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Juridical Analysis Of Default In The Procurement Contract For Supporting Facilities For Nicu & Neurosurgery In Banten Province (Study Of Supreme Court Decision No.418k/Pdt/2021)

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Abstract

Case Decision Number 418K/PDT/2021 is a decision of the Supreme Court regarding a lawsuit between PT Dini Usaha Mandiri and the Banten Provincial Health Office regarding an alleged act of default in a contract agreement for the procurement of medical equipment for Banten Province. the judge granted Ahmad Saepudin's lawsuit, which in this case is the President Director of PT Dini Usaha Mandiri, the object of the case is a lawsuit for default for the non-entry of payment to Ahmad Saepudin's account number. then the Defendant still wants to file an Cassation to dissatisfy the Banten high court decision, in case register number 1/Pdt/2019/PT BTN. Then the Defendant still wants to file an Cassation for dissatisfaction with the Banten high court's decision, in case register number 1/Pdt/2019/PT BTN This research uses the Juridical-Normative Research Method, Normative legal research (Legal research) This research uses the type of approach Legislation and (case approach), namely by understanding the legal reasons used by the judge in deciding the case of his decision (Ratio Decidendi). This study aims to determine the judge's consideration in deciding the case due to default in the implementation of the Banten provincial health facility procurement agreement and how the responsibility of the local government related to default. This research aims to find out the legal consequences for the parties to the construction contract agreement if they make a default and to find out the process of resolving default disputes in the contract agreement.

Keywords: Default; Compensation ;Judex Factie ; Judge's Decision

1. INTRODUCTION

(Pradana and Rizka 2023) Enhancing public services, promoting national and regional economies, and enhancing the process of implementing national development are all made possible by public procurement. Such as NICU Support facilities and Neurosurgery tools. The consensual principle in the formation of a sale and purchase contract also applies in the procurement of goods by the government but with due regard to the procedures and procedures stipulated in Presidential Regulation Number 16 of 2018 concerning Government Procurement of Goods / Services¹

(Kenedi, Lanin, and Agus 2018) Hospitals are medical facilities that offer complete inpatient, outpatient, and emergency care to each individual patient. The provision of professional, high-quality, and long-lasting healthcare services by hospitals depends on the availability of standard medical equipment.²

The concept of organizing construction services has basically been regulated for the first time through Law Number 18 of 1999 concerning Construction Services essentially the object is construction work which according to the provisions of Article 1 number 2 of the Construction

¹ Pradana and Rizka" Juridical Review of the Implementation of Medical Goods Procurement Agreement Between CV. Prasetya Utama with the West Java Health Office. Journal of Science and Humanities 6. no 1 (2023) : 56-71. <http://um-tapsel.ac.id>.

² Kenedi, Lanin and Agus" Analysis of Medical Device Procurement at Padang Pariaman Regional General Hospital in 2018." Andalas Health Journal 7 (Supplement 2): 9. <https://doi.org/10.25077/jka.v7i0.818>.

Services Law can be defined as all or part of the activities that include construction, operation, maintenance, demolition, and rebuilding of a building.³

The implementation of construction services for national development is actually not only carried out by the private sector, but the Government, in this case the State, can also be involved in the procurement of construction services. Through the provisions of Presidential Regulation No. 54 of 2010 concerning Government Procurement of Goods and Services.⁴

The basis of the organization of how the legal relationship between the parties in construction services between providers and users of services. When examined according to the nature of the work, the legal relationship between users and construction service providers is a civil legal relationship.⁵

Furthermore, the obligation to make construction service contract documents is contained in Article 22 paragraph (1) of the Construction Services Law which states: "Working relationship arrangements based on the law as referred to in Article 18 paragraph (3) must be set out in a construction work contract"⁶

The responsibility to perform what was promised is known as an achievement. Article 1313 of the Civil Code, which states that "an agreement is an act in which one or more people bind themselves to another or more people," governs agreements from a legal standpoint. It is clear from the way the article is written that an agreement that results in an obligation (verbintenisscheppende overeenkomst) or an obligatory agreement is what is intended to be understood by the term "agreement."⁷

Default refers to a circumstance in which an individual might be held accountable for not keeping their word or not performing as expected. According to Article 1243 of the Civil Code, "If the debtor continues to be negligent in fulfilling the obligation after being found negligent, or if something that needs to be done can only be done, reimbursement of costs, losses, and interest for non-fulfillment of an obligation begins to be required."⁸

(Faliquzzaman and Sakti 2023) Meanwhile, cassation is the authority of the Supreme Court which is a high state institution of judicial power. The Supreme Court has the authority to examine and decide on cassation applications. In cassation there is a Judex Juris who examines the application of the law or in other words the application of the Judex Factie law in examining and deciding cases that have become their authority based on the Legislation.

