

COOPERATION CONTRACT BETWEEN LOCAL GOVERNMENT AND THIRD PARTIES IN PROCUREMENT OF WASTE FACILITIES INFRASTRUCTURE

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Abstract

This research is intended to answer two main legal issues, namely 1). What is the Government's Legal Responsibility for the Negative Impacts arising from solid waste activities? And 2). Components what are the indicators in providing compensation to the community as a negative impact arising from the construction of waste infrastructure? This research is a normative legal research (legal research) using statutory approach, conceptual approach and case approach, as well as comparative approach. The results of the study show 1) that the government's legal responsibility related to waste is not only limited to the construction of waste infrastructure but also to the impacts arising from the existence of this waste infrastructure, especially related to the environment. 2). Based on the Decree of the Governor of NTB No. 900-32 of 2019 concerning the provision of financial assistance to the NTB provincial government to compensate for the negative impacts of the Kebon Kongok TPAR operation on Sukamakmur and Banyumulek Villages, the negative impacts that can be caused by the existence of the Kebon Kongok TPAR include: water pollution, air pollution, landslide, fire, methane gas explosion and others that have a negative impact. Negative Impact Compensation (KDN) is calculated based on the amount of waste that enters the Kebon Kongok TPAR which is paid by the West Lombok Regency government and the Mataram City government through the NTB provincial government through financial assistance to the village government. KDN financial assistance on in 2019 were given to Banyumulek Village and Sukamakmur Village according to an agreement between the NTB Provincial Government and the West Lombok Regency government and the Mataram City government.

Keywords: Legal Responsibility, Government, Negative Impacts, Garbage

INTRODUCTION

In principle, government-private cooperation can accelerate infrastructure development, so that economic growth in an area will be better. Therefore developing public infrastructure services through cooperation with the private sector is needed because¹:

- 1) Demand is faster than the government's ability to provide infrastructure services.
- 2) The huge investment needs cannot be met by the Government alone, only around 50% of the estimated infrastructure investment can be met by the State Budget, BUMN profits, and development assistance from abroad.
- 3) Cooperation with the private sector provides additional funding sources for good infrastructure and managerial capabilities.
- 4) In the context of global competition, public and private partnerships can accelerate the provision of infrastructure while increasing the efficiency of service quality.

- 5) Infrastructure development must be treated as a business activity.
- 6) Creating a new paradigm in the provision of infrastructure services from monopoly to a competitive model.
- 7) Protect the public interest.

For Regional Governments, the financing of infrastructure development by relying on APBD (State Revenue and Expenditure Budget) is also felt to be increasingly limited, for this reason new patterns are needed as alternative funding which often involve the private sector (national-foreign) in Government projects.

With the consideration of implementing the provisions of Article 369 of Law Number 23 of 2014 concerning Regional Government, President Joko Widodo on 12 July 2018 has signed Government Regulation (PP) Number 28 of 2018 concerning Regional Cooperation. In the Provision of Infrastructure, the types of infrastructure that can be collaborated with Business Entities include:

- a) Transportation infrastructure, including airport services, provision and/or port services, railway facilities and infrastructure;
- b) Road infrastructure, including toll roads and toll bridges;
- c) Irrigation infrastructure, including raw water carrier channels;
- d) Drinking water infrastructure which includes raw water collection buildings, transmission networks, distribution networks, drinking water treatment plants;
- e) Waste water infrastructure which includes wastewater treatment plants, collection networks and main networks, and waste facilities which include transporters and disposal sites;
- f) Telecommunications and informatics infrastructure, including telecommunications networks and e-government infrastructure;
- g) Electricity infrastructure, including generators, including development of electricity originating from geothermal, transmission or distribution of electricity;
- h) Oil and gas infrastructure, including oil and gas transmission and/or distribution.

