

Contractor's Responsibility for a Work Contract in a Project Direct Appointment by the Commitment Making Officer (PPK) of the Regional Government Organization (OPD) (Study at the Public Works and Spatial Planning Department of Tanjungbalai City)

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Abstract

The Reformation era was an era of change in national and state life. The reform era began in 1998. The background to the birth of the Reform Era was the dysfunction of the wheels of government in national and state life, especially in the fields of politics, economics and law. So with the Reformation, state administrators want to make radical (fundamental) changes in these three areas. The form of contractor responsibility for a work contract in a Direct Appointment project, where basically the responsibility of the contractor (work implementer) in the work contract in all selection models (whether direct appointment or not) is the same. The cooperation contract system and payment method with contractors and terms and each month which is influenced by the form of contract for the Direct Appointment method is in the form of a Letter of Agreement. Meanwhile, the type of contract can be a Lumpsum Contract, or a Unit Price Contract, or a Combined Unit Price and Lumpsum Contract. Usually using a Combined Unit Price and Lumpsum Contract. Except for emergency work using unit price contracts. Meanwhile, the method or method of payment can be termly or monthly (certificate mountly: based on work performance). The formulation of the problem discussed is how the contractor's responsibilities regarding work contracts in projects are directly appointed by the PPK of the Tanjungbalai City Public Works and Spatial Planning Service.

Abstrak

Dalam era Reformasi merupakan era perubahan dalam kehidupan berbangsa dan bernegara. Era reformasi telah dimulai sejak tahun 1998 yang lalu. Latar Belakang lahirnya Era Reformasi adalah tidak berfungsinya roda pemerintahan dalam kehidupan berbangsa dan bernegara, Terutama dibidang politik, ekonomi, dan hukum. Maka dengan adanya Reformasi, penyelenggara negara berkeinginan untuk melakukan perubahan secara radikal (mendasar) dalam ketiga bidang tersebut. Bentuk tanggungjawab kontraktor terhadap sebuah kontrak kerja di dalam proyek Penunjukan Langsung, yang mana pada dasarnya tanggung jawab kontraktor (pelaksana pekerjaan) dalam kontrak kerja pada semua model pemilihan (baik penunjukan langsung maupun bukan) adalah sama. Sistem kontrak kerjasama dan metode pembayaran dengan kontraktor dan termin dan setiap bulannya yang mana dipengaruhi dari bentuk Kontrak untuk metode Penunjukan Langsung ialah berbentuk Surat Perjanjian. Sedangkan jenis kontrak dapat berupa Kontrak Lumpsum, atau Kontrak Harga Satuan, atau Kontrak Gabungan Harga Satuan dan Lumpsum. Lazimnya menggunakan Kontrak Gabungan Harga Satuan dan Lumpsum. Kecuali untuk pekerjaan darurat menggunakan kontrak harga satuan. Sedangkan metode atau cara pembayaran dapat dengan cara termyn atau dapat juga dengan cara bulanan (*certificate mountly*: didasarkan pada prestasi pekerjaan). Adapun rumusan masalah yang dibahas yaitu Bagaimana bentuk tanggung jawab kontraktor terkait kontrak kerja di dalam proyek penunjukan langsung oleh PPK Dinas Pekerjaan Umum dan Penataan Ruang Kota Tanjungbalai. Bagaimana hambatan-hambatan dan solusinya di dalam kontrak kerja terkait *force majeure* proyek penunjukan langsung oleh PPK Dinas Pekerjaan Umum dan Penataan Ruang Kota Tanjungbalai.

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1. INTRODUCTION

In an effort to meet needs, the government as the organizer in the form of government obtains these needs, some from within and some from outside the country. Indonesia is divided into provincial and district/city governments, all tasked with addressing the needs of the Indonesian

people. The land issue is a problem that is almost difficult to solve because it is related to aspects of life which in this case have a personality that symbolizes the value of goodness.