In addition, it is also authorized to cancel decisions from all judicial circles or court decisions on the basis of lack of authority or exceeding the limits of authority based on several reasons such as misapplication of applicable law, failure to fulfill the requirements required by laws and regulations and so on.⁹ The grounds for filing a cassation are regulated in Article 30 of Law No.

³ Article 1 point 3 of Law Number 18 Year 1999 on Construction Services

⁴ provisions of Presidential Regulation No. 54/2010 on Government Procurement of Goods and Services.

⁵ Default in the procurement of Construction services (Analysis of Decision No. 01/Pdt.G/2019/PN.Jkt.Sel)

⁶ Article 46 paragraph (1) of Law Number 18 Year 1999 concerning Construction Services

⁷ Article 1313 of the Civil Code

⁸ Article 1243 of the Civil Code related to compensation due to non-fulfillment of performance in the agreement

⁹ Faliquzzaman and Muthia Sakti "ANALYSIS OF THE CONSIDERATIONS OF THE SUPREME COURT IN GRANTING THE PUBLIC PROSECUTOR'S CASSATION AGAINST JUDEX FACTIE ERRORS" 11. No 3

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14 of 1985 jo Article 30 of Law No.5 of 2005 concerning the Supreme Court jo Article 30 of Law No.4 of 2004, namely lack of authority or exceeding the limits of authority, misapplication or violation of applicable law, and negligence to fulfill the conditions required by laws and regulations that threaten the negligence with the cancellation of the decision concerned. As well as in filing a cassation there is a rejection, it can be caused by various factors that are not contained in Article 30 of Law No. 14 of 1985 jo Article 30 of Law No.5 of 2005 concerning the Supreme Court jo Article 30 of Law No.4 of 2004. (Bandem, Wisadnya and Mordan 2020)The basis of the Plaintiff's claim is that the Defendant made a default to the Plaintiff which resulted in losses and demanded the Defendant to compensate for the losses suffered by the Plaintiff and in this case the basis and demands of the Plaintiff are clear Based on Article 164 HIR, the letter of claim is not evidence, but later it must be proven at trial.

This discussion of default in the procurement of construction services uses an analysis as in the Supreme Court Decision No.418K/Pdt/2021. In this decision, there is a legal relationship as in the Construction Work Contract Agreement Letter, Construction of supporting facilities for NICU & Neurosurgery in Banten Province, Number: 900/B.14/KKPB/PU/KES/2013 & Number: 900/B.14/KKPB/PU/KES/2013 dated September 2, 2013 where the procurement was held by the Banten Provincial Health Office and then PT Dini Usaha Mandiri Ahmad Saepuddin as the President Director (Plaintiff) got the project. Furthermore, there was a misunderstanding regarding the implementation of the contract which then occurred several times the contract addendum so that there was a dispute regarding the implementation of the contract resulting in both parties claiming to have made achievements. This paper will discuss how the characteristics of default in the procurement of construction services and how the Local Government Liability in this case the Banten Provincial Health Office in the case of Default in the procurement of Construction services for Health procurement tools.

2. METHOD

This research method uses juridical-normative research methods, normative legal research (Legal research), namely document studies using sources of legal material in the form of laws and regulations (Statute Approach) Court decisions / decrees, legal theories and opinions of scholars. This research also uses the case approach method, namely by understanding the legal reasons used by the judge in deciding the case of his decision (Ratio Decidendi). the method of analysis carried out is limited to a qualitative method of analysis, namely by interpreting the legal materials that have been collected.The use of this method of interpretation (interpretation) aims to interpret the law, whether the legal material, especially primary legal material, is vacant of legal norms and vague legal norms. This research uses deductive inference, namely drawing conclusions from general things that can be drawn conclusions that are specific such as starting from the principles or principles of a law and legal rules on the issues studied.

3. RESULTS AND DISCUSSION

3.1 Judges' considerations in deciding cases and the legal consequences of the parties

Before the author explains the judge's consideration in handing down a decision in case number 418K/PDT/2021.

