

AGAINST THE CRIMINAL LAW IN THE DEVELOPMENT OF THE MINI HYDRO POWER PLANT PROJECT; REVIEW OF CASE NUMBER 321/PID.SUS/2017/PN LMJ

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ABSTRACT

Sustainable development is one of the right ways in development related to the management of natural resources using hydropower (mini-hydro). The purpose of this study is to find out what if there is a criminal act against the law in the Mini-hydro Power Plant (PLTM) project if there is damage due to a disaster, no party is willing to be responsible for repairing the damage and how the regulations regulate the responsibilities of the parties and the consequences of the nature of the disaster. against the law criminally. In this study, the research method used is related to unlawful nature and criminal liability in infrastructure projects, including normative legal research or library research, then the research approach used in this research is a normative juridical approach (legal research). The conclusion that criminal acts against the law do not occur and cannot be applied to the Mini-hydro Power Plant (PLTM) project if the damage is due to a disaster event (force majeure) the parties are responsible for repairing it.

Keywords: Unlawful Act, Force Majeure, Criminal Liability

INTRODUCTION

The development process of a country aims to achieve the welfare of people's lives. One way that the government does this is to equalize development. The development aims to increase the standard of living and the welfare of the people. It can also be said that development aims to improve the quality of life of the people. Because the quality of life can be said to be the degree to which basic needs are met, development can be interpreted as an effort to better meet the basic needs of the people (Soemarwoto, 2004).

Natural resources play an important role in the development process of a country. The existence of natural resources in various forms contributes to the achievement of economic growth. Sustainable development is one of the right ways in development related to natural resource management. Sustainable development includes three important pillars, namely economic, social, and environmental which must be implemented in an integrated manner. An understanding of sustainable development is not defined narrowly as environmental protection but an understanding of the interrelationships between economic, social, and natural environments. Through the concept of sustainable development, the management of natural resources must be carried out carefully so that future generations can still enjoy these natural resources (Sulistiyani, 2013).

The management of natural resources, especially for development needs, is adjusted to the potential possessed by each region. As a country that is developing equitable development, Indonesia is trying to develop industries in every region of the archipelago. The development of these industrial sectors is expected to lead to the expansion of job opportunities in each region so that it will increase people's income and demand (purchasing power). In addition, development

can also improve the quality of human resources with their ability to utilize resources optimally. This means that development is also considered as an effort to increase the productivity of human labor accompanied by efforts to expand the scope of human activities. One example is the development in Mamasa Regency, West Sulawesi.

Mamasa Regency is one of the Level II Regions or districts in the province of West Sulawesi, Indonesia. The district capital is located in the Mamasa sub-district, about 340 km from Makassar City, can be reached in about 6 hours by car from Pare-Pare city, the center of an integrated economic development area in South Sulawesi province about 190 km. In 2020, the population of the Mamasa district is 163,383 people and have a population density of 54 people/km² (Wikipedia, 2021).

Currently, the development that occurs in Mamasa Regency is more optimizing the energy industry, namely in the form of building and developing Mini-hydro Power Plants (PLTM). Based on the Regulation of the Minister of Public Works and Public Housing of the Republic of Indonesia Number 09/PRT/M/2016 concerning procedures for implementing cooperation between the government and business entities in the utilization of water resource infrastructure for the construction of hydroelectric power plants/mini-hydropower plants/micro-hydropower plants, then PT. PLN (Persero) builds a mini-hydropower plant. The development in the field of energy resources is located in Mamasa Regency, West Sulawesi. The construction of a mini-hydropower plant in Mamasa Regency, West Sulawesi has power (2 x 2000 kW). The construction of a mini-hydropower plant (PLTM) aims to increase the supply and improve the quality, quantity, and reliability of electric power in the Sulawesi, Maluku, Papua system network.

Unexpectedly to the project, there was a Flash Flood disaster from the upstream of the river, which brought roots and logs and hit the intake door, causing the intake door to collapse. Damage to the project that causes the parties to be held responsible, then actually based on the law who should be responsible for repairing the damage to the intake door and what if the parties in the project do not want to be responsible for repairing until the project is functioning again, can they be considered an act against the law and be prosecuted criminally if they are not responsible for restoring and repairing the intake door. This research aims to discuss whether there is a violation of criminal law during the development of mini-hydropower plant projects.

