Unilaterally-Cancelled Cooperation Agreement (A Case Study of Supreme Court of The Republic of Indonesia)

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ABSTRACT
The agreements that have been made and agreed upon by the parties shall be effective as Law and bind the parties to make them. Because every agreement made has to be actually implemented. Otherwise, it will be categorized as an act of Breach of contract that gives the right to the aggrieved party to sue for compensation. In the implementation of the Agreement on The Utilization of State Property in the TNI AD there is a violation of the law committed by the parties, because in implementing an agreement must be done in good faith. Until now, neither party has had good faith to resolve the issue of the cooperation agreement and there have been arbitrary actions, or use its dominant position to exploit weak positions (adverse circumstances for PT. Cakra Asia Agung), then it is included in the Act Against the Law, because the act of arbitrariness is outside of the implementation of obligations stipulated in the agreement, so it is not a Breach of contract, but rather in the direction of violating its legal obligation to always be in good faith. The cooperation agreement is settled to find the best solution to provide legal protection to the parties who make the agreement, especially about the substance of legal certainty and legal consequences that occur if the agreement is canceled unilaterally.

Keywords: *binding, agreements, breach of contract, tort law*

1. INTRODUCTION

The management of state finances as mandated in Article 23 of the 1945 Constitution of the Republic of Indonesia needs to be carried out professionally, openly, and responsibly for the greatest prosperity of the people, which is manifested in the State Revenue and Expenditure Budget (APBN) and the Revenue and Expenditure Budget. Region (APBD) [1]. The new paradigm shift in the management of State Property / State assets marked by the issuance of Government Regulation Number 6 of 2006 which is a derivative regulation of Law Number 1 of 2004 concerning the State Treasury, has created new optimism for better practices in structuring and managing state assets orderly, accountable, and transparent in the future [2].

Professional and modern management of state assets by prioritizing good governance on the one hand is expected to be able to increase public trust in the management of state finances. The regulation in the use of State Property is intended so that in its management by third parties it can provide benefits for non-tax state revenues, but also pay attention to legal aspects concerning contractual relationships (agreements) between government agencies and third parties, where legally the agency acts on behalf of the manager (Minister of Finance of the Republic of Indonesia), in the case of making an agreement on State Property.

In accordance with Government Regulation of the Republic of Indonesia Number 27 of 2014 on Government Regulation Concerning State Regional Property Management [3] and Regulation of the Minister of Finance of the Republic of Indonesia Number 78/PMK.06/2014 concerning Procedures for the Implementation of the Utilization of State Property, that the process of managing State Property such as the logistics cycle begins with planning needs and budgeting, procurement, use, Utilization, Security and Maintenance, Assessment, Elimination, Transfer, Administration, Supervision and control of State Property, in which the management must be organized, from planning needs to supervision and control, so that it can be seen clearly who is responsible on the existence and use of the country's assets [4].

The number of cases of irregularities in the management of State Property proves the lack of professionalism or lack of firmness of both Users or Managers of State Property in the management of State Property, therefore it is necessary to have an understanding of the procedures for the utilization of State Property with the aim of realizing orderly management State Property, especially regarding the use of State Property in the form of leasing. The main objective of the government in terms of managing state assets is for the welfare of the community, including the management of state property.

Thus, the Management of State Property is a tool for the Government in providing the best service for the community and in order to improve the welfare of the nation as a whole. Research with objects of state-owned land and buildings that are under the control of the Indonesian Army, especially State Property (BMN) which is controlled by the Authorized User of State Property (Jayakarta Military Region Command / Jayakarta TNI AD) because in practice there are still legal problems in terms of implementing the agreement the cooperation of the State Property, as referred to in the Agreement on the Utilization of State Assets for Construction and Delivery Number. 04/PPBMN/BGS/VII/2009 dated 12 July 2009 and the Joint Agreement on Land Utilization of the Army Cq Kodam Jaya Number. 03/KB/VII/2009 dated July 13, 2009 where in the making of the cooperation agreement in this case the Jaya/Jayakarta Kodam as the first party has made a Cooperation Agreement and a Joint agreement with PT. Cakra Asia Agung as the second party in which one of the parties did nothave good intentions in resolving the problem and unilaterally canceled the cooperation agreement.

