

LEGAL RESPONSIBILITIES OF COMMITMENT-MAKING OFFICER OF DEFAULT BY THE GOVERNMENT PROCUREMENT CONTRACTS

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Abstract

Government procurement projects in Indonesia encounter various challenges, one of which is the government's default on its obligations through delayed payments to suppliers of goods and services. This research addresses two primary issues: first, the legal relationships formed within government procurement processes, and second, the liability that arises from defaults in these contracts. This normative legal research provides a detailed examination of the legal framework that governs these relationships. The procurement process involves key government officials, including the Authorizing Officer (PA), Commitment-Making Officer (PPK), and Budget User Authority (KPA), who act on behalf of the government. These officials are responsible for contract management and budget oversight. Should the government fail to fulfill its payment obligations in a timely manner, it may be held legally liable for compensating the provider for any resulting losses, fees, and interest. The liability of the PPK, when acting within the scope of their official duties and in good faith, remains the responsibility of the state. However, if the PPK's actions are found to be intentional or negligent, they may be personally liable, subject to criminal or administrative sanctions.

Keywords: Commitment Making Officer, Government Procurement Contracts, Legal Responsibilities.

INTRODUCTION

One of the biggest expenditures in the State Budget (hereinafter referred to as APBN) as well as the Regional Budget (hereinafter referred to as APBD) is the activity of Government Procurement (hereinafter referred to as PBJP). PBJP is the process of government procurement which work includes planning, preparation, permitting, determining the auction/tender winner, and up to the implementation.¹ The scope of government work, especially in PBJP, is very complex and does not possible for the government to work itself or only in collaboration with the government organs themselves, but also involves the private sector, one of which is through an agreement, especially PBJP contracts.²

Article 8 Presidential Regulation of the Republic of Indonesia Number 12 of 2021 on Amendments to Presidential Regulation of the Republic of Indonesia Number 16 of 2018 on Government Procurement, hereinafter referred to as Presidential Regulation Number 12 of 2021 on Amendments to Presidential Regulation Number 16 of 2018 of Government Procurement on the provider of government procurement states that there is a legal relationship between government officials and the private sector in PBJP. The government here includes Budget User (hereinafter referred to as PA), Proxy of Budget User authorities (hereinafter referred to as KPA),

¹Adrian S, *Aspek Hukum Pengadaan Barang & Jasa dan Berbagai Permasalahannya*, Yogyakarta:Sinar Grafika, 2014, P. 06.

² Ridwan HR, *Hukum Administrasi Negara*, Jakrta: PT Raja Grafindo Persada, Jakarta, 2010, p. 121.

Commitment-making Officer (hereinafter referred to as PPK) with private parties, namely providers.

The PBJP contract frames a clear legal relationship between the government and the private sector. Where the government in a contract cannot position itself higher than other parties as stipulated in Article 1338 of the Indonesia Civil Code, even though in fact the government has the authority to be regulator. The obligations of the parties in carrying out the contract must be clearly and detailed in the contract.³

The government's action in premising contracts are belong to civil category therefore it is subject to Civil Code. In 2016, cooperation projects between the government and the private sector in the procurement of goods/services in the construction sector reached Rp 93.81 trillion. Most of these infrastructure projects are hard infrastructure such as the construction of power plants, hospitals, sports halls, public housing, etc.⁴ The implementation of the procurement is not all smooth. The provider in carrying out the contract is required to work impeccably. Impeccable work is intended for the providers to carry out work without any lessening in the quality of the agreed contract.

The government can easily sue the provider to be responsible for mistakes made by them. The problem that is often faced by the government besides regarding the quality of buildings is the delay that is often carried out by the providers. In fact, some of these defaults also sometimes come from the government in carrying out contracts, especially in terms of payments. It's just that in reality the private sector rarely fights against the law in these defaults even though they have suffered losses. Such as the case of late payment by government that occurred in the Ujong Tanoh Village Coast Guard Work Project, Samadua District, South Aceh Regency. This project is a collaboration between the government and Citra Bunda Inc. in handling natural disasters. This case does not burden PPK as the party that should be responsible because PPK has executed the contract in accordance with what is stated in the RAB (Budget Estimate Plan).

Based on the legal issues and facts that have been described regarding several cases of default in the procurement of goods/services, especially regarding late payments by the government, it must be reviewed again at the causes of late payments. Factors causing late payments will correlate with legal responsibilities that will be given later. Eventhough the government in the PBJP contract is represented by the PPK that the PPK is the one who premises and controls a contract, can the PA and KPA be withdrawn as parties to responsibility if a legal problem occurs in the contract later while control of the contract is under the authority of the PPK? What are the limits of responsibility in the event of a legal problem, is it jointly borne by the PA, KPA and PPK, or is it borne solely by the PPK? What are the legal consequences for the PPK in the event of default in the contract, whether due to negligence or non-negligence?

METHOD

The research is normative research using a research approach, namely the statutory approach and the case approach. The data used in this study is secondary data consisting of primary legal materials, secondary legal materials, and tertiary legal materials. Data collection techniques in this study used literature study with descriptive evaluative data analysis techniques. In order to achieve research originality and avoid repeating studies of the same research object, the authors found several studies with similar themes, namely PBJP including Kadek Deddy

³Sarah Kuahaty, "Pemerintah Sebagai Subjek Hukum Perdata Dalam Kontrak Pengadaan Barang atau Jasa". *Jurnal Sasi*. Vol. 17, Num. 3, 2011, P.56.

⁴Yulida Medistiara, " 12 Proyek Kerjasama Pemerintah Swasta RP 93 T Tahap Konstruksi " Yulida Medistiara (02 Februari 2017), <https://finance.detik.com/berita-ekonomi-bisnis/d-3412545/12-proyek-kerja-sama-pemerintah-swasta-rp-93-t-tahap-konstruksi>. accessed 12 Agustus 2024.