Although based on (Article 20 paragraph (2.3)) PP KSDD clearly states that KSDPK proceeds which become regional rights in the form of money deposited into the regional treasury as goods revenue, KSDPK proceeds which become regional rights in the form of goods are recorded as assets of the Regional Government. This means that the pattern of cooperation is Build Use Transfer (BGS) because the goods resulting from cooperation within a certain period become the property of the Regional Government, but in the negotiation stage the problem of the pattern of cooperation often becomes an obstacle to the signing of a cooperation contract, because not all goods resulting from cooperation benefit the local government. Especially for goods which in their management and operation require certain expertise, which if these assets directly become regional assets,

Thereby also if there is a change in the burden of each region in the cooperation (both financial and certain assets), whether the Council's approval from each region is required or not. This is for example what happened in cooperation between regions (NTB Province with the Regional Government of Lobar and the City Government of Mataram) in waste management in Gerung, West Lombok. Whereas after two years it turns out that the previously agreed final disposal site (in Gerung) is now inadequate and affects the level of air pollution (environment) for the local community around the TPA. For this reason, the parties agreed to move the TPA location, namely in West Lombok Sheet. Changes to the cooperation contract are of course not only related to the relocation of the TPA, but also has implications for the burden and responsibility of each party. This is what the Provincial Government of West Nusa Tenggara, the West Lombok Government, the Mataram City Government and their partners are currently facing in relation to the contribution of each party in relocation, both regarding land and monthly fees for waste processing.

Related to Law Number 25 of 2007 concerning Investment, it is also explained regarding aspects of legal certainty in Article 14 with an explanation, "every investor has the right to obtain certainty of rights, law and protection, open information regarding the business sector he is running, the right to service and various forms of convenience facilities in accordance with the provisions of laws and regulations" so that in this case it can be said that the aspect of legal certainty is the right for investors in the context of carrying out their capital activities in Indonesia, especially in West Nusa Tenggara. This means that in this case there is a conflict of norms, especially if it is related to the problem of legal certainty in accelerating investment in the future. Meanwhile, on the other hand, the PPP scheme itself is carried out, one of which is with the aim of creating an investment climate that encourages the participation of Business Entities in the Provision of Infrastructure based on sound business principles as stated in Article 3 of the Presidential Regulation of the Republic of Indonesia Number 38 of 2015 Jo. Presidential Regulation Number 28 of 2018 concerning Cooperation between the Government and Business Entities in the Provision of Infrastructure.

Arrangements regarding urban waste management are regulated in Law Number 18 of 2008 concerning Waste Management and NTB Regional Regulation Number 5 of 2019 regarding Waste Management. The problem of waste management is one of the priorities for the Provincial Government (Pemprov) of West Nusa Tenggara (NTB) at this time. Through the NTB Zero Waste (NTB Zero Waste) program, the NTB Provincial Government hopes that problems related to waste management can be resolved.

According to the Law of the Republic of Indonesia Number 18 of 2008 concerning Waste Management in article 1 point 1 it is stated that the definition of waste is as follows:

"Waste is the residue of human daily activities and/or natural processes in solid form."

TPA is an important part of the waste management system. Environmental cleanliness and safe TPA will provide benefits for public health and the environment, if environmental cleanliness and unsafe TPA will provide harm to the health and environment of the community, especially the people who live around the TPA location.

Based on the Law of the Republic of Indonesia Number 18 of 2008 concerning Waste Management, the definition of Final Processing Site (TPA) is as follows:

"Final Processing Site is a place to process and return waste to environmental media safely for humans and the environment."

The Kebon Kongok Final Processing Site is the largest landfill in West Nusa Tenggara (NTB). The Kebon Kongok Final Processing Site began operating in 1993 with an open dumping system. The Kebon Kongok Regional Landfill Area occupies ±10.24 ha of land.

With an increasing number of population growth, of course, it will be in line with higher consumption, this will cause an increase in the volume of household waste produced, so that the waste that will be taken to the Final Processing Site (TPA) will certainly increase as well. Based on data belonging to the NTB LHK Service, in 2018 alone around 80% of waste in NTB could not be managed. Particularly in NTB, the potential waste per day is 3,388.76 tonnes. Of this amount, only around 641.92 tonnes per day goes to the Final Processing Site (TPA), and only around 51.21 tonnes per day is successfully recycled in the waste bank.²

The distance between the Kebon Kongok landfill and community settlements is less than 500 meters, while in Government Regulation of the Republic of Indonesia Number 81 of 2012 concerning Management of Household Waste and Household-like Waste, the distance between the landfill and settlements is required to be more than 1 km.

