

ABSTRAK

ASAS KESEIMBANGAN DALAM PERJANJIAN PENGADAAN BARANG DAN JASA PADA PT. YOKOGAWA INDONESIA

Dalam suatu pengadaan barang dan jasa baik yang dilakukan pihak swasta atau pemerintah perjanjian mutlak diperlukan diantara kedua belah pihak. Pada perjanjian tersebut akan dirinci hak dan kewajiban para pihak. Agar hak dan kewajiban para pihak seimbang dan tidak berat sebelah, klausula-klausula dalam perjanjian tersebut harus sejalan dengan asas keseimbangan. Sehingga pada pelaksanaan perjanjian tidak akan menimbulkan akibat hukum, seperti perubahan perjanjian, pengakhiran atau timbul sengketa dari perjanjian tersebut. Sebagai perusahaan *trading* PT. Yokogawa Indonesia banyak melakukan transaksi bisnis seperti pengadaan barang dan jasa untuk di internal perusahaan sendiri atau mensuplai untuk pihak pemerintah atau swasta lainnya. Atas dasar inilah penulis berminat meneliti perjanjian pengadaan barang dan jasa di PT. Yokogawa Indonesia.

Permasalahan dalam penelitian ini adalah bagaimana pelaksanaan perjanjian pengadaan barang dan jasa, apakah sudah sejalan dengan asas keseimbangan dan akibat hukumnya bila perjanjian tersebut melanggar asas keseimbangan. Tujuan penelitian ini untuk mengetahui pelaksanaan perjanjian pengadaan barang dan jasa di PT. Yokogawa Indonesia, mengetahui dan menganalisis mengapa perjanjian tersebut belum sejalan dengan asas keseimbangan dan mengetahui akibat hukumnya bila asas keseimbangan dilanggar.

Penulisan tesis ini menggunakan Metode Pendekatan Yuridis Empiris. Data primer diperoleh melalui studi di lapangan melalui wawancara dengan narasumber yaitu dengan bagian *Sales Department, Purchasing Department dan OPD Dept (Operational Processing Data)*, sedangkan data sekunder diperoleh melalui studi pustaka dan perundang-undangan.

Berdasarkan penelitian deskriptif analitis diketahui bahwa hal-hal yang menyebabkan perjanjian pengadaan barang dan jasa di PT. Yokogawa Indonesia belum sejalan dengan asas keseimbangan yaitu diantara kedua belah pihak kurang terbuka dalam memberi dan memperoleh informasi, waktu negoisasi kurang, kemudian antara kesalahan dan sanksi masih belum berimbang, dan posisi salah satu pihak mempunyai bargaining power lebih kuat, antara kerugian yang diderita dengan dendanya tidak seimbang. Akibat hukumnya bila suatu perjanjian pengadaan barang dan jasa melanggar ketentuan asas keseimbangan maka dapat dikatakan perbuatan hukum dimaksud batal demi hukum (*nietig*), perbuatan hukum dimaksud dapat dibatalkan, khususnya bila ketentuan tersebut hanya ditujukan untuk melindungi kepentingan salah satu pihak, selain itu perbuatan hukum dimaksud tetap dianggap absah dan mengikat. Untuk pemulihan keseimbangan diantara para pihak perlu upaya negoisasi ulang dan penyesuaian, Para pihak dalam perjanjian pengadaan barang dan jasa di PT. Yokogawa Indonesia seharusnya mencerminkan asas keseimbangan. Tujuan dari asas keseimbangan ini adalah hasil akhir yang menempatkan posisi para pihak misal produsen dan konsumen seimbang (*equal*) dalam menentukan hak dan kewajibannya. Sehingga para pihak tidak merasa berat sebelah hak dan kewajibannya.

Kata kunci : Asas Keseimbangan, Pengadaan Barang dan Jasa, Perjanjian

ABSTRACT

PRINCIPLE OF BALANCE IN GOODS AND SERVICES PROCUREMENT AGREEMENT IN PT. YOKOGAWA INDONESIA

In a goods and services procurement done by a private entity or the government, an agreement must be concluded between the two parties thereto. The said agreement shall detail the rights and obligations of the parties. To make the rights and obligations of the parties balanced and not biased, the clauses in the agreement must be consistent with the principles of balance. Thus, the implementation of the agreement will not lead to legal consequences, such as changes to the agreement, termination or dispute arising from the agreement. As a trading company PT. Yokogawa Indonesia concluded many business transactions such as the procurement of goods and services for the internal of the company or to supply the government or other private parties. Based on this, the authors are interested in studying the procurement agreement in PT. Yokogawa Indonesia.

The problem in this research is how the implementation of the goods and services procurement agreement, whether or not it is in line with the principle of balance and the legal consequences if the agreement violates the principle of balance. The purpose of this study is to investigate the implementation of the goods and services procurement agreement of PT. Yokogawa Indonesia, investigate and analyze why the agreement is not in line with the principles of balance and to find out the legal consequences if the principle of balance is breached.

This thesis uses Juridical Empirical Approach. The primary data are obtained through field studies by conducting interviews with source persons, namely the section Sales Department, Purchasing Department and OPD Department (Operational Data Processing) staff, while the secondary data are obtained through library and legislation.

Based on descriptive analytical research it was noted that the behind the incompliance of the goods and services procurement agreement of PT. Yokogawa Indonesia with the principles of balance between the two sides is among others, both parties are not fully transparent in terms members and obtainment of information, not enough time for negotiation, and no balance between defaults and the penalties, and one of the parties to have a stronger bargaining power, the losses suffered and the of the fine thereon is not balanced. The legal consequences of the incompliance of a procurement agreement with the provisions of the principles of balance are the annulment the said the legal action (nietig), particularly when the terms are intended to protect the interests of only one party, other than that the legal actions are still considered as valid and binding. To restore the balance between the parties, renegotiation and adjustment are needed, the parties to the goods and services procurement agreement of PT. Yokogawa Indonesia should reflect the principle of balance. The purpose of this principle of balance is a final result that makes the position of the parties i.e. the producers and consumers balanced (equal) in determining the rights and obligations. So that the parties do not feel that their rights and obligations are lopsided.

Keyword: Principles of Balance, Goods and Services Procurement, Agreement