That the Plaintiff in his lawsuit dated August 13, 2018 which was received and registered at the registrar in Register Number 91/Pdt.G/2018/PN.Srg has filed a lawsuit as follows: 1) That Defendant 1 has breached the contract agreement that was made on September 2, 2013, and signed by the Plaintiff/PT. Dini Usaha Mandiri and Defendant 1/District Health Office of Banten Province as the Budget User, the Plaintiff/PT. Dini Usaha Mandiri was appointed as the executor of the goods/services provider for the following work: I a) Name of Work: Procurement of NICU Support Facilities for Banten Provincial Hospital, Activity Name: Improvement of Hospital Health Efforts and Labkesda Contract Number: 900/B.14/KKPB/PU/KES/2013, Contract Date: September 2, 2013, Account Code: 5.2.3.19.18, Contract Value: Rp. 9.796.249.000,- (nine billion seven hundred ninety six million two hundred forty nine thousand rupiah). II a) Name of Work: Procurement of Neurosurgery Support Facilities for Banten Provincial Hospital, Activity Name: Improvement of Hospital Health Efforts and Labkesda, Contract number: 900/B.13/KKPB/PU/KES/2013, Contract Date: September 2, 2013, Account Code: 5.2.3.19.18, Contract Value: Rp. 20.376.517.000,- (twenty billion three hundred seventy six million five hundred seventeen thousand rupiah). 2) That based on the contract agreement signed by the Plaintiff / PT Dini Usaha Mandir with the Defendant I / Head of the Bantens Provincial Health Office as the Budget User, the Plaintiff / PT Dini Usaha Mandiri was appointed as the executor of the goods / services provider for the aforementioned work. 3) That subsequently based on Work Order Number: 900/B.14/SPK/PU/Kes/2013 for the Procurement of NICU Support Facilities for Banten Provincial Hospital and Work Order Number: 900/B.13/PU/Kes/2013 for the Procurement of Neurosurgery Support Facilities for Banten Provincial Hospital, the Plaintiff/PT. Dini Usaha Mandiri began carrying out the work on September 02, 2013 with a work period of 120 (one hundred and twenty) calendar days. 4) That subsequently after carrying out work in accordance with the contract, the Plaintiff/PT.Dini Usaha Mandiri submitted an advance disbursement through Application Letter Number: 005/DUM/PU/IX/2013 dated September 17, 2013 amounting to 20% of the contract value, namely Rp 1,959,249.800, - (one billion nine hundred fifty nine million two hundred forty nine thousand eight hundred rupiah) for the Procurement of NICU Support Facilities for Banten Provincial Hospital and Application number: 006/DUM/PPU/IX/2013 dated September 17, 2013 amounting to 20% of the contract value of Rp 4,075,303,400, - (four billion seventy five million three hundred three thousand four hundred rupiah) for the Procurement of Neurosurgery Support Facilities for Banten Provincial Hospital and has been received and disbursed by the Plaintiff/PT. Dini Usaha Mandiri. 5) That the work being carried out by the Plaintiff/PT. Dini Usaha Mandiri was then carried out an Addendum to the Contract Value on December 3, 2013 as follows: a) Name of Work: Procurement of NICU Support

Facilities for Banten Provincial Hospital, Activity Name: Improvement of Hospital Health Efforts and Labkesda Contract Number: 900/B.14/KKPB/PU/KES/2013, Contract Date: September 2, 2013, Account Code: 5.2.3.19.18, Initial Contract Value: Rp. 9,796,249,000, - (nine billion seven hundred ninety six million two hundred forty nine thousand rupiah), Contract value after addendum: Rp.7,027,374,000,-, Contract Number: 900/B.14/AMD/KPPB/LU/KES/2013, Contract addendum date: December 3, 2013. a) Name of Work: Procurement of Neurosurgery Support Facilities for Banten Provincial Hospital, Activity Name: Improving Health Efforts in Hospitals and Labkesda, Contract number: 900/B.13/KKPB/PU/KES/2013, Contract Date: September 2, 2013, Account Code: 5.2.3.19.18, Initial Contract Value: Rp. 20,376,517,000, - (twenty billion three hundred seventy-six million five hundred seventeen thousand rupiah), Contract Value after addendum: 14.747.323.000,-, Contract Number: 900/B.13/AMD/KPPB/LU/KES/2013. 6) That the Plaintiff PT Dini Usaha Mandiri has completed all of the work in accordance with the contract within the period as stated in the contract agreement, as stated in the Minutes of Handover of Work Results (BASTHP) Number: 027/022.a/PP/Rujukan.B14/BASTHP/APBD/Kes/2013 dated December 12, 2013 for the Procurement of Supporting Facilities for NICU Banten Provincial Hospital and Minutes of Handover of Work Results (BASTHP) Number: 027/025/PP/Rujukan.B.13./BASTHP/APBD/KES/2013 dated December 17, 2013 for the Procurement Work of Neurosurgery Banten Provincial Hospital. 7) That because the Plaintiff / PT Dini Usaha Mandiri has completed all work in accordance with the contract agreement, the Plaintiff / PT Dini Usaha Mandiri made a letter requesting the disbursement of the remaining unpaid funds of the Defendant I / Head of the Banten Provincial Health Office to the Plaintiff / PT Dini Usaha Mandiri with letter number: 015 / DUM / PU / XII / 2013 dated : December 18, 2013, addressed to Defendant I/Head of the Banten Provincial Health Office. 8) That subsequently Defendant 1/ Banten Provincial Health Office made a disbursement process to the Banten Provincial Government through Defendant II/ Head of the Banten Provincial Revenue and Regional Financial Management Office with a Pay Order (SPM) Number: 00674/Dinkes/SPM-LS/09.02/13 Dated: December 23, 2013 for the Procurement of Banten Hospital NICU Support Facilities in the amount of (gross value / before deducting PPH Article 22 tax and VAT according to SP2D), namely Rp.4.960,077,550, (four billion nine hundred sixty million seventy seven thousand five hundred and fifty rupiah), amounting to (net value / after deducting PPH Article 22 tax and VAT according to SP2D), namely Rp.4.960,077,550, - (four billion nine hundred sixty million seventy-seven thousand five hundred fifty rupiah), amounting to (net value / after deducting PPH Article 22 tax and VAT according to SP2D) of Rp.4,441,523,988, - (four billion four hundred forty-one million five hundred twenty-three thousand nine hundred eighty-eight rupiah) and Pay Order (SPM) Number: 00678/Dinkes/SPM-LS/09.02/13 Date: December 27, 2017 amounting to (gross value / before deducting PPH Article 22 tax and VAT according to SP2D) which is Rp. 7,198,280,750, - (seven billion one hundred ninety-eight million two hundred eighty thousand seven hundred and fifty rupiah), amounting to (net value / after deducting PPH Article 22 tax

