

Legal Consequences Of Tort Contract For Construction Of Keureutoe Reservoir In North Aceh

Muhammad Haykal Arsy¹, Sri Walny Rahayu², Sanusi³

¹ Law Faculty, Syiah Kuala University, Banda Aceh, Indonesia

² Law Faculty, Syiah Kuala University, Banda Aceh, Indonesia

³ Law Faculty, Syiah Kuala University, Banda Aceh, Indonesia

Abstract: Subject to article 1234 The Civil Code says that, the alliance is intended to give something, to do something, or to do nothing, hereinafter section 1338 of the Civil Code says, all approvals made in accordance with the law apply as a law to those who make it. The agreement is irrevocable in addition to the agreement of both parties, or for the reasons prescribed by the law. Consent must be exercised in good faith. In relation to the construction contract of the Keureuto Reservoir in North Aceh, the main contractor with the delay in payment of the executor of the implementation of some work has occurred. The first party, namely PT Hutama Karya, must pay some money to the second party, namely PT Sahrindo who has carried out irrigation excavation activities for the Keureuto Reservoir. At maturity for excavation Pembayaran, it turns out that the first party does not fulfill its promise as referred to in the agreement. This type of approach is the method of normative juridical approach. This research uses primary and secondary legal materials by conducting structured interviews as well as unstructured interviews and discussions related to the study. Data is collected through field research and literature research. Data is analyzed in a qualitative analysis way. The results showed that, the default legal relationship of the working contract of the Keureutoe Reservoir in north Aceh between the Maincontractor and subcontractor, from the rights and obligations of the first Party and the second party has spawned a binding legal relationship between the two, so that it can produce provisions containing fines and also the implementation of the work of Keureuto Reservoir project in North Aceh. According to the interview results, in the contract date 05 April 2016 was agreed numbered: 014. SSP/HUTAMA-PRAPEN. JO/SJP/IV/2016, namely, land work, work threw out the proceeds on the project of the construction work of the Keureuto Kab. North ACEH between the parties, namely PT Hutama Prapen with PT Sarindo Jaya Perkasa has set up a substance clearly with the law as a law for the parties.

Keywords: Due to Legal, Default, Contract Work Contracts.

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I. Introduction

In doing every activity human beings always interact with one another. Interactions made between human beings in legal relations can be interactions in the political, social, cultural and economic fields such as buying and selling, renting rent as well as other economic activities, along with the development of such interactions. National development is essentially, the development of Indonesia completely and the development of the whole people of Indonesia, which emphasizes on the balance of the economy over the outward prosperity and the inward satisfaction in an Indonesian society that is advanced and socially equitable based on Pancasila.

Indonesia has a legal entity arrangement in the form of legislation, among others, found in the ninth chapter of the civil Law, which governs the association. Among these provisions is article 1653 of civil law. Notwithstanding the provisions of article 1653 of Civil Law has been amended by STB. 1870 No. 64, but according to Man S. Sastrawidjaja theoretically remains useful in understanding the theory of existence of the legal entity. The provisions of the civil Law designate two different legal sources as the basis for the establishment of a legal entity, which is based on private law and under public law. This private legal resource becomes the legal basis for the establishment of a private legal entity, while the public law source becomes the legal basis for the establishment of a public entity. Thus there are two types of legal entities, namely private legal entities and public legal entities with different legal bases. In addition to the differences in the legal resources that are the basis of the formation, both types of legal entities can be distinguished also based on methods used in the formation, the field of activities, and the scope of authority (Bintang, 2016).

State-owned enterprises (BUMN) carried out the state task for the development and economy of the country based on Pancasila and the CONSTITUTION 1945. BUMN is engaged under the Ministry to carry out activities in accordance with the duties, principal, and function of each BUMN. One of the ENTERPRISES

engaged in the construction sector, namely PT Hutama Karya (in this case as the main contractor or the job holder). The company is obliged to carry out the reservoir construction project in North Aceh. PT Hutama Karya As the complete executor of the work obtained from the Ministry of PUPR by using the state expenditure budget. PT Hutama Karya as state enterprises in the work representing the State to carry out development and economy in accordance with Pancasila and the mandate of article 33 UUD 1945.

