

THE IMPLICATIONS OF THE EXISTENCE OF THE ALLEGED CRIMINAL ACTS OF CORRUPTION TOWARDS THE IMPLEMENTATION OF THE CONSTRUCTION CONTRACT

Bondan Bayu Tetuko*

Abstract

Construction contracts are civil relations, and is an agreement, principle principle in Book III Civil Code, and in construction contracts are generally used for the achievement of common goals. Fulfilling the needs of goods and services is an important part of governance, In connection with this the emergence of negative implications on the problem of the neglect of construction services in the process constrained indications of corruption. Contract cancellation stage in legal doctrine in Indonesia is only limited to contract and pre contract phase but also possible in the implementation phase by considering the principle of presumption of innocence as well as the principle of legal certainty, the implementation of construction contracts should proceed accordingly without having to override the legal process that runs from parties that are indicated to be corrupt. In the event that the construction contract is carried out in accordance with the basic principles of government procurement of goods / services that are efficient, effective, open and competitive, transparent, fair and accountable, in order to achieve development goals equally and in accordance with the mandate of the constitution of the Republic of Indonesia.

Keywords

criminal act of corruption, construction contract

* Faculty of Law, Airlangga University

Correspondence: Bondan Bayu Tetuko, Faculty of Law, Airlangga University, Surabaya, Indonesia. Email: bondanbintan@gmail.com

Introduction

As developing countries, as well as construction of infrastructure to support the economy and life of community service in Indonesia is important needs that can not be avoided. It was very important especially if the State wanted to embody the nation's future goals, namely to protect the whole nation of Indonesia and all the spilled blood of Indonesia and to promote the general welfare, the intellectual life of the nation, and implement a world order based on freedom, eternal peace and social justice. In organizing the life of the State Governments are always required to advance the general welfare. For carrying out this obligation, the Government has an obligation of providing the people's needs in a variety of shape either in the form of goods, services or construction of infrastructure. On the other hand the Government also requires that goods and services in carrying out the activities of Government.

To that end, the Government needs the goods/services in an effort to enhance every moment of his public service. Presidential regulation Number 54-year 2010 On the procurement of goods/services the Government Regulation Number 35 President juncto Year 2011 About changes to the presidential regulation Number 54 Year 2010 procurement of goods/services of the Government of the Republic of Indonesia juncto presidential regulation Number 70 Year 2012 second Regulatory Change President Number 54-year 2010 On the procurement of goods/services Government, (hereinafter the Regulation of government procurement of goods/services).

With very detailed and full to the hearts of the hatian has formulated a whole of the provisions relating to the process of goods/services procurement activities of the Government, but in practice many still found the issue because of the highly technical nature of this Regulation as well as the rule separating apart, scattered in the technical instructions and the instructions was stall (fragmentatif). The activities of the procurement of goods/services gave rise to negative implications akhirnya on issues of the construction services terbelengkalainya in the process of an indication of a violation of the law. Some of the problems generally occur related implementation contract procurement of goods/services, among others, the delay in completion of the work and payment which is not in accordance with the accomplishment of the work, other than it is an indication of the corruption that often happen in practice because of the element of the legal fight, a loss to the State, and enrich themselves or other people/corporations.

The absence of a definite rule for rule out legal proceedings in progress in order to continue the process of development in accordance with the basic principles of Government procurement of goods/services are efficient, effective, open and competitive, transparent, fair and accountable. As one example of the many cases he snagged the alleged criminal acts of corruption, which imposes on the construction project dormant. For example, such as the construction of the bridge located at Brawijaya Kediri Jawa timur province as reported by the post's news pages in tulungagung mentions, the alleged case law the Kediri CPNS got into the spotlight of a number of African-American activist communities (NGO) or the Media when it

investigated Polresta is now renamed City of Kediri Polres, so far there is a new round of inquiry.

