

Legal Protection for Indonesia Railways Company in Public Service Liability Contract for Economic Class Railways Towards Audit Results of the Financial Auditing Board

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Abstract. Provisions in the contract, which have stipulated in detail, do not rule out the possibility of problems in its implementation. The contract for the public service obligation for economy class train transportation, it is just that the problems that arise are not directly due to the negligence of the parties but in connection with the Audit Result Report from the Audit Board of the Republic of Indonesia, which caused losses for Indonesia Railway Company. Therefore this paper is intended to determine the legal protection for Indonesia Railway Company for the Audit Board of the Republic of Indonesia Audit Result Report. The research method used is a normative juridical study with a case approach analyzed based on the applicable legal provisions and described in a descriptive-analytical manner. In principle, there is legal protection for Indonesia Railway Company in the public service obligation contract on the Audit Board of the Republic of Indonesia Audit Result Report.

Keywords: Indonesia, legal protection agreements, public service obligation.

I. INTRODUCTION

Following the provisions of Article 152 paragraph (2) of Law Number 23 of 2007 concerning Railways, the Government may determine the tariff for public transportation for economy class service transportation lower than the tariff set by the railway facility operator with the difference being the responsibility of the Government in the form of public service obligations.

Based on the authority in Law Number 23 of 2007, the Minister of Transportation has assigned the Indonesia Railway Company to carry out the obligation of public service for economy class train transportation (after this referred to as public service obligations) in 2018 through the Decree of the Minister of Transportation Number KP 1110 of 2017 concerning the Assignment to the Indonesian Railway Company for the Implementation of Public Service Obligations for Transportation of People by Economy Class Train for the Fiscal Year 2018. The Assignment is then stated in the contract between the Directorate General of Railways and the Indonesia Railway Company regarding the Implementation of Public Service Obligation in the Field of Public Transportation Economy Class Service Train for Fiscal Year 2018 as the basis for fulfilling the rights and obligations of each party in the implementation of public obligations in 2018.

A public obligation contract is an agreement[1], which, according to Article 1313 of the Civil Code, is an act whereby one or more people bind themselves to one/more other people. In the public service obligation contract between the Director-General Railway and the Indonesia Railway Company, problems arise those cause losses, namely in the form of an obligation for the Indonesia Railway Company to return payments that have been made. For the implementation of its public service obligations in 2018, the Indonesia Railway Company is obliged to return the excess payment of the value of public service obligations to the state treasury

in the amount of Rp143,196,727,531.00 (one hundred forty-three billion one hundred ninety-six million seven hundred twenty-seven thousand five hundred and thirty-one rupiah).

The public service obligation contract problems between the Directorate General Railway and the Indonesia Railway Company have distinctive characteristics. Problems arise not at the contract implementation stage but the post-contractual stage, namely after the issuance of the Supreme Audit Agency's audit results, which are listed in this agency's Audit Results Report.

The findings of the Supreme Audit Agency's audit results regarding overpayments stem from different perceptions regarding the principle of public service obligations. The findings of the Supreme Audit Agency in the form of an obligation for the Indonesia Railway Company to return the excess payment of public service obligation funds are, of course, very detrimental and create uncertainty in doing business.

II. RESULT AND DISCUSSION

1) Public Service Obligation Contract for Economy Class Train Transportation

The public service obligation contract is a form of agreement that arises in connection with the provisions of the laws and regulations governing the obligation of economy class train transportation public services. Public service obligation contracts have a distinctive character, which lies in the existence of statutory provisions that regulate the substance of the contract in detail so that even though it is not a standard contract, it contains the character of a standard contract. In this case, the agreement's form and content are determined by the provisions of laws and regulations.

Conceptually, Law Number 23 of 2007 has determined the character of public service obligations in the form of the difference between the rates set by the facility administering business entities and the government rates set by the Government and the realization that the amount paid by the Government will depend on the volume of passengers using the service.

As a contract that is born in the context of implementing the provisions of laws and regulations, most of the substance of the public service obligation contract follows the provisions of the laws and regulations, including the Minister of Transportation Regulation Number 68 of 2016 concerning Procedures for Implementing Public Service Obligations for Public Transportation by Railway Economy Class Service as amended by the Minister of Transportation Regulation Number PM 151 of 2016.

The detailed regulation of public service obligation contracts in statutory regulations is expected, considering that the implementation of public service obligations uses APBN funds, which must be managed openly and responsibly for the people's greatest prosperity. In addition to ensuring that the management of public service obligations is carried out accountably, it is also hoped that it can provide legal certainty and protection for the parties concerned.

Public service obligation contracts are included in one type of anonymous agreement that arises, grows, lives, and develops in community life, and there is no specific regulation yet in the Civil Code. As an agreement that is subject to the provisions of Book III of the Civil Code, general principles in an agreement law apply as the basis for the parties' will to achieve their goals.[2] The principle is an agreement has a binding force, and then the agreement serves as a corridor for the parties to be forced to fulfill it.[3] It is a principle that has legal force juridically and empirically, meaning that the parties must apply a principle to the agreement. Understanding a principle cannot be understood conceptually. In law that a word or sentence must be explained logically, scientifically, and juridically.[4]

As befits an agreement, a service obligation contract is composed of elements of the agreement, with essential elements that differentiate it from other agreements, and has its characteristics that are different from other agreements, and represents provisions in the form of achievements that must be carried out by the parties that reflect the nature of the agreement[5], including the provision of services and payment from economy class rail transport. The contract value is calculated based on the difference between the

operator and regulator tariffs.[6] The natural element in the public service obligation contract refers to the statutory provisions in public service obligations. Meanwhile, the accidental element includes provisions regarding the administrative verification process, payment methods, reporting, monitoring, inspection, and evaluation of public service obligations.