With the Kebon Kongok TPA and settlements being too close, there will be an increase in negative impacts in the form of environmental pollution, bad odors and several factors causing disease. Then the Kebon Kongok TPA is currently exceeding its capacity with the height of the waste pile reaching a height of more than 40 m and reaching a dangerous stage if it continues to operate.³

The existence of a TPA has a major impact on the social environment of the community, such as a pungent odor and the potential for an explosion of methane gas produced by the waste. Communities are also susceptible to diseases caused by bacteria in the waste, such as the presence of flies, rats, cockroaches and other animals that are widespread in residential areas around the TPA.

The most common diseases suffered by the people living around the TPA are diarrhea, coughing, shortness of breath, chest pain, dysentery, itching, and other types of stomach ailments.⁴ This is caused by bacteria that are produced by piles of garbage in the landfill and then spread to residential areas living around the landfill. This is clearly very disruptive to social activities and the environmental conditions of the people living around the TPA.

Arrangements relating to civil liability related to the impact arising from the Kebon Kongok landfill activities are contained in article 1365 of the Civil Code (KUHPERDATA) which states that:

"Every act that violates the law and causes harm to other people obliges the person who caused the loss because of his mistake to compensate for the loss."

Civil liability based on unlawful acts based on the existence of a legal relationship, rights and obligations. Environmental responsibility is a series of obligations of a person or party to assume responsibility for sufferers whose rights to a good and healthy environment have been violated.

The position of the NTB Regional Government as the manager of the Kebon Kongok Regional TPA for the prosperity of the community. The purpose of management by the Regional Government of NTB is solely a mandate from Law no. 23 of 2014 concerning the authority of the provincial government in regional waste management. The existence of the Kebon Kongok Regional Landfill besides providing positive benefits also has a negative impact on the environment and surrounding communities. Therefore, a pattern of cooperation between the regional government and the private sector is needed in procuring waste infrastructure that minimizes the impact of the construction of the said waste infrastructure.

METHODS

This research is a normative legal research (legal research) using statutory approach, conceptual approach and case approach, as well as comparative approach, collected through literature study and then analyzed qualitatively to then be concluded qualitatively. Deductive.

RESULTS AND DISCUSSION

Government Legal Responsibility for Negative Impacts arising from waste activities

Based on article 1365 of the Civil Code, it determines that:

"Every act violates the law and causes harm to other people, obliges the person who caused the loss because of his mistake to compensate for the loss."

Unlawful acts contain a broad meaning which is an act that is contrary to legal rights and obligations according to law. Article 87 paragraph (1) of Law Number 32 of 2009 concerning the Environment explains that there are two types of compensation, namely:

- a) Compensation for people who suffer from environmental damage or pollution;
- b) Compensation for the environment itself.

According to Abdul Kadir Muhammad, in determining civil liability it is necessary to approach the development of theories; the theory of responsibility in unlawful acts is divided into several theories, namely:⁵

- a) Responsibility for unlawful acts committed intentionally (intentional tort liability), the defendant must have committed an act in such a way as to harm the plaintiff or know that what the defendant has done will result in a loss;
- b) Responsibility for unlawful acts committed due to negligence (negligence tort liability), is based on the concept of fault, which is related to morals and laws that have been

intermingled;

- c) Absolute responsibility due to unlawful acts without questioning mistakes (strict liability), is based on his actions either intentionally or unintentionally, meaning that even though it is not his fault he is still responsible for the losses incurred as a result of his actions.

In the discussion of unlawful acts in environmental disputes in Indonesia, the Principle of Absolute Responsibility (strict liability) is known, which a type of civil liability is.

In civil liability, there are two types of liability, namely liability requiring the existence of an element of error (fault based liability) and liability without having to prove or fulfill the element of error.