Yaesu Bridges Development Brawijaya, where on Tuesday (30/1/13) this afternoon Polres Kediri City will do an examination against the head of the Office of public works (PU) alleged corruption related mega project. The examination is done in units of criminal acts of corruption (Tipikor) are covered. Traces of Case examination related information Kediri Kadis PU Kasenan was obtained from interviewees in the police force. According to plan, the police will also memintai Information Officer Commitment Maker (PPK) the construction of the bridge of Brawijaya Nur Iman Satrio Widodo, on another day.

For the examination of both the caller's letter has been sent by the police, some time before. Kadis PU Kasenan will be prompted for a description of the planning phase, approval of project budgeting multy years or plural year project for three years in charge of the construction of the bridge of Brawijaya cost Rp 71 billion. So, from the results of the collection material description made during six months, obtained indication of irregularities and abuse of authority. If, from the results of the investigation, police found any discrepancy, do not cover the possibility of Kadis PU Kasenan would return the law ensnared. Because, the local State Prosecutor previously had already established itself as one of the suspects in the alleged case corruption of Public Hospital development area (HOSPITALS) Gambiran II Kediri. Meanwhile, Nur Iman Satrio Widodo itself also has an important participation in the project of construction of the bridge of Brawijaya.

Kasi road-building, bridges and Irrigation in the service of PU in 2010 it as PPK. He was acting on behalf of the City Government (City Government) Kediri cq Office of PLUTONIUM, according to the Decree the Head Office of PU KotaKediri No: 419.48 188.45/08/2010/July 7, 2010. In the frame of the life of a country, all activities performed the country's institutions, including the procurement of goods and/or services should be accountable. Based on the 1945 CONSTITUTION mandate. The State's obligation to serve every citizen in meeting the rights and needs to gain a decent public services and adequate, so the Government must play an active role providing and provided in the form of General needs beneficial to society at large, which can be accessed by all members of the community in a transparent and accountable.

In addition, the financing of government procurement of goods/services from State income and Expenditure Budget (STATE BUDGET) and budget income and Expenditure area (BUDGETS), its use needs to be accountable in accordance with the provisions of the regulation legislation in force. Thus, the setting in the process of government procurement of goods/services in addition to proceeds from the Constitution and organization of the public service, as well as related or based on the settings of the Treasury of the State. That is, in the process of government procurement of goods/services must be carried out by applying the principles and the basis of the principle of good governance - (Good Governance).

Research Method

In this research proposal writing, research classified as legal research to find the rule of law, the principles of law, as well as the doctrines of the relevant law and do a review about legal concepts, opinions of experts of law to enhance the power of interpretation in order to answer the legal issues at hand.

This research is the legal research using the statutory approach (Statute Approach). This approach was conducted to elucidate all the laws and regulations relevant to legal issues with the concern that is being handled. This approach is derived from relevant legislation relating to the legal issues. In addition, the study also uses a conceptual approach (Conceptual Approach), while researchers do not depart from the existing rule of law. In using the conceptual approach, researchers need to refer to the principles of the law. This study combines two methods of approach, namely legislation (Statute Approach), and conceptually. The approach of legislation is done by collecting and then analyze and conclude kontekstualisasinya with subject matter, conceptual approach is done by collecting the opinions of legal experts to answer existing problems in.

Result and Discussion

The Notion and functions of contract

In Book III of the civil code the Alliance subject KUH (verbinteniss) has the meaning of the words of the Covenant is in question, "a relationship of laws (regarding the wealth of objects) between two people who give the right on that one to demand the goods one over the other, while the other person who is required to meet the demands of it ". So the contents of Book III is also called the perhutangan law, the parties are entitled to demand the 2 parties named or the creditor, while the parties are obliged to meet the demands of the named parties owed or the debtor. As for the goods is something that can be called an accomplishment demanded by law can be :

1. Submit an item;
2. Doing a deed;
3. Do not perform an act.

Contract or contract (in English) and eveerekomst (in Dutch) in the wider sense is often called also with the term of the agreement, though in subsequent descriptions the author wears the term contract for agreement which actually has almost the same meaning. The parties agree on terms that are exchanged, is obliged to comply with and carry out the agreement, thereby incurring the legal relationship called the Alliance (verbinteniss).

