



Breach of power using budget in implementation of goods procurement contracts and government services (Empirical study of decision number 4/PDT.G/2019/PN.BNA)

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Abstract

This research is about Defaults of Budget User Authorities in the Implementation of Goods and Services Procurement Contracts in work contracts for the procurement of goods and services for Cliff Safety and Normalization of Kr. Peuto, North Aceh District. The results of the study indicate that the cause of the default of the Budget User Authority in the Work Contract for the Procurement of Goods and Services for Cliff Safety Works and the Normalization of Kr. Peuto, North Aceh District, was due to the Negligence of the Authority of the Budget User of the Aceh Irrigation Service in allocating the budget for payments to PT Aldy Jaya Utama and the change of leadership wheel at the Aceh Irrigation Service. The basis for the Judge's consideration in deciding the default case is the presence of a Construction Contract Agreement, Work Commencement Letter (SPMK), and the results of Forkopimda meeting resumes, as well as other documentary evidence which was taken into consideration by the judge to declare that the party Proxy of Budget Users for the Aceh Irrigation Service has committed an act of default in the decision of the Banda Aceh District Court Number 4/Pdt.G/2019/PN. BNA. The principle of legal certainty and the principle of justice for the parties in decision Number 4/Pdt.G/2019/PN. BNA has been fulfilled. The decision has reflected the principles of legal certainty and justice for both parties, in which the panel of judges granted the claim for material and immaterial compensation submitted by the Plaintiff.

Keywords: procurement of goods and services, agreements, defaults

Introduction

Procurement of goods and services is an activity in which the user attempts to obtain or realize the goods and services he wants, using certain methods and processes in order to reach an agreement on price, time and other agreements. Every procurement of goods and services has guidelines and philosophies. The philosophy of procurement of goods and services is subject to the ethics and norms of the procurement of goods and services that apply, following the principles, methods and processes of procurement of goods and services that are standard.

In the procurement of goods and services there are several methods, namely: Direct Appointment is a selection method to get a Provider of Goods/Construction Work/Consulting Services/Other Services in certain circumstances. The latest regulations for the procurement of goods and services as contained in Presidential Regulation Number 12 of 2021 concerning Procurement of Goods and Services Every time they carry out goods and services procurement activities, the parties are obliged to comply with the law of the agreement as stipulated in the Civil Code (KUH). Civil). Therefore, in implementing the procurement of goods/services, the government is involved in a contractual relationship with the service provider. This contractual relationship is as regulated in Article 1338 of the Civil Code, which states "that all agreements made in accordance with the law apply as laws for those who make them.

One type of implementation of the procurement of goods and services using a contract/agreement is the Cliff Safety Work and Normalization of Kr. Peuto North Aceh District which was carried out in the 2013 fiscal year, with the direct appointment method based on the Decree of Budget User

Authorization/User Authority of Goods Programs/Activities in the Field of Rivers, Lakes and Reservoirs of the Aceh Irrigation Service Number: KU.602-A/KPA-SDW/1972/2013 concerning Appointment of Goods/Services Providers for Cliff Safety Work and Normalization of Kr. Peuto North Aceh District (Natural Disaster) at the Aceh Irrigation Service, 2013 fiscal year.

The form of the contract for the procurement of goods and services in the direct appointment method is contained in the Agreement Number: KU.602-A/KONST-PNL/20018/2013 on December 2, 2013, with a contract value of IDR 750,000,000 (seven hundred and fifty million rupiah). In the Construction Payment Agreement it is stated that the first party in the Agreement on Cliff Protection and Normalization of Kr. Peuto Aceh Utara District is the Budget User Authority for the Aceh Irrigation Service. While the Second Party in the contract is PT Aldy Jaya Utama as the provider of goods and services.

