

# **Legal Certainty Concerning Implementation of Working Agreements between Service Providers & Workers Concerning Delay Payments of Work Achievement**

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**Abstract.** This study aims to: to determine legal certainty regarding the implementation of work agreements between service providers and employers in the event of a delay in payment of work performance by the service provider. The approach method in this research is normative law, the data source is obtained from the literature and the legal materials used are primary, secondary and tertiary legal materials which are then analyzed by means of qualitative analysis. Based on the results of data analysis, it can be concluded that : With the presence of a work agreement between the service provider and the employer, this agreement basically provides legal certainty regarding the rights and obligations of both parties, one of the points in the payment is the payment for work performance, in this case the service provider is obliged to accept work repayment that has reached 100 % or it has been completed, when the Regional Government of South Konawe Regency, the Office of Food Crops, Horticulture and Plantations does not make payment, the agency has defaulted because in the agreement it was agreed that when the work was completed, a settlement would be carried out. This certainly violates the Principle of Pacta Sunt Servanda (Agreement Applies as Law) as contained in the provisions of Article 1338 paragraph (1) and paragraph (2) of the Civil Code which states that "all agreements legally made are valid as laws for those who make them.

Keywords: Employment Agreement; Service Provider; Employer.

## **1. INTRODUCTION**

Based on the Civil Code, book III on Engagement, it is stated that an engagement can be born because of a law or agreement. An agreement that is born because of the meaningful agreement contained in Article 1338 of the Civil Code states that "All agreements made must fulfill the conditions determined by law have the force of law as law for those who make them". That is, all binding agreements involved for those who make them, have the rights given to them by the agreement and are obliged to do the things specified in the agreement, including in the agreement for the procurement of goods and services which is an agreement with which one party carries

out a work for other parties by receiving a certain price, until the agreement is the basis for the implementation of activities.<sup>1</sup>

An agreement between legal subjects, including the legal relationship for the procurement of goods and services, between users and providers of goods and services from the signing of the contract to the end / completion of the contract in accordance with the contents of the contract. The legal relationship between the user and the provider occurs during the process of signing the contract for the procurement of goods and services until the completion of the contract is a civil law relationship, especially the contractual relationship / agreement. According to Presidential Regulation Number 54 of 2010, Article 1 point 1 states, that the procurement of government goods / services, hereinafter referred to as procurement of goods / services by the Ministries / Institutions / Work Units of Regional Devices / other institutions, the process starts from planning needs to completion of all activities for obtain goods / services.

From this explanation implies that "a contract made between the employer and the service provider, in which the employer is entitled to the performance made by the service provider, and the service provider is obliged to carry out his performance, in accordance with the agreement that has been signed". The elements of a service provider contract, namely: 1. The existence of a legal subject; 2. The existence of an object; and 3. Implementation. The legal subjects in the service provider contract are employers and service providers.

The work agreement made by the parties must be in accordance with the applicable rules, that is, there must be a valid condition of the agreement. While the contents of the agreement can be made free in accordance with the principle of freedom of contract, but this principle does not apply if the agreement made is a standard or standard agreement because the contents of the agreement have been determined by existing regulations and determined by one of the parties, namely the service user. The service provider only carries out the contents of the agreement. The work contracting agreement in which the service provider binds itself to the service user to complete the project work at a predetermined price. On the other hand, service providers and service users are mutually binding, that is, each party has its own rights and obligations.<sup>2</sup>

Meanwhile, regarding the payment for work performance has been strictly regulated in the Presidential Regulation of the Republic of Indonesia Number 54 of 2010 concerning Government Procurement of Goods / Services, Article 89 which states that: Paragraph (1) Payment for work performance can be given in the form of: a. monthly payments; b. payment based on the stages of work completion (terms); or c. lump sum payment upon completion of work.<sup>3</sup>

Basically like a contract in general, the work contract between the employer and the service provider has fulfilled the legal requirements of a contract as stipulated in Article 1320 of the Civil Code, so the validity of the Work Contract is by fulfilling the provisions

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<sup>1</sup>Ahmadi Miru. (2011). *Hukum Kontrak dan Perancangan Kontrak*. Jakarta: Rajawali Pers. p. 74