and VAT according to SP2D) which is Rp. 6,446,733,177, - (six billion four hundred forty-six million seven hundred thirty-three thousand one hundred seventy-seven rupiah) for the Procurement of Neurosurgical Support Facilities. 9) That Defendant II approved the request of Defendant I as evidenced by the issuance of a Fund Disbursement Order (SP2D) by Defendant II/Head of the Banten Province Regional Revenue and Financial Management Office number: 17969/Dinkes/LS/09.02/2013 Date: December 31, 2013 amounting to Rp.4,441,523,988, - (four billion four hundred forty one million five hundred twenty three thousand nine hundred eighty eight rupiah) for the Procurement of NICU Support Facilities and Disbursement Order Number: 17857/Dinkes/LS/09.02/2013 Dated: December 31, 2013 amounting to Rp 6,446,733,177, - (six billion four hundred forty-six million seven hundred thirty-three thousand one hundred seventy-seven rupiah) for the procurement of neurosurgical support facilities. 10) Then submitted by Bank Jabar Serang Branch Office dated December 31, 2013 on the account belonging to the Plaintiff / PT Dini Usaha Mandiri Number: 0018345226001 with a Blocked Account Description so that the Pay Order (SPM) that had been issued by Defendant I / Head of Banten Provincial Health Office and Disbursement Order (SP2D) that had been issued and signed by the Regional General Treasurer of Banten Provincial Government, the funds could not enter the account of the Plaintiff / PT Dini Usaha Mandiri and were returned to the Banten Provincial Government account. 11) Therefore, PT Dini Usaha Mandiri cannot receive the remaining payment that is legally entitled to the Plaintiff / PT Dini Usaha Mandiri for the completion of all work (obligations) according to the contract agreement with Defendant I / Head of the Banten Provincial Health Office.

So that the plaintiff is entitled to receive the remaining wages/salaries that have not been paid to the plaintiff which is the right of the plaintiff/PT. Dini Usaha Mandiri, As a result of this, the plaintiff must bear the loss because the plaintiff's business and business has been disrupted/stalled which would have been with the money the plaintiff could use for business capital or business. As well as suffering material losses due to not being able to receive the disbursement of funds that were legally entitled to the plaintiff for the completion of all work (obligations) in accordance with the contract agreement with the 1st defendant/head of the Banten Provincial Health Office. Furthermore, the defendant also provided an answer (Exception) to the plaintiff's lawsuit, that the Defendant had partially disbursed the funds, as evidenced by the disbursement of 20% of the contract at the beginning. the non-inclusion of the remaining payment funds in the plaintiff's account because the plaintiff's account was blocked did not necessarily become the fault of the defendants and refused to pay interest for late payment. That subsequently based on the Certificate from Bank Jabar Banten Number: 207/BJB-SRG/2017 Dated February 22, 2017 it was conveyed that the plaintiff's account was blocked: February 22, 2017 it was conveyed that the account of the Plaintiff/PT.Dini Usaha Mandiri with Account Number: 0018345226001 has been opened and reactivated, therefore there is no reason for the Defendants not to fulfill their obligation to pay to the Plaintiff / PT Dini Usaha Mandiri the remaining obligation of Rp. 10,888,257,165, - (ten billion eight hundred eighty-eight million two hundred fifty-seven thousand one hundred sixty-five rupiah). That referring to the Letter of the Chairman of the Corruption Eradication

Commission of the Republic of Indonesia Number: B-272/23/10/2014 Dated October 31, 2014 Regarding Replies to Requests for Follow-up Letters on the Findings of BPK RI Representative of Banten Province in 2013, and based on a letter from Bank Jabar Banten, the Plaintiff / PT. Dini Usaha Mandiri has reapplied for the remaining unrealized payments with Application Letter Number: 01/DUM/Dks.Prov/II/2017 dated; February 24, 2017 addressed to Defendant I / Head of Banten Provincial Health Office. PT Dini Usaha Mandiri has made several attempts to appear before Defendant I / Head of the Banten Provincial Health Office and other relevant officials to resolve the matter, but until now the Defendants have not fulfilled their obligation to make payments to the Plaintiff / PT Dini Usaha Mandiri from the work that has been completed, even though the medical devices that have been handed over have been used according to their designation and are beneficial to health services to the community. So it is clear that the defendants have clearly committed an act of default because they are not in accordance with what was promised in accordance with the agreement.