The second party PT Aldy Jaya Utama carried out the work based on the Work Commencement Order (SPMK) Number: KU.602/A-SDW/676/2010 by the Head of the Aceh Irrigation Service regarding the Implementation of Cliff Safety Work and Normalization of Kr. Peuto, North Aceh District. In its implementation, there was an act of default (default) committed by the first party as the Authority of the Budget User. In this case, the first party has violated Article 5.1 Jo. Article 6 by not making payments according to the contract in the amount of IDR 750,000,000 (seven hundred and fifty million rupiah). This is as stated in decision Number 4/Pdt.G/2019/PN.Bna, Banda Aceh District Court. In this decision, PT Aldy Jaya Utama as the service provider has the position as the Plaintiff, and the

Budget User Authority of the Aceh Irrigation Service, has the position as the Defendant.

Defaults committed by the first party as the Authorized Budget User have caused losses to the second party as the service provider. The first party has neglected its obligation to make payments for the work to the second party, so that the second party as the Service Provider is greatly disadvantaged. This is because the second party has incurred personal costs and company costs as well as loans to banks. The first party who has been negligent in carrying out payment obligations, can submit a lawsuit through the District Court which has received an inkraht decision with case register Number 4/Pdt.G/2019/PN.Bna.

Seeing that there were acts of default in contracts for the procurement of goods and services carried out by the government, especially the Budget User Authorities at the Aceh Irrigation Service, the researcher was interested in studying the decision Number 4/Pdt.G/2019/PN. BNA, in the form of thesis writing. So that the main problem can be identified, namely what are the factors causing the default of the Budget User Authority in the work contract for the procurement of goods and services for Cliff Safety Works and Normalization of Kr. North Aceh District Peuto? What is the basis for the judge's considerations in deciding cases of default related to the Cliff Safety Work Contract and Normalization of Kr. North Aceh District Peuto? Is the decision of the Banda Aceh District Court Judge Number 4/Pdt.G/2019/PN. BNA is related to the work contract for the procurement of goods and services for Cliff Safety Work and Normalization of Kr. North Aceh District Peuto has fulfilled the principle of legal certainty and the principle of justice for the parties?

Research methods

The method used in this study is an empirical juridical method, which refers to behavior that grows and develops in society. Empirical juridical research is descriptive analytical by describing systematically and accurately the application of laws and regulations that apply in society. Data collection was carried out through field research and library research. Literature research was conducted by tracing books, journals, articles and laws and regulations related to the law on the procurement of goods and services, defaults and analysis of decisions. Field research was conducted by interviewing informants and respondents.

Results and Discussion

1. Causes of Defaults in Budget User Authorities in Work Contracts for the Procurement of Goods and Services for Cliff Safety Work and Normalization of Kr. Peuto, North Aceh District.

One of the most important parts of an agreement is the contents of the agreement itself. From the articles contained in a contract, it can describe the conditions and information about what was agreed upon by the parties who made it either expressly or implicitly. The contract for the procurement of goods and services between the Aceh Irrigation Service and PT Aldy Jaya Utama contains several contract provisions, namely;

1. Identity of the parties signing the contract including name, position, address;
2. Purpose of the Agreement Letter (contract);
3. Contract Section, Terms and Conditions;

4. Duties, Responsibilities, Rights and Obligations of the Second Party;
5. First Party Duties, Responsibilities, Rights and Obligations;
6. Contract System, Contract Value and Method of Payment;
7. Sanctions and Fines;
8. Differences in Understanding and Agreement;
9. Dispute Resolution, and;
10. Closing

The obligation for the parties to enter into agreements for the procurement of goods and services in the activities of the Cliff Safety and Normalization of Kr. North Aceh Regency Peuto has been limited to 10 clauses, which are contained in the construction work contract Number KU.602-A/KONST-PNL/22018/2013, dated December 2, 2003. A total of 10 of these clauses were determined as one of the legal protection efforts for the party. The parties are obliged to carry out and for all the provisions of the contract.