<sup>2</sup>Adrian Sutedi. (2017). *Aspek Hukum Pengadaan Barang & Jasa*. Jakarta: Edisi Kedua, Sinar Grafika. p. 102

<sup>3</sup>Abdulkadir Muhammad. (2010). *Hukum Perdata Indonesia*. Bandung: PT. Citra Aditya Bakti. p.4

of Article 1320 of the Civil Code, namely agreement, the ability of certain objects and lawful reasons. So it is binding on both parties, however, in its implementation, the work agreement between the service provider and the employer does not always run without problems, for example, there is a default on one of the points of the agreement regarding the late payment of work performance.

One form of default in terms of the relationship between employers and service providers occurring in 2020, this problem began with an announcement by the South Konawe Regency Government, the Food Crops Service, Horticulture that wanted to hold a job auction for goods procurement services, in the process the auction was won. by CV. Anugrah Jaya in accordance with the minutes of auction results, thus CV. Anugrah Jaya as the winning bidder in accordance with the work agreement that has been mutually agreed upon between KPA (budget user power) through a work contract with number: 520 / SP-PPK / Pengadaan-Bun / PL-S2 / DTPHP / XI / 2020, namely the Konawe Regency Government Selatan, Department of Food Crops, Horticulture and Plantation as an employer and service provider CV.

Furthermore, because CV. Anugrah Jaya has completed 100% of the work in accordance with the Minutes of Handover of Work on April 21, 2020, for that it is the obligation of the South Konawe Regency Government, the Office of Food Crops, Horticulture and Plantation to CV. Anugrah Jaya according to work contract number: 520 / SP-PPK / Pengadaan-Bun / PL-S2 / DTPHP / XI / 2020 to pay achievements to service providers but CV. Anugrah Jaya does not accept the remaining results of the payment for work that has been completed 100%, this is of course violating the agreement that has been mutually agreed upon, the South Konawe Regency Government, the Food Crops, Horticulture and Plantation Service argued that they have not paid the remaining work to CV. Anugrah Jaya because it happened to a budget vacuum, for that payment will be made but shifted to the following year's budget meanwhile the budgeting system for the settlement of regional debts must go through a long procedure because budget discussions must be carried out at the Regional People's Representative Council again, meaning CV. Anugrah Jaya here has indirectly been disadvantaged because it does not receive performance for the work it has completed in accordance with the work contract.

If viewed from the perspective of civil law, the South Konawe Regency Government, the Food Crops, Horticulture Service, indirectly committed defaults because they violated the agreement they had signed, it was said that the Konawe Selatan Regency Agriculture Service did default because in the Civil Code a treaty becomes law for those who make it. In line with the explanation above, we can see together that there have been several legal polemics related to the legal certainty of the company in entering into a work agreement with the local government as the employer.

## **2. RESEARCH METHODS**

The research method used is normative through a statutory approach (statute approach) with documentary study techniques to obtain primary, secondary and tertiary data and then analyzed by descriptive analytical depiction.<sup>4</sup>

## **3. RESULTS AND DISCUSSION**

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<sup>4</sup> H.Halim HS & Erlies S. Nurbani. (2013). *Penerapan Teori Hukum Pada Penelitian Tesis Dan Disertasi*. Jakarta: Raja Grafindo Persada. p. 17-18

Legal certainty regarding the implementation of work agreements between service providers and employers regarding delays in payment of work performance

An agreement in the procurement of goods and services is an agreement whereby one party carries out a job for another by receiving a certain price. The agreement is the basis for carrying out activities. In fact, even though the agreement for the procurement of goods and services has been agreed upon, in its implementation it often results in breaches of the agreement by one party, for example in relation to the volume of work and regarding the payment system. One of the work agreements between service providers and employers that causes problems related to the payment system agreement, which can be seen in the contract for the procurement of patchouli refining equipment between service providers, in this case CV. Anugrah Jaya and the employer, in this case the Regional Government of South Konawe Regency, the Food Crops Service,

With the existence of a work agreement between the service provider and the employer, this agreement basically provides legal certainty regarding the rights and obligations of both parties, one of the points in payment is the payment for work performance, in this case the service provider is obliged to accept work repayment that has reached 100 % or it has been completed, so that when the Regional Government of South Konawe Regency, the Food Crops, Horticulture and Plantation Service do not make payments according to the agreement, the agency has defaulted because in the agreement it was agreed that when the work was completed, a settlement would be made.