LITERATURE REVIEW

Definition of Against the Criminal Law

The nature of being against the law in criminal law is known by the term in Dutch, namely "*wederechtelijk*". In a criminal act, the element against the law is very important because this element will determine whether a person deserves to be sentenced or not. Differences in the meaning of law and act result in different meanings of "against the law" and "against the act". Being against the law means being against the law or not in accordance with the prohibitions/requirements specified in the law or attacking an interest protected by law. Meanwhile, the nature of being against the law means that it is against the law or not in accordance with the prohibition or legal requirement or attacking an interest that is protected by law.

Against the law as a general condition for criminal acts summed up in van Hamel's statement states "The unlawful nature of a criminal act is part of a general understanding, criminal lawmakers do not always state this part but this is an allegation" (Hiariej, 2014). Against the law can be interpreted as "actions that are against the law, or not in accordance with the prohibitions/requirements specified in the law, or not in accordance with the

prohibitions/requirements specified in the law, or attacking an interest protected by law. Is against the law, means contrary to the law, or not in accordance with prohibitions or legal requirements, or attacks an interest protected by law. In this case, what is meant by law is the law (Prodjodikoro, 2003).

Van Bemmelen said that against the law is no different from the meaning of being against the law in the field of civil law (Sapardjaja, 2002). What is meant by Van Bemmelen here is the understanding given by *Arrest* on January 31, 1919, in the case of *Lindenbaum vs. Cohen*, where Hoge Raad argues that an unlawful act must be interpreted as doing or not doing something that is contrary to or violates (Agustina, 2003);

- 1) The subjective rights of others;
- 2) The legal obligations of the perpetrator;
- 3) Rules of decency;
- 4) Propriety in society.

Meanwhile, Pompe's view is that '*wederrechtelijk*' means '*in strijd met het recht*' or contrary to the law which has a broader meaning than just '*in strijd met de wet*', or contrary to the law (Lamintang, 1984). The definition of '*wederrechtelijk*' like that, according to him, is in accordance with the notion of '*onrechtmatig*' in Article 1365 *Burgerlijk Wetboek* (BW), as applied by the Hoge Raad decision dated January 31, 1919, above.

Definition of Accountability

Discussing criminal liability, this cannot be separated from the term criminal act. Although the definition of a crime does not include the issue of criminal liability (Prasetyo, 2010). The definition of responsibility, in general, is human awareness regarding behavior/actions, whether intentional or accidental. Responsibility also means a manifestation of a sense of obligation. Based on the opinion of Simons, regarding the basis of criminal responsibility, namely the error that lies in the soul of the perpetrator in relation to the behavior that can be punished, and based on that mentality, the perpetrator can be reproached because of his behavior (Adji, 1991).

In the legal dictionary, responsibility is defined as a necessity for someone to carry out what has been required of him (Hamzah, 2005). The meaning of responsibility, in general, is human awareness of behavior or actions, both intentional and unintentional. Responsibility also means acting as an embodiment of awareness of obligations. Responsibility is an act that is carried out by each individual based on one's obligation or calling. That is an attitude that shows that someone has a very high caring and honest nature. In other words, based on the opinion of the Quarterly Point regarding accountability, it is necessary to have a basis, namely: "things that cause a legal right for one person to sue another person simultaneously, in the form of things that give birth to another person's legal obligation to give accountability" (Triwulan & Febrian, 2010).

Definition Crime

Etymologically the use of the term criminal is defined as a criminal sanction. For the same meaning, other terms are often used, namely punishment, punishment, sentencing, imposing sentences, giving criminal and criminal penalties. "Criminalization comes from the word *straf* (Dutch), which basically can be said as a suffering (nestapa) that is intentionally imposed/inflicted on someone who has been proven guilty of committing a crime" (Muladi & Arief, 2005).