Permana Artha (2018)⁵, thesis entitled Legal Protection for the Government in Procurement of Goods/Services Through E-Purchasing, Universitas Airlangga. Yahya Ubed (2015)⁶, thesis entitled Legal Protection for Goods/Services Providers in Goods/Services Procurement Contracts at Kereta Api Indonesia Inc., Universitas Islam Indonesia. A study by the Head of the Legal Subdivision of the Secretariat of the House of Representative of Subulussalam City, Julianda B. Manalu regarding Legal Protection for Goods/Services Procurement Organizers in the Jurnal Hukum Samudera Keadilan Volume 12, Number 2, July-December (2017).

RESULT AND DISCUSSION

Legal Relations of the Parties in the Goods/Services Procurement Contract

The legal relationship that occurs between legal subjects has three elements. The first element is the existence of a legal subject whose rights and obligations vis-a-vis. The second element is the existence of an object that applies between the legal subjects. And the last is the existence of a relationship between the owner of the right and the bearer of the obligation or the relationship of the object in question.⁷ Legal relations are carried out by legal subjects. The definition of legal subject itself is something that has rights and obligations in legal activity. Legal subjects consist of 2 (two), namely humans (natuurlijke person) and legal entities (recht person).⁸

Legal relations occur in the activities carried out by the government on a daily basis. The government in carrying out its duties requires non-governmental parties in order to carry out its daily functions. This can be seen in the contracts for the procurement of goods/services. When the government becomes a party to the contract, the government's position is equal to that of non-government parties.⁹

Cooperation between the government and the private sector in procuring infrastructure in goods/services procurement projects is a natural thing for the government to do as in civil code acts (privaatrechtelijke handling).¹⁰ Not all contracts where one of the parties is the government fall within the scope of civil code. Sometimes the government has a dual position, either as a party or as the government in contracts involving the government. So that a contract where one of the parties is the government can enter into the realm of private law and can enter into the space of public law because the government as a party cannot be said to be an ordinary commercial contract.¹¹ One of these government civil code relations arises because of the existence of a government procurement of goods/services contract.

The government here is an organizational leader, especially in ministries/agencies/local governments called PA and has the right to make decisions that cause budget expenditures and become the main actor working on behalf of the government in the procurement of goods/services. A budget user can give part of his authority and responsibility in budget matters to a Proxy of Budget User (KPA). PA/KPA as long as they meet the requirements can simultaneously serve as a Commitment-Making Officer who is also in charge of contract control and has implications for budget use. The three procurement actors above are parties representing the government in carrying out legal actions with the private sector in the practice of procurement

⁵ Kadek Deddy, [Perlindungan Hukum Bagi Pemerintah Dalam Pengadaan Barang/Jasa Melalui E-Purchasing Repository - Unair Repository](#)

⁶ Yahya Ubed, [Perlindungan Hukum Bagi Pihak Penyedia Barang/Jasa Dalam Kontrak Pengadaan Barang/Jasa Di Pt. Kereta Api Indonesia \(Persero\)](#)

⁷ Soeroso. *Pengantar Ilmu Hukum*. Jakarta:Sinar Grafika, 1996, P. 271.

⁸ Ridwan Halim. *Hukum Perdata Dalam Tanya Jawab*. Jakarta:Ghalia Indonesia, 1985, P. 29

⁹ Sarah S. Kuahaty, *Op. Cit.* P 56.

¹⁰Bagir Manan, *Bentuk-bentuk Perbuatan Keperdataan Yang Dapat Dilakukan Oleh Pemerintah Daerah, Majalah Ilmiah Universitas Padjajaran*. 1996.

¹¹S Hartono. *Masalah- masalah dalam Joint Ventures antara Modal Asing dan Modal Indonesia*. Bandung:Alumni, 1974, P. 28.

of goods/services.¹² While the provider here is a business actor who provides goods/services based on a contract.

In general, contracts for the government procurement must comply with contract law principles such as the principle of consensualism, the principle of legal certainty, the principle of good faith, the principle of freedom of contract, and other principles.¹³ Because of the government's involvement in it, there is a mixture of private and public elements which makes the rules and principles of private contracts not fully apply to contracts made by the government. For example, PBJP must adhere to all the principles and values contained in Presidential Regulation Number 16 of 2018 concerning Government Procurement and Presidential Decree Number 12 of 2021 concerning Amendments to Presidential Regulation Number 16 of 2018 concerning Government Procurement. This is what distinguishes government contracts from private contracts in general, namely not only based on contract principles but regulated in a special regulation either in the form of government regulations, laws, presidential regulations or other statutory regulations.¹⁴

The government's activities in PBJP in representing this country are the implementation of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia which reads:

"The land, the waters and the natural resources within shall be under the powers of the State and shall be used to the greatest benefit of the people."

These norms indicate that the state, which in this case is represented by the government, has the authority to regulate and manage natural resources in all parts of Indonesia. With the right to control the country, the state cannot be separated from its main objective, namely for the greatest prosperity of the people. The state must give prior rights to the people who have real and in good faith.¹⁵

As a consequence of this, the state is referred to as the 'administrator' which must make policies that must be in favor of the people for the sake of welfare. This stewardship is interpreted as the duty of the state to regulate, manage, organize and control the use, use and allotment of natural resources, and advance the economy.