Thus the contracts may give rise to rights and obligations for the parties to make the contract, that the contract because they make is a formal legal sources, the origin of the contract is a valid contract. Lawrence m. Fridmen mean the contract is "legal tools which only regulate certain aspects of the article and set the type of agreement certain" here Lawrence m. Fridmen not explain further certain aspects of the article and the type of a specific agreement .

In addition the contract has a sense of meaning that are too broad and do not provide a firm understanding and concrete. According To Charless L. Knapp & Nathan M. Crystal, "contract is an agreement between two or more person not merely a shared belief, but common understanding as to something that is to be done in the future by one or both of them".

Validity of the contract is based on the book of the law of civil liability

In article 1338 b. W, stipulates that any agreement made legally "valid as legislation" to those who make it. That sentence is meant, not another, that an agreement made legally. It means not prohibited by the laws that bind the two sides. In a contract/agreement on It is generally irrevocable, except with the consent of the parties or on the basis of the reasons reasons specified by law.

Further in section 1338 it determined that "all agreements should be implemented in good faith. That is, that the way of running an agreement should not be contrary to propriety and fairness ". Although not an addendum agreement, but all have been agreed upon by the parties, then the treaty binding upon the Department as the laws as set in article 1338 Civil KUH, that is something that is made legally binding on the parties as the Act.

As for the elements that are listed in the legal agreements/contracts can be pointed out as follows:

1. The existence of a rule of law

Rule of law agreement can be divided into two kinds, namely, written and unwritten. The rule of law is the legal norms contained in treaties, legislation, and *yurisprudensi*. While the rule of law the unwritten agreement is the legal norms that arise, grow, and live in the community, such as buy sell buy sell off, annual, etc. These legal concepts derive from customary law.

2. The subject of the law

Other terms of the subject of law is *Recht*person. *Recht*person defined as a proponent of rights and obligations. In this case that became a subject of law in the law of contract is the creditor and the debtor.

3. The Existence Of The Achievements

Achievement is what the rights and obligations of the debtor's creditors. A feat generally consists of a few things as follows, give something, do something, does nothing.

4. The Word Agree

In article 1320 Civil KUH determined four terms of the agreement as aforesaid legitimately, where one of them is said to have agreed (*consensus*). The deal was the agreement statement of will between the parties.

5. Legal Consequences

Any agreement made by the parties will give rise to legal consequences. The result is the onset of legal rights and obligations. The sense of the agreement as an agreement made by the parties to have the force of law that are binding.

Understanding construction contracts

According to R. Subekti chartering agreements are agreements whereby one party, the contractors committing yourself to a job on behalf of the buy up accepting a price specified. In civil litigation, Treaty KUH chartering called by the term chartering jobs, as stated in article 1601 (b) Civil KUH that: "the Treaty is an agreement with a contractor where one party (the Jobber) committing yourself to hold a job for the other party (those who buy up) and receive a price determined. "

In connection with the procurement of construction services, Regulation Number 54/2010 have been using the term "construction work" the use of the term is different from that used in the Issued No. 80/2003. The term terminology services chartering is not appropriate, because since the enactment of Law No. 18 of the year 1999 the term is not used anymore. The type of contract with a job object construction services construction and employment contract is not a contract of chartering the building as commonly used prior to the inception of this Act.

Construction employment contract term is a translation of the construction contract. Construction work contract is a contract which is known in the execution of the construction of buildings, both implemented by the Government or private parties According to article 1 paragraph (5) of the Act, construction Services construction work contract is "overall document regulating legal relationship between service users and service providers in the venue construction work".