2) Examination of the Implementation of Public Service Obligations by the Supreme Audit Agency

Examination of the implementation of railroad public service obligations is based on the provisions of Article 26 of Presidential Regulation Number 124 of 2015, which states that the implementation of public service obligations carried out by business entities is carried out by audits following the provisions of laws and regulations. This provision is the basis for the Supreme Audit Agency's authority to conduct an audit of the public service obligation funds provided to the Indonesia Railway Company. The examination of public service obligations by the Supreme Audit Agency is also based on state finance laws and regulations, mainly audits of state finances.

Audit by the Supreme Audit Agency is one of the essential stages in the implementation of public service obligations, both for the Government and the Indonesia Railway Company, considering that the Audit by the Supreme Audit Agency will culminate in an assessment of whether there is an excess or lack of payment of public service obligation funds for one fiscal year. The examination results can become a new financial burden, both for the Government in the event of an underpayment and for the Indonesia Railway Company if there is an overpayment.

The provisions above are regulated in Article 26A of Presidential Regulation Number 124 of 2015, which states if based on the results of an examination of the implementation of public service obligations it is stated that the Government has paid more to the organizing business entity, the excess payment is deposited into the state treasury by the organizing business entity following statutory provisions.

The provisions regarding examination in Presidential Regulation Number 124 of 2015 are still general, do not yet regulate how the procedure, scope, or criteria for the examination are carried out. Nor does it specify where the excess/underpayment calculation is obtained. It is understandable because the Presidential Decree regulates not only public service obligations but also subsidies for pioneer transportation, costs for the use of state-owned railway infrastructure, maintenance, and operation of state-owned railway infrastructure. The four activities have different characteristics so that it will require different procedures for checking and calculating the over/underpaid.

Meanwhile, Regulation of the Minister of Finance Number 84 of 2016 has regulated in more detail that the calculation of excess/underpayment of public service obligation funds is obtained from calculating the difference between the number of funds for the implementation of public service obligation activities and the number of funds that have been paid to business entities. However, this detail has a drawback regarding the choice of the phrase “the number of funds for implementing public service obligations” can have a double interpretation.

First, if interpreted consistently with the characteristics of public service obligations, the phrase “the number of funds for the implementation of public service obligation activities” should be interpreted as the number of funds that must be paid by the Government as compensation for public service obligations from the difference between the rates set by the Government and the rates set by business entities.

Second, suppose only grammatically interprets the phrase “the number of funds for the implementation of public service obligation activities” without systematic interpretation of other public service obligations' characteristics. In that case, the wording can be interpreted as the number of costs incurred by a business entity for economy class transportation. This kind of interpretation has the potential to create legal uncertainty due to an examination of the costs of administering public service obligations.

At the next point, the 2018 Public Service Obligation Audit Results Report, the choice of criteria for the Supreme Audit Agency is in the interpretation, which makes the examination of the implementation of public service obligations to be disharmonized with the characteristics of the public service obligations themselves. Disharmony of interpretation by the Supreme Audit Agency has an impact on the emergence of audit results in the form of excess payment of public service obligations so that it is detrimental to the Indonesia Railway Company as the provision of public service obligations.

3) Legal Protection in Public Service Obligation Contracts

The Audit Report from the Financial Audit Agency regarding public service obligations has stated an overpayment of the Government to the Indonesia Railway Company. Following the contract's provisions, the Indonesia Railway Company is required to deposit the excess payment of public service obligations to the state treasury. However, in connection with the Supreme Audit Agency's disharmony in interpreting the laws and regulations, as a party with good faith in the contract, public service obligations are entitled to legal protection as the juridical function of the contract to realize legal certainty for the parties making the contract.

Legal protection is a necessity in the concept of civil law, which involves many legal means and institutions such as statutory regulations and legal principles that function as patronage in protecting the parties' interests in the agreement. Every agreement made following Article 1320 of the Civil Code binds the parties like a law. Thus, the essential elements that have been agreed by the parties in the form of the value of public service obligations, which are calculated based on the difference in tariffs from the Indonesia Railway Company and the economical rates set by the minister, must be respected and obtain legal protection.

Likewise, in examining public service obligations, the auditors of the Supreme Audit Agency should respect the enforcement of the pact sun servanda principle. It is because the examination has resulted in a conflict between the legal rules regarding the mechanism for examining the implementation of public service obligations.

Preventive legal protection for the Indonesia Railway Company for implementing the Audit Board of the Republic of Indonesia is stated in the statutory provisions concerning public service obligations, which are then outlined in the contract and other laws and regulations regarding the authority and audit process for financial audits. As for the repressive protection for the Indonesia Railway Company on the Audit Result Report of the Supreme Audit Agency, in principle, it is contained in the principles in the public obligation contract. If this principle is not implemented in an agreement, the agreement must be declared null and void, or one of the parties can file a lawsuit against the court to cancel the agreement.

Then in the event of a difference in interpretation, according to the dispute settlement clause in the contract, the parties should first resolve the dispute through deliberation. Furthermore, in the event of failure to reach an agreement, to provide justice and legal certainty for the parties and be a strong basis for completing recommendations according to the Audit Result Report of the Supreme Audit Agency, the problem should be resolved by litigation.

III. CONCLUSION

Legal protection in the public service obligation contract for Indonesia Railway Company on the Audit Result Report of the Supreme Audit Agency is not stated in a clause. However, it does not mean that there is no legal protection for the Indonesia Railway Company. In principle, the legal protection for the Indonesia Railway Company for the existence of the Audit Report of the Supreme Audit Agency adheres to the principles contained in the public obligation contract and the laws and regulations governing public service obligations.

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