keadilan Dengan Hukum Progresif, Sebuah Upaya Menyempurnakan Putusan Hakim Pada Keadilan*, Makassar, Nas Media Pustaka, 2020
- Achmad Roestandi, *Mahkamah Konstitusi Dalam Tanya Jawab*, Jakarta, Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi, 2006.
- Al-Hafiz, A.-H., Kusbianto, K., & Sitompul, A. (2023). Protection Of The Parties In The Implementation Of The Ship Lease Agreement (Case Study Decision No.231 / Rev.G / 2020 / PN.JKT.UTR). *International Asia Of Law and Money Laundering (IAML)*, 2(2), 92–104. <https://doi.org/10.59712/iaml.v2i2.64>
- Arief Nurtjahjo, Esti Royani, Dian Damayanti, , *Sengketa Utang-Piutang BUMN Berdasarkan Telaah Hukum*, Banyumas, Amerta Media, 2024
- Ariman Sitompul,. *Metode Penelitian Hukum Normatif*. Malang: Mazda Media, 2022.

- Ariman Sitompul. (2023). *Kebijakan Kriminal Dalam Sistem Peradilan Serta Penanggulangan Kejahatan di Indonesia* (1st ed.). Malang : Mazda Media.
- Ariman Sitompul., Sabela Gayo, Dina Mary, *Mediation in the Settlement of Inheritance and Joint Property Matters in the Medan Religious Court. International Asia Of Law and Money Laundering (IAML)*, 3(2), 34–39, 2024. <https://doi.org/10.59712/iaml.v3i2.85>
- Barda Nawawi Arief, *Masalah Penegakan Hukum dan Kebijakan Penanggulangan Kejahatan*, Bandung, PT Citra Aditya Bakti, 2001.
- Binoto Nadapdap, *Hukum Persaingan Usaha*, Jakarta : Jala Permata Aksara, 2019
- Dean G Pruitt, “Konflik Sosial”, Yogyakarta, Pustaka Pelajar, 2004
- Fuady, Munir, *Hukum Kontrak (Dari Sudut Pandang Hukum Bisnis)* Bandung, Citra Aditya Bakti, 2007
- Gunawan Widjaja, Ahmad Yani, “*Jaminan Fidusia*”, Jakarta, Raja Grafindo Persada, 2001
- Hamidi, S Gayo, A Sitompul. (2021). Juridical Analysis on The Procurement Of Goods/Service Of The Government To Realize Good Governance (Research Studies In The Department Of Human Settlement and Layout Batam City). *International Journal Of Research and Review* 8 (11 DOI: <https://doi.org/10.52403/ijrr.20211109>
- Hans Kelsen, , *General Theory of Law and State*, diterjemahkan oleh Rasisul Muttaqien, Bandung, Nusa Media, 2011.
- Harjono, *Konstitusi Sebagai Rumah Bangsa*, Jakarta, Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi, 2008.
- Hasibuan, E. S. (2023). Analysis of the use of discretionary rights by members of the national police under law No. 2 of 2002 and the use of discretion in error. *The International Journal of Politics and Sociology Research*, 11(1), 161–166. <https://doi.org/10.35335/ijopsor.v11i1.125>
- Hernoko, Agus Yudha, *Hukum Perjanjian, Asas Proporsionalitas dalam Kontrak Komersial*, Yogyakarta, LaksBang Mediatama, 2008 .
- Hotma P Sibuea, *Asas Negara Hukum, Peraturan Kebijakan, dan Asas-asas Umum Pemerintahan yang Baik*, Jakarta, Penerbit Erlangga, 2010.
- J.E Sahetapy, *Kejahatan Korporasi*, Bandung : Eresco, 1994.
- Jopie Jusuf, *Analisis Kredit untuk Account Officer*, Jakarta: PT. Gramedia Pustaka Utama, 2008.
- Jujun S.Soeryasumantri. *Filsafat Ilmu Sebuah Pengantar Populer*, Jakarta, Sinar Harapan, 1978 .
- Kitab Undang-undang Hukum Perdata (Staatsblad 1848 Nomor 23 Tahun 1847).
- Kurnia Rezeki Syahputra, Kusbianto, Ariman Sitompul, Application of Material Criminal Law Against Embezzlement in Lubuk Pakam District Court Decision Number 2697/PID.B/2021/PN LBP, *International Journal of Research and Review* Vol. 10; Issue: 7; July 2023 <https://doi.org/10.52403/ijrr.20230727>
- Laura Nader, “*The Disputing Process Law in Ten Societies*”, New York, Columbia University Press, 1978.