RESEARCH METHOD

In preparation for this research, which is the main objective of the research, it is called the object of research. The object of this research is the laws and regulations relating to the nature of against the law and criminal liability in infrastructure projects. The data is used as material for discussion and analysis so that it can be trusted and accounted for. The research method used is related to unlawful nature and criminal liability in infrastructure projects, including normative legal research or library research, then the research approach used in this research is a normative juridical approach (legal research). The normative juridical legal research approach is legal research that identifies and conceptualizes law as norms, rules, regulations, laws that apply at a certain time and place as a product of certain sovereign state power.

In this study, the descriptive analysis method is used, which is a method that describes or describes a fact or reality systematically. The type of data in the study is secondary data, namely data obtained from library materials.

RESULTS AND DISCUSSION

Regulations Relating to the Development of Minihydro Power Plant (PLTM)

The regulations governing the construction of Mini-hydro power plants (PLTM), namely the Regulation of the Minister of Energy and Mineral Resources of the Republic of Indonesia Number 4 of 2020 concerning the Second Amendment to the Regulation of the Minister of Energy and Mineral Resources Number 50 of 2017 concerning the Utilization of Renewable Energy Sources for the Provision of Electricity, as for the creation of the Regulation of the Minister of Energy and Mineral Resources of the Republic of Indonesia Number 4 of 2020 taking into account the previous regulations including:

1. Regulation of the Minister of Energy and Mineral Resources Number 50 of 2017 concerning Utilization of Renewable Energy Sources for the Provision of Electricity as amended by Regulation of the Minister of Energy and Mineral Resources Number 53 of 2018 concerning Amendments to Regulation of the Minister of Energy and Mineral Resources Number 50 of 2017 concerning Utilization of Renewable Energy Sources for the Provision of Electricity;
2. Regulation of the Minister of Energy and Mineral Resources Number 39 of 2017 concerning the Implementation of Physical Activities Utilizing New and Renewable Energy and Energy Conservation as amended by Regulation of the Minister of Energy and Mineral Resources Number 12 of 2018 concerning Amendments to the Regulation of the Minister of Energy and Resources Mineral Number 39 of 2017 concerning the Implementation of Physical Activities Utilizing New and Renewable Energy and Energy Conservation, including those from grant financing, it is necessary to regulate the mechanism for purchasing electricity and the purchase price of electricity;
3. Presidential Regulation Number 4 of 2016 concerning Acceleration of Electricity Infrastructure Development (State Gazette of the Republic of Indonesia of 2016 Number 8) as amended by Presidential Regulation Number 14 of 2017 concerning Amendments to Presidential Regulation Number 4 of 2016 concerning Acceleration of Electricity Infrastructure Development;
4. Regulation of the Minister of Energy and Mineral Resources Number 13 of 2016 concerning Organization and Work Procedure of the Ministry of Energy and Mineral Resources.

Regulations Relating to Criminal Actions of Corruption in the Development Project of Minihydro Power Plant (PLTM)

Every project cannot be separated from the existence of several frauds in every running of state projects, in this case, there is a need for regulations that regulate every fraud in every state project wherein the fraud there may be elements of state losses, in terms of In this study, the

researcher explains the articles in the Corruption Crime Law no. 20 of 2001 which regulates every type of fraud during planning, procurement, implementation and in Mini-hydro power plant (PLTM) development projects, including:

State Financial Losses

The Corruption Law Adopts State Loss in a Formal Meaning,

The element 'can harm state finances' should be interpreted as harming the state in a direct or indirect sense. This means that an automatic action can be considered detrimental to state finances if the action has the potential to cause state losses. Article 2 paragraph (1) of the Corruption Act jo. Constitutional Court Decision Number 25/PUU-XIV/2016 stipulates that:

"Everyone who unlawfully commits an act of enriching himself or another person or a corporation that is detrimental to the state finances or the state economy shall be sentenced to life imprisonment or a minimum imprisonment of 4 (four) years and a maximum of 20 (twenty) years. years and a minimum fine of Rp. 200,000,000.00 (two hundred million rupiahs) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah)."