Furthermore, the first decision in case register number 91/Pdt.G/2018/PN Serang, the judge stated that he had accepted and granted the Plaintiff's / PT Dini Usaha Mandiri lawsuit in its entirety. Then afterwards the Defendant also filed an exception which was basically about the obscure lawsuit (obscure libel) and the Plaintiff's lawsuit was wrong address (error in persona), but the judge rejected the Defendant's exception in its entirety. Then afterwards, the Defendant filed an appeal to the court on April 15, 2019. The reasons that form the basis of the Plaintiff's lawsuit are basically about the actions of Defendant 1 who has committed a breach of promise against the Payment Order (SPM) where the Defendants did not fulfill their obligations by not paying the remaining payments as agreed in the disbursement application letter which in this case became the absolute right of the plaintiff / PT. Dini Usaha Mandiri For the bad debts of Defendants I & II, the Plaintiff has made regular collections to the Defendants, in addition based on a certificate from Bank Jabar Banten that the Plaintiff's account has been reactivated so that there is no reason for the Defendants not to pay the remaining unpaid payments to the Plaintiff's account, but still the plaintiff did not receive the remaining payment for work that had been completed in accordance with the contract agreement.

(4) Law Number 18 of 1999 concerning Construction Services (hereinafter referred to as the Construction Services Law), states that the selection of service providers using State financing is carried out by taking into account the principle of budget availability from the government to carry out the construction work. In this case, the procurement carried out by the Banten Provincial Health Office is appropriate, namely using financing funds from the Government.¹⁰

The problem in the implementation of the agreement began where the Plaintiff felt that he had not received the remaining payment so that he argued that there was a default in the contractual relationship in question, which can indeed be interpreted as a default because the obligation has not been fulfilled. In accordance with doctrine and teachings in the context of engagement. Default

¹⁰ (4) Law Number 18 of 1999 concerning Construction Services (hereinafter referred to as the Construction Services Law)

itself is contrary to performance, which can be interpreted as a brief failure to carry out obligations and not providing obligations in accordance with what was agreed.¹¹

In addition, the contract in general must include procedures for terminating the contract under any circumstances. In this case which concerns matters of State finances and / or financing, through Presidential Regulation Number 54 of 2010 concerning Government Procurement of Goods and Services, specifically Article 93 paragraph (1) letter b which states that if one party is in breach of promise, then the other party can terminate the contract unilaterally. Therefore, in addition to the contract as the basis for legal relations between construction service providers and users, when it comes to State finances, both parties must comply with the provisions of Presidential Regulation Number 54 of 2010 concerning Government Procurement of Goods and Services, especially in this case.¹² Based on the above, the Judge needs to first consider whether the Defendant has indeed made a default?

A person can be said to have failed (debtor) not to do what he promised or he violated the agreement, and a debtor's default consists of four kinds of elements/criteria, namely: 1) Does not do what he promised to do; or 2) Performs what it promises, but not as promised or; 3) Performs what it promises but is late; or 4) Doing something that according to the agreement he is not allowed to do;¹³

(Katrinasari and Hadi 2017) The above case is a case of default committed by the defendant, where default itself is defined as not fulfilling the obligations agreed upon in the agreement.

(Pendit, Indrawati, and Sukihana 2019) According to the defendant in the aforementioned instance is in default, which is characterized as failing to meet the commitments made in the engagement. Additionally, default is governed by Article 1243 of the Civil Code (KUHPer), which states that reimbursement of costs, losses, and interest resulting from the debtor's failure to fulfill an obligation begins to be required if the debtor continues to be negligent despite having been found negligent, or if something that needs to be done can only be completed in a time that exceeds the allotted time.¹⁴

(Irianto and Elfani 2020) One of the steps in the development process is the acquisition of products and services from the government. The funding source for purchasing products and services from the government is the state or regional revenue and expenditure budget. Contractors perform construction work in accordance with an agreement. The agreement is carried out by a government agency appointed to bind the construction service implementer with the government, where the government will be represented by a Commitment Making Officer (hereinafter

¹¹ Hardijan Rusli, Indonesian Treaty Law and Common Law, Pustaka Sinar Harapan, Jakarta, 2001, pp. 64

