

## THE LIABILITY OF UNILATERAL TERMINATION BY GOVERNMENT ON GOODS AND SERVICE PROCUREMENT CONTRACT

**Anton Cahyono\*, Ninis Nugraheni\*\*, Mokhamad Khoirul Huda\*\*\***

### Abstract

The increasing development in Indonesia, particularly the development of public facilities and infrastructures makes many public contracts, commonly called governmental goods and service contract, increase as well. It is a contract which one of the parties involves the government. In Indonesia, goods and service procurement contracts are not always well-conducted as expected. Lawsuits, which one of those is the liability from one party, may reveal in such contracts. Therefore, this study would discuss about an issue of unilateral contract termination on good-and-service procurement contract along with its solution. Referring to legal regulation related to governmental good-and-service procurement contract, President's Regulation No. 54 Year 2010 on Governmental Goods and service Procurement and had been amended by President's Regulation No. 4 Year 2015 about the Forth Amandment of President's Regulation No. 54 Year 2010 about Governmental Goods and service Procurement.

### Keywords

governmental goods and service procurement contract, Liability, contract termination, dispute resolution

---

\* Faculty of Law, Hang Tuah University, Surabaya, East Java, Indonesia.

\*\* Faculty of Law, Hang Tuah University, Surabaya, East Java, Indonesia.

\*\*\* Faculty of Law, Hang Tuah University, Surabaya, East Java, Indonesia.

**Correspondence:** Anton Cahyono, Faculty of Law, Hang Tuah University, Surabaya, East Java, Indonesia.

## Introduction

In this increasingly sophisticated current era, we realized that government had increase the development on, for instance, bridges, levees, highways, electric resource centers, and harbors. By 2017, at least 13% of the infrastructure projects had been completely conducted by the government. Among 225 targeted projects by 2019, 30 of them had been completely done (databoks.katadata.co.id, 2017).

Applying contracts as a governmental instrument had been increasing, and thus, a discourse about contracts involving government as the contractan was considerably necessary to be intensively organized. There were at least two reasons for that. First, it was to provide protection for the national/local assets. Second, it was to provide protection for the stakeholders that represented the nation/local or other private parties that had contract with the government (Simamora, 2017).

The protection of the national/local assets was necessary in order to avoid any misuses of the contract which might lose the national/local assets. On the other hand, the protection for the stakeholders or business partners was for the sake of legal enforcement by implementing the most appropriate legal regulation and principle.

Contracts by government was multi-aspects with specific characters (Simamora, 2017). Although the legal relationship that reveal within between the government and the partners was contractual, it contained not only private law but also public law. The existence of public "color" in such contract was the specific character that made it different from any other common commercial contracts. Therefore, it needed a very clear understanding to determine whether the governmental contract was classified into private or public laws, or both of them.

Governmental goods and service procurement based on President's Regulation No. 4 Year 2015 about the Forth Amandment of President's Regulation No. 54 Year 2010 on Article 1 subsection (1) mentioned:

"The governmental goods and service procurement, later called good/service procurement, is an activity to procure good/service by the Ministry/Instances/Units of Local/Institutional Instances, which process start from planning the needs up to completing all the activities of good/service procurement."

In case of procurement contracts by government, it needed a theoretical base to define a formula to provide an equal legal protection for the urgency of both public protection

and the national finance for government in one hand, and the protection for contractors or suppliers and the likelihood of any losses on the other hand (Simamora, 2013).

Thus, it was crucial to understand the goods and service procurement contract by government should rely on the principle of both public law and private law, in relation to contractual principle, or even combining those two principles. One issue that remained problematic in goods and service procurement contract by government was a dispute due to unilateral contral termination by government. It might bring disadvantages toward the supplier of good ans service, thus, it was necessary to understand the procedures for solving such dispute. However, it should be proven at first whether the supplier of goods and service did 6that made the procurement contract terminated by government.

In order to procure the governmental goods and service, contract termination was necessary to conduct as the supplier had done fatal negligence that could not be accepted by Commitment Making Official (CMO), and it should be realized by all the parties involved that this termination was unexpected. The contracting parties should do their best to avoid any termination on their on-going contract.

Contract termination might bring disadvantages to both parties; the CMO and the supplier. For the CMO, this termination might effect on their performance assessment, making them fail on their work and low budget realization. For the supliers, this termination might effect on their company's performance, material lost, and other disadvantages such as being black listed. Contract termination might cause a dispute between suppliers and CMO as the representative of the government in terms of governmental contract.