Bribery

Examples of bribery in the Anti-Corruption Law and its amendments are regulated in Article 5 of Law no. 20 of 2001, which reads:

- (1) Sentenced to a minimum imprisonment of 1 (one) year and a maximum of 5 (five) years and or a minimum fine of Rp. 50,000,000.00 (fifty million rupiahs) and a maximum of Rp. 250,000,000.00 (two hundred and fifty million rupiahs) every person who:
 - a. Give or promise something to a civil servant or state administrator with the intention that the civil servant or state administrator do or not do something in his position, which is contrary to his obligations; or
 - b. Giving something to a civil servant or state administrator because of or in connection with something contrary to his obligations, done or not done in his position.
- (2) For civil servants or state administrators who receive gifts or promises as referred to in paragraph (1) letter a or letter b, shall be subject to the same punishment as referred to in paragraph (1).

Embezzlement in Position

Examples of embezzlement in the office are regulated in the Anti-Corruption Law, Article 8 of Law no. 20 of 2001 which reads:

"It shall be punished with a minimum imprisonment of 3 (three) years and a maximum of 15 (fifteen) years and a minimum fine of Rp. 150,000,000.00 (one hundred and fifty million rupiahs) and a maximum of Rp. 750,000,000.00 (seven) hundred and fifty million rupiah), a civil servant or a person other than a civil servant who is assigned to carry out a public office continuously or temporarily, intentionally embezzles money or securities that are kept due to his position, or allows the said money or securities to be taken or embezzled. by another person, or assist in performing the act."

According to Soesilo (2019) in his book the Criminal Code (KUHP) and its Complete Commentaries Article by Article (p. 258), embezzlement is a crime that is almost the same as theft. The difference is that in the case of theft, the item that is owned is not yet in the hands of the thief and must still be 'taken'. Meanwhile, in embezzlement, when it is owned, the item is already in the hands of the maker, not by means of crime.

Embezzlement in office in the Anti-Corruption Law and its amendments, in our opinion, refers to embezzlement by weight, namely embezzlement committed by the person holding the goods in connection with his job or position (*beroep*) or because he gets wages.

Blackmail

Extortion in the Anti-Corruption Law Article 12 letters e, g, and h of Law no. 20 of 2001 in the form of actions:

- a. A civil servant or state administrator who to unlawfully benefit himself or others, or by abusing his power forces someone to give something, pay, or receive a discounted payment, or to do something for himself;
- b. A civil servant or state administrator who, at the time of carrying out his duties, asks for or accepts work, or delivers goods, as if it were a debt to himself, even though it is known that it is not a debt; or
- c. Civil servants or state administrators who, when carrying out their duties, have used state land on which there is a use right as if in accordance with statutory regulations, have harmed the entitled person, even though he knows that the act is contrary to the statutory regulations. Invitation.

Cheating

Cheating in the Anti-Corruption Law Article 17 Paragraph (1) of Law no. 20 of 2001 and its amendments include:

- a. A contractor, a construction expert who at the time of constructing a building, or a seller of building materials who, at the time of delivering building materials, commits a fraudulent act that may endanger the security of people or goods, or the safety of the state in a state of war;
- b. Any person in charge of supervising the construction or delivery of building materials, intentionally allows the fraudulent act above;
- c. Any person who at the time of handing over goods needed by the Indonesian National Armed Forces and or the State Police of the Republic of Indonesia commits a fraudulent act that may endanger the safety of the state in a state of war; or
- d. Any person in charge of supervising the delivery of goods needed by the Indonesian National Armed Forces and/or the Indonesian National Police intentionally allows the fraudulent act above.

Conflict of Interest in Procurement

In the Corruption Act Article 12 letter i of Law no. 20 of 2001 explains that a conflict of interest in the procurement of government goods/services is a situation in which a civil servant or state administrator, either directly or indirectly, intentionally participates in chartering, procurement, or leasing, which at the time of the act, is for all or partly assigned to manage or supervise it.

Gratification

In the Corruption Act Article 12B Paragraph (1) of Law No. 20 of 2001, it is explained that every gratuity to a civil servant or state administrator is considered a bribe, if it is related to his position and is contrary to his obligations or duties, provided that:

- a. With a value of Rp. 10 million or more, the proof that the gratification is not a bribe is made by the recipient of the gratification.
- b. If the value is less than Rp. 10 million, the proof that the gratification is a bribe is proven by the public prosecutor.