In the work of the construction of the Keureuto Reservoir project in North Aceh, SOES in this case PT Hutama Karya as Main contractor (the main implementing) divides several construction activities to be implemented by other companies in accordance with the field stipulated by PT Hutama Karya, this is taken as an effort to guarantee the quality and achievement of the target of the Keureuto reservoir construction work in accordance with the stipulated time. The next step of PT Hutama Karya conducts a selection of the company's associates to carry out one of the activities that has been determined, on the occasion a local company, PT Sahrindo is entrusted by PT Hutama Karya as the main contractor or the main executive to become one of the partners in the work of the Keureuto Reservoir construction in North Aceh. Once all requirements and criteria are met then PT Hutama Karya with PT Sahrindo agreed to sign the work contract of Keureuto Reservoir in North Aceh. In accordance with the contents of such contracts can be known that PT Hutama Karya as the first party has a position as Main contractor or main executive, while PT Sahrindo as the second party has a position as a Sub contractor or a job acting in the construction project of the Keureuto Dam development in North Aceh.

Construction contracts contain a sense of a legal relationship of wealth or property between two or more persons who give power to one party in order to obtain achievement as well as obliging to the other party to perform achievements. The agreement is governed in book III of the Civil Code (hereinafter abbreviated to Civil Code), which uses an open system, that everyone is free to make agreements with anyone and make agreements on anything (Harahap, 1986).

In making an agreement need to note the terms of the valid agreement governed by Article 1320-article 1327 Civil Code. Article 1320 Civil law mentioned the terms of the agreement must fulfill the elements, (1) Agreement, (2) proficiency, (3) certain objects, and (4) the halal the. The first and second terms are called subjective terms, while the third and fourth terms are referred to as objective conditions. Article 1320 the Civil Code contains provisions that the legal object of the Agreement shall be certain or at least be determined. The agreements are made by the parties in order to form, alter or terminate an alliance. The agreement requires the parties to give something, do something or not do something (Chrystofer, 2017).

Agreements are distinguished into 2 (two) kinds based on their name, i.e. a treaty called (Nominat) and an unnamed treaty (Innominat). A named agreement is a regulated or known agreement in Khucivil, such as buying and selling agreements, tenancy, swinger, grants, luggage storage, borrowing, etc. whereas, the unnamed agreement (Innominat) is an agreement that has not been set up in the Khucivil service (Mertokusumo, 2001). Thus, the construction of the Keureuto Reservoir in North Aceh, which the state-owned enterprises as the main executor used the budget of the APBN which began in 2015 and is multiyears. Later, this development was partially handed over to subcontractors.

According to article 1234 the Civil Code states that, "the alliance is intended to give something, to do something, or to not do something". As for items something that can be claimed is called "achievement", which by law can be:

1. Submit an item,
2. Do a deed,
3. Not doing a deed.

According to R. Subekti the agreement as a legal relationship between two persons or two parties, on which the one is entitled to demand something from the other party, and the other party is obliged to fulfill the demands. In other words, a covenant is an event where one promises to another or where two people promise each other to do something (Subekti, 1985).

Keureuto Reservoir is a reservoir located in Aceh province precisely in North Aceh district. The reservoir is planned to have a capacity of 215.94 M3 and is expected to multiply an area of 9420 Ha, reducing the flood by 610m3/sec, providing a raw water supply of 0, 40m3/sec and generating electricity of 5, 00MW. The project has a total investment of 1.735 trillion which is the source of funds derived from the state BUDGET. The project was responsible for the Ministry of PUPR and the implementation of its construction began in 2015 and was targeted to operate in 2020.