State control in terms of natural resource management is in line with one of the doctrines, namely the essential facilities doctrine. This doctrine states that if a business actor is dominant in holding an essential facility, then that organ is obliged to provide access to other business actors to use the facility.¹⁶ Essential Facilities here are not only in the form of resources, but funds owned by the state and used in PBJP. Where the government cooperates with the private sector in a contract so that later private parties who are also citizens can enjoy benefits sourced from state finances.¹⁷

Contracts for the procurement of goods/services are fully designed by PPK. Therefore, before making a contract, the PPK must have a good understanding of DIPA. Later, the DIPA

¹²Fahrurrazi, *Pengguna Anggaran, Kuasa Pengguna Anggaran, Dan Pejabat Pembuat Komitmen Dalam Implementasi Peraturan Presiden Nomor 12 Tahun 2021*. 2021, from <https://biropbj.jabarprov.go.id/wp-content/uploads/2021/03/PAPARAN-PA-KPA-dan-PPK-dalam-Perpres-12-Th-2021-Fahrurrazi.pdf> accessed at 13th August, 2024.

¹³Sinaga, N.A., "Perjanjian Pengadaan Barang/Jasa Pemerintah Kaitannya Dengan Asas Keseimbangan Dalam Hukum Perjanjian." *Jurnal Ilmiah Hukum Dirgantara*, 2019, Vol. 9 Num. 2, P. 32.

¹⁴Y.S Simamora. *Prinsip Hukum Kontrak Pengadaan Barang dan Jasa Oleh Pemerintah*. Surabaya: Disertasi Program Pascasarjana Universitas Airlangga. 2005. P. 73-78.

¹⁵Bagir Manan, *Menyongsong Fajar Otonomi Daerah*. Yogyakarta: PSH FH UII, 2004 P. 233.

¹⁶C.M. Seelen, "The Essential Facilities Doctrine: What Does It Mean To Be Essential" *Marquette Law Review*. 1997, Vol. 18 Num. (4). P. 1119.

¹⁷Gessica Freshana Marsauli. *Tinjauan Yuridis Essential Facilities Doctrine Dalam Hukum Persaingan Usaha*. 2019 from <https://lib.ui.ac.id/detail?id=20485212&lokasi=lokal> accessed on 11th, August 2024.

will be used by the PA/KPA as the basis for making payments. DIPA is a document that contains the amount of the budget allocated for a work unit and is the basis for using the APBN at the work unit level. It is from this DIPA that the PA/KPA must notify the budget limit of an activity and may not exceed this allocation.¹⁸

The PPJB contract can be in the form of a standard contract that was originally designed by the PPK. This is permissible in line with the theory of standard agreements where agreements are allowed to occur without going through a balanced negotiation process between the parties, but the agreement is made by one of the parties by preparing standard terms on a printed agreement form which is then offered to the party with condition that the other party agrees to all the clauses of the agreement.¹⁹

There are several types of contracts where the budget amount cannot be predicted when the contract is made. So PPK must know very well the specifications of the contract. Therefore, it is very important for PPK to meet the PPK qualifications as required. The accuracy of PPK in predicting the value of this budget is considered very urgent because it is feared that it will exceed the amount of the budget and the government will not be able to pay providers.²⁰ The obligation to pay by the government for goods/services that have been provided by the provider is an obligation that must be paid by the government to the provider in a legal relationship for the procurement of goods/services.

Like a legal relationship arising from a contract, the parties are required to fulfill their rights and obligations. The provider's obligation is to provide goods/services in accordance with what the government needs, and the government fulfills its obligations by paying according to the agreed nominal. This legal relationship must be carried out in good faith by each party. However, this legal relationship does not always run smoothly, sometimes the parties commit defaults, namely when the provider does not complete the project on time or the government does not pay the project on time.

Legal Responsibilities of Commitment-Making Officer for Default in Goods/Services Procurement Contracts

Performance is the creditor's rights and obligations of the debtor in the contract. Performance means giving something, doing something, and not doing something. That when a person or the parties to the agreement are unable to carry out their obligations or carry out their obligations but are not on time or inappropriate, not even carrying out their obligations at all means violating performance or default.²¹

This is regulated in Article 1238 of the Indonesia Civil Code on default, namely:

The debtor shall be deemed in default, either by an order or other similar deed, or pursuant to the obligation itself, where such obligation stipulates that the debtor shall be in default, upon failure to deliver within the stipulated time period”.

The government can be considered negligent and fulfill Article 1238 of the Civil Code regarding this default because the government that is given the obligation to pay does not fulfill the contents of the agreement as agreed in the contract for the procurement of goods/services with the provider. As in theory, there is no default without an agreement or contract. The occurrence of cases of late payment in the government procurement is not automatically classified as a

¹⁸Direktorat Sistem Perbendaharaan Direktorat Jenderal Perbendaharaan Kementerian Keuangan RI. *Panduan Teknis Pejabat Pembuat Komitmen*. [https://dipb.kemenkeu.go.id/portal/images/panduan_teknis/ppk/Panduan Teknis PPK lq.pdf](https://dipb.kemenkeu.go.id/portal/images/panduan_teknis/ppk/Panduan_Teknis_PPK_lq.pdf), 2017, accessed on 14th August 2024.

¹⁹Munir Fuady, *Pengantar Hukum Bisnis (Menata Bisnis Modern di Era Global)*. Jakarta: Citra Aditya, 2022, P. 22.

²⁰Pusat Pendidikan dan Pelatihan Sumber Daya Air dan konstruksi, *Modul Pelaksanaan Kontrak*. Bandung, 2016, P. 7.