The punishment for civil servants or state administrators who receive gratification is life imprisonment or imprisonment for a minimum of four years and a maximum of 20 years, and a fine of at least Rp. 200 million and a maximum of Rp. 1 billion has been regulated in the Anti-Corruption Law Article 12B Paragraph (2) of Law no. 20 Year 2001. However, this provision

does not apply if the recipient reports the gratification he has received to the Corruption Eradication Commission, no later than 30 days from the date the gratification is received as stipulated in the Corruption Law Article 12C Paragraph (1) and (2) of Law no. 20 of 2001.

Case Position No.321/PID.SUS/2017/PN LMJ

The duration of the work was originally scheduled for 370 calendar days or 1 year 5 calendar days. In the implementation of the design and land acquisition stages, several obstacles were encountered, namely the determination of the layout design and the constraints of land acquisition in accordance with the layout design which experienced several shifts due to the existing land being unable to be acquired for various reasons from the landowner. In the implementation of PLTM Construction, PLN and the Contractor face several social obstacles, namely having to utilize the existing manpower and potential of the area, which results in delays in the completion of construction work, so that up to 8 (eight) time addendums are required. The construction can be completed by carrying out the Reliability Run (RR) for Unit-1 and Unit-2 on 28-30 April 2012 as well as the issuance of an Operational Worthiness Certificate (SLO) by PT PLN Jasa Certification for both generating units on 7 May 2012 simultaneously. With the implementation of the Handover of Phase-I (ST-1) according to the Minutes of Handover of Phase-I dated April 17, 2014. The maintenance period according to the Letter of Agreement (Article 8 paragraph 1) is for 180 (one hundred and eighty) calendar days since the issuance of BAST- I. Then the operation of the PLTM in Mamasa Regency was carried out on August 15, 2012, along with the repair of pending items during the Maintenance Period.

On November 12, 2012, Minutes of Completion of Pending Items have been issued which have been signed by both parties, then On December 5, 2012, or 1 month after the expiration of the Maintenance Period, the operation of the PLTM was stopped due to a request from PLN to the Contractor to repair headpond reinforcement and repair of waterway inspection roads. The repairs were carried out until March 15, 2013, and on March 16, 2013, Unit-1 resumed operation, followed by the operation of Unit-2 on April 13, 2013.

The waterway repair process took a long time because apart from weather problems, social problems around the worksite were also constrained. After the repair of the waterway was completed, on March 10, 2015, PLN was unable to carry out the 2nd Handover (ST-2) because there was a new pending item (different from the previous pending item) that the Contractor had to complete. All of the new pending items were completed by the contractor on March 24, 2015, and the PLTM in Mamasa Regency could be operated again on April 1, 2015, and the Minutes of Operation (BA) signed by the parties.

On April 13, 2015, the Minutes of Work Inspection Phase-II (BAPP-II) was published, so the duration of the Maintenance Period should be 180 (one hundred and eighty) calendar days after BAST-I, but the duration of the BAST-I period until the News Work Inspection Program-II (BAPP II) reached 1,071 calendar days. On April 16, 2015, at 20.30 there was a Flash Flood disaster from upstream of the river, which brought roots and logs and hit the intake door, and caused the intake door to collapse, this incident has been reported to PLN, based on this, PLN has not issued BAST- II because the Contractor still should repair the damage caused by the Banjir Bandang disaster. For Unit-1 and Unit-2, Phase-I (ST-1) Handover has been carried out according to the Minutes of Handover Phase-I dated April 17, 2014, the maintenance period according to the Agreement (Article 8 paragraph 1) is 180 (one hundred and eight twenty) calendar days since the issuance of BAST-I, namely 7 May 2012 - 3 November 2012. Several pending items have not been implemented by the Contractor until finally all the new pending items were completed by the contractor on 24 March 2015, and the PLTM can be operated again on April 1, 2015, and Minutes of Operation (BA) signed by the parties. Furthermore, on April 13,

2015, PLN has just issued Minutes of Inspection of Work Phase-II (BAPP-II) but has not yet issued Minutes of Handover – II. On April 16, 2015, at 20.30 there was a Flash Flood disaster from upstream of the river, which brought roots and logs and hit the intake door, and caused the intake door to collapse, the incident has been reported by the contractor to PT. PLN.