From the legal aspect, the agreement that has been made and agreed upon by the parties applies as law and is binding on the parties who made it (Article 1338 of the Civil Code). Therefore, every agreement made must be truly implemented. Otherwise, it will be categorized as an act of breach of contract or breaking a promise which gives the injured party the right to claim compensation. Meanwhile, there are actions that occur in deciding or canceling the agreement unilaterally, which has violated the obligations as a party in the implementation of the agreement and can be categorized as An Tort Law because there is an element of arbitrariness or using its dominant position to take advantage of a weak position (adverse circumstances).

The fact is that until now, one of the parties does not have good faith to resolve the problem of the cooperation agreement, the cooperation agreement was completed to find the best solution to provide legal protection to the parties who made the agreement, so according to the author it is worthy of a study, especially about:

a. The substance of how legal certainty in the cooperation agreement for the use of State Property, especially in the Decision of the Supreme Court of the Republic of Indonesia Number 2600 K/Pdt/2018?
b. What are the legal consequences of an agreement that is unilaterally canceled?

2. METHOD

The research that will be conducted by the author is a form of normative juridical research. That is a scientific activity based on certain methods, systematics, and reasoning that aims to study one or several certain legal phenomena, by analyzing and also conducting an in-depth examination of legal facts to then carry out a solution to the problems that arise in the law. a related symptom. Here the author will conduct research based on a normative juridical approach, where the library materials that will be used by the author are sourced from primary legal sources and secondary sources [5].

3. DISCUSSION

3.1. Legal Certainly of Cooperation Agreements for State Property Within the Indonesian Army

A valid agreement applies as law for the parties that made it, meaning that the parties must obey the agreement the same as obeying the law (Article 1338 of the Civil Code). If someone violates the agreement they made, it is considered the same as violating the law, which has certain legal consequences, namely legal sanctions. Whoever violates the agreement he made, then he will get the punishment as stipulated in the law [6]. A valid agreement cannot be withdrawn unilaterally.

The agreement is binding on the parties, and cannot be withdrawn or canceled unilaterally. If you want to withdraw or cancel, you must obtain the approval of the other party, so that to do so, there is a need for another agreement or another agreement. However, if there are sufficient reasons according to the law, the agreement can be withdrawn or canceled unilaterally [7].

There are two important things that must be in the implementation of an agreement in good faith, there are two kinds, namely the existence of a subjective element and the existence of an objective measure. To assess performance, the subjective element means "honesty" or "cleanliness" of the maker. Good faith can also be interpreted that in exercising their rights, a creditor must pay attention to the interests of the debtor in certain situations. If the creditor claims his rights at the most difficult time for the debtor, perhaps the creditor can be considered to have carried out the contract in bad faith, in which case the Jaya/Jayakarta Regional Military Command asked for a contribution fee in excess of what had been agreed to the PT. Cakra Asia Agung [8].

At the Cassation Decision, the Supreme Court Number 2600 K/Pdt/2018 has decided as follows in the case between PT. Cakra Asia Agung hereinafter referred to as the Petitioner for Cassation is the party who lost against the Government of the Republic of Indonesia Ministry of Defense of the Republic of Indonesia Cq the Indonesian National Army Cq Commander of the Greater Jakarta Military Regional Command hereinafter referred to as the Respondent for Cassation is the party who wins in the case. The Plaintiff is a limited liability company (PT) which has agreed and agreed to establish, build and manage the State Property in the form of land described in the Right of Use certificate Number 00167/Balimester, located in DKI Jakarta Province, East Jakarta City, Jatinegara District, Balimester Village, locally known as Jalan Jatinegara Timur Number 60-62, covering an area of 6,275 M^2 according to the letter of measurement dated August 9, 2004 Number 00020/2004 and a certificate issued by the competent authority in East Jakarta dated August 12, 2004,

registered in the name of the Ministry of Defense and Security of the Republic of Indonesia (currently the Ministry of Defense of the Republic of Indonesia) Cq Indonesian National Army Army Cq Kodam Jaya with Number Identification of the plot of land (NIB) 09.04.01.01.01281 along with everything that is erected, planted, and placed both above and below the surface of the land, which according to its designation and the law is considered immovable property, nothing is excluded, based on agreement Number 04/PPBMN/BGS/VII/2009 dated 12 July 2009.

The Jayakarta Military Regional Command (Kodam Jaya/Jayakarta) is the Assistant to the User of State Property in the Jayakarta Region for a plot of land with a Right of Use Certificate Number 00167/Balimester covering an area of 6,275 M^2 on behalf of the Department Indonesian Defense Cq TNI AD Cq Kodam Jaya/Jayakarta. PT. Cakra Asia Agung is a limited liability company engaged in the Development and Development Business (General Contractor) and has obtained the necessary permits from the competent authorities.