Therefore, a good procedure in contract termination should be implemented by the government, represented by CMO as the stakeholder that organized governmental goods and service procurement contract. However, many still assumed that government was protected by the national immunity and thus, it brought out an assumption that Nation could never be sued in a contract of goods and service procurement. It was totally unjustified as government, as the contractant, also had rights and obligations to reach the performance and their rights as well. Hence, the government could also be sued if it found corruption or negligence in conducting a good-and-service procurement contract termination by the government, as well as the vice versa.

Furthermore, many suppliers of goods and services often did defaults. Hence, what procedures the government should do in contract termination and what sanction to be charged to the suppliers.

Thus, this paper would explain the principle in governmental goods and service procurement contract. On the other hand, it also described what the government should do to terminate a goods and service procurement contract.

Therefore, there were 2 (two) issues to discuss, including the process of unilateral termination on goods and service procurement contract and the dispute resolution along with its penalty due to the termination.

### **The Process of Unilateral Termination on Goods and Service Procurement Contract by Government**

Basically, the principle of *pacta sunt servanda* embedded in a contract to bind the contracting parties, and it applied as legal regulation for each of the engaged parties. It had been mentioned in Article 1338 BW that contract termination was actually never expected by all the contracting parties, otherwise, it might cause a legal issue in the future. However, it was allowed to happen in governmental goods and service procurement contract. Contract termination could be conducted due to undone/failed project or force majeure. As a contract was terminated, the CMO must pay some amount based on the achieved performance to the supplier.

A contract termination was conducted if the needs of goods could not be delayed over the due date of the contract. According to CMO studies, suppliers would not be able to complete the entire tasks although they had 50 (fifty) calendar days to complete it since the end of task execution of their project. After they had 50 (fifty) days since the task execution, the suppliers of goods/services might not be able to complete their project.

In terms of contract termination due to the suppliers' default, thus, (a) the execution assurance was disbursed; (b) the rest of the down payment should be fully paid by the suppliers or the assurance was disbursed (if any); (c) the suppliers of goods/services paid a fine due to the delay completion of particular tasks in the contract as mentioned in conditions of contract that the contract termination was not applied to entire parts of the contract; and (d) the supplier of goods/services was listed into the black list (Simamora, 2013).

In regard to failed contract, a cause that make the governmental goods and service procurement contract might be terminated by government was due to defaults. In

normal situation, both performance and defaults were exchangeable. In particular condition, however, the exchange was not well conducted as it was supposed to be, resulting in defaults which led to unilateral contract termination.

BW had set the regulation of contractual rights which might reveal the liability of providing compensation based on the default. It was Article 1236 BW (for a performance of conferring something) that mentioned as follow. "The debtor is obligated to give compensation for expenses, losses, and interests toward the creditor, if he had engaged in a condition making him unable to put their assets, or had neglected in maintenance."

And Article 1239 BW (for a performance of conducting actions) that mentioned as follow. "Each agreement to do or not to do something, if the debtor is unable to do his liability, he will get the solution for their liability by providing compensation on expenses, losses, and interests."

Furthermore, in relation to such default, Article 1243 BW mentioned as follow. "The compensation of expenses, losses, and interests due to a failed agreement is applied if the debtor, after he was found neglecting the agreement, remains of getting neglected, or if something to be provided or made up is only available over the due date."

The debtor was considerably neglected if: (a) he did not reach the performance, (b) he was late to perform, and (c) he got performance but not as expected. (Hernoko, 2008). However, a default often revealed due to the statement of negligence (*in mora stelling; ingebreke stelling*) from the creditor to the debtor. This statement of negligence was actually aimed to determine the (fair) due date to the debtor to reach their performance with liability on any losses the creditor had. Based on Law, the creditor's somation (*somatie*) on the debtor's negligence should be mentioned in written (vide Article 1238 BW -*bevel of sortgelijke akte*).

In particular conditions, to prove the defaults, it was no longer need the debtor's statement of being neglected. Those conditions were as follow (Hernoko, 2008).

1. In accomplishing the performance, it applied a fatal due date (*fatale termijn*);
2. The debtor refused the accomplishment;
3. The debtor admitted the negligence;
4. The accomplishment of performance was impossible (beyond *overmacht*);

5. The accomplishment was no longer needed;
6. The debtor did performance but not as expected.

In practices of establishing a contract, a clause mentioning the conditions above was often listed. Thus, if the debtor failed to meet any of those obligations, a default automatically revealed.