PT Hutama Karya Jo Perapen, which is the job of package 3, has signed a working contract with PT Sahrindo Jaya Perkasa which is one of the local companies as an associate for the project. In the contract of employment mentioned that PT Hutama Karya as the first party as the Main contractor (main executive) while PT Sahrindo as the second party as a sub contractor (executive part) the parties have agreed to complete the construction of a Keureuto reservoir in accordance with the targets that have been given by the Ministry of PUPR. But the practice of implementing the work has been a default made by PT Hutama Karya to PT Sahrindo in terms of invoicing payment that does not comply with the agreed norms.

The issue arose when PT Sahrindo filed a job invoice for PT Hutama Karya for the 3rd stage achievement with an invoice Bill of Rp. 1 billion; (one billion rupiah), but PT Hutama Karya paid only to PT Sahrindo amounting to Rp. 800 million; (Eight hundred million rupiah). The invoice difference is promised to be paid on the next most recent invoice, but what happens when the invoice has matured the first party in this case PT Hutama Karya as the main executor also does not fulfill its obligations on new and past invoices.

There is a forbidden consequence that has been done by BUMN to Sub contractors, ie not pay invoices in accordance with the contents of the agreement, which is stated that there is a reason in article 1337 the Civil Code, mentioned that, "a cause is forbidden, if it is prohibited by law or if it is contrary to decency or with public order".

Due to the law that has been done by BUMN to Sub contractors, ie not pay according to the contents of the agreement. To obtain legal protection as warranted in the provisions of legislation. Indemnity is a form of business actors responsibility for services that do not meet the standards of service. It should also be proved that the loss suffered by consumers is not the negligence/fault of sub-contractors in carrying out its obligations (Rahayu, 2019).

In the above cases, the indication of tort as stated expressly in article 1338 of the following Civil Code, "All approvals made in accordance with the law apply as law to those who make it. The agreement is irrevocable in addition to the agreement of both parties, or for the reasons prescribed by the law. Consent must be exercised in good faith. "

As for the size to determine the debtor guilty (tort) There are four kinds, namely (Subekti, Aneka Perjanjian, 1981):

1. Not doing what it takes to do (not fulfilling its obligations),
2. Carry out what it promises, but not as promised,
3. Do what it promises but be late (late fulfilling its obligations),
4. Do something that according to the Covenant must not do so (fulfilling but not as promised).

Default is not fulfilled or in carrying out obligations (achievements), as stipulated in the Agreement between the parties (A.A.Pradnyaswari, 2013). Default can occur due to debtor error (intentionally or negligent); and a force (Overmacht) state. According to Agus Yudha Hernoko including tort is (Yessica, 2014):

1. Not fulfilling achievements,
2. Late Achievers,
3. Achievers but not as it should be.

In relation to the construction contract of the Keureuto Reservoir in North Aceh, the main contractor with the delay in payment of the executor of the implementation of some work has occurred. The first party, namely PT Hutama Karya, must pay some money to the second party, namely PT Sahrindo who has carried out irrigation excavation activities for the Keureuto Reservoir. At maturity for excavation Pembayaran, it turns out that the first party does not fulfill its promise as referred to in the agreement.

Relationship with notary Public, deed under hand made by BUMN and Sub contractor do not have strong proof. If the deed is in front of the notary as a public official, then the validity of the deed under the hands can provide legal certainty, because there is a neutral party in the form of deed, so this deed to be an authentic deed that can be accounted for in the face of the law, and can not provide a clear legal relationship to the parties the second party. But in practice the first party does not do that, the reason the deed under the hand can also provide a legal certainty for the parties.

Based on the background description above, the main problem can be formulated, that is, how does the legal relationship of the contract of construction of the Keureutoe Reservoir in North Aceh between the main contractor and the sub-contractor in the perspective of the Covenant law?

According to Johnny Ibrahim normative juridical research focuses on the implementation of rules or norms in positive law, Soerjono Soekanto on normative juridical research, a study focused on reviewing and researching legal material, by reviewing that is the basic provisions on the consequences of the main contractor in contract work contracts between PT Utama Karya and PT Sarindo for development under article 33 UUD 1945, KUHcivil, UUJN, and Construction Services Act.

