



THE 3rd INTERNATIONAL CONFERENCE AND CALL FOR PAPER

"Legal Development in Various Countries"



IMAM AS SYAFEI BUILDING
 Faculty of Law, Sultan Agung Islamic University
 Jalan Raya Kaligawe, KM. 4 Semarang, Indonesia

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INFORMATION OF THE CONFERENCE AND CALL PAPER

WORLD CLASS ISLAMIC UNIVERSITY
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"LEGAL DEVELOPMENT IN VARIOUS COUNTRIES"

This conference tries to reviews different theories of legal development in order to highlight their similarities and differences. And focusing on the development of law in both developed and developing countries and its role in shaping a good future.

KEYNOTE SPEAKER:
Prof. Henning Glaser
Thammasat University, Thailand

IMAM AS SYAFEI BUILDING
Faculty of Law, Sultan Agung Islamic University
Jalan Raya Kaligawe, KM. 4 Semarang, Indonesia

Organized by : Faculty of Law Sultan Agung Islamic University (UNISSULA) Semarang-Indonesia

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2. Prof. Dr. Ruzian Markom
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Indonesia, September 05th 2017

WORLD CLASS ISLAMIC UNIVERSITY
UNISSULA
SULTAN AGUNG ISLAMIC UNIVERSITY

International Conference

5
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Organized by : Faculty of Law UNISSULA Semarang-Indonesia

IMAM AS SYAFEI BUILDING, Faculty of Law, Sultan Agung Islamic University
Jalan Raya Kaligawe, KM. 4 Semarang, Indonesia

FACULTY OF LAW
Sultan Agung Islamic University

This Conference And Call Paper was held by the Faculty of Law, Sultan Agung Islamic University (UNISSULA) Semarang, on:

Day: Tuesday

Date : September 5th 2017

Time : 08:00 - 15:00 pm

Place : Imam AsSyafei Building 3rd Floor

Faculty of Law, Sultan Agung Islamic University, Semarang, Indonesia

Jl. Raya Kaligawe Km. 4 PO. BOX.1054 Telp. (024) 6583584 Fax.(024)6582455
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“LEGAL DEVELOPMENT IN VARIOUS COUNTRIES”**

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PREFACE

Assalamu'alaikum, Wr. Wb

First of all, let's say Thanks to Allah, who has been giving us guidance, happiness, healthy, and mercy, so we can finish this conference proceeding without any obstacles. Praise and salutation upon our prophet Muhammad saw the last messenger, the best figure of this universe; the person who was able to save us from Jahiliyah era.

We would like to extend our thanks to the invited speakers: **Prof. Henning Glaser from Thammasat University, Prof. Shimada Yuzuru from Nagoya University, Hilaire Tegan, Ph.D from Sorbone University, Prof. Dr. I Gusti Ayu Ketut Rachmi Handayani, MM from SebelasMaret University, Dr. Zaharudin from Universiti Utara Malaysia, and Dr. Anis Mashdurohatun, S.H., M.Hum from Sultan Agung Islamic University.**

This is our third International conference and call for paper held by Faculty of Law, Sultan Agung Islamic University. This annual conference tries to gain any information and studies done by academician and practitioner to be discussed as guidelines to exchange and discuss views on the most important recent on Legal Development happens in both developed and developing countries and its role in shaping a good future, and to discuss the challenges and practical aspects in integrating competition law enforcement and guidelines to develop legal state in accordance with the diversity of all countries around the world. We hope this conference brings benefit for both participants and our faculty.

We are pleased to have your critique, suggestion and correction in order to make us better. Finally, we do thanks to all who helped this conference. May Allah guide us to always develop useful knowledge for human being.

See you in our fourth International and call for paper next year.

Wassalamualaikum, Wr. Wb

Semarang, September 5th 2017

Chairman of the Committee,



Dr. Anis Mashdurohatun, S.H., M.Hum
NIDN : 06-02105-7002

GREETING FROM THE DEAN OF FACULTY OF LAW

As-salamu'alaikum Wr. Wb.