In civil cases, Article 1267 BW also mentioned about contract termination. It stated that due to the debtor's defaults, the creditor was allowed to claim for a contract termination along with its compensation.

In goods and service procurement contract, it often found a unilateral termination by government due to defaults from the supplier of goods and services. In goods and services procurement, the government was the subject of civil law. As the subject of civil law, the government could engage themselves with the suppliers of goods and services. In the context of goods and service procurement, the government would establish a legal relationship with the suppliers in a procurement contract. Its function was similar to other private law subject, either individual or corporates. The implementation of rights and obligation of each party, along with the procedures within, should be clearly set and mentioned in a contract.

The juridical consequence for default parties was a claim from the advantageous party toward the accomplishment of their contract, or a fine/compensation from the default party. In goods and service procurement, there were several regulations dealing with the penalty and it had been set in Article 118 of President's Regulation No. 54 Year 2010 on Goods and Service Procurement, that:

- (1) Goods and service suppliers' behavior that could be charged by sentences involved:
  - a. Trying to influence the ULP (procurement officer)/other authorized parties in many ways, both directly and indirectly in order to reach their goals against the provision and procedures mentioned in Contract/Procurement Document, and/or the provision of Law.
  - b. Having collusion with other suppliers of goods and services to set up the bid price over the procedures of goods/service procurement to decrease/hamper/alleviate and/or abolish a fair play and/or to disadvantage others;

- c. Establishing and/or distributing documents and/or other incorrect information to meet the conditions of goods/service procurement mentioned in Procurement Document;
- d. Resigning from the contract execution with irresponsible and/or unacceptable reasons by the ULP (Procurement Officer);
- e. Unable to responsibly accomplish the tasks mentioned in the contract; and/or
- f. Based on the result of investigation as mentioned in Article 99 subsection (3), it found a discrepancy in utilizing goods and services from local products.

From those conditions, due to the incompletion of Article 118 subsection (1) letter (e), it was classified into default.

#### **The Process of Terminating Governmental Goods and Service Procurement Contract based on President's Regulation No. 4 Year 2015 about the Forth Amendment of President's Regulation No. 54 Year 2010 about Governmental Goods and Service Procurement**

In governmental goods and service procurement contract, one clause as a standard clause was a clause that set the failure of performance by the supplier. This clause would become the basis for user in establishing a contract due to the failure. In fact, there were two kinds of contract termination on governmental goods and service procurement; termination and dissolution.

The termination of contract was related to *force majeure*, while the dissolution was related to the failure of performance by the supplier of goods/service. Hence, the supplier of goods/service was considerably failed in implementing their obligation.

In goods and service procurement contract, the theorem on *force majeure* could be used by the supplier of goods/service as the reason of their failure in accomplishing their obligation. Any situations or events that could be used as the reason of *force majeure* were commonly set in a contract in limitative way. With this clause of *force majeure*, all the parties had determined any situations that were considered as ones that abolished the default of goods/service supplier (Simamora, 2017).

In the process of unilateral contract termination by government, it had been set in Article 93 of President's Regulation No. 4 Year 2015 that:

- (1) The CMO could terminate a contract unilaterally if:

- a. The needs of goods/service could not be delayed over the due date of the contract;
    - a.1. According to CMO study, goods/service suppliers would not be able to accomplish all their tasks although they had 50 (fifty) calendar days since the end of the task execution to accomplish their obligation;
    - a.2. After the additional period of time to accomplish the tasks up to 50 (fifty) calendar days since the end of their work, the suppliers of goods/service could not accomplish their project;
  - b. Goods/service suppliers were neglected/ broke their promise to accomplish their obligation and did not fix their negligence in the range of predetermined period of time;
  - c. Goods/service suppliers were found committing corruption, collusion, nepotism (KKN) and/or falsification on the process of procurement that the authorized instance had defined; and/or
  - d. An accusation on procedure deviation, the notion of KKN, and/or violation on a fair play in the execution of goods/service procurement was considerably exist by the authorized instance.
- (2) In terms of contract termination, it was conducted due to the default of goods/service suppliers:
- a. The execution assurance was disbursed;
  - b. The rest of the down payment should be fully paid by the supplier or the assurance of the down payment should be disbursed;
  - c. The supplier of goods/service paid the penalty due to the delay; and
  - d. The supplier of goods/service was classified into black list.
- (3) In terms of executing a contract termination unilaterally by the CMO due to the default of goods/service supplier as mentioned in subsection (1), the unit of ULP could directly select the next back-up winner on the same project or goods/service suppliers that were capable and met the condition."