Based on the Minutes of the Discussion Meeting on Damage to the PLTM Weir Drain on May 7, 2015, it was decided that after a joint evaluation of the PLTM contract in Mamasa Regency, it was agreed by all meeting participants that the occurrence of a major flood disaster at the PLTM Mamasa Regency could be categorized as Force Majeure and agreed to repair the damage. Weirs are carried out by the Contractor and are treated as additional work or variation orders. But on the other hand On February 17, 2017, PT. PLN issued a letter to the Contractor, stating that the damage to the PLTM Dam area in Mamasa Regency is the responsibility of the Contractor (Evidence P-33). This PLN letter refers to the Legal Opinion of the Central PLN Corporate Legal Unit and the Follow-up to the PLTM Development Work in Mamasa Regency (2x2000 kW) issued on February 17, 2017, or for 673 (six hundred and seventy-three) calendar days after the submission of the Notification Letter of Flood Disaster on April 17, 2015.

Then on March 17, 2017, the Contractor issued a Response Letter on the Submission of Legal Opinion for the Central PLN Corporate Legal Unit and the Follow-up to the Development of a PLTM in Mamasa Regency (2x2000 kW) which objected to the letter of PT. PLN, considering that the Contractor has executed all pending items requested by PT. PLN, which should only be during the maintenance period of 180 calendar days, but the Contractor has carried out maintenance for 1,071 calendar days. Based on this, the Contractor states that all damage due to flooding events can be categorized as Force Majeure and is no longer the Contractor's responsibility.

Analysis of Criminal Law in the Development of Minihydro Power Generating Projects

Whereas furthermore, the researcher made good observations on the documents submitted in the PLTM Project Construction dispute in Mamasa Regency (2X2000 kW) between the Contractor and PT. PLN (Persero). That the PLTM Development Project (2 x 2000 kW) was built based on the Decree of the Minister of Energy and Mineral Resources of the Republic of Indonesia No. 1379.K/80/MEM/2008, dated March 27, 2008, and the Decree of the Board of Directors of PLN (Persero) for the delegation from the President Director of PT PLN (Persero) as the Proxy of Budget/Goods User (KPA/KPB) in the Power Generation and Network Main Unit No. 112.K/DIR/2008 dated April 14, 2008. The Contract is a pure contract between two (private) legal subjects. It did not involve any government body or institution. The contract is not a Public-Private Partnership (Widjaja, 2017).

The project is implemented based on the Contract dated December 4, 2008, between PT PLN (Persero) and the contractor. Commercial Operations are scheduled to take place after 370 calendar days for Unit-1 and Unit-2 since the agreement letter is effective on December 4, 2008. The source of project funds comes from the State Revenue and Expenditure Budget (APBN) and PT. State Electricity Company (APLN). In its implementation, the Contract has 15 (fifteen) Addendums. Based on the evidence submitted by the Contractor, the Minutes of Work Inspection Phase-II (BAPP-II) was only issued on April 13, 2015, so the duration of the Maintenance Period which should have been 180 (one hundred and eighty) calendar days after BAST-I, was, in fact, the duration of the period. BAST-I to Minutes of Work Inspection-II (BAPP II) reached 1,071 calendar days. In this case, the contractor should have been declared to have completed the responsibilities within the maintenance period and received BAST-II on November 3, 2012, if PT. PLN (Persero) is aware of this and observes article 8 paragraph 1 of the agreement letter of both parties.

During the period of completion of the recovery period based on article 8 paragraph 1 of the agreement, which is 180 calendar days until the issuance of the Minutes of Inspection Phase-II (BAPP-II) so that the maintenance period becomes 1,071 calendar days, based on the documentary evidence submitted by the contractor, that the contractor is still in good faith to complete the pending items requested by PT. PLN (Persero) outside of the maintenance period. It can be seen that the contractor continues to fulfill the demands of PT. PLN (Persero) as compensation even though it is beyond its responsibilities. In the case of the flash flood that occurred on April 16, 2015, at 20.30 WIT, there was a flash flood disaster from the upstream of the river which carried roots and logs and hit the intake door, causing the intake door to collapse. The contractor thinks that the event constitutes a force majeure.