Thank to Allah SWT is an absolute act that we must say after conducting the International Conference and Call for Paper by theme: “**Legal Development in Various Countries**” which is held by Faculty of Law, Sultan Agung Islamic University (UNISSULA) Semarang, on September 5th 2017.

This conference tries to reviews different theories of legal development in order to highlight their similarities and differences. In the end, as in contract theories, no monist view of legal development possesses the explanatory power needed to understand how law has come to be and where it may take us in the future. What we do have is a foundation built on at least two millennia of legal history. The intellectual starting point for this project is Nathan Isaacs' unfinished work on a cycle theory of legal development. His view of legal development takes issue with Henry Sumner Maine's thesis that development in advanced legal systems is progressive in nature. And, more importantly for the current undertaking, that this progression is linear in nature. Instead, Isaacs' review of thousands of years of Jewish legal development indicated that legal development perpetually progressed in cycles.


Therefore, to discuss more about legal development or law reform, Faculty of Law, Sultan Agung Islamic University is confidence to conduct a conference by the theme “**Legal Development in Various Countries**” focusing on the development of law in both developed and developing countries and its role in shaping a good future.

Finally, we thank to the presenters, article senders, and comittee who have contributed in this event, so that this international seminar ran well.

Wassalamu'alaikum Wr. Wb.

Semarang, September 5th 2017

Dean,



Prof. Dr. Gunarto, SH, SE, Akt, M.Hum
NIDN.062004670

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LEGAL ANALYSIS ON THE IMPLEMENTATION OF DIRECT APPOINTMENT OF PROCUREMENT SERVICES OF GOVERNMENT'S PROJECT

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ABSTRACT

Direct appointment of procurement of government project work services with certain criteria that the implementation of its work cannot be delayed, or it should be done immediately, including the handling of natural disaster related to 1 (one) service provider by negotiating both technical and cost so as to obtain reasonable price and technically accountable. Presidential Decree No. 18/2000 concerning guidelines for the procurement of services of government agencies procurement of job creation services for public safety and security through service users (Service Implementation Units/SKPD) and provision of services (contractors), but the reality of the project development committee misuses power (Detournement de Pouvoir) with a lawless act (onrechmatige daad) that neglected legal obligations to harm the state finance or economy in accordance with Presidential Regulation (Perpres) No. 85/2006 Amendment to the sixth Presidential Decree No. 80/2003, as was the last time with Presidential Regulation No. 4/2015 on the Fourth Amendment to Presidential Regulation No. 54/2010 on Procurement of Government Goods/Services. And Law No. 31/1999 which has been amended by Law No. 20/2001 on the Eradication of Corruption juncto The Criminal Code.

Keywords: services, projects, government

1. Introduction

1.1 Background

Prosperity and welfare are dreamt by every human being and at the same time they are desired for a lifetime. Similarly, the Indonesian nation cannot be separated from that fact. Furthermore, the goal of social justice to be achieved by the Indonesian nation is to realize the demands of the ideals of the proclamation of August 17, 1945, which is a prosperous society, just and welfare both spiritual and material as it is in the opening of the 1945 Constitution of the State of the Republic of Indonesia; the second paragraph that regulates: "And the struggle of the independence movement of Indonesia has come to a happy moment with the congratulations of always delivering the people of Indonesia to the gate of independence of the State of Indonesia, which is independent, united, sovereign, just and prosperous".

Event in the contracting agreement nowadays is through contracting agreement with direct appointment, it experiences loss. Furthermore, it is not only experienced by the owner

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of the building, individuals/communities, but also experienced by parties concerned with the Chartering Services, such as Contractor or legal entity and Government Agencies (SKPD based on the Minister of Home Affairs Regulation No. 59/2007 concerning Amendment to the Minister of Domestic Affairs Regulation No. 13/2006 on Local Financial Management Guidelines, October 26, 2007) on projects directly used by the Regional Government, organized by Regional Government agencies.