In a condition that if a unilateral contract termination was due to corruption, collusion, nepotism, fraudulence, and/or falsification as mentioned in the subsection (1) letter (c),



thus, if the intended falsification was on the process of filing the tender document, it was defined as a defective will. Article 1321 BW set that any agreement would be powerless if it was established due to oversight or force majeure or deception. This article was supported by Article 1328 defining that deception was a motive to terminate an agreement, if it was used by one of the engaged parties through such a way, and thus, it was real that other parties would not had the agreement without any deception. It could not be estimated, but should be proven. With this defective will, it should previously have a process of evidence from the user of budget to prove any defective will on the goods/service supplier.

However, it was often found a termination of contract due to fraudulence, as the auction documents were many, and the user of budget often prioritized a trust over the credibility of the suppliers. Thus, they used their credibility to build a trust with the budget user. It was not supposed to happen if the budget user verified the auction documents more thoroughly.

In addition, Article 35 subsection (2) to (5) also set the termination of contract. it mentioned that:

- (1) The termination of contract could be conducted if all the parties involved committed injured promise and/or could not accomplish their obligation and responsibility as mentioned in the contract.
- (2) The termination of contract due to negligence from the goods/service supplier would be charged as mentioned in the contract in the form of:
  - a. The execution assurance would belong to the government;
  - b. The rest of the down payment should be fully paid by the supplier;
  - c. The supplier should pay penalty/fine and compensation to the government;
  - d. The implementation of black list in some period of time.
- (3) The user of goods/service could terminate the contract unilaterally if the fine of tardiness in executing the project due to the negligence of the supplier of goods/service had been overreached the amount of the assurance.
- (4) The termination of contract due to the negligence of the goods/service user would be charged by making them pay compensation to the goods/service supplier as mentioned in the contract and the provision of applier law.

Therefore, the user should rely on the applied regulation and the contract itself if the termination of goods/service procurement contract happened. And if it was seen from Article (5), the authority to terminate the contract was not on the user only, as the supplier might also be able to do contract termination by charging the obligation of providing compensation on the user, of course, by considering the content of the contract and the applied law.

### **Dispute Resolution and Penalty in the Termination of Governmental Good and Service Procurement Contract**

Basically, in a contractual relationship, all the engaged parties always wanted to make the contract keep in track as what they expected. Along with the time went by, however, the likelihood of dispute among them might happen although they did not expect that to happen, as well as in governmental goods and service procurement contracts. Indeed, it needed a solution as the manifestation of win-win solution in a contract.

The dispute resolution in governmental goods and service procurement contract was actually similar to other dispute resolution in common. It could be solved either through Public Court or arbitrase. In addition, it could also be solved in Administrative Court in case to judge the validity of judgment on blacklisting the goods/service supplier by the stakeholder either due to violation on the process of auction or contract termination.

The solution in Public Court and arbitrase was similar to the procedural law in providing solution for private contracts. The difference, however, was on the process of execution as it had a rule that disallowed any confiscation toward the national/local assets. The nation/local was remained liable in a contractual relationship they had bt the rule of the execution would not be applied as it assumed that the government/local were capable to pay the charge.

Basically, the procedure of seeking for dispute resolution was commonly mentioned in the clause of the contract. If the contract dealt with either the principle of kinship or lawsuit as the solution, this right would belong to each of the engaged parties. However, if the contract dealt with arbitrates in its clause, it should be implemented. Nevertheless, the clause was sometimes unable to implement due to financial factor for the down payment. For the government, it was not set in the calculation of dispute resolution.

Article 94 of the President's Regulation Article 54 subsection (1) mentioned that in a dispute among the engaged parties in a governmental goods/service procurement contract, those parties should previously solve the dispute through deliberation for consensus. In the explanation of this article, it was expected that the dispute would not be sustainable.

Furthermore, President's Regulation Article 54 subsection (2) mentioned that if the dispute resolution as mentioned in subsection (1) was not reached, the solution could be conducted through arbitrase, an alternative solution or through court based on the provision of applied regulation. The explanation of this article was clear that all the engaged parties of governmental goods/service procurement contract might have three options as the dispute resolution if it happen.