Based on Article 19 paragraphs (1) and (2) of the Agreement regarding Force Majeure, it is defined as follows:

1. What is meant by force majeure are events beyond the ability of the First Party and Second Party to handle them, including Natural disasters that cause damage/destruction of work that has been carried out/submitted are earthquakes, lightning, floods, hurricanes/hurricanes, volcanic eruptions, and fires.
2. In the event of force majeure, the SECOND PARTY is obliged to notify the First Party in writing no later than 3 (three) days from the event in question accompanied by a statement from the competent authority regarding the incident.

To strengthen his argument and fulfill the prerequisites for force majeure as stipulated in the agreement, the contractor has sent a Notification Letter of Flood Disaster to PT. PLN on 17 April 2015 and a Certificate of Flood Event at the PLTM Project Location in Mamasa Regency (2X2000 kW) from the Head of Talopa Village, Tabuhanan District, Mamasa Regency, West Sulawesi Province, dated 18 April 2015 as the authorized party in declaring a disaster situation as the local government based on Law of the Republic of Indonesia Number 24 of 2007 concerning Disaster Management and Government Regulation of the Republic of Indonesia Number 21 of 2008 concerning Implementation of Disaster Management according to the documentary evidence submitted by the contractor. So it is clear that the contractor has fulfilled his obligations in the context of determining force majeure as regulated in Article 19 of the agreement letter.

PT. PLN (Persero) has also agreed with the flash flood event based on the Minutes of the Discussion Meeting on Damage to the PLTM Weir Drain Gate in Mamasa Regency (2X2000 kW) on 7 May 2015 according to the evidence of documents submitted by the contractor located in the DIVKIT Meeting Room JB LT 5 PLN Office The Center, it was decided that after a joint evaluation of the PLTM contract, it was agreed by all meeting participants: "That the occurrence of a major flood disaster at the PLTM can be categorized as Force Majeure" and agreed that repairs to dam damage were carried out by the Contractor and treated as additional work or variation orders.

Based on Article 40 of Law no. 2 of 2017 concerning Construction Services, the provisions regarding the binding between the parties of Service Users and Service Providers as referred to in Article 39 apply in accordance with the provisions of the laws and regulations governing civil law unless otherwise stipulated in this Law. Furthermore, basically according to Article 1244 of the Civil Code, Force Majeure is an event that cannot be predicted by the parties beforehand. So the legal consequence is that if the Force Majeure incident occurs, one of the parties cannot be charged and compensated for the incident as stipulated in Article 1245 of the Civil Code. The occurrence of flooding is seen as a natural disaster that is planned by God and cannot be predicted by anyone. So that PT. PLN (Persero) understands and understands this, but does not demand responsibility from the Contractor for the incident. Based on the legal facts that were revealed in the trial and the facts that have been obtained that the parties (the contractor and PT. PLN (Persero)) confirmed it and remained in their respective positions.

The researcher analyses the case of the mini-hydro power plant development project whether or not there are any non-criminal elements in the project, as follows:

State Financial Losses

Article 2 paragraph (1) of the Corruption Act jo. Constitutional Court Decision Number 25/PUU-XIV/2016.

Researchers analyzed in the mini-hydropower development project (PLTM) in Mamasa Regency (2X2000 kW) that it was not related to Article 2 paragraph (1) of Law no. 20 of 2001 concerning amendments to law number 31 of 1999 concerning the eradication of criminal acts of corruption jo. The decision of the Constitutional Court Number 25/PUU-XIV/2016 was due to the absence of state financial losses but this was due to a catastrophic event (Force Majeure).

Bribery

Researchers analyzed in the development project of mini-hydropower (PLTM) in Mamasa Regency (2X2000 kW) that it is not related to Article 5 of Law no. 20 of 2001 concerning amendments to Law No. 31 of 1999 concerning the eradication of criminal acts of corruption because there were no acts of bribery but this was due to a catastrophic event (Force Majeure).