²¹A.R. Saliman, *Esensi Hukum Bisnis Indonesia*, Jakarta: Kencana, 2004, P. 15.

default.²² Some violations in procurement practices can also be classified as cases of unlawful acts. If an act conflicts with the rights of other people or conflicts with its own legal obligations or conflicts with decency, then it is called an unlawful act. Some experts even equate unlawful acts with defaults within certain limits.²³

Default can occur if there is an action. A legal entity can only act through persons who represent it. Thus, when a legal entity can carry out legal actions, the legal entity can also be asked to carry out legal responsibilities. This legal responsibility can only be given when the state is proven to have committed something that is prohibited by law, for example in this case a default.²⁴

One example of a default case by the government in the PBJP Project is written in the Supreme Court Decision Number 3229 K/Pdt/2015 concerning a case that occurred in the Project for the Procurement of Goods/Services for Coast Guard Work in Ujung Tanoh Village in Samadua District, South Aceh Regency. This PBJP is a project involving Citra Bunda Inc. which received an emergency work project due to a natural disaster as outlined in a contract in the form of a Work Order (SPMK) Number KU.602/A-IRP/1989/2010 issued by the Minister of Home Affairs, Governor of Aceh, and Head of the Aceh Irrigation Service in their capacity as the Government of the Republic of Indonesia.²⁵

Whereas based on the SPMK, Citra Bunda Inc. has succeeded in completing the project perfectly 100% (one hundred percent) in accordance with the visualization photo of the implementation of the work which has been confirmed, acknowledged, and approved by the Field Supervisor of the Aceh Irrigation Service, Technical Officer (PPTK) for Coastal Safety Infrastructure Development of the Aceh Irrigation Service, and Plaintiff Company. In fact, the benefits of the project have been recognized by the people of Gampong Ujung Tanah who live along the coast.²⁶

Regarding payment, it is stated in the construction contract agreement agreed by both of them. The government has paid part of the project value for 2 times with details of Rp 743,953,000.00 (seven hundred forty-three million nine hundred fifty-three thousand rupiah) as stipulated in the Construction Work Agreement (Contract) Number KU.602-A/ KONST-PNI/1177/2012, dated March 21, 2012 and a total of Rp 750,000,000.00 (seven hundred and fifty million rupiah) as stipulated in the Construction Work Agreement (Contract) Number KU.602-A/KPA-IRP/3547/ 2013. That all of these payments are paid using Aceh Budget (APBA).²⁷

After being paid in two previous payments, the government did not immediately complete the payment until a lawsuit was filed by Citra Bunda Inc. against the government. Decision Number 3229 K/Pdt/2015 stated that the reason for the delay in payment was because the Minister of Home Affairs of the Republic of Indonesia, the Governor of Aceh, the Head of the Aceh Irrigation Service, and the Leaders of the Aceh House of Representative, who in their capacity as the government did not budget any of the project funds in APBA in 2014 which caused material losses for Citra Bunda Inc. as a provider.²⁸

Another factor that causes delays in payment in other PBJP is the inaccuracy in predicting the procurement deadline in one budget period. This can be seen in the case of arrears in payments by the City Government of Depok. This project is an Infrastructure Development Project which

²²Nindyo Pramono, *Hukum Komersil*. Jakarta:Pusat Penerbitan UT, 2003, P. 21.

²³Leo, *Perbuatan Melawan Hukum Dan Wanprestasi Sebagai Dasar Gugatan*. (6 September 2001), <https://www.hukumonline.com/berita/a/perbuatan-melawan-hukum-dan-wanprestasi-sebagai-dasar-gugatan-hol3616>, accessed on 13th of August, 2024.

²⁴Pramono, N. *Op. Cit.* P. 56

²⁵Putusan Mahkamah Agung Nomor 3229 K/Pdt/2015

²⁶*ibid*

²⁷*ibid*

²⁸*ibid*

includes construction of roads and drainage in technical implementing units (UPT) 1, 2, 3, Construction of plaster in the water resources (SDA) sector and construction of roads in the Bina Marga sector managed by the Public Works and Spatial Planning Service. In 2021, this project has been officially completed and involves many providers who in this case work as contractors. In fact, one contractor can work on up to 15 PBJP projects. Because this project was completed at the end of the year, namely in November and at that time many projects were being worked on by the Depok City Government, and administratively it had not been completed and even passed the deadline, the budget could not be disbursed in a timely manner, and caused delays in payments by providers. This delay caused a massive material loss for the contractor where the source of funds used for the project came from loans to several parties.²⁹

The two cases above are small examples of the many stalled projects by the Government of Indonesia due to the rigidity of the treasury system in the form of budget reductions in Indonesia. The first case illustrates the ignorance of the Budget User and the proxy of the budget user regarding the main reference in the form of statutory provisions in the state finance sector.

Lack of knowledge about these regulations causes planning and budgeting discrepancies in the form of Withdrawal Deviation and Withdrawal Realization which are still high on average of 98.74% so that they do not support good cash planning.³⁰ Cash planning is an important part of efforts to accelerate budget absorption because good and accurate cash planning will ensure the availability of funds to finance government activities.³¹

This budget prediction is one of the tasks of the Budget User mentioned in Article 9 of Presidential Decree Number 12 of 2021 concerning Amendments to Presidential Decree Number 16 of 2018 concerning Government Procurement. A Budget User certainly will not be able to predict the value of a project without the expertise possessed by PPK. And the accuracy of PPK in assessing the amount of the budget for a project is not greater than the allocation of funds budgeted by PA in DIPA. This will have consequences for PPK's authority in asking the state for collection rights as outlined in a letter of evidence in accordance with the provisions of Article 12 of the Government Regulation of the Republic of Indonesia Number 45 of 2013 concerning Procedures for Implementation the State Budget, hereinafter referred to as PP Number 45 of 2013 concerning State Budget Implementation Procedures.