The Basic Law of construction contract

The inaugural of procurement in the field of construction in Indonesia have been regulated specifically in Act No. 18 year 1999 about construction services. In terms of its substance, except as regards the establishments-law contract, the Act is fairly complete mangatur the procurement of construction services. This legislation created during the Reformation. The background of the birth of this Act because of the variety of applicable legislation not yet oriented on the development of construction services to suit its characteristics. This has resulted in less growing business climate that supports the improvement of the competitiveness of optimally as well as for the interests of the community. Construction Services Act enacted on 7 May 1999. conditions consists of 12 chapters and 47 article.

Further settings of the Act is contained in three government regulations, namely: the Government Regulation Number 28 year 2000 efforts and the role of the public construction service (GR No. 28/2000) as amended by regulation of the Government No. 4 of the year 2000 (GR No. 4/2010), government regulation Number 29 year 2000 about conducting of construction services (GR No. 29/2000) as amended by regulation

of the President Number 59 (2010 Year Regulation No. 59/2010), and Government Regulation Number 2000 30 years about Organizing Coaching Services construction (GR No. 30/2000).

In connection with the procurement of construction services, the procedures and the procedures for the procurement of goods and services for the benefit of government agencies, has been set in the Presidential Decree (Presidential Decree No.) No. 80 Year 2003 about the implementation of the guidelines for procurement of goods/services of the Government have been refined through presidential Regulation (Regulation) No. 54 Year 2010. Then Regulation No. 54 Year 2010 modified through presidential Regulation (Regulation) No. 70 Year 2012 about the second amendment above Regulation No. 54 Year 2010 about Government procurement of goods/services.

Construction contract annulled by law

The agreement is contrary to the law has four gradations, first any agreement that deviate from the provisions of the legislation, for example the agreement that contains the gambling. Positive law in Indonesia, the Treaty nevertheless contains *Naturlijk Verbintenis* which cannot be implemented. Second, the Treaty that led to the loss of one of the parties, such agreement made by entrepreneurs with consumers. Within the framework of consumer protection, the Country has a State consumer protection laws set in one of the conditions that apanila an agreement between employers and consumers that is the consumer harm is considered null and void.

Third, the agreement made by the parties with the menyimpangi procedure that must be observed, for example purchase agreement of shares of a company that went public without having to pay attention to the terms of the provisions of the law on the capital market. Fourth, an agreement that his achievements are not prohibited, but the fulfillment of his achievements has to go through the terms of the conditions set by law. for example can be expressed by Furmston, namely the case of *Anderson v. Daniel*. British law required sellers of fertilizers brew gave to the buyer an invoice which lists the percentage of the substance of certain chemical substances in the blood in the goods sold. In this case the seller send 10 tons of artificial fertilizer without fulfilling the provisions of the Act, when the seller filed a lawsuit to court to ask for the payment of the price of fertilizers are, the lawsuit in court by starting because the seller does not meet the requirements of the law and the Court held that the rights and obligations of smua arising from the Covenant revealed nothing.

One of the terms of the agreement according to article 1320 legitimately BW Indonesia is geoorloofde oorzaak or Indonesia because that are allowed. Based on the provisions of article 1337 BW who made Indonesia a causa is not allowed when dezelve strijdig is met if the geode zeden translate literally "contrary to propriety". The Nieuwe Burgerlijk Wetboek inside (NBW) Netherlands no longer contained causa as one of the conditions of his or her legal agreement as stated in article 1320 BW Indonesia 1356 or long-time BW Netherlands. But it does not mean that a treaty containing causa contrary to propriety not declared null and void.

Seen from the perspective of the law of civil liability, in addition to the Treaty of the Treaty to the contrary with the propriety of the agreement can be requested cancellation is contrary to the openbare orde or contrary to public policy. The law that forces generally are within the scope of public law so that it can be It is said that public law presumtif is a law that forces, otherwise private law in presumtif set. According to Prof. peter, "if public order (openbare orde) in sinonimkan with dwingend recht public order According to my view is indeed the provisions that specifically made for restricting the freedom of contracts so that it doesn't have to be in the space of public law, as well as in private law, there are also provisions that are forcing but not necessarily public order ".