Embezzlement in Position

Researchers analyzed in the mini-hydropower development project (PLTM) in Mamasa Regency (2X2000 kW) that it was not related to Article 8 of Law no. 20 of 2001 concerning amendments to Law Number 31 of 1999 concerning the eradication of criminal acts of corruption because there was no embezzlement in office but this was due to a catastrophic event (Force Majeure).

Blackmail

Researchers analyzed in the mini-hydropower development project (PLTM) in Mamasa Regency (2X2000 kW) that it was not related to Article 12 letters e, g, and h of Law no. 20 of 2001 concerning amendments to Law Number 31 of 1999 concerning the eradication of criminal acts of corruption due to the absence of acts of extortion but this is due to a catastrophic event (Force Majeure).

Cheating

Researchers analyzed in the mini-hydropower development project (PLTM) in Mamasa Regency (2X2000 kW) that it was not related to Article 17 Paragraph (1) of Law no. 20 of 2001 concerning amendments to Law No. 31 of 1999 concerning the eradication of criminal acts of corruption because there were no fraudulent acts but this was due to a catastrophic event (Force Majeure).

Conflict of Interest in Procurement

Researchers analyzed in the development project of mini-hydropower (PLTM) in Mamasa Regency (2X2000 kW) that it was not related to Article 12 letter i of Law no. 20 of 2001 concerning amendments to Law Number 31 of 1999 concerning the eradication of criminal acts of corruption because there is no conflict of interest in procurement but this is due to a disaster event (Force Majeure).

Gratification

Researchers analyzed in the mini-hydropower development project (PLTM) in Mamasa Regency (2X2000 kW) that it was not related to Article 12B Paragraph (1) of Law no. 20 of 2001 concerning amendments to Law Number 31 of 1999 concerning the eradication of criminal acts of corruption due to the absence of acts of gratification but also not related to Article 12B Paragraph (2) of Law no. 20 of 2001 this is due to a disaster event (Force Majeure).

According to the researcher, there is a technical gap between the provisions concerning non-criminal legislation, especially corruption when faced with events related to the strategic project of a mini-hydropower plant that hit the intake door and caused the intake door to collapse. Of course, this physically factually causes damage to the project belonging to the State and the situation of the damage must be restored so that the strategic project can function optimally, therefore the agreement to repair the dam damage is carried out by the Contractor and is treated as additional work or a variation order, this is legally moral bonds (non-negotiable obligations of the parties having a balanced responsibility) to avoid state losses that arise, even if the situation and events occur in force majeure conditions.

However, in the observations of the researchers, if there is a tendency for the parties not to carry out their responsibilities, they often throw responsibilities at each other and there is no seriousness in carrying out additional work or variation orders, then the element of being against the law is in the form of fraudulent acts in the provisions of Article 17 Paragraph (1) of Law no. 20 of 2001 concerning amendments to Law No. 31 of 1999 concerning the eradication of criminal acts of corruption may be applied by law enforcers.

In addition, there appears to be a regulatory gap that regulates accountability due to the nature of being against the law or violating the law that causes state losses where the legislation for criminal acts, especially corruption, has not clarified the normative aspects of the form and amount and nominal size of the determination of the legal responsibility of the parties. This is both from the aspect of technical rules and legal rules.

CONCLUSION

Based on the discussion of the main cases described above, it can be concluded that:

1. Criminal acts against the law do not occur and cannot be applied to the Mini-hydro Power Plant (PLTM) project if the damage is due to a disaster event (force majeure).
2. Regarding the regulations governing the responsibilities of the parties in the Mini-hydro Power Plant (PLTM) project if the damage is due to a disaster event (force majeure) using civil responsibility in the form of an agreement to repair dam damage carried out by the Contractor and treated as added work or variation order with the financing covered as stipulated in the provisions of Article 40 of Law no. 2 of 2017 concerning Construction Services, the provisions regarding the binding between the parties of Service Users and Service Providers as referred to in Article 39 apply in accordance with the provisions of the laws and regulations governing civil law unless otherwise stipulated in this Law.

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