¹² Article 93 paragraph (1) letter b of Presidential Regulation No. 54/2010 on the Procurement of Goods and Services Government

¹³ Definition, Causes and Forms of Default <https://www.dppferari.org/pengertian-bentuk-penyebab-dan-hukum-wanprestasi/>

¹⁴ Ayudhani Pendit, Ni Luh Gede Napriza, A.A Sri Indrawati, and Ida Ayu Sukihana. 2019. "SETTLEMENT OF DEFAULT IN CAR RENTAL AGREEMENT IN NORTH BADUNG DISTRICT." Journal of Kertha semaya 1-16.

abbreviated as PPK)¹⁵ And contract documents have been prepared by the government or by the committee / official for the procurement of goods / services.¹⁶ The contract is an engagement between the user of goods / services and the provider of goods / services in the procurement of goods / services.¹⁷

(Widyantoro and Kurniawan 2020) The contract is part of the goods / service provider selection document which contains more specific provisions that are binding for the parties. Law Number 2 of 2017 regulating Construction Services, which superseded Law No. 18 of 1999, regulates construction services in and of themselves, which are defined as construction work and/or construction consulting services under Article 1 Number 1 of the Construction Services Law. And both parties in this construction service have the same position, so the position of the contract in this case becomes very important if there are cases of default that occur.¹⁸

An agreement is a legal relationship between two or more parties or more where each party has rights and obligations that arise because of the agreement. Source of obligation that between the Plaintiff and the Defendant in this case is included in the Agreement or agreement in written form (contract), namely Agreement or agreement in written form (contract), namely an event in which a person promises to carry out a certain thing, which is where from this event a legal relationship arises between the two legal subjects, which is called an obligation. legal subjects, which is called an obligation.¹⁹

In this case the Judge ruled that the Defendants had committed an act of default, granted the Plaintiff's claim in part, and rejected the appeal from the Defendants. And I personally agree with the decision made by the judge, because the judge in making his decision has fulfilled one of the legal principles, namely "Decisions must be accompanied by reasons", namely the principle that all court decisions must contain information or arguments that are used as the basis by the court in deciding a case. In addition, The Judge's decision stating that the Defendants had committed an act of default was based on existing evidence proving that the Plaintiff had carried out and completed the work according to the contract, namely the Procurement of Support Facilities for the Banten Provincial Hospital and the Minutes of Handover of the work had been made but had not received the remaining payment that should have been paid by the Defendants, and the decision had been corroborated by the *Judex Factie* decision of the Banten High Court. And the Judge's decision to reject the appeal by the Defendants has also been based on the *Judex Factie* decision from the Banten High Court. Based on the arguments given above, it can be

¹⁵ Irianto, Kartika dewi, dan Radella elfani. *Penyelesaian sengketa Wanprestasi pada kontrak jasa konstruksi di pemerintahan daerah kota bukittinggi.pagaruyuan* Law journal Vol.4, no.1 2020

¹⁶ Juliawan, I putu Eka, dan I Made dedy Priyanto. *Wanprestasi dalam Perjanjian Pengaturan Barang dan Jasa*. Jurnal Kertha Wicara Vol. 9. 2020.

¹⁷ Irianto, Kartika Dewi, and Radella Elfani. 2020. "Dispute Resolution for Default in Construction Services Contract in Bukittinggi City Local Government." *Pagaruyuang Law Journal* 134-148.

¹⁸ Widyantoro, Vincentius Gegap, and Faizal Kurniawan. 2020. "THE DEVELOPMENT OF PRINCIPLES AND LIABILITY IN CONSTRUCTION WORK CONTRACTS." *Arena Law Journal* 157-180.

¹⁹ Setiawan, I. Ketut Oka. 2020. *Law of Association Fifth Mold*. Jakarta: Sinar Grafika.

concluded that overall the Judge's decision on this default case can be justified and is in accordance with the provisions of existing laws and regulations.

Inequality in the implementation of the contract that befalls the injured party contextually must be given legal protection. In this case, the meaning and purpose of legal protection can be realized to provide prevention of an effect that arises and to improve the situation if the effect has been actually experienced by the injured party.

The substance of the case raised by the author is quite clear in the realm of agreement law which then occurs an act of default by one of the parties, namely the Defendants where it is obvious that the Plaintiff has not received the rest of the payment that should be paid to carry out construction procurement as the Construction Work Contract Agreement, Procurement of supporting facilities for NICU & Neurosurgery Banten Province with Application Letter Number: 01/DUM/Dks.Prov/II/2017 dated; February 24, 2017 addressed to Defendant I / Head of Banten Provincial Health Office.