### **Dispute Resolution of Governmental Goods and Service Procurement Contract through National Arbitrase Organization (BANI)**

The definition of arbitrase, following *Black's Law Dictionary* was: "A method of dispute resolution involving one or more neutral third parties who are usually agreed to by disputing parties and whose decision is binding" (Campbell, 1979).

Following *Kamus Besar Bahasa Indonesia*, arbitrase was a intermediary efforts to seek for dispute resolution; referee judiciary (Ali, 1995).

Arbitrase was a method of dispute resolution by arbiter ad-hoc or arbitrase committee, known as Private Court. It was a method of dispute resolution that involved one or more third parties that were neutral to conduct "arbitration hearing" based on the specific procedures or rules to address who was right and who was wrong, and the judgment was final and binding (Hardjomuljadi, 2014).

Tracking to the history of Law in Indonesia, this arbitrase official had actually been recognized since 1894, it was since the Dutch government by applying the procedural civil law (*Reglement Op De Burgerlijke Rechtvoordering* or called Rv). The rule of dispute resolution through arbitrase was set in Article 615-651 Rv. In those regulations, it could be seen what and how, the scope, and the authority as well as the function of arbitrase in solving the filed disputes (Harahap, 2006)

Actually, the dispute resolution of governmental goods/service procurement contract could be through several non-litigation and litigation dispute resolution organizations, including:

- a. Dispute Resolution Service of Governmental Goods/Service Procurement Contract (LPSK PBJP)
- b. National Arbitrase Organization (BANI)
- c. Indonesia Alternative Organization of Construction Dispute Resolution (BADAPSKI)
- d. Public Court

Each of those four organizations had different characteristics as follow.

1. LPSK PBJP: free charge, the period of resolution through this organization was 30 days for mediation process, 30 days for conciliation, and 90 days for arbitrase. The dispute of procurement was goods/service procurement for construction and consultant. In addition, the mediator, conciliator, and arbiter should well understand about the procurement along with the legal regulations;
2. BANI: the cost was 0,5-5% from the claim and should be down paid. The period of resolution was 60 days for mediation, 120 days for arbitrase, and 14 days for binding opinion.
3. BADAPSKI: the cost was 0,5-5% from the claim and this organization would only accept the disputes of construction goods/service procurement.
4. Public Court: unlimited budget for cost, not all judges understood the case of governmental goods/service procurement, and the time for solution was also unlimited according to the rute of procedural civil law in a dispute resolution.
  - a. In dispute resolution through arbitrase, it should select an arbiter with good understanding on governmental goods and service procurement contract along with its rules. The selection of this arbiter was by all the engaged parties, both the users and supplier of the goods and service.

Conducting an alternative resolution, it could mediate all the engaged parties to reach reconciliation without waiting for the process of hearing that took more time.

M. Yahya Harahap argued that, according to businessmen, having resolution for business dispute through judicial process was less effective. It was due to some reasons (Hernoko, 2008).

- a. The slow settlement of the resolution which took more time to spend;
- b. High cost;
- c. The Court's irresponsiveness on public interests;
- d. The judicial judgment could not solve the dispute;
- e. The judges' competence were not general;
- f. The judicial judgment was often charged without quite rational consideration.

The contracting parties used some of those reasons to prefer resolution through alternative ways.

#### **Dispute Resolution of Governmental Goods and Service Procurement through Dispute Resolution Service of Governmental Goods/Service Procurement Contract (LPSK PBJP)**

As previously described, the dispute resolution through LPSK PBJP had some advantages including free cost, taking shorter time to spend which needed 30 days for mediation, 30 days for conciliation, and 90 days for arbitrase. In addition, the procurement handled dealt with consultant and construction goods/service procurement. The mediator, conciliator, and arbiter must have good understanding on such procurement along with its applied rules.

The resolution through this organization was an alternative effort of seeking for dispute resolution. Following Goldberg, there were four purposes of alternative dispute resolution, as follow.

- a. To alleviate any traffic in Court;
- b. To improve public engagement on the process of dispute resolution;
- c. To reinforce the path of justice;
- d. To provide chances to reach for dispute resolution that resulted in resolution with public consent.

In addition to those four purposes as what Goldberg argued, the alternative resolution was also a resolution allowed to take by the Law, as previously described.