According to Achmad Santosa, civil law instruments are used to determine whether a person or legal entity is responsible for losses caused by pollution or environmental damage, the plaintiff is required to prove the existence of pollution, as well as the link between the pollution and the losses suffered.⁶

Proving in environmental cases is especially a crime, because pollution cases are often characterized by their distinctive characteristics, including⁷:

- a) The causes are not always from a single source, but come from various sources (multi sources);
- b) Involve other scientific disciplines and demand the involvement of experts outside the law as witnesses;
- c) Often the consequences suffered do not arise immediately, but some time later (long period of latency).

Compensation for Negative Impacts on Society

Based on findings in the field, compensation for affected communities or Negative Impact Compensation (KDN) was only given after the management of the Kebon Kongok TPAR was taken over by the NTB Provincial Government through a joint agreement with the NTB Provincial Government, Mataram City Government, and West Lombok District Government. Some people are still not aware of the negative impact of TPAR which threatens their health, so that before 2019 there were not many protests from the people who were affected by the Kebon Kongok TPAR.

In 2021 the people of Gapuk Village, Gerung District, West Lombok Regency, are demanding compensation for the negative impact on the mobility of garbage transport vehicles from West Lombok Regency to the Kebon Kongok TPAR. The garbage transport vehicles pass through Gapuk Village every day and cause several environmental impacts so that the people of Gapuk Village demand that they be treated the same as other villages which are the crossing areas for the garbage transport vehicles to TPAR Kebon Kongok. The people of Gapuk Village are demanding KDN like Suka Makmur Village and Banyumulek Village which are both crossing areas for garbage trucks going to TPAR every day.⁸

As compensation for the negative impact experienced by the community around the TPAR and the tracks of the garbage trucks starting from the TPS to the Kebon Kongok TPAR, the NTB Provincial Government together with the Mataram City Government and the West Lombok Regency Government to provide compensation to affected residents, have adopted a policy that is outlined in the cooperation agreement (PKS) Number: 027/01.1./PPL.DISLHK/2018 (NTB Province), 118/08.D.DLH/2018 (West Lombok Regency), 658.1/06.a/DLH-2018 (Mataram City) dated 02 January 2018.

To provide negative impact compensation (KDN) to the community as stated in the areas of concern for clean, health and safety (CHS). The types of negative impacts that can arise from TPAR activities are in the form of:⁹

- a) Facilitation activities for negatively affected people
- b) Air/odor pollution
- c) Quality problems and quantity Water resources
- d) Health problems
- e) Soil erosion disturbance and sedimentation land
- f) Disturbance to flora and fauna
- g) Damage to access road facilities and infrastructure according to the authority of the West Nusa Tenggara Provincial Government

"The provision of KDN by the UPTD TPAR Kebon Kongok (Organizational Unit of the NTB Environment and Forestry Service) representing 3 local governments gave it to the Village Government starting from 2019 to 2020 and will be carried out periodically in the following years."¹⁰

Based on the Decree of the Governor of NTB No. 900-32 of 2019 concerning the provision of financial assistance to the NTB provincial government to compensate for the negative impacts of the Kebon Kongok TPAR operation on Sukamakmur and Banyumulek Villages, the negative impacts that can be caused by the existence of the Kebon Kongok TPAR include:¹¹

- a) Water pollution
- b) Air pollution
- c) Landslide
- d) Fire
- e) Methane gas explosion
- f) Another thing that has a negative impact

Negative Impact Compensation (KDN) is calculated based on the amount of waste that enters the Kebon Kongok TPAR paid by the West Lombok Regency government and the Mataram City government through the NTB province through financial assistance to the village

government. KDN financial assistance on in 2019 were given to Banyumulek Village and Sukamakmur Village according to an agreement between the NTB Provincial Government and the West Lombok Regency government and the Mataram City government.

The selection of Banyumulek Village as the KDN recipient village was because Banyumulek Village received a direct impact from the waste transportation activity. The impact of the transportation began to be felt when it entered the settlement of Banyumulek Village as the main route for garbage trucks to enter. The length of the route from the beginning of entering Banyumulek Village to the TPA is 4.8 km long.