- Lili Rasjidi dan I.B Wysa Putra, *Hukum Sebagai Suatu Sistem*, Bandung : Remaja Rusdakarya, 1993.
- Miru, Ahmadi, *Hukum Kontrak dan Perancangan Kontrak*, Jakarta: Rajawali Pers, 2007.
- Muhammad, Abdulkadir, *Hukum Pengangkutan Niaga*, Bandung, Citra Aditya Bakti, 2008 .
- Peraturan Presiden Nomor 54 Tahun 2010 Tentang Pengadaan Barang/Jasa Pemerintah sebagaimana yang telah diubah oleh Peraturan Presiden Nomor 35 Tahun 2011, Peraturan Presiden Nomor 70 Tahun 2012, Peraturan Presiden Nomor 172 Tahun 2014, dan Peraturan Presiden Nomor 4 Tahun 2015 serta Peraturan Presiden Nomor 16 tahun 2018 dan Peraturan Presiden Republik Indonesia (PERPRES) Nomor 12 tahun 2021 tentang pengadaan barang/jasa pemerintah
- Rosa Agustina, *"Perbuatan Melawan Hukum"*, terbitan Pasca Sarjana Jakarta, Fakultas Hukum Universitas Indonesia, 2003.
- Saliman, Abdul Rasyid, *Hukum Bisnis Untuk Perusahaan Teori dan Contoh Kasus*, Jakarta, Kencana Pradamedia Group, 2005.
- Santoso Lukman, *Aspek Hukum Perjanjian Kajian Komprehensif Teori dan Perkembangannya*, Yogyakarta, Penebar Media Pustaka, 2019
- Satjipto Raharjo, *Ilmu Hukum* , Bandung, PT. Citra Aditya Bakti, 2000.
- Satjipto Rahrdjo, *Sisi-sisi Lain dari Hukum di Indonesia*, Jakarta Bukum Kompas, 2006.
- Setiawan, R., *Pokok-pokok Hukum Perikatan*, Bandung, Bima Cipta, 2008.
- Simamora, Y. Sogar., *Hukum Perjanjian Prinsip Hukum Kontrak Pengadaan Barang dan Jasa oleh Pemerintah*, Surabaya: Laksbang PRESSindo, 2009.
- Simanjuntak, *Pokok-Pokok Hukum Perdata Indonesia*, Jakarta, Djambatan, 2009.
- Soekanto, Soerjono & Mamudji, Sri, *Penelitian Hukum Normatif Suatu Tinjauan Singkat*, Jakarta: Raja Grafindo Persada, 2007.
- Soekanto, Soerjono, *Pengantar Penelitian Hukum*, Jakarta: UI Press, 2008.
- Subekti, *Hukum Perjanjian*, Jakarta, Intermasa, 2007.
- Subekti, *Hukum Perjanjian*, Jakarta, Intermesa, 2005.
- Subekti, *Pokok-Pokok Hukum Perdata*, Jakarta, Penerbit PT. Intermasa, 2003.
- Subekti, R., & Tjitrosudibio, R., *Kitab Undang-Undang Hukum Perdata*, Jakarta, Pradnya Paramita, 2003.
- Subekti, R., & Tjitrosudibio, R., *Kitab Undang-Undang Hukum Perdata*, Jakarta, Pradnya Paramita, 2004.
- Subekti, Tjitrsudibio, *Kitab undang-undang Hukum Perdata*, Jakarta, Pradnya Pratama, 2004 .
- Sudikno Mertokusumo, *Hukum Acara Perdata Indonesia*, Yogyakarta, Liberty, 2002.
- Sutedi, Adrian, *Aspek Hukum Pengadaan Barang dan Jasa*, Jakarta, Sinar Grafika, 2003.
- Sutrisno, *Peningkatan Sumber Daya Manusia di Era Otonomi Daerah*, Yogyakarta, Raja Pustaka, 2003.

- Suyono Yoyok ucuk, *Aspek Hukum Pidana Pengadaan Barang dan Jasa Pemerintah*, Yogyakarta, LaksBang Justitia, 2020.
- Syahmin, *Hukum Perjanjian Internasional*, Jakarta, Raja Grafindo Persada, 2006.
- Talib, I. *Bentuk Putusan Penyelesaian Sengketa Berdasarkan Mediasi*. Jurnal Lex et Societatis, Vol.I/No.1. 2013.
- Undang-Undang Republik Indonesia Nomor 19 Tahun 2003 Mengenai Badan Usaha Milik Negara (BUMN) sesuai Lembaran Negara Republik Indonesia Tahun 2003 Nomor 70.
- Wiryaningsih. *"Konsep Keadilan Menurut Filsafat Hukum Islam dalam Perkawinan Poligami"*. Jurnal Hukum dan Pembangunan Fakultas Hukum, 2018.