The synergy between PA, KPA, and PPK is very important because most delays in payments in goods/services procurement projects are caused by two things: First, the ignorance of the Budget User and the proxy of budget user regarding the main references to statutory regulations in the field of state finance which causes budget delays. Second, PPK's inaccuracy in predicting the value of the budget and the number of projects that caused the budget predictions to be not in accordance with the DIPA. This second reason is a case of late default caused by

²⁹ Kisar Rajaguguk, *Pemkot Depok Belum Bayar Tunggakan Kegiatan Infrastruktur Rp 51 miliar*. Retrieved Sep 2023 from <https://mediaindonesia.com/megapolitan/462398/pemkot-depok-belum-bayar-tunggakan-kegiatan-infrastruktur-rp51-miliar#:~:text=Pemkot%20Depok%20belum%20Bayar%20Tunggakan%20Kegiatan%20Infrastruktur%20Rp51%20Miliar,-Kisar%20Rajaguguk%20%7C%20Megapolitan&text=PULUHAN%20orang%20kontraktor%20rekananan%20Pemerintah,Raya%20Nomor%2054%20Pancoran%20Mas,2022>, accessed on 14th, August 2024.

³⁰ Direktorat Sistem Perbendaharaan Direktorat Jenderal Perbendaharaan Kementerian Keuangan RI, *Panduan Teknis Kuasa Pengguna Anggaran* from https://dipb.kemenkeu.go.id/portal/images/panduan_teknis/kpa/Panduan-Teknis_KPA_Final.pdf, 2018, accessed on 11th of August, 2024.

³¹ Haryanto, J. Dodik, Wihascaryo, Adithya Bayu, *Evaluasi Penerapan Perencanaan Kas di Tingkat Satuan Kerja* from <https://dipb.kemenkeu.go.id/portal/id/berita/lainnya/artikel-ulasan/1580-evaluasi-penerapan-perencanaan-kas-di-tingkat-satuan-kerja.html>, 2011, accessed on 13th of August, 2024.

PPK. It should be remembered that apart from being a contract controller, Article 12 PP Number 45 of 2013 concerning Procedures for Implementing the State Budget explains that PPK also serves as an official who has authority in spending the state budget. The authority of the PPK as contract controller is very important because it relates to contract signing.

Government Goods/Services Procurement Policy Institute Regulation Number 9 of 2018 concerning Guidelines for the Implementation of Procurement of Goods/Services Through Providers also states that although contract signing may be carried out by Budget Users, Proxy of Budget User, and Commitment-Making Officer. But in practice, the signing of the contract is part of the implementation of the contract and before the contract is signed, the contract must be finalized by preparing all documents, one of which is the work order which is the authority of the PPK. The signing of this contract is important because it relates to legal responsibility if later there are problems in the contract.

Signing a contract is directly related to legal responsibility. One of these legal responsibilities is in the form of financial sanctions imposed on providers of goods/services while compensation is a financial sanction imposed on the PPK due to a breach of contract/default stated in the contract.

An act can be categorized as a default if:

- a. There is a valid agreement.
- b. There is an error, whether due to intent or negligence.
- c. There is a loss
- d. There is sanction³²

According to decision No. 3229/K/Pdt/2015, this case certainly meets point A with the issuance of SPMK No. KU.602/A-IRP/1989/2010. Article 28 of Presidential Decree No. 16 of 2018 Concerning Government Procurement of Goods/Services states that a Work Order (SPK) is a form of contract. The second point is that there is an error. An action is considered by law to contain an element of error so that it can be held legally responsible if it is deemed to contain an element of intent or contains an element of negligence (negligence, culpa), and there is no justification or excuse, such as overmacht.³³ The government's action by not allocating funds in the APBA or not predicting the budget value correctly is a negligent act. Neglect here because there is no intention in the PPK to commit these actions but because of carelessness or negligence.

Loss is the third point of the element of default. Where the material loss here is not only in the form of residual payments that must be paid, namely Rp. 8,501,282,000 (eight billion five hundred and one million two hundred and eighty-two thousand rupiah), but also the loss suffered by the plaintiff is equivalent to the standard government commercial bank interest from 2011 until the defendant implements the decision.³⁴

The last point in the element of default above is the existence of sanctions. The sanction here is in the form of legal responsibility because the government's actions have fulfilled the three elements above.

New legal responsibility can be given when the provider/government party is proven to have committed a default. That the category of action is called default, including³⁵:

- a. The debtor does not carry out his obligations at all.
- b. The debtor does not carry out his obligations properly.
- c. The debtor does not carry out his obligations on time.
- d. The debtor does something that is not allowed.

³²Sinaga, N.A. *Op. Cit.* Hlm. 44.

³³M. Fuady, *Perbandingan Hukum Perdata*. Bandung: Citra Aditya Bakti, 2005, P. 12.

³⁴Putusan Mahkamah Agung No. 3229/K/Pdt/2015.

³⁵Gunawan Widjaja, *Arbitrase VS Pengadilan Persoalan Kompetensi (Absolut) Yang Tidak Pernah Selesai*. Jakarta: Kencana Prenada Media, 2008, P. 106.

So it needs to be overviewed again, if payments have been made in several payments, as in the case of the Ujung Tanoh Village Beach Protection project in Samadua District, South Aceh Regency, then it is considered a default because it fulfills points B and C. If the government does not make payment for achievements at all for goods / services that have been provided by the provider then meet point A.

The nominal amount of the fine is also explained in LKPP Regulation Number 12 of 2021, namely the fine to the provider for late completion of work is 1/1000 (one thousandth) of the remaining price of the part of the Contract that has not been done, if the part of the goods that has been implemented can function or 1/1000 (one per thousand) of the contract price, if the part of the goods that has been implemented is not functioning. Meanwhile, the interest rate on overdue invoices is calculated based on the interest rate prevailing at that time according to Bank Indonesia regulations, or compensation can be provided in accordance with the provisions in the Contract Documents.

Losses that must be paid by the debtor to the creditor as a result of default are as follows:

a. Losses that can be foreseen when the agreement is made. According to article 1247 of the Civil Code, the debtor is only required to pay compensation for losses that he actually had or could have foreseen when the agreement was made, except if the non-fulfillment of the agreement was caused by deceit committed by him.

b. Loss as a direct result of default. According to Article 1248 of the Civil Code, if the agreement is not fulfilled due to the deceit of the debtor, the payment of compensation only concerns the losses suffered by the creditor and the profits lost for him.