The advantages of resolution through this organization were:

- 1) The dispute resolution of goods/service procurement was more effective and efficient as BPS PBJ only handled cases of governmental goods/service procurement dispute;
- 2) The resolution was more accurate as the board consisted of experts on governmental goods/service procurement;
- 3) It provided enthusiasm for the suppliers to be more active to participate in conducting governmental goods/service procurement as the resolution tended to provide legal assurance;
- 4) It led governmental goods/service procurement to a better climate due to better fairplay along with the increasing number of suppliers in governmental goods/service procurement.

There were three phases in this organization, including: mediation, conciliation, and arbitrase with different period of time for each of them. It needed 30 days for mediation, 30 days for conciliation, and 90 days for arbitrase. Instead of being unseparable unity, each of those three phases was optional.

In the process of mediation, a mediator for the resolution should be ones with good understanding on governmental goods/service procurement, he/she was as a mediator for both engaged parties to find an agreement. In the process of conciliation, the conciliator should have good understanding on governmental goods/service procurement. Besides, he/she also contributed to give ideas about the disputed issue, but the resolution remained on both engaged parties' agreement. In the process of arbitrase, an arbiter should have good understanding on governmental goods/service procurement, and the resolution would have fixed and binding legal power.

The mediator should be from neutral parties or, in other word, they were neutral parties proposed by many third parties and/or delegated by the secretary of LPSK PBJP to help the disputing parties to reach a resolution through deliberation. The conciliator was a neutral party proposed by many third parties and/or delegated by the secretary of LPSK PBJP to provide an alternative resolution for the disputing parties. The arbiter was one from the third party and/or delegated by the secretary of LPSK PBJP to verify and judge the dispute of procurement contract.

However, the dispute resolution through Public Court kept following the rules and path as mentioned in Procedural Civil Law to solve civil cases. From various

advantages described, the resolution through LPSK PBJP was the most effective and efficient way to take.

### **Penalty on Governmental Goods and Service Procurement Contract Dispute**

In civil law, the judgment was defined by the judge in the form of ([www.hukumonline.com](http://www.hukumonline.com), 2018):

- a. *Condemnatoir* judgment, which nature was charging the defeated parties to do liabilities;
- b. *Declaratoir* judgment, which nature was to create a legitimate condition in legal perspective. This judgment was only explaining and defining a legal condition;
- c. *Constitutive* judgment which abolished the existing legal condition and created the new one.

In civil law, therefore, the types of legal penalty could be in the form of liabilities to do performance, the lost of a legal condition followed by the emergence of new legal condition. In administrative penalty, however, it would deal with violation on administrative law. Commonly, the administrative penalty was in the form of:

- a. Fine (e.g., set in PP No. 28 Year 2008);
- b. Freezing up to revocating certificates and/or license (e.g., set in Permenhub No. KM 26 Year 2009);
- c. Temporer block on administrative services up to the decompression on production quota (e.g., set in Permenhut No. P.39/MENHUT-II/2008 Year 2008);
- d. Administrative penalty (e.g., set in KPPU Verdict No. 252/KPPU/KEP/VII/2008 Tahun 2008).

In governmental goods and service procurement contract, the rules of penalty was also set in Article 118 of President's Regulation No. 54, that:

The treatment or behavior of the goods/service suppliers that could be charged by penalty was:

- a. Trying to influence the Procurement Officers or other authorized parties in such a way, both directly and indirectly, in order to reach their goals against the predetermined procedures and law as set in the Document of Contract, and/or the provision of law.

- b. Having collusion with the goods/service suppliers to set up the bid price over the procedures of goods/service procurement to decrease/hamper/alleviate and/or abolish a fair play and/or to disadvantage others;
- c. Establishing and/or distributing documents and/or other incorrect information to meet the conditions of goods/service procurement mentioned in Procurement Document;
- d. Resigning from the contract execution with irresponsible and/or unacceptable reasons by the ULP (Procurement Officer);
- e. Unable to responsibly accomplish the tasks mentioned in the contract; and/or
- f. Based on the result of investigation as mentioned in Article 99 subsection (3), it found a discrepancy in utilizing goods and services from local products.

Those all behaviors could be charged by administrative penalty, blacklisting, claim for civil case, and/or filing the issue as a criminal case to the authorized party.

Noted that the penalty was not only for the suppliers, but also the user of budget. Article 118 subsection (7) of President's Regulation No. 54 mentioned that if a violation and/or fraudulence happened on the process of governmental goods/service procurement, the ULP could be charged by administrative penalty, sued for compensation, and/or reported as criminal case.