As with any propriety of so-called public order (openbare orde) and public policy (public policy) there is also no clear limits. Both in the nature of a thought system civil law nor the common law notion that submit to the judge's interpretation. It's just that given in Countries with common law systems apply the doctrine stare decisi. the construction can be done from the rulings of these courts so that it can identify a variety of agreements is said to be contrary to public policy.

Construction contract may be cancelled

Netherlands after World War 2 as well as the more passes allowing government invitation militate in preventing the abuse of the principle of freedom of contracts, in the verdict over the case of Van Elmbt v Fierabend on 29 May 1964 the Hoge Raad stating that the agreement containing clause abuse (misbruek van omstandigheden) State considered contrary to propriety. On the occurrence of misbruek van omstandigheden itself in article Burgerlijk Wetboek Nieuw 3.2.10 (NBW) mentioned when someone in an emergency, dependency, careless, a State of the soul that is not normal or inexperienced. The presence of law and jurisprudence in the State of the country where the development of liberalism indicates the need to do the basic limitation on freedom of contracts. Therefore the principle of freedom of contracts needs to be accompanied with the principle of Aequitas Praestationis i.e. the principle that requires the balance of the guarantee and the teachings of the justum pretium, namely the propriety according to law.

Construction contract that can be forwarded

In the stage of implementing the entire terms and conditions contained in the contract must be carried out. The Governments concerned have been met in accordance with procurement object the magnitude of financial expenditure of the State. PPK as kontraktan in this case is responsible for ensuring the achievement of business goals of procurement. Therefore, for the principle of the prohibition applies to RPC does not change the contents and terms of the contract. This understanding is important because it changes the contents of the contract may result in essential changes in the contract and the consequences of change in fact gave birth to new procurement contracts Thus even if a contract already specified in the clause of the contract changes, PPK must had the principle that changes could be made only if there is a valid reason and not adversely affect the finances of the State.

As the author pointed out in discussion Chapter 3 sub chapter construction contract that can be forwarded, the Foundation thought the author mentioned above is a logical consequence of the parties who should have a balanced position in law, as well as the magnitude of the law has not yet been fixed. Therefore the application of the principle of innocent presumption is very important. The Basic Law of the year 1945 does not list explicitly in one specific article regarding the principle of presumption of innocence. This principle can be found in the invitation itself militate i.e. the law No 14 Year 1970 as changed by Law No. 35-year 1999 which replaced with law No. 4 of the year 2004 about the powers of the judiciary, and replaced with law No. 48 of the year 2009 about the powers of the judiciary Law No. 39-year 1999 on human rights, law No. 8 year of 1981 on the law of criminal procedure and Chapter 3 decision the Minister of Justice of the Republic of Indonesia Number m. 01. PW. 07.03 Year 1982 regarding the implementation of the guidelines of the law book law criminal.

From the explanation above it can be concluded that the process of procurement of goods and services in terms of the construction contract, as long as the magnitude of the law has not been fixed and based on the principle of innocent presumption of the contract there is no an alas to break unilaterally. Does not cover possible if one of the parties in this case PPK as a budget user or any party proven providers do criminal acts of corruption or even two of his two proven. If the parties involved in this contract including one or two other involved corruption and then engagement it has been attested on the basis of a Court of law remains strong, then there could be resumed should be continued by others. If that is proven to perform criminal acts of corruption from the Government certainly could not continue on and should be replaced.

Conclusion

Within the law in Indonesia invitation militate in the process of cancellation of the contract only as stage in contractual and prakontraktual, but does not cover the possibility in law of this contract cancellations in Indonesia allow in the stage of implementation of the in countries where the development of liberalism indicates the need to do the basic limitation on freedom of contracts, therefore the principle of freedom of contracts need to be accompanied by the principle of Aequitas Praestationis i.e. the principle that requires the guarantee the balance and the teachings of the Justum Pretium i.e. merit according to law.

So the execution of the contract in this case construction contract can run properly taking into account the principle of Presumption of innocent as well as the legal certainty against the party Organizer construction contract that constrained the crime corruption.

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