II. LITERATURE REVIEW

According to article 1319, the Civil Code mentions that, "all approvals, whether a special name, or not well known as a particular name, are subject to the general rules, contained in this chapter and past chapters." The contractor is included in a group of agreements called (Benoemde Overeenkomst Nominale contracten), which is a covenant that has a specific name set forth in the Law PA & Book I11 Chapter V-XVIII KUH Civil Code pursuant to article 160 1 Civil law mentions that, "In addition to the agreements to perform temporary services, which are governed by the provisions specific to it and by the terms that are promised, and if it does not exist, by customs, then there are two kinds of agreements with which the other Party shall bind itself to do the work for the other by accepting wages: Labor approval and the employment of the work. "

Pursuant to article 1601 Civil Code There are two types of agreements to commit to the sponsorship, namely:

1. Labor agreements;
2. Contractor work.

The Civil Code mentions the contract of contractor with the term of the job. The juridical definition of the contract of the contractor & Pat we meet in article 1601 b the Civil Code which reads as follows, "The contractor of the work is a covenant, with which the one, the contractor, is to bind itself to the conduct of a work for the other party, the party that is appointed, by accepting a specified price."

In addition to the juridical notion above, some scholars also give an understanding of the contractor's agreement. Sri Soedewi Masjchoen Interpreting the contract of the job, "the contract of contract of employment is a covenant in which the one (the contractor) is bound, while the other party (the buyer) to produce a specific job at a certain price (Maasjchoen, 1982).

The formula given by Sri Soedewi Masjchoen Sofivan is not much different from the formulation contained in the criminal Code. F. X Djumialdji criticised the formulation of the Treaty of the contract is given article 1601 B Civil Code. He assessed the formulation is less precise because as if seen the contract of the contractor is a unilateral agreement. In fact, the contract is a reciprocal agreement in which the parties have a reciprocal right and obligation. From the description, he said the definition of the contractor agreement should be as follows, "The volume of employment is an agreement with which the other party, the contractor, cleave to organize a job, while the other party, who is the one who is in the place, cleave to pay a set price (Djumialdjik, 1996)."

Therefore, Gunawan Sidauruk also gave his opinion on the definition of the contract of the contract, namely, "The contractor agreement is a treaty between a (party that is a company) with another person (a party that is a company with a job) first party Diana would want a work that is being denied by the opponent, for the payment of a certain result as the price of the contractor (Sidauruk, 1981).

From some of the definitions above, it can be concluded that there are several elements contained in the agreement of the chartering namely:

1. is a reciprocal agreement,
2. There are parties that boast,
3. The parties who receive the wholesale,
4. The object of the Covenant to do a particular job,
5. The payment of a specified price.

III. LIABILITY OF THE PARTIES IN THE CONSTRUCTION WORK CONTRACT UNDER LAW NO. 2 OF 2017 ON CONSTRUCTION SERVICES

Basically, construction contracts occur due to the agreement by 2 Parties IE service users and service providers/contractors. However, for the implementation of construction contracts it is necessary for other parties to facilitate and guarantee the exercise of such contracts such as architects, supervisors and other parties according to the needs of the contract and agreed upon by the parties during the preparation of construction contracts.

Law No. 2 of 2017 on construction services govern the matters relating to the responsibility of the user's services and service providers that is, the service provider is responsible for handing over the results of his work in a timely, cost and and precise quality. The service provider is also responsible for knowing the risk mechanism of commitment to the administration of construction services products and ensuring the functionality of construction products in accordance with the provisions of legislation. Then, accountability to the results of the construction services can be done by the guarantee mechanism, which consists of an advance payment guarantee; Performance assurance; Warranty on the quality of the work, the guarantee of failure of the building, guarantee of failure of construction work, among others, worker insurance, material insurance and so on.

In the event that the service provider does not fulfill its obligations and responsibilities in accordance with the construction work contract, the service users can withdraw and use the warranty from the service provider as compensation for the fulfillment of obligations of the service provider. Meanwhile, the service user is responsible for the cost of construction services in accordance with the agreement in the construction work contract and execute the payment in a precise amount and timely.