Earth is a problem that is almost difficult to solve because it is related to aspects of life which in this case have a character that symbolizes the existence of good values. "Economic development and social welfare in Indonesia are based on the principle of kinship as defined in paragraph 1. Article 33 of the 1945 Constitution states that a reliable life is structured as a joint effort based on the principle of kinship."

The principles that apply in this matter are under the law of the subsequent development agreement concerns universal interests. These principles are stated in the contract, namely:

- a. The principle of freedom of contract, which in this case is in paragraph 1. Article 1338 of the Civil Code, which stipulates that every contract made legally is valid as law for those who enter into it.
- b. The principle of good faith (Goede Trouw), which in this case is in paragraph 3.

Indonesian legislation understands several regulations related to construction law recorded in the Civil Code, special laws and other statutory regulations. Some of these regulations have existed since before the war, which are often outdated and in need of regulation and improvement.

In accordance with the growth of the era and various "development" needs, construction services also grow and expand. In the interpretation of construction services in accordance with Law Number. 2 of 2017 concerning services construction It is stated that construction services are construction project planning consulting services and supervision consulting services. This matter is closely related to the living conditions of construction service residents, both individually and as a network of associations. In this case, however vague, it is necessary to take into account employment patterns. Where do the current people in construction services come from, where do the manufacturers come from, and what training qualifications are undertaken in-house.

Legal protection in settlements means that when making an agreement, it should provide responsibility or the guarantor as a third party who can be responsible if something happens which in this case can no longer be avoided.

With this background, the author is interested in carrying out legal research which is presented in the form of thesis with the title Contractor's Responsibility for a Work Contract in a Direct Appointment Project by a Commitment Making Officer (PPK) of a Regional Government Organization (OPD) (Studies at the Tanjungbalai City Public Works and Spatial Planning Service).

2. RESEARCH METHOD

This research used a type of empirical legal research which was carried out by studying primary data through interviews and this method was used as detailed information in this legal research. Data collection area tried it at the Office of Tanjungbalai City Public Works and Spatial Planning Department. Sources of information obtained from primary, secondary and tertiary information sources.

3. Results and Discussion

1. Forms of Contractor Responsibilities Related to Work Contracts in Projects Direct Appointment by PPK Public Works and Spatial Planning Department of Tanjungbalai City

In designing work that was carried out by direct appointment, try to prepare a work plan that is carried out by direct appointment, such as a work program with procedures for selecting alternatives that are carried out by budget users (PA) and/or contract signatories (PPK). Overriding Article 9 and Article 11 of the Presidential Regulation of the Republic of Indonesia

No. 16 of 2018 concerning Universal Procurement of Goods/Services, where the procurement plan contains:

- 1) Needs analysis, determination of goods/services, procedures, agenda and budget for procurement of goods/services.
- 2) Provision planning was carried out to coincide with the process of implementing project plans and regional feature budgets (RKA Aparelhos Daerah) after the promulgation of the universal APBD policy convention and interim budget priorities and limits (KUA-PPAS).
- 3) Purchasing plans through suppliers include:
 - a. Implementation of technical specifications/TOR;
 - b. Implementation of budget/ RAB;
 - c. Packaging for purchasing goods/services;
 - d. Consolidation of purchases of goods/services;
 - e. Summary of support payments;
 - f. The results of planning for the procurement of goods/services can be seen in the RUP
- 4) NoAdditionally, PA/KPA/PPK and/or UKPBJ (in this case the Procurement of Goods and Services Section of the Tanjungbalai City Regional Bureau) handles the consolidation of procurement of goods/services and/or preparation for selecting suppliers, this matter is as defined in. in Article 21 of the Presidential Regulation of the Republic of Indonesia No. 16 of 2018.

In the procurement of goods and services, in carrying out the activity there must be a consultant, namely a person or body who has certain abilities to be able to provide consulting services (in this case planning consultation, or control/monitoring consultation). At the Department of Universal Works and Public Housing (PUPR) of Tanjungbalai City, in implementing projects using the direct appointment selection procedure, consultant services are not used. The planning and supervision of the development was carried out by technical personnel/ASN from the Public Works and Public Housing Department (PUPR) of Tanjungbalai City itself.