Default in the form of late payment cannot be caused by the second reason because the subject is the government and used for general welfare purposes is not deception and if deception is carried out by government officials then it is included in the scope of criminal law.

There are four consequences of default, as follows³⁶:

a. Creditors can ask for the implementation of the agreement, even though this implementation is too late.

b. Creditors can ask for compensation, namely losses suffered because the agreement was not or was implemented late, or was implemented but not as it should.

c. Creditors can demand the implementation of the agreement accompanied by compensation for losses suffered by them as a result of delays in implementing the agreement.

d. In the case of an agreement that places mutual obligations, the negligence of one party gives the other party the right to ask the judge to cancel or terminate the agreement, accompanied by a request for compensation.

Providers can request confirmation from the government regarding the status of contracts that have been implemented. It is impossible to choose the option to cancel the contract because the performance has been carried out by the provider perfectly. Therefore, what the provider can do is ask for legal responsibility to the government for the default as stated in points B, C or D.

The nominal amount of the fine is also explained in LKPP Regulation Number 12 of 2021, namely the fine to the provider for late completion of work is 1/1000 (one thousandth) of the remaining price of the part of the Contract that has not been done, if the part of the goods that has been implemented can function or 1/1000 (one per thousand) of the contract price, if the part of the goods that has been implemented is not functioning. Meanwhile, the interest rate on overdue invoices is calculated based on the interest rate prevailing at that time according to Bank Indonesia regulations, or compensation can be provided in accordance with the provisions in the Contract Documents.

Article 53 of Presidential Decree Number 16 of 2018 concerning Procurement of goods/services states that payments for new work performance can be given after deducting installments for refunds of advance payments, retention and fines that have already been paid.

³⁶ *Ibid*, hlm. 106.

This is very unfortunate when delays in project work by the provider are regulated in special laws and regulations, while delays in payments by the government are not specifically regulated in a regulation because these provisions are already in the contract. It's just that most contracts for the procurement of goods/services are standard contracts made unilaterally by the PPK and to some extent it will be more profitable for the government where the provider can only agree by affixing a signature.

According to the provisions of Article 1246 of the Civil Code, compensation consists of 3 elements, namely:

- a. Costs, namely all expenses or costs that have actually been incurred.
- b. Loss, namely losses due to damage to the creditor's goods caused by the debtor's negligence.
- c. Interest, namely the profit that should be obtained or expected by the creditor if the debtor is not negligent.³⁷

This compensation can be in the form of costs, for example the cost of work, goods and materials used and other costs in the project. Losses, for example fines that must be paid on bank interest for capital loans because money that should have been paid is not paid, or interest, namely the profit that can be obtained by the provider if payments are made on time. Decision No 3329/K/Pdt/2015 provides an example that compensation in the form of this fee is Rp. 8,501,282,000 (eight billion five hundred and one million two hundred and eighty-two thousand rupiahs). This fee is pure project development costs that have not been paid by the government plus a 10% Value Added Tax (VAT). Then these costs are added to the interest of 13% per year from the value of the plaintiff's work so that the total fee to be paid is Rp. 9,995,235,000 (Nine billion nine hundred ninety nine five million two hundred thirty five thousand rupiah).³⁸

Legal responsibility in a legal entity is carried out by an 'organ' in a legal entity. That which is called an organ according to Mr. R. Kranenburg is every person who does work steadily for the country. So that a legal entity can be held accountable for unlawful acts from its organs if it is carried out within the scope of its duties.³⁹ When a state organ within the scope of its duties commits a mistake, for example in default, it is tantamount to the state's obligation to be responsible because the state is a legal entity. This can be done when the loss occurs beyond the PPK's prediction or in the sense that the PPK has carried out good faith by fulfilling all existing procedures, it's just that there are obstacles that cause payments to be unable to be paid as they should. In other words, there is no intentional element in PPK and this can be proven.

When a private party is harmed by the state due to an error committed by its organs, it must be overviewed whether this error is an error committed within the scope of its work as a state organ or not. In general, all consequences arising from state employees are the responsibility of the state. The state should not only enjoy benefits because of the skills of its organs, but must be held accountable for the actions of its employees when carrying out their duties which are proven to be against the law. This is also based on the impossibility of state organs to pay compensation values that are far greater than the wages they receive from the state.⁴⁰

The compensation above can only be given if the loss occurs outside the PPK's prediction or in the sense that the PPK has carried out good faith by fulfilling all existing procedures, it's just that there are obstacles that cause payments to be unable to be paid as they should. So that when the private sector is harmed by the state due to mistakes made by government organs, it must be overviewed whether this error is purely an error made in PPK in its negligence or not. If the PPK can prove that the PPK has carried out the contract in accordance with the existing

³⁷ Sinaga, N.A. *Op. Cit.* P. 52.

³⁸ Putusan Mahkamah Agung No 3229/K/Pdt/2015.

³⁹ Sudikno Mertokusumo, *Perbuatan Melawan Hukum Oleh Pemerintah*. Yogyakarta: Cahaya Atma Pustaka, 2004, P. 40.