According to Darmawan, in making a work contract for the procurement of goods and services, there are 5 (five) aspects that must be considered, namely; mastery of the subject matter of the agreement, including the object and the terms or conditions to be agreed upon; interpretations of the agreement clauses, the language of the agreement; related laws and regulations as well as dispute resolution. Each construction contract made must meet the general terms of the contract as stipulated in Regulation of the Head of LKPP Number 6 of 2010 concerning Document Standards for Government Procurement of Goods and Services.

From the results of the research, it is known that there are several causes for the default of the Budget User Authority in the Work Contract for the Procurement of Goods and Services for Cliff Safety Works and Normalization of Kr. Peuto North Aceh District, namely;

- a. The negligence of the Aceh Irrigation Service in allocating the budget

The negligence of the Budget User Authority of the Aceh Irrigation Service in allocating a budget for payments to PT Aldy Jaya Utama as the counterparty is a form of default in executing a construction contract. Regarding the activities of Cliff Safety Work and Normalization of Kr. Peuto North Aceh District previously had no previous budget, because the procurement work was a procurement using a direct appointment method that was not planned beforehand, and there was no budget plan. This is because the procurement using the direct appointment method was carried out suddenly due to natural disasters.

According to Darwansyah, direct appointments are made by inviting 1 (one) goods and service provider who is deemed capable of carrying out the work and can meet the qualifications. In the Cliff Safety and Normalization work of Kr. Peuto North Aceh District, PT Aldy Jaya Utama was appointed to carry out this activity, because he was considered financially capable and had previous experience in carrying out goods and services procurement activities using the direct appointment method.

Criteria for certain conditions that make it possible to appoint goods and services providers directly, namely because there is an emergency response that cannot be planned in advance and the time for completion of the work must be carried out immediately and cannot be postponed,

such as the condition of a natural disaster in North Aceh District which can stop public service activities.

b. Changing wheels of leadership

The replacement of the wheel of leadership is also one of the factors causing the unpaid procurement of goods and services for the Cliff Safety and Normalization of Kr. Peuto North Aceh Regency to PT Aldy Jaya Utama. The replacement of the leadership wheel at the Aceh Irrigation Service agency had a negative impact on the prosecution of construction contract payments made by PT Aldy Jaya Utama to the Aceh Irrigation Service. This is because when the leadership changes, the accountability of the previous Budget User Authority also shifts to the new leadership. This of course can slow down the payment process for construction contracts for Cliff Safety and Kr Normalization work activities. Peuto North Aceh Regency to PT Aldy Jaya Utama.

Whereas PT Aldy Jaya Utama has made various efforts to settle defaults out of court with the Government of Aceh, such as sending letters and going directly to the relevant offices to make the remaining payments from activities, but found no results. So that the last resort taken by Darwansyah as PT Aldy Jaya Utama is to file a lawsuit for default to the Banda Aceh District Court, with the aim of having a judge's decision which in his considerations provide justice for PT Aldy Jaya Utama as the aggrieved party.

2. Basis for Judges' Considerations in Deciding Default Cases Related to Cliff Safety Work Contracts and Normalization of Kr. Peuto, North Aceh District

The judge's consideration is one of the most important aspects in determining the realization of the value of a judge's decision which contains justice and legal certainty, besides that it also contains benefits for the parties concerned so that this judge's consideration must be addressed carefully, properly and carefully. If a judge's consideration is made in an inaccurate, good and careful manner, the judge's decision originating from the judge's consideration will be annulled by the High Court/Supreme Court.

Ani Hartati said that in trying a case the judge must carry out three actions, namely: the first stage, constituting, namely admitting or justifying that an event has occurred that has been proposed by the parties before the trial. The conditions needed for this are concrete events that must be proven first. The second stage, qualifying, namely assessing events that have been deemed to have occurred are included in a legal relationship or determine the law for events that have been confirmed by applying legal regulations to these events. As well as the third stage, the constitution, namely establishing the law or drawing conclusions from the legal regulations and events.