Implementation of works will not be done well without basic principles and ethics, and if it is not executed by the head office as the party that buy the project. The reality in the field is very different from the procedure, so that there is poor quality of work even harm the state. The objective of national development is to achieve social justice for all the people, in reality there is abuse of power/authority.

Attention and serious handling of various elements of society are needed, because there are many abuses of power/authority in government agencies, one of them in Pematangsiantar City. The process of selecting service providers through the procurement of government project workers' chartering services is misused by the organizing committee by recasting the bidding documents. The local government as an extension of the central government has problems in relation to procurement of services on projects derived from APBN/APBD (National and Regional Budget). Based on the data obtained, the description of abuse of power/authority to the project is derived from APBD (Regional Budget) funds. The description of the problem lies in the process of appointing direct appointments, in the development project document is not through the rules of law procedures carried out that it has an impact on the completion of the project work; and resulted in a loss to the City Pematangsiantar and Negara.

1.2 Objective

This paper aims to know procurement services workers with direct appointment in the City Pematangsiantar.

1.3 Research Methods

The method used was normative legal research, namely legal research that prioritizes library legal materials as the main source. To complete the analysis, this study was also conducted with case studies based on the Decision of the Supreme Court. Further, the nature

of research is descriptive. Descriptive is intended to obtain a description of the circumstances as well as the implementation of contracts procurement of entire government services projects in Pematangsiantar City.

2. Theoretical Framework

2.1 The Law of Contracts and the Procurement of Employment Services

The Agreement based on pursuant to Article 1313 of the Civil Code regulates: "An agreement is an action by which one or more persons bind themselves to one or more persons". The agreement is a legal relationship situated within the field of property law, between two or more persons who bind themselves to do something (achievement and counter-achievement). An agreement is really the result of a declaration of will (agreed) between two parties who bind themselves into the covenant. The existence of such agreement is an absolute requirement for the agreement.

A contract is an event in which two or more persons promise to do or not to do a particular deed, usually in writing ". The substance of the contents of the contract is stipulated in Article 29 paragraph (1) of Presidential Decree. 18 of 2000 on Guidelines for Procurement of Goods/Services of Government Agencies.

The research was conducted in the Pematangsiantar District Court, it gained example on Letter of Contract Agreement No: 010/Pemb/TK/II/2002 dated February 11, 2002 that the substance of the contents of the contract (Document Contents) was in accordance with Article 27 of Keppres No. 18 of 2000 dated February 21, 2000. Although the contents of the contract was too simple, it did not reduce the substance of the contents of Article 29 of Keppres No. 18 of 2003 which is the development of the provision that is always growing steadily (dynamic) in accordance with the law and the need for procurement of works, as Article 1320 KUHPERDA, namely: Agree, those who bind themselves; Ability to make a commitment; A certain thing; A lawful cause. But the Law requires that there be mutual reconciliation of the will, in the absence of coercion, the oversight and fraud, as intended in Article 1321 of the Civil Code.

2.2 Rights and Obligations of the Parties

The rights and obligations of the parties to the contract of chartering in the Civil Code are not clearly regulated. Rights and obligations in procurement of entire work services. The rights and obligations of the Parties are:

a) Rights and Obligations of the SKPD

- (1) Supervising and inspect the work performed by the service provider
- (2) Periodically reports on the execution of work performed by the service provider
- (3) Paying the work in accordance with the contract price that has been assigned to the service provider
- (4) Providing facilities in the form of facilities and infrastructure needed by the service provider for the smooth implementation of work in accordance with the terms of the contract.

b) Rights and obligations of service providers

- (1) Receiving payment for the execution of work in accordance with the price specified in the contract.
- (2) The right to request facilities in the form of facilities and infrastructure of the SKPD for the smooth implementation of work in accordance with the terms of the contract
- (3) Reporting the implementation of the work periodically to the SKPD
- (4) Implementing and completing the work in accordance with the implementation schedule conducted by the SKPD
- (5) Providing the necessary information for the examination of the implementation of the SKPD
- (6) Submitting the results of work in accordance with the delivery schedule of work specified in the contract
- (7) The Contractor shall take adequate measures to protect the environment both within and outside the workplace and to limit the company and its effects to the community and its property, as a result of the contractor's activities.