The laying of the first stone in the construction process was carried out by Mr. Major Jenderal TNI Darpito Pudyastungkoro, SIP., M.M in his position as Commander of the Kodam Jaya Regional Military Command and currently the building has been completed and used. In carrying out the construction process, the Plaintiff has also taken care of the Building Permit as referred to in the Building Permit Number 6358/IMB/2012 dated May 31, 2012, so that the Plaintiff has implemented the provisions as referred to in Article 5 paragraph (2), the utilization agreement. State-Owned Goods Build for Handover Number 04/PPBMN/BGS/VII/2009 which basically contains:

"The permit in the context of building management is fully managed by the Second Party (Plaintiff) assisted by the First Party (Defendant) which is financed by the Second Party (Plaintiff) and on behalf of the First Party (Defendant)".

The Plaintiff has complied with the building construction process and has the right of management as referred to in Article 1 (one) letter (f) and (h) Agreement Letter on the use of State-Owned Property Build to Transfer No. 04/PPBMN/BGS/VII/2009 dated July 13, 2009.

Then Kodam Jaya/Jayakarta unilaterally terminated the Agreement and the Collective Agreement, causing losses to PT. Cakra Asia Agung. The action of Kodam Jaya/Jayakarta unilaterally terminated Agreement 04/PPBMN/BGS/VII/2009 dated July 13, 2009 in the background because of a Breach of contract which was carried out systematically by PT. Cakra Asia Agung by not completing the permit, the construction of the building is not in accordance with the building permit, there is no building use permit, the development is not in accordance with the mutually agreed Plan of construction, in accordance with the contents of the Agreement Number 04/PPBMN/BGS/VII/2009 dated July 12, 2009 along with the Joint Agreement on Land Utilization of the Army Cq Kodam Jaya/Jayakarta Number 03/KB/VII/2009 dated July 13, 2009 which has been notified through a warning letter or summoned by the Jaya/Jayakarta Military Command.

Based on the legal facts and considerations of the East Jakarta District Court Judges at the first instance Number 388/Pdt.G/2015/PN.Jkt.Tim stated that the construction of the building did experience delays due to the permit and approval design process which underwent changes to suit the location conditions in Jatinegara. The construction of the building is not in accordance with the building permit, there is no building use permit, the development is not in accordance with the mutually agreed plan of construction. This occurs because of obstacles related to the General Spatial Plan, in fact it is proven in the implementation of the agreement in the form of building construction, both the Plaintiff and the Defendant cannot show documents in the form of pictures including details and work plans of mutually agreed upon plan of construction requirements, which should have existed at the time of signing the agreement and were not legally proven.

The real reason for the unilateral termination of the agreement was the desire of the Jaya/Jayakarta Regional Military Command to increase the payment of contributions as agreed in Agreement Number 04/PPBMN/BGS/VII/2009 dated July 13, 2009 and in particular the Joint Agreement Number 03/KB/VII/2009 dated July 13, 2009 Article 1 (one), namely from a total of Rp. 60.000.000,00.- (Sixty million rupiah)/Month for the first 5 years with an increase of 14% every 5 years, paid during the management period or starting on August 15, 2011 it becomes Rp. 240.000,000, - (Two hundred and forty million rupiah).

Table 1 The Cost of Increasing Contributions from the 1st year to the 20th year which has been approved by Kodam Jaya/Jayakarta with PT. Cakra Asia Agung

No.	Year	Total Contribution Per Year (Rp)	Contribution Value Per Month (Rp)
1.	First	720.000.000,00 : 12	60.000.000,00
2.	Second	720.000.000,00 : 12	60.000.000,00
3.	Third	720.000.000,00 : 12	60.000.000,00
4.	Fourth	720.000.000,00 : 12	60.000.000,00
5.	Fifth	720.000.000,00 : 12	60.000.000,00
6.	Sixth	820.000.000,00 : 12	68.333.333,33
7.	Seventh	820.000.000,00 : 12	68.333.333,33
8.	Eighth	820.000.000,00 : 12	68.333.333,33
9.	Ninth	820.000.000,00 : 12	68.333.333,33
10.	Tenth	820.000.000,00 : 12	68.333.333,33
11.	Eleventh	920.000.000,00 : 12	76.666.666,66
12.	Twelfh	920.000.000,00 : 12	76.666.666,66
13.	Thirteenth	920.000.000,00 : 12	76.666.666,66
14.	Fourteenth	920.000.000,00 : 12	76.666.666,66
15.	Fifteenth	920.000.000,00 : 12	76.666.666,66
16.	Sixteenth	1.120.000.000,00 : 12	93.333.333,33
17.	Seventeenth	1.120.000.000,00 : 12	93.333.333,33
18.	Eighteenth	1.120.000.000,00 : 12	93.333.333,33
19.	Nineteenth	1.120.000.000,00 : 12	93.333.333,33
20.	Twentieth	1.120.000.000,00 : 12	93.333.333,33