Legal consequences are all the results of all legal activities taken by legal subjects against legal objects, as well as any additional effects brought about by specific incidents that the law has defined or deemed to be legal consequences. This effect can take the form of : 1) "The creation, change or cessation of a state of law; 2) The creation, change or cessation of a legal relationship, between two or more legal subjects, where the rights and obligations of one party face the rights and obligations of the other party; 3) The birth of sanctions if an unlawful act is committed There are 4 (four) consequences of default, namely as follows: a) The engagement remains; b) The debtor must pay compensation to the creditor (Article 1243 of the Civil Code); c) The burden of risk shifts to the debtor's disadvantage, if the obstacle arises after the debtor defaults, unless there is willful or gross misconduct on the part of the creditor. Therefore, the debtor is not allowed to rely on force majeure; d) If the obligation is born from a reciprocal agreement, the creditor".²⁰

Further analysis here is that in the context of implementing the procurement of construction services involving financing from State finances, if problems occur as in the case, then potential State losses will arise and legal protection is more appropriately given to the State in this case PT Dini Usaha Mandiri as a construction service provider.

Obviously if there is a default in the procurement of construction services involving State finances and / or financing, then the appropriate legal protection is repressive legal protection where to prevent leakage of state finances and ensure the agreement continues to run properly, then based on the provisions of Article 92 paragraph (1) of Presidential Regulation Number 54 of 2010 concerning Implementation of Government Procurement of Goods and Services which states that if there is a breach of promise against the contract document, one of the parties can terminate the contract unilaterally. And if the guilty party has violated the contract, it can be subject to

²⁰ Halim, A. Pengantar Ilmu Hukum dalam Tanya Jawab (2007) Jakarta: Ghalia Indonesia

sanctions up to the revocation of the license as a construction service user as stipulated in Article 42 paragraph (2) of the Construction Services Law.²¹

Furthermore, the legal consequences for the parties, namely, that the Cassation Respondent received a loss of Rp10,888,257,165, - (ten billion eight hundred eighty-eight million two hundred fifty-seven thousand one hundred sixty-five rupiah), the debt was obtained from the remaining payments that had not been paid by the Banten Provincial Health Office to PT. Dini Usaha Mandiri, but until now the Defendants have not fulfilled their obligation to make payments to the Plaintiff / PT. Dini Usaha Mandiri from the work that has been completed, even though the medical equipment that has been handed over has been used according to its designation and is useful for health services to the community. So that the Defendants have clearly and evidently committed an act of default in fulfilling their obligations to the Plaintiff / PT Dini Usaha Mandiri, resulting in losses to the Plaintiff / PT Dini Usaha Mandiri.

3.2 Liability of Banten Provincial Government for Defaults²¹

The responsibility of the power of attorney for the use of the budget for state finances in the process of procuring government goods / services. State financial responsibility in terms of procurement of goods/services starts from planning, organizing, implementing, and supervising in accordance with general management principles.²² In the perspective of public law, those who perform legal actions so that they can be burdened with responsibility are positions, namely an institution with its own scope of work that is formed for a long time and to which it is given duties and authority. Thus, a person is categorized as an official when he exercises authority for and on behalf of the office. Meanwhile, when a person performs legal acts not in the framework of the position or acts not in accordance with the authority that exists in the position, then he cannot be categorized as an official or an unauthorized official (onbevoegd). The Minister of State Apparatus Empowerment and Bureaucratic Reform's Regulation Number 36 of 2012 states that "accountability is accountable in accordance with the provisions of laws and regulations" with regard to technical guidelines for the creation, determination, and implementation of service standards. As for the principle of accountability, it states in article 3 of Law Number 28 of 1999 concerning State administrators who are clean and free from corruption, collusion, and nepotism that every action and the outcome of the activities of State administrators must be accountable to the community and the people as the highest holders of State sovereignty in accordance with the provisions of applicable laws and regulations.²³

(Sinaga et al. 2015) An important aspect of public procurement is financial

²¹ Article 92 paragraph (1) of Presidential Regulation No. 54/2010 on the Implementation of Government Procurement of Goods and Services and Article 42 paragraph (2) of the Construction Services Law. ⁴²

²² Yohanes Sogar Simamora, Law of Agreement - Legal Principles of Government Procurement of Goods and Services. Yogyakarta: LaksBang PRESSindo, 2009, pp. 1.

²³ Sinaga, Dearma, Pendastaren Tarigan, Faisal Akbar Nasution, and Jusmadi Sikumbang. "RESPONSIBILITY OF BUDGET USER AUTHORITY TO STATE FINANCE IN THE PROCESS OF GOVERNMENT BARGAGE/SERVICE REQUIREMENTS (CASE STUDY OF HEALTH ALERT REQUIREMENTS IN Dr. FL Hospital. TOBING SIBOLGA HOSPITAL." USU Law Journal 3 (2) 2015 : 43-58.

accountability. The current law on State finances has not implicitly emphasized the limits of responsibility of the parties involved in the procurement of government goods/services. The main actors in the procurement of government goods / services are budget users and goods / service providers. Basically, the responsibility for the success of government procurement of goods/services, namely achieving the objectives as planned, lies with the Budget User or the Power of Budget User. The goods/service provider is responsible for producing goods/services in accordance with all the requirements of the contract that has been made. To achieve this goal, it may happen that more than one provider of goods / services is involved, and each of them makes a contract with the user of goods / services called a joint procurement contract.