Any agreement made legally under Article 1320 of the Civil Code has legal consequences. If the parties are giving the employment and the contractor has signed the contract in accordance with the terms of an agreement legally under Article 1320 Civil Code

then for the parties to apply rule stated in Article 1338 Civil Code Section Three, Book III Civil Code about the effect of an agreement.

2.3 Direct Appointment of Procurement of Works

The scope of the provision of services shall include the procurement of government services and the establishment of procurement committees/appointments of procurement officers, through contractual agreements in the form of standard agreements. The selection procedure for chartering providers refers to the Prequalification and Post-qualification principles as a basic guideline for the direct appointment committee. Direct appointment should differ from other selection procedure of other service providers, where the substance of direct appointment is easier and more efficient.

2.4 Warranties in the Entire Work Agreement

At each stage of the process of selecting the provider of goods/services, the procurement of goods/services/procurement committee is prohibited from charging or levying any fees to the service provider, unless the cost of copying the procurement documents and bank guarantees in the contract of contract consists of 3 : Bid Security (Tender Bond) of 1% (one percent) to 3% (three percent) of the Value of Own Calculation (HPS), Performance (Performance bond) of 5% (Five percent) of the contract value to the user of the goods/services, Performance Guarantee (Performance bond) at the amount of advances provided by SKPD, namely 20% (twenty percent) of the bulk price.

As an indicator of the research to know the error of procedure of direct appointment of procurement service in case of research is contained in Article 20 paragraph (4) and Article 14, 15 of Keppres Number 80 Year 2003, which set the basis of procedure of election of service provider and Principle and Process of Prequalification/Postqualification. The authority existing in the SKPD by direct appointment method misuses the authority, opportunity or means available to him because of his position or position. The Committee on the direction of the Head of Region made a mistake in the direct appointment procedure by engineered as stipulated to be done. The principles and processes undertaken in the development project at that time are very much in contradiction with the Presidential Decree Number 18 of 2000 Article 7 paragraph (1) on the qualifications and Tasks of the Head of Office/Work Unit/Project Leader/part of the project: "Head of Office/the project leader/project section/equivalent/appointed official or other authorized officer shall have the integrity of

morality, discipline, responsibility and technical and managerial qualifications to perform the tasks assigned to him ". The prosecutor's indictment to the Head of Region has not legalized either assigned to him as Presidential Decree Number 18 of 2000 Article 7 paragraph (1).

2.5 Direct Appointment Criteria

Criteria of project implementation applied through direct appointment is based on criteria of certain circumstances set in the provisions of Presidential Decree Number 85 of 2006 Article 1 point 2 a and Attachment I of Presidential Decree Number 80 Year 2003 Chapter I letter C. a) regulate: "certain circumstances emergency handling for state defense, security and safety of the community whose work cannot be postponed, or should be done immediately, including emergency response from natural disasters ".

The direct appointment on the direct appointment project is in the Decree of the Head of Pematang Siantar No.050-24/WK/2002 on the organizational structure of the committee as the General Responsible Party is not appropriate. Regional Head is prohibited from sitting as committee/officer of procurement service because he/she is the object of examination, including being treasurer of job procurement project is clearly prohibited based on Decree of Minister of Finance of Republic of Indonesia and Head of Bappenas Number: S-42 / A / 2000 and Number: S-2262 / D.2 / 05/2000 Concerning Technical Directive of Presidential Decree No. 18/2000 on the guidelines for the implementation of Procurement of Goods/Services Government Agencies in Chapter I point 5 point c set: "Users of goods/services, employees at the Supervisory Agency of Non-Departmental Government Institution/Provincial Inspectorate/Regency/City/Internal Control Unit BUMN/BUMD, is prohibited from sitting as committee of a unit that becomes the object of its examination, to avoid conflict of interest.