Source: Agreement on Utilization of State-Owned Property for Construction and Handover Number 04/PPBMN/BGS/VII/2009 and Collective Agreement Number 03/KB/VII/2009 dated July 13, 2009 [9].

The request from the Jaya/Jayakarta Kodam was revealed at a meeting on March 20, 2015, who were present from the Jaya/Jayakarta Kodam, Brigadier General Teddy Lhaksamana and Lieutenant Colonel Tri Hascaryo, S.I.P, while PT. Cakra Asia Agung is Br. Bambang Sulistyo and Br. Pramono Istianto who is the President Director of PT. Cakra Asia Agung and the management of PT. Cakra Asia Agung.

The form of the request for the Jaya/Jayakarta Regional Military Command is a form of arbitrariness and is an act that can be categorized as a tort law because the arbitrary act is outside the implementation of the obligations stipulated in the agreement, contrary to its own obligations determined by law and contrary to the law. with the rights of others, so that it is not a Breach of contract, but rather towards violating its legal obligations to always have good intentions.

Because PT. Cakra Asia Agung has spent a lot of development capital and based on the good faith of PT. Cakra Asia Agung, then PT. Cakra Asia Agung responded to the request of Kodam Jaya/Jayakarta. Payment of contributions from August 2014 to March 2015 was Rp. 60.000.000,00.- (Sixty million rupiah)/per month X 8 (eight) and then for April 2015 it is approved for Rp. 150.000.000,00.- (One hundred and fifty million rupiah)/Month.

Then the response of PT. Cakra Asia Agung was not responded to by Kodam Jaya/Jayakarta, but Kodam Jaya/Jayakarta still asked for an increase in accordance with what PT. Cakra Asia Agung money on top. Therefore, at the request of Kodam Jaya/Jayakarta regarding the increase in the contribution fee, of course, PT. Cakra Asia Agung, Kodam Jaya/Jayakarta Parties immediately terminated the Cooperation agreement for the use of State Property and then entered into a new management agreement with another Party, namely Co-Defendant of Cassation I (PT. Rezeki Dwi Sejati) for the management of buildings and land as referred to by the Right to Use Number 00167/Balimester which is supposed to be the right of PT. Cakra Asia Agung as stated in the Agreement on the Utilization of State Property, Build for Handover Number 04/PPBMN/BGS/VII/2009 dated July 13, 2009 and Collective Agreement Number 03/KB/VII/2009 dated 13 July 2009.

3.2. Legal Consequences That Occur Against an Agreement That Is Canceled Unilaterally

In connection with the compensation demanded by the Plaintiff, which can be the basis for the claim for compensation for the breach of contract action by the Kodam Jaya/Jayakarta Military Command regarding the losses that may be suffered from the cancellation of the unilateral agreement. PT. Cakra Asia Agung is one of the parties that has already produced or incurred large costs to carry out the construction of the appropriate building in Agreement Number 04/PPBMN/BGS/VII/2009 dated July 13, 2009 and Collective Agreement Number 03/KB/VII/2009 dated July 13, 2009, but because the agreement was unilaterally canceled by the Jayakarta Military Command, PT. Cakra Asia Agung suffers a loss. This is the basis for PT. Cakra Asia Agung regarding compensation.

From the explanation above, it is known that PT. Cakra Asia Agung and Kodam Jaya/Jayakarta as legal parties in the agreement made by both parties. The parties to the agreement are subject to the agreement made by them and apply as law, so that the actions of the Jayakarta Military Command by unilaterally terminating the agreement that had been made together and asking for a contribution fee exceeding what was agreed upon, is an act that cannot be justified and Kodam Jaya/Jayakarta should obey the agreement that has been made with the cancellation unilaterally by the Kodam Jaya/Jayakarta, so the consequence is that Kodam Jaya/Jayakarta must compensate for losses that have been incurred by PT. Cakra Asia Agung.