The situation in which the building services community lives, either individually or in a network of associations. In this case, however superficial, it is necessary to evaluate employment patterns. Where do the current people in building services come from, where the creation comes from and what training skills the organization undertakes internally.

Therefore, the procedures and requirements for Commitment Forming Officials (PPK) in selecting Direct Nomination Contractors where the Public Works and Public Housing Department (PUPR) of Tanjungbalai City carry out work where the selection procedure is Direct Nomination in 2020 and 2022, after that in 2020 , determines the use of work implementation budgets using the direct work ordering method to speed up action against Covid 19. Thus, under the decision it is an "emergency condition". In 2022, Budget Users determine as PPK jobs with direct nominations for jobs that face 2 bid defects.

Therefore, the decision is essentially a "rebid failure". Our contract law still uses the provisions of the Dutch colonial government in III. civil law book. Book III of the Civil Code adheres to an open system, meaning that parties are free to enter into agreements with anyone, ensuring the terms, implementation and form of the agreement, whether oral or written. Not only that, it is permissible to make agreements regulated in civil law as well as outside civil law.

In experiencing ongoing development projects, there are several regulations related to building use rights contained in the Civil Code, special laws and statutory regulations.- another invitation. Some of these regulations have existed since before the war, which are often outdated and in need of regulation and improvement.

With regard to the purchase of building materials and finishing materials, the specifications that are usually used are that for selecting a work contractor, the PA/PPK has determined the technical specifications of the project (technical specifications of materials, technology for

carrying out the work and photos). Material specifications and technical work refer to the Indonesian National Standard (SNI) specifications. Service providers must carry out work in accordance with the formalized technical specifications. With the exception of direct scheduling work for emergencies, there are no technical specifications (where there is no work agenda).

2. Obstacles and Solutions in the Work Contract Related to Force Majuere Project Direct Appointment by PPK Public Works and Spatial Planning Department of Tanjungbalai City

It is necessary to formalize conditions regarding the existence of disputes, which is intended as a form of litigation when drawing up work contracts for contractors who provide construction services and products. For Richard L. Abel, a dispute is a public statement of incompatible claims. Work steps in the event of conditions that cannot be controlled, but after that if an uncontrollable event occurs which causes a temporary suspension of work implementation, then the work performance is taken into account. Unfinished work stages will be returned according to the work implementation time.

Construction contracts are based on the principle of contract binding (*pacta sunt servanda*) which is regulated in Article 1338 of the Civil Code, this states that all contracts made are legally legal as per the law for those who make them. If the parties want the contractual dispute to be resolved in a relatively short time to save costs, then a settlement outside the legal tribunal is the best solution. This dispute resolution standard is Alternative Dispute Resolution (ADR).

Construction contracts in the legal system are one of the factors/parts of legal construction (*Buwrecht*). Buildings or structures here have a broad meaning, namely everything that is built on the ground. So, what is defined by Building/Building Regulations is all the features of statutory regulations relating to buildings including construction, maintenance, demolition, transfer, both civil and universal/administrative.

Overrides the cooperation agreement system as well as payment methods to contractors and deadlines as well as all months affected by the form of direct appointment contracts in the form of contracts. Although the type of contract can be a Lumpsum contract, or a unit price contract, or a combination of unit price and Lumpsum contracts. Combined unit prices as well as Lumpsum contracts are commonly used. There is no emergency work listed on unit price contracts. Although the payment method can be done over time or can also be tried on a monthly basis (certificate attached: based on work performance). Except for emergency work with regular payment procedures. At the Tanjungbalai City PUPR Service Office, payment is attempted using the installment method.

The Debt Management Officer (PPK) of the Public Works and Spatial Planning Department of the Tanjungbalai City Council throughout the last 10 years has had problems with the law, namely that the procurement of goods/services is a prolonged activity, regulations are always changing, changing/growing with time. Because of this, it is very possible to stumble into the law. Debt Management Officers (PPK) at the Public Works and Public Housing Department (PUPR) in Tanjungbalai City are often subject to the supervision of financial auditors and legal auditors. In the last 10 years, 2 bond holders (PPK) from the Public Works and Public Housing Department (PUPR) of Tanjungbalai City have been diagnosed.