In addition, the ULP of the planning consultant could also be charged if it found guilty. Article 121 of President's Regulation No. 54 set that if a planning consultant was careless and disadvantaged the government, she/he was charged in the form of liability to rearrange the plan with their own budget, and/or sued for compensation.

The CMO with injured promise could also be charged. Article 122 of President's Regulation No. 54 set that the CMO with injured promise on the clause in a contract could be charged by paying compensation with several conditions as follow.

- a. The amount of compensation paid by CMO due to the delay of payment should correspond to the amount of interests of delayed payment, based on the rate of current interest of Bank Indonesia; or
- b. The compensation corresponded to the clause in the contract.

Relying on the principle of proportionality in goods/service procurement contract, it needed to consider the weight of guilt committed by the supplier of goods/service,



particularly to unilateral contract termination. Thus, the weight of penalty should correspond to the weight of guilt committed by the supplier.

### Conclusion

According to the discussion above, some conclusion could be made:

1. In regard to unilateral termination of contract by government/the CMO in goods/service procurement contract, it had been set and allowed by the Law and should be based on the provision of Law as set in Article 93 of President's Regulation No. 4/ 2015 about the Forth Amandment of President's Regulation No. 54/2010 about Governmental Goods and Service Procurement.
2. In regard to dispute resolution in goods and service procurement contract, it had three options; deliberation for consensus, alternative resolution, and through Court. it had been set in Article 94 of President's Regulation No. 54 Year 2010 subsection (1) and (2).
3. The dispute resolution of governmental goods/service procurement contract through alternative way could be conducted through Dispute Resolution Service of Governmental Goods and Service Procurement Contract (LPSK PBJP), National Arbitrase Organization (BANI), and Indonesia Alternative Construction Dispute Resolution Organization (BADAPSKI).

### References

- Ali, Lukman et al. (1995). *Kamus Besar Bahasa Indonesia*. Edisi Kedua. Jakarta: Balai Pustaka.
- Black, Hendry Campbell .(1979). *Black's Law Dictionary. Fifth Edition*. USA: Paul Minn, West Oublishing Co.
- Harahap, M. Yahya . (2006). *Arbitrase*. Edisi Kedua. Jakarta: Sinar Grafika.
- Hardjomuljadi, Sarwono. (2014). *Dispute Board Suatu Penyelesaian Sengketa Konstruksi (FIDIC Conditions of Contract MDB Harmonised Edition)*. Jakarta.
- Hernoko, Agus Yudha. (2008). *Hukum Perjanjian Asas Proporsionalitas Dalam Kontrak*, Yogyakarta: Laksbang Mediatama.
- <http://databoks.katadata.co.id/datapublish/2017/06/09/bagaimana-progres-pembangunan-infrastruktur>.

<http://www.hukumonline.com/klinik/detail/lt4be012381c490/sanksi-hukum-pidana-perdata-dan-administratif->

Simamora, Yohanes Sogar. (2009). *Hukum Perjanjian (prinsip hukum kontrak pengadaan barang dan jasa oleh pemerintah)*. Yogyakarta: LaksBang PRESSindo.

Simamora Yohanes Sogar. (2013). *Hukum Kontrak (kontrak pengadaan barang dan jasa pemerintah di Indonesia)*. Surabaya: LaksBang Justitia.

Turpin Collin. (1972). *Government Contratc Law*. Baltimore: Penguin Books.

*Burgerlijk Wetboek (BW)*

Act No. 18 Year 2000 on Construction Service (Government Gazette No. 54 Year 1999, Additional Gazette of the Republic of Indonesia No. 3833)

Act No. 30 Year 1999 on Arbitrase and Alternative Dispute Resolution (Government Gazette of the Republic of Indonesia No. 138 Year 1999, Additional Gazette of the Republic of Indonesia No. 3872)

Government Regulation No. 29 Year 2000 on the Organization of Construction Service (Government Gazette of the Republic of Indonesia No. 64 Year 2000, Additional Gazette of the Republic of Indonesia No. 3956);

Government Regulation No. 30 Year 2000 on the Development of Construction Service (Government Gazette of the Republic of Indonesia No 65 Year 2000, Additional Gazette of the Republic of Indonesia No. 3957);

President's Regulation No. 54 Year 2010 on Governmental Goods and Service Procurement.