On April 05, 2016 it was agreed to contract number: 014. SSP/HUTAMA-PRAPEN. JO/SJP/IV/2016, namely, land work, work threw out the proceeds on the project of the construction work of the Keureuto Kab. North Aceh between the parties is PT Hutama Prapen with PT Sarindo Jaya Perkasa located in North Aceh. The second party is Ismail Adnan as the director of PT Sarindo Jaya Perkasa in accordance with the deed of limited liability company to act as a representative in the implementation of Project contract construction work of Keureuto Kab. North Aceh.

Pursuant to article 3 type and price of contract is agreed on the contract value of Rp. 2,106,500.00 (two billion one hundred six million five hundred thousand Rupiahs), where the value of the contract includes all the expenditures of the second party for the smoothness and perfection of the work that includes insurance, taxes, levies and other obligations in accordance with the prevailing laws and regulations and can be paid gradually to the second party by the Parties in accordance with the results and progress of the work.

The payment is governed in article 10 of the contract stating that, the implementation of payment shall be governed by the first party, namely PT Hutama Prapen in accordance with such stages in paragraph (1) of article 10 on the basis of the evidence indicated by the second party that, the second party is fully qualified to be stipulated by the first party. Payment will be made after all payment terms are received by the first party in full and correct consisting of invoices, original receipts, tax invoices. The list of quantity and price can be seen in the table below.

No.	Job description	Unit	Volume	Unit Price	Total Price
1.	Mobilization and demobilisation preparatory work	Ls	1.00	10.000.000	10.000.000
2.	Earthwork (digging, Loading, carrying and leveling with a maximum distance of 1.5 Km)	m ³	20.000	29.000.000	580.000.000
3.	Ground throwing jobs (digging, Loading, hauling and leveling with a maximum distance of 1.5 Km)	m ³	50.000	26.500	1.325.000.000
					1.915.000.000
	PPn 10%				191.500.000
	Total				2.106.500.000

Payment based on the sponsor above by noting some provisions:

1. The first Party may identify the deposit to the second party,
2. The advance must be discounter with the bank guarantee issued by the Government bank type unconditional and irrevocable,
3. The first party may pay the advance deposit as contained in the contract to the second party after the second party submits a cash advance guarantee of the value of the advance payment that will be received from the first party,
4. The refund is done by means of a propositional deduction on each bill submitted and has to be paid off at the moment the achievement of the job has reached 80% with the calculation of the following return, with the advance payment (%) X Progress (%) X 125%.

According to the interview, the payment contained in the employment contract is appropriate, but in the implementation of the payment made by the first party to the second party there is a delay, this is detrimental to the second party where the work has been registered in the tax SPT, so that the tax to be paid is due and there is a penalty (Adnan, 2020).

Furthermore, in article 15 of this contract explains the fines of negligence and the penalty of delay containing:

1. If the second party is unable to complete the work in accordance with the period of the implementation stated in the agreement, then every day of delay of the second Party shall pay a late payment penalty.
2. In the event of a delay in completion, the first party is entitled to appoint another company to continue the work or appoint another company to cooperate with the second party in the completion of the work with the cost of settlement is fully a burden of the second third.
3. The fines and costs incurred as such at the first point shall be accounted for by the first Party's payment obligations of the second party.
4. If the second Phak performs negligence and has received a written warning from the first party of 2 consecutive times-participated with a period of 2x24 hours of the time, then the second Pihak will be subject to a penalty of negligence which is stipulated in special provisions until the rights that cause the negligence.
5. If the second party is unable to reach the target completion of a milestone on the physical progress of the work in the work plan caused by the negligence of the second party, it will be fined as stipulated in the special provisions.
6. If the second party does not make payment to the vendor or the manpower working under its supervision, the first party may suspend the payment.