Letter b of Law Number 1 Year 2004 on State Treasury above may designate the Power of Budget User (KPA) in the provisions of article 4 paragraph (2). In addition, as stated in paragraph 1 of Article 6 of the Second Amendment to Presidential Regulation Number 54 of 2010 concerning Government Procurement of Goods/Services, it can be said that the Authorized Budget User or also known as KPA is a tool used by the PA to utilize the APBN or used by regional leaders to utilize the APBD.

In the above case, PT Dini Usaha Mandiri did not receive the remaining payment due to the notification of the "Blocked Account" account on behalf of Ahmad Sepuddin, which subsequently the account of PT Dini Usaha Mandiri was reactivated, therefore it did not become an excuse for the Banten Provincial Health Office not to immediately pay the remaining payment to PT Dini Usaha Mandiri, so the form of responsibility of the local government in this case the Banten Provincial Health Office must immediately pay off the remaining payment through the SPM letter that was previously issued. And must also pay late interest in accordance with the previous agreement contract.

Defaults committed by the defendants cause legal consequences / legal responsibilities / legal sanctions that must be received, there are 4 (four) types, namely: a) The debtor is obliged to pay the loss suffered by the creditor or what is called paying compensation; b) Cancellation of the agreement or also called breaking the agreement; c) Transfer of risk. The promised object of the agreement at the moment of non-fulfillment of the obligation becomes the responsibility of the debtor; d) The debtor is obliged to pay court costs if the case is brought before the court, and the debtor is proven to have defaulted.²⁴

(Bambang Eko Turisno Sabillah Utomo Putra* 2016) According to Article 1243 of the Civil Code, civil compensation focuses on compensation for non-fulfillment of obligations (default). Even after being found negligent, the debtor is still required to pay compensation if he continues to breach the restitution. Articles 1244 to 1246 of the Civil Code provide that the following are included in the compensation: actual losses from damage, lost property due to the debtor's carelessness, interest, or anticipated profits.

(Lubis, Desi, and Tarina 2023) Based on the lawsuit submitted by the Plaintiff, the decision of the Panel of Judges examined and granted the entire petitum submitted by the Plaintiff, namely: a) Grant the Plaintiff's claim in its entirety; b) Declare by operation of law that the Defendants

²⁴ Sunggono, 2012 "Metodologi Penelitian Hukum, Jakarta; PT. Raja Hal 115

have defaulted in fulfilling their obligations contained in Letter number: 015/DUM/PPU/XXI 18 December 2013. c) Punish the Defendants to pay in full at once without conditions all remaining payments/credits to the Plaintiff in the amount of Rp10,888,257,165, - (ten billion eight hundred eighty-eight million two hundred fifty-seven thousand one hundred sixty-five rupiah) with the provision that if the Defendants do not pay the debt after the decision is legally binding to the Plaintiff, then the property of the Defendants will be auctioned to settle the debt; d) Order the Defendant to pay the costs incurred in this case in the amount of Rp500,000 (five hundred thousand rupiah).

The responsibilities of the Banten Provincial health office as stated in the agreement are as follows in the agreement: 1) Return the remaining funds that have not been paid to PT Dini Usaha Mandiri in accordance with the warrant to pay (SPM) in the amount of Rp. 10,888,257,165, - (ten billion eight hundred eighty-eight million two hundred fifty-seven thousand one hundred sixty-five rupiah), 2) Pay interest money for late payment which resulted in PT Dini Usaha Mandiri's business breaking down / not running smoothly 3) fully responsible for the payment of lawsuit case money in the amount of Rp. 500,000 (Five Hundred Thousand Rupiah)

5. CONCLUSION

The default case the judge granted the Plaintiff's claim and rejected the appeal, cassation of the Defendants. In making a decision, the judge has fulfilled the legal principle, namely "The decision must be accompanied by reasons", namely the principle that states that all court decisions must contain information that is used as the basis by the court in deciding a case other than that. The Judge's decision stated that the Defendants had committed an act of default based on the available evidence which proved that the Plaintiff had carried out and completed the work in accordance with the contract, namely the Procurement of Support Facilities for the Banten Provincial General Hospital and the Minutes of Handover of the work had been made but had not received the remaining payments that should have been paid by the Defendants and the decision had been confirmed by the decision of the Judex Facti of the Banten High Court. And the Judge's decision to reject the Defendants' appeal was also based on the decision of the Judex Facti of the Banten High Court. It is concluded that overall the Judge's decision in this default case was correct and in accordance with the applicable law.

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