3. Discussion

The charter agreement is different from other types of agreements such as sale and purchase, lease which basically concerns the matter of payment and delivery of goods which is the object of the agreement. Payment and delivery of goods may occur simultaneously. The charter agreement is made by Payment; and submission of progress on field work as made in the contract.

The construction of emergency kiosk of Horas market was based on Letter of Contract Agreement No: 010/Pemb./TK/II/2002 dated February 11, 2002. It was done at the price of

Lump sum Fixed Price (Valuable and Fixed Price) as per provider offer (CV Vini Vidi Vici) with how to bulk price inflation. According to the researcher, it should choose the form of unit price in accordance with the elucidation of Article 28 paragraph (3) Presidential Decree Number 18 of 2000 jo Article 30 explanation of Presidential Decree Number 80 Year 2003 set: "For unit cost contract system, added/less work based on joint measurement of the required work. Consideration to choose this way was due to the high work volume measurements required a very detailed survey and research. The research should be details, and used many samples, a long time so that the cost was expensive, whereas the measurement was also easier in the implementation, on the other hand the job was very urgent and should be immediately implemented. Therefore, lumpsum system was not appropriate applied. "

The explanation of witnesses in the trial at the Pematangsiantar District Court stated that the Construction has been started on 24 January 2002 before the contract, and the administrative procedures of the implementation of the Chartering Services No: 010/Pemb./TK/II/2002 dated February 11, 2002 were fictitious (the contrived) engineered the contents of the project document.

Based on the research, the witnesses were as committee of chartering service did not understand the system method and criteria of direct appointment in Article 17 paragraph (5) Presidential Decree No. 80 Year 2003 regulate: "... by direct appointment to 1 (one) service provider by negotiate both technical and cost so that in obtaining a reasonable price and technically accountable ". Preferably the committee chooses with unit price.

The principal issue of violation of the implementation of development is the process of fictitious administration and the inflation of the price of the job vacancy, so that the Pematangsiantar government suffers losses derived from the DAU based on the Supreme Court's decision on the financial or economic losses of the state by violating Article 2 paragraph (1) and Article 3 jo Article 18 Law No. 31/1999 which has been amended by Law Number 20 Year 2001 concerning the Eradication of Corruption under Article 55 Paragraph (1) of the Penal Code) has been sentenced by the Head of Region and 2 (two) service providers (CV Vini Vidi Vici) in the form of criminal sanctions, damages and penalties as a result of the law of Article 1321 Civil Code.

Freis Ermessen represents the freedom granted to state administration in the framework of governance, in line with the increasing demands of public services that should

be given by state administration to the socio-economic life of the increasingly complex citizens. The local government apparatus which is a regional fitting in the framework of governance through rule of law shall not misuse power (*Detournement de Pouvoir*). The inadequate quality, mentality, capacity implementing apparatus gives rise to unfavorable implications for the implementation of regional autonomy.

Conclusion

Legal aspect of contract of procurement service of entire government work project with direct appointment is made in the form of standard agreement between SKPD and Contractor which regulates the rights and obligations of the parties on a reciprocal basis. The Contractor performs a development work achievement and SKPD pays the price of work according to the stage of payment in contract. The charter agreement shall be applicable as a law to the parties with an achievement, if violated shall bear the legal consequences of a risk with compensation to the Government.

Implementation of the direct appointment of procurement services with criteria of certain circumstances is urgent, the implementation of its work cannot be postponed. It is done immediately due to natural disaster by performing direct appointment procedure of 1 (one) Contractor participant. The procurement committee of a job-coaching service together with the service provider (Contractor) commits an unlawful act by manipulating the documents of the bid administration process, thus harming the state's finances and economy.

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