⁴⁰ *Ibid*

administration, including designing the contract in accordance with the DIPA, then all consequences arising from state employees are the responsibility of the state. The state should not only enjoy benefits because of the skills of its organs, but must be held accountable for the actions of its employees when carrying out their duties which are proven to be against the law. This is also based on the impossibility of state organs to pay compensation values that are far greater than the wages they receive from the state.⁴¹

This has different consequences if the default is caused by the PPK's negligence. This legal responsibility must also be given by the state to the provider in the form of compensation for costs, losses and interest. It's just that the government can hold PPK personally accountable for the negligence it has made. PPK's personal responsibility must be qualified whether it enters the realm of civil law, criminal law or state administration. If this negligence is classified as an unlawful act by the authorities, then or in Dutch terms it is known as *onrechtmatige overheidsdaad*, then this case is under the authority to examine and adjudicate the state administrative court. Later, there will be 2 (two) types of lawsuits. First, a lawsuit for canceling a decision by a government agency or official on the basis of a violation of applicable laws and violations of the general principles of good government. Second, claims for material or immaterial compensation based on the actions of government agencies or officials that cause material or immaterial losses according to the law.⁴²

This legal responsibility can also be transferred to the realm of crime as long as the PPK policy is classified as 'harmful to state finances'. that policies taken by policy makers that cause losses to state finances constitute a criminal act of corruption/discretionary corruption if the action is carried out to seek profit by violating the law and harming state finances. Apart from seeking profit by violating the law, the act is classified as corruption if it is committed by abusing one's position to seek profit and harm the State. In this corruption there is an element of abuse of authority, opportunity or means owned because of position or position. It is regulated in Article 3 of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption Crimes.⁴³

Based on this, the responsibility carried out by the government to providers for default is paid on behalf of the central/regional government with funds used in paying compensation, interest or fees using APBN/APBD funds. The use of APBN/APBD funds in the context of fulfilling legal responsibilities by the government is reflected in decision no. 3229/K/Pdt/2015 regarding the case of the Project for the Procurement of Goods/Services for the Work of Coast Guards in Ujung Tanoh Village in Samadua District, South Aceh Regency. This is in accordance with what is mandated in Article 1 of Presidential Decree No. 16 of 2018 concerning Government Procurement regarding the definition of government procurement of goods/services is the activity of procuring goods/services by ministries/agencies or regional apparatus financed by the APBN/APBD. So that even if the default is caused by PA/KPA/PPK, in this case the government's capacity, the costs must still be allocated in the APBN and APBD and follow the provisions of the APBN and APBD.

The government can ask for personal legal responsibility to officials working on behalf of the government if it is proven that they have caused losses due to their negligence. This responsibility can be given after reviewing the causes of the loss, whether it was carried out to

⁴¹ *ibid*

⁴²P.E. Lotulung, *Menyongsong Pengesahan Rancangan Undang-Undang Republik Indonesia Tentang Administrasi Pemerintahan. Bimbingan Teknis Peradilan Tata Usaha Negara Mahkamah Agung RI*, 2009. P.2.

⁴³R. Putradinata "Pertanggungjawaban Pidana Pejabat Pembuat Kebijakan (*Policy Maker*) Atas Diambilnya Kebijakan Yang Menimbulkan Kerugian Keuangan Negara". *Diponegoro Law Journal*. Vol. 5 Num. (3). P. 5.

seek profit by breaking the law, or whether the act was a public policy that violated the realm of state administration.

CONCLUSION

The legal relationship between the parties in the procurement of goods/services is a legal relationship in which the government, in this case PA, KPA and PPK, are the main actors working on behalf of the government. A PA can give part of its authority and responsibility in terms of budget to a KPA. PA/KPA as long as they meet the requirements can simultaneously serve as PPK in charge of contract control and have implications for the use of the budget. Government actions like this are a relationship that is regulated within the scope of civil code between the government and people or civil code subjects while at the same time subject to public law rules, namely all laws and regulations issued for the smooth running of PBJP. Where the provider has an obligation to provide goods/services and the government is obliged to pay wages or rewards according to what was agreed. But the government sometimes perform defaults, namely not making payments in a timely manner so that the provider suffers a loss.

The legal responsibility of the central/regional government when it is proven that they have defaulted is in the form of compensation to the provider in the form of payment of fees, losses and interest. The legal responsibility caused by the PPK in its work as a government organ is the responsibility of the state as long as the PPK can prove that he has acted in good faith and that the loss occurred unintentionally or negligently. So that costs, losses and interest are paid with costs allocated in the APBN/APBD. If the act was intentional or personal negligence of the PPK, then the government can hold the PPK personally accountable in the form of criminal or administrative sanctions depending on the mistake made.

BIBLIOGRAPHY

- A.R. Saliman, *Esensi Hukum Bisnis Indonesia*, Jakarta: Kencana, 2004, P. 15.
- Direktorat Sistem Perbendaharaan Direktorat Jenderal Perbendaharaan Kementerian Keuangan RI, *Panduan Teknis Kuasa Pengguna Anggaran* from https://djpb.kemenkeu.go.id/portal/images/panduan_teknis/kpa/Panduan-Teknis_KPA_Final.pdf, 2018, accessed on 11th of August, 2024.
- Direktorat Sistem Perbendaharaan Direktorat Jenderal Perbendaharaan Kementerian Keuangan RI. *Panduan Teknis Pejabat Pembuat Komitmen*. [https://djpb.kemenkeu.go.id/portal/images/panduan_teknis/ppk/Panduan Teknis PPK lq.pdf](https://djpb.kemenkeu.go.id/portal/images/panduan_teknis/ppk/Panduan_Teknis_PPK_lq.pdf), 2017, accessed on 14th August 2024.
- Dodik Haryant, Wihascaryo, Adithya Bayu, *Evaluasi Penerapan Perencanaan Kas di Tingkat Satuan Kerja* from <https://djpb.kemenkeu.go.id/portal/id/berita/lainnya/artikel-ulasan/1580-evaluasi-penerapan-perencanaan-kas-di-tingkat-satuan-kerja.html>, 2011, accessed on 13th of August, 2024.
- Fahrurrazi, *Pengguna Anggaran, Kuasa Pengguna Anggaran, Dan Pejabat Pembuat Komitmen Dalam Implementasi Peraturan Presiden Nomor 12 Tahun 2021*. 2021, from <https://biropbj.jabarprov.go.id/wp-content/uploads/2021/03/PAPARAN-PA-KPA-dan-PPK-dalam-Perpres-12-Th-2021-Fahrurrazi.pdf> accessed at 13th August, 2024.
- M. Fuady, *Perbandingan Hukum Perdata*. Bandung: Citra Aditya Bakti, 2005.
- Fuady, Munir, *Pengantar Hukum Bisnis (Menata Bisnis Modern di Era Global)*. Jakarta: Citra Aditya, 2022
- Halim, Ridwan.. *Hukum Perdata Dalam Tanya Jawab*. Jakarta: Ghalia Indonesia, 1985.
- HR, Ridwan, *Hukum Administrasi Negara*, Jakarta: PT Raja Grafindo Persada, Jakarta, 2010.
- Kuahaty, Sarah, "Pemerintah Sebagai Subjek Hukum Perdata Dalam Kontrak Pengadaan Barang atau Jasa". *Jurnal Sasi*. Vol. 17, Num. 3, 2011.