The panel of judges in the Case Decision Number 04/Pdt.G/2019/PN.Bna has the power to accept, examine, and decide on the case submitted by PT Aldy Jaya Utama as the plaintiff through his attorney M. Amin Said, and Yahya from the Advocate Association organization Indonesia (PERADI). The panel of judges has carried out what has been mandated by Article 10 paragraph (1) of Law Number 48 of 2009 and to carry out the principle in civil procedural law, namely the *ius curia novit* principle, namely that judges are considered to know the law. The principle of *ius curia novit* views that every judge knows the law so he must try every case that is submitted to him.

In case Number 4/Pdt.G/2019/PN.Bna, a mediation step has been attempted in advance, this is in accordance with the sound of Article 4 of Supreme Court Regulation Number 1 of 2016 Concerning Mediation Procedures in Court, which states that all civil disputes filed to the Court, it is obligatory to seek settlement through Mediation beforehand, unless otherwise stipulated based on a Supreme Court Regulation. Even though peace efforts have been made between the two parties, an agreement was not reached in this case (Failed Mediation)..

Whereas the main source of problems between the Plaintiff and the Defendant was the non-compliance of the remaining payment for the Cliff Safety and Normalization of Kr. Peuto North Aceh District, the work was carried out by the Plaintiff, because the Plaintiff received an order from the Defendant by direct appointment. The Defendant issued a Commencement Work Order (SPMK) Number: KU.602/A-SDW676/2010, April 5 2010, referring to the Aceh Governor's Letter No.360//11282, March 25 2010, concerning approval for the issuance of a Commencement Order. Work (SPMK) for Natural Disaster Management work.

The panel of judges in their considerations on the decision on case Number 4/Pdt.G/2019/PN.Bna, said that the results of the resume of the Forkopimda meeting became one of the materials for the judge's considerations in the decision on the default case. That in order to complete the payment of the remaining/volume value of the work of the Plaintiff by budgeting in pure APBA and/or APBA, the 2013, 2015, 2016, 2017 fiscal year and the fiscal year until this lawsuit was filed, where it has been proven that no dime was proposed/allocated the budget for settlement of payment of the remaining volume value of the work of the Plaintiff in the List of Implementation of the Regional Work Unit Budget (DPA-SKPA) of the Aceh Irrigation Service (Defendant).

The Aceh Irrigation Service as the Defendant was declared to have committed a default as described in point 4 (four) injunction No. 4/Pdt.G/2019/PN.Bna which stated that the Defendant had not made payment for the remaining work on Cliff Safety and Normalization of Kr Peutoe Aceh District North is an act of default. Furthermore, in number 5 (five) in the verdict stated that "Punish the Defendant to make payments of the remaining debt to the Plaintiff of approximately Rp. 3. 120,839,178,000 (three billion one hundred twenty million eight hundred thirty nine thousand one hundred twenty million eight hundred thirty nine thousand hundred and seventy eight rupiah) through the account of PT Aldy Jaya Utama".

In the consideration of the panel of judges, it is the Plaintiff's right to receive the remaining unpaid payments in a natural disaster work as stated in the lawsuit. The Defendant as a good Government Agency should not violate the general principles of good government towards its citizens, and therefore the Defendant is obliged to allocate and propose funds for repayment of the remaining debt to the Plaintiff in the 2019 APBA amendment to the 2019 Budget or in the 2020 Fiscal Year and/or in next year.

According to Ani Hartati that in a contract, if one of the parties defaults, the injured party can demand compensation related to the payment of fines. In the *posita* and *petitum*, the Plaintiff (PT Aldy Jaya Utama) asked for a fine of 13% of the contract value. However, this request was not granted by the panel of judges. Ani Hartati added that the panel of

judges in determining the amount of interest fines did not follow the interest fines that had been decided in similar cases previously, which was 13%, there is no obligation in the legal system in Indonesia.