The risk that exists if an agreement made by both parties is canceled unilaterally, then the one who cancels unilaterally, namely the Jaya/Jayakarta Military Command must compensate for the losses suffered by the aggrieved party, namely PT. Cakra Asia Agung.

The actions of Kodam Jaya/Jayakarta by unilaterally terminating the agreement that had been made together and asking for a contribution fee exceeding what was agreed upon, is an act that cannot be justified and Kodam Jaya/Jayakarta should obey the agreement that has been made with the cancellation unilaterally by the Kodam Jaya/Jayakarta, as a consequence, the Jaya/Jayakarta Military Command must compensate for the losses incurred by PT. Cakra Asia Agung.

In the Decision of the East Jakarta District Court Number 388/Pdt.G/2015/PN.Jkt. Tim, the Panel of Judges of the East Jakarta District Court which according to their considerations has determined that the Defendant of the Jaya/Jayakarta Kodam is a party that is proven to have manifestly committed an act of breach of contract because it has decided or canceled the agreement unilaterally (contrary to Article 1338 of the Civil Code) and caused losses to the Plaintiff, so as to compensate for any losses PT. Cakra Asia Agung, the Panel of Judges of the East Jakarta District Court has determined the Plaintiff's loss for the Defendant's Breach of contract for the implementation of Agreement Number 04/PPBMN/BGS/VII/2009 dated July 13, 2009 and Collective Agreement Number 03/KB/VII/2009 dated July 13, 2009, sentenced the Defendant Kodam Jaya/Jayakarta to pay the Plaintiff PT. Cakra Asia Agung in the form of material losses of Rp. 40.313.050.000,00.- The rules used for this compensation are analogous to using the rules for compensation due to breach of contract as regulated in Article 1243-1252 of the Civil Code, in addition to restoration back to its original state.

4. CONCLUSION

A valid agreement, in the sense that it fulfills the legal requirements according to the law, then applies as law for the parties who make it. As stated in Article 1338 (1) of the Civil Code. Whereas in paragraph (2) it is stated that the agreements cannot be withdrawn except with the agreement of both parties, or for reasons which are declared sufficient by law.

Article 1338 paragraph (2) of the Civil Code states that the agreement cannot be canceled unilaterally. In the Decision of the East Jakarta District Court Number 388/Pdt.G/2015/PN.Jkt. The team, the East Jakarta District Court Judges have determined that the party that actually committed the breach of contract was the Jaya/Jayakarta Military Command because they unilaterally decided on the Cooperation agreement and then entered into another cooperation agreement with PT. True Dwi sustenance. In the decision, the Jaya/Jayakarta Kodam has been determined by the East Jakarta District Court to have breach of contracted.

The risk that occurs if an agreement made by both parties is canceled unilaterally, then the one who cancels it unilaterally, namely the Jaya/Jayakarta Military Command must compensate for the losses suffered by the aggrieved party, namely PT. Great Asia Chakra. So that the actions of Kodam Jaya/Jayakarta by unilaterally terminating the agreement that had been made together and asking for a contribution fee in excess of what was agreed upon, is an act that cannot be justified so that it is considered an tort law and Kodam Jaya/Jayakarta should obey the agreement that has been made. made with the unilateral cancellation of the Jaya/Jayakarta Kodam, then the consequence is that the Jaya/Jayakarta Kodam must compensate for the losses that have been incurred by PT. Great Asia Chakra.

An agreement is needed between the parties, namely PT. Cakra Asia Agung with Kodam Jaya/Jayakarta in making an agreement, so that there is no unilateral cancellation, because in this case PT. Cakra Asia Agung is a party that always carries out its obligations in the Cooperation agreement and feels disadvantaged because of the unilateral termination of the Cooperation agreement by the Jaya/Jayakarta Military Command.

The East Jakarta District Court Panel of Judges has determined that the Plaintiff PT. Cakra Asia Agung caused by the Breach of contract Act committed by the Jaya/Jayakarta Regional Military Command is Rp. 40.313.050.000,00.- (Forty billion three hundred thirteen million fifty thousand rupiah). Kodam Jaya/Jayakarta should have paid the amount of compensation suffered by Plaintiff PT. Cakra Asia Agung.

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