The implementation of construction services aims to produce an orderly implementation of construction services that guarantees equality between users and service providers in carrying out their rights and obligations, and increases compliance with statutory regulations.

If a legal problem arises in the construction industry, it is a matter of dispute resolution which is resolved between dispute resolution bodies or disputes through procedures agreed upon by the parties. The contractor's responsibility in the event of construction failure is:

1. The contractor must be responsible for the destruction of the building within the time period estimated in the building age plan.

2. If the construction age exceeds 10 years, the contractor is responsible for the destruction of the building for a maximum of 10 years from the time the construction services end.
3. The contractor is responsible for any building failures that occur after that time.
4. Construction contracts must contain provisions for a guarantee period against destruction of property.

In implementing a development project, a message is created which can be said to be a legal message, only if it fulfills certain conditions which can be considered a legal message when making a contract. The conditions are as follows:

- a. your contract that binds you;
- b. Eligibility to Participate;
- c. Specific object;
- d. Triggers that are not prohibited.

OPD's responsibility if there is a project or construction material in the work that is not in the contract requires making a new contract again and familiarizing with the work being carried out and also all contracts made must be in accordance with the laws currently in force as the law for those who make them. This agreement cannot be terminated except with the agreement of both parties or due to reasons determined by law. Contracts must be made in good faith. There are also other tasks, namely:

1. Supervise work in the field, so that it always matches the project plan and technical requirements/specifications for work implementation.
2. Respond to cases related to project implementation in the field and deliver and share recommendations for revision options to the PPK.
3. Checking the truth or comparing the project progress report claimed/stated by the project developer with that obtained from the field monitoring consultant's report.

For A. Pitlo, if an agreement is made for the implementation of a project in the form of cooperation regulated in the work, then it is a signed message, made as a fact and used by the person for whom the message was made.

On the other hand, residents who are affected can file a lawsuit and demand compensation or compensation for the consequences caused by construction service activities. If a lawsuit is filed because of a construction activity, then in substance it can be considered as a written fact, which in certain cases is a solid fact for the person concerned. A form of maintenance guarantee at the end of the work where the service user pays 100 percent of the contract price, where the contractor is obliged to share a maintenance guarantee of 5 percent of the price contract. Throughout the maintenance period, the builder must monitor the success of the work and maintain it so that unwanted damage does not occur. However, in this case, regarding the arrangement in the form of payment for the provision of guarantees during maintenance implementation, these are:

1. After 100% completion of other work/services, the work is handed over for the first time. The publisher shares a maintenance guarantee of 5% of the contract value.
2. Based on the initial delivery of work results and maintenance responsibilities, PPK can pay 100% of the contract value. The provider must also carry out maintenance to repair all damage/defects that may arise during the maintenance period.
3. When the maintenance period ends and all errors/defects known/occurring during the maintenance period by the service provider have been repaired, the second delivery or final delivery will be attempted.
4. Upon final delivery, maintenance responsibility returns to the provider.

5. CONCLUSION

From the description discussed in this research discussion, it can be concluded that:

1. The form of contractor's responsibility for a work contract was in work carried out directly, where in principle the contractor's obligations (work implementation) in contracts in all types of selection (with direct appointment or not) are the same.
2. The cooperation contract system and payment methods to contractors and deadlines and all months that were affected by the form of the contract for direct recruitment procedures are in the form of a contract. Although the type of contract can be in the form of a contract, or a unit price contract, or a combination of unit price and contract. Combined unit prices as well as contracts were generally used. Except for emergency work with a unit price contract. Although the payment method can be done over time or can also be tried on a monthly basis (certificate attached: based on work performance). Except emergency work with cash payment. At the Tanjungbalai City PUPR Service Office, payment was attempted using the installment method.

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