In determining the amount of interest fines in the default case number 4/Pdt.G/2019/PN.Bna, the panel of judges was guided by data issued by an official state institution, namely the Financial Services Authority, as well as Indonesian Banking Statistics (SPI) data which contains fluctuations deposit interest. So that due to fluctuations, the panel of judges granted a fine for interest that must be paid by the Defendant to the Plaintiff in accordance with the ruling of 10% per year, in accordance with the amount of bank interest, if the money is deposited annually, and this is a reasonable interest, so it is not burdensome for both parties to the lawsuit. Apart from that, in the consideration of the judge in case number 4/Pdt.G/2019/PN.Bna, charging case costs to the Defendant as the defeated party,

3. The Principle of Legal Certainty and the Principle of Justice for the Parties in Decision Number 4/Pdt.G/2019/PN. BNA is related to the Work Contract for the Procurement of Goods and Services for Cliff Protection and Normalization of Kr. Putroe, North Aceh District.

The decision on case number 4/Pdt.G/2019/PN.Bna reflects the principle of legal certainty and justice for both parties, this is because the first party, PT Aldy Jaya Utama, is the party that has been harmed materially and immaterially. During the trial the Defendant also did not argue, did not deny and did not repudiate the arguments of the Plaintiff's lawsuit against him for having committed a breach of contract, and in fact had justified it. This is as stated on page 8 in the decision case number 4/Pdt.G/2019/PN.Bna.

The decision on case number 4/Pdt.G/2019/PN.Bna is a decision that has implemented the principle of legal certainty and the principle of justice, the decision has provided legal protection against arbitrary actions, which means that someone who is harmed will get something expected in certain circumstances. Every member of the public who comes to court is a person who expects legal certainty and justice, because the judge's duty is to create legal certainty with the aim of creating order in society. The principle of legal certainty and the principle of justice in a judge's decision is a guarantee that someone who is punished must carry out the decision.

According to Eva Susanna, a court decision basically has to be able and courageous to show and voice the conscience of the people. As in the verdict case number 4/Pdt.G/2019/PN.Bna is a decision based on the position of the plaintiff PT Aldy Jaya Utama which is the community against the government, namely the defendant in this case the Government of Aceh cq. Aceh Irrigation Service. Decision case number 4/Pdt.G/2019/PN.Bna has reflected that the Court in carrying out its functions and duties works in accordance with the conscience and dreams of the people. The court institution is not only a law machine, but also capable of changing the life of the nation in an intense manner. In fact, a judge's decision is needed to resolve a case submitted to court.

In addition, the verdict case number 4/Pdt.G/2019/PN.Bna also has permanent legal force, the nature of the decision which has permanent legal force in case number in the form of a decision at the first level.

Decision case number 4/Pdt.G/2019/PN.Bna, it was decided in the deliberation meeting of the Panel of Judges of the Banda Aceh District Court on April 22 2019 that it has provided legal certainty and legal justice, especially to PT Aldy Jaya Utama as the Plaintiff who is demanding compensation for the default committed by the Defendant. Even though the decision has permanent legal force (incraht), but the facts on the ground, the Plaintiff until now January 2023, has not received payment of the remaining proceeds. Cliff Safety Work and Normalization of Kr. Peuto, North Aceh District and also have not received compensation or compensation of 10% in accordance with the verdict.

Conclusion

The decision of the Banda Aceh District Court regarding default in the procurement of goods and services is a decision that has provided the principle of legal certainty and the principle of justice for both parties. PT Aldy Jaya Utama as the service provider has carried out the work in accordance with the contents of the agreement, and is the obligation of the Government of Aceh cq. Aceh Irrigation Service to carry out obligations by making payments and fines in accordance with the verdict number 4/Pdt.G/2019/PN. BNA. Aceh Government cq. The Aceh Irrigation Service should carry out the principles of good governance, one manifestation of the principles of good governance is to implement the said decision.

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