The author analyzes the implementation of the work of the CV. Anugrah Jaya here has carried out all the points in the agreement as described in the Eighth Paragraph of the Handover of Work Article 95 which states that:

1. After the work is completed 100% (one hundred percent) in accordance with the provisions contained in the Contract, the Goods / Services Provider submits a request in writing to the PA / KPA through the PPK for delivery of work.
2. PA / KPA appoints the Committee / Officials who receive the results of the work to assess the results of the work that has been completed.
3. If there are deficiencies in the results of the work as referred to in paragraph (2), the Committee / Officials Receiving the Results of the Work through the PPK instructs the Goods / Services Provider to repair and / or complete the shortage of work as required in the Contract.
4. The Committee / Officials Receiving the Results of the Work accept the delivery of work after all the results of the work have been carried out in accordance with the provisions of the Contract.
5. Specifically for construction work / other services: a. The Construction Work / Other Services Provider carries out maintenance of the work results during the period stipulated in the Contract, so that the conditions remain as at the time of delivery of the work; b. the minimum maintenance period for permanent work is 6 (six) months, while for semi-permanent work it is 3 (three) months; and c. maintenance period can exceed the fiscal year.
6. After the maintenance period as referred to in paragraph (5) ends, PPK returns the Maintenance Guarantee / retention money to the Goods / Services Provider.
7. Especially for the procurement of goods, the guarantee period is enforced according to the agreement of the parties in the contract.
8. The goods / services provider signs the final handover of work at the time of the final handover process.

9. Goods / Service Providers who do not sign the Minutes of Final Handover of Work as intended in paragraph (8) are included in the Black List.

As for the work performance of service providers in addition to the rights and obligations regulated in the work contract, the fulfillment of work performance is also regulated in the Presidential Regulation of the Republic of Indonesia Number 54 of 2010 concerning Government Procurement of Goods / Services Article 89 which states:

1. Payment for work performance can be given in the form of: a. monthly payments; b. payment based on the stages of work completion (terms); or c. lump sum payment upon completion of work.
2. Payment of work performance is given to providers of goods / services after deducting the installments for back down payments and fines if any, as well as taxes.
3. Requests for payment to PPK for contracts that use subcontracting must be accompanied by proof of payment to all subcontractors in accordance with the progress of their work.
4. Monthly payment / term for construction work, is made in the amount of work that has been installed.
5. PPK can withhold part of the payment for job performance as retention money for the Construction Work Maintenance Guarantee.

The presence of a work agreement between CV. Anugrah Jaya as a service provider and employer, in this case the Regional Government of South Konawe Regency, the Office of Food Crops, Horticulture and Plantation with Contract Number: 520 / SP-PPK / Procurement-Bun / PL-S2 / DTPHP / XI / 2020, are obliged to implemented because it becomes a law for those who make it besides also being mentioned in statutory regulations.

In connection with not paying in full by the employer, in this case the Regional Government of South Konawe Regency, the Office of Food Crops, Horticulture and Plantation as stated in the contract: 520 / SP-PPK / Pengadaan-Bun / PL-S2 / DTPHP / XI / 2020 on the grounds that there was a coercive situation, as stated by the employer, in this case the Regional Government of South Konawe Regency, the Office of Food Crops, Horticulture and Plantation as KPA, according to the author, is a default act, because it violates the agreement in the contract that has been agreed.

#### **4. CLOSING**

Legal certainty regarding the implementation of work agreements between service providers and employers in the event of a delay in payment of work performance. With the presence of a work agreement between the service provider and the employer, this agreement basically provides legal certainty regarding the rights and obligations of both parties, one of the points in payment is the payment for work performance, in this case the service provider is obliged to accept work repayment that has reached 100% or it has been completed, when the Regional Government of South Konawe Regency, the Food Crops, Horticulture and Plantation Service does not make payment, the agency has defaulted because in the agreement it was agreed that when the work was completed, a repayment would be carried out.

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