- Leo, *Perbuatan Melawan Hukum Dan Wanprestasi Sebagai Dasar Gugatan*. (6 September 2001), <https://www.hukumonline.com/berita/a/perbuatan-melawan-hukum-dan-wanprestasi-sebagai-dasar-gugatan-hol3616>, accessed on 13th of August, 2024.
- Marsauli, Gessica Freshana, *Tinjauan Yuridis Essential Facilities Doctrine Dalam Hukum Persaingan Usaha*. 2019 from <https://lib.ui.ac.id/detail?id=20485212&lokasi=lokal> accessed on 11th, August 2024.
- Manan, Bagir, *Menyongsong Fajar Otonomi Daerah*. Yogyakarta: PSH FH UII, 2004 P. 233.
- Manan, Bagir, "Bentuk-bentuk Perbuatan Keperdataan Yang Dapat Dilakukan Oleh Pemerintah Daerah", *Majalah Ilmiah Universitas Padjajaran*. 1996
- Mertokusumo, Sudikno. *Perbuatan Melawan Hukum Oleh Pemerintah*. Yogyakarta: Cahaya Atma Pustaka, 2004, P. 40.
- Medistiara, Yulida "12 Proyek Kerjasama Pemerintah Swasta RP 93 T Tahap Konstruksi" Yulida Medistiara (02 Februari 2017), <https://finance.detik.com/berita-ekonomi-bisnis/d-3412545/12-proyek-kerja-sama-pemerintah-swasta-rp-93-t-tahap-konstruksi>. accessed 12 Agustus 2024.
- N.A. Sinaga, "Perjanjian Pengadaan Barang/Jasa Pemerintah Kaitannya Dengan Asas Keseimbangan Dalam Hukum Perjanjian." *Jurnal Ilmiah Hukum Dirgantara*, 2019, Vol. 9 Num. 2
- Nindyo Pramono, *Hukum Komersil*. Jakarta: Pusat Penerbitan UT, 2003, P. 21.
- Pusat Pendidikan dan Pelatihan Sumber Daya Air dan konstruksi, *Modul Pelaksanaan Kontrak*. Bandung, 2016, P. 7.
- P.E. Lotulung, *Menyongsong Pengesahan Rancangan Undang-Undang Republik Indonesia Tentang Administrasi Pemerintahan. Bimbingan Teknis Peradilan Tata Usaha Negara Mahkamah Agung RI*, 2009. P.2.
- Putusan Mahkamah Agung No. 3229/K/Pdt/2015.
- Kisar Rajaguguk, *Pemkot Depok Belum Bayar Tunggakan Kegiatan Infrastruktur Rp 51 miliar*. Retrieved Sep 2023 from <https://mediaindonesia.com/megapolitan/462398/pemkot-depok-belum-bayar-tunggakan-kegiatan-infrastruktur-rp51-miliar#:~:text=Pemkot%20Depok%20belum%20Bayar%20Tunggakan%20Kegiatan%20Infrastruktur%20Rp51%20Miliar,-Kisar%20Rajaguguk%20%7C%20Megapolitan&text=PULUHAN%20orang%20kontraktor%20rekananan%20Pemerintah,Raya%20Nomor%2054%20Pancoran%20Mas>, 2022, accessed on 14th, August 2024.
- Putradinata, R, "Pertanggungjawaban Pidana Pejabat Pembuat Kebijakan (*Policy Maker*) Atas Diambilnya Kebijakan Yang Menimbulkan Kerugian Keuangan Negara". *Diponegoro Law Journal*. Vol. 5 Num. (3). P. 5.
- S Adrian, *Aspek Hukum Pengadaan Barang & Jasa dan Berbagai Permasalahannya*, Yogyakarta: Sinar Grafika, 2014.
- S Hartono. *Masalah- masalah dalam Joint Ventures antara Modal Asing dan Modal Indonesia*. Bandung: Alumni, 1974
- Seelen, C.M. "The Essential Facilities Doctrine: What Does It Mean To Be Essential" *Marquette Law Review*. 1997, Vol. 18 Num. (4). P. 1119.
- Soeroso. *Pengantar Ilmu Hukum*. Jakarta: Sinar Grafika, 1996, P. 271.
- Widjaja, Gunawan, *Arbitrase VS Pengadilan Persoalan Kompetensi (Absolut) Yang Tidak Pernah Selesai*. Jakarta: Kencana Prenada Media, 2008, P. 106.
- Y.S Simamora. *Prinsip Hukum Kontrak Pengadaan Barang dan Jasa Oleh Pemerintah*. Surabaya: Disertasi Program Pascasarjana Universitas Airlangga. 2005.