According to Ismail Adnan, the fines contained in this construction contract provide the second party as an executive, in this case the first party's negligence when the late payment is no particular penalty contained in this contract, it occurs when the job has been carried out properly, the first party has made payment to the second party (Adnan, 2020). In this contract there is also a settlement of disputes between the first party and the second party containing:

1. The Parties agree in the event of a dispute in respect of this Agreement then the Parties shall settle through deliberation for consensus in the term 60 calendar days.
2. If the period of 60 calendar days is not reached by deliberation of eating the parties agree will settle through an arbitration term domiciled in Indonesia.

This is not possible because the cost of the need is very large and a long time, which the second party continues to deal with the construction tax that each day goes, therefore this will cause losses that will be greater by the second party.

The legal relationship contained in this contractual agreement can be seen in article 9 describing the rights and obligations of the parties, namely:

1. The first party reserves the right to:
 - a. Supervise and examine the work carried out by the second party.
 - b. Receive periodic reports on the implementation of projects performed by the second party.
 - c. Conducting inspection and testing of goods/materials or tools that are used for the execution of work/factory acceptance test.
 - d. Instruct in writing to the second party for the second party's own expense to:
 - Moving from the field and replacing it with material/material tools that do not meet the technical specifications set.
 - Disassemble and rework the work that does not meet the technical specifications set forth.
 - Perform an indispensable job for the execution of the work.
 - If the second party fails to perform, the first party may show the third or perform it on its own with a second party fee.
 - e. Suspend second party's work if:
 - Get the project owner's instructions.
 - The second party does not meet the working requirements as intended in the contract.
 - For safety considerations and general goal achievement.
 - f. Stop second party work.
 - g. Deduct any second party bill for the guarantee of maintenance and/or fines and other matters required in the agreement.
 - h. The first Party shall at any time be entitled to suspend/suspend the work of the second party by mentioning its name in writing and the second party at its own expense should protect the work from loss of quality, loss or damage.
 - i. The first party has the right to conduct and test the job section at the end of the work. If the test result does not qualify the first party has the right to reject a second party job should fix it.
 - j. The first party is entitled to make changes, additions or deduction of employment with written instruction.
2. The first Party is obliged to:
 - a. Cut work in accordance with contractual provisions.
 - b. Provide supporting documents owned for the performance of the work.
 - c. provide drawings plan.
 - d. Give approval to the submission of work drawings, approval materials, and request at least 3 days after it approved the owner.

From the rights and obligations of this first party and the second party has spawned a binding legal relationship between the two, so that it can give birth to provisions containing fines and also the implementation of the work of the Keureuto Reservoir project in North Aceh. According to the interview results, in the contract date 05 April 2016 was agreed numbered: 014. SSP/HUTAMA-PRAPEN. JO/SJP/IV/2016, namely, land work, work threw out the proceeds on the project of the construction work of the Keureuto Kab. North ACEH between the parties, namely PT Hutama Prapen with PT Sarindo Jaya Perkasa has set up a substance clearly with the law as a law for the parties.

However, if further studied with the substance of this contract, there is still a lot of impending to the second party that could harm the financial party, because the creation of the contract deed is done by the first party which then only agreed by the second party. The second party took this work by accounting for the good faith of the first party, without the loss of payment, but in the implementation is different (Made, 2020).

IV. CONCLUSIONS

The legal relationship found in the construction of the Keureuto Reservoir in North Aceh under LAW No. 2 of 2017 on construction services has responsibility for the failure of the building. This legal relationship is based on the contract of construction work No. 014. SSP/HUTAMA-PRAPEN. JO/SJP/IV/2016 who must accept and do something in accordance with the contents of article 1234 of the Civil Code of which the first Party is obliged to do complete the work in accordance with the period of the implementation stated in the Agreement and the first Party shall be obliged to pay with the provisions of the contract substance. It is advised that the working contract perpetrators can make a treaty to a party that is neutral, impartial, and not detrimental to either party, in which case the notary can take its role as a state official in its execution, thus giving birth to a binding legal relationship and the fixed law in the event of a dispute.

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