Derivative impacts that arise as a result of the transportation process in Banyumulek Village are odors, garbage that falls during the transportation process, leachate droplets from the transportation, noise during the transportation process, and safety due to the speed of the garbage transport vehicles.¹²

"The amount of KDN assistance in 2019 is Rp. 238,725,000 was then distributed to the two affected villages, namely Banyumulek village in the amount of Rp. 119,362,000 and Sukamakmur village in the amount of Rp. 119,362,000, the allocation of financial assistance for the Kebon Kongok TPAR operational KDN to Banyumulek Village and Sukamakmur Village, West Lombok Regency, for the 2019 fiscal year was allocated to NTB Provincial Budget for the 2019 fiscal year.¹³

In 2020 there are three villages that get KDN scores, namely Sukamakmur Village, Taman Ayu Village, Banyumulek Village. The number of KDN in 2020 is less than that of 2019. This condition is due to the fact that the source of determining KDN in 2019 is based on 20% of Service Compensation (KJP). Meanwhile in 2020 the determination of the number of KDN is determined based on an impact analysis, the magnitude of the impact, the impact risk of the Kebon Kongok TPAR, the willingness to receive from affected residents, and the willingness to pay from the Municipal Government of Mataram and West Lombok Regency.

"Adjustment the 2020 KDN costs received by Banyumulek Village are IDR 119,362,000, Sukamakmur Village are IDR 119,362. 000, and Taman Ayu Village which is Rp. 64,128,800".¹⁴

Disbursement of KDN fees is carried out twice a year, namely once every 6 months. There is no added value for KDN in 2020, but only additional villages, namely Taman Ayu Village. The nominal amount of KDN paid is adjusted to the capacity and slot of the local government budget. In 2019, the West Lombok Regency government provided KDN funds of Rp. 315,000,000 sourced from APBD funds. Meanwhile the Mataram City government provided funds of Rp. 110,906,250, which is 25% of the stipulated Service Compensation (KJP) or 12,500/ton of waste.¹⁵

Compensation in civil liability is one of the consequences in order to fulfill aspects of actions that may violate the law. As a result of environmental pollution which can be detrimental, namely exceeding environmental quality standards, so this compensation exists because of the discovery of real losses. From this point of view, civil liability in environmental law, when

focusing on the concept of unlawful acts in civil law, needs to be proven from the elements of the act and the consequences.

Based on Article 1365 of the Civil Code, it stipulates that every act that violates the law and causes harm to others requires the person who caused the loss because of his mistake to compensate for the loss. Unlawful acts contain a broad meaning which is an act that is contrary to legal rights and obligations according to law.

According to Abdulkadir Muhammad, in determining civil liability it is necessary to approach the development of theories, the theory of responsibility in unlawful acts is divided into several theories, namely:¹⁶

- a) Liability due to unlawful acts committed intentionally (intentional tort liability), the defendant must have committed an act in such a way as to harm the plaintiff or know that what the defendant is doing will result in a loss;
- b) Responsibility for unlawful acts committed due to negligence (negligence tort liability), is based on the concept of fault, which is related to morals and laws that have been intermingled;
- c) Absolute responsibility due to unlawful acts without questioning mistakes (strictliability), based on his actions either intentionally or unintentionally, meaning that even though it is not his fault he is still responsible for the losses incurred as a result of his actions.

According to Civil law provisions, namely Article 1243 and Article 1365 of the Civil Code, regulate the principle of liability based on fault in the matter of compensation to determine who has committed an unlawful act. Article 1243 reads:

“Reimbursement of costs, losses and interest due on the fulfillment of an agreement begins to be required if the debtor, even though he has stated negligent, neglectful to fulfill the engagement, or if something that must be given or done can only be given or done within a time that exceeds the allotted time”

Chapter1365 reads:

"Every act violates the law and causes harm to others, obliges the person who caused the loss because of his mistake to compensate for the loss"

Based on the findings in the field as described above, the NTB Government has provided compensation to the people who were seriously affected by the Kebon Kongok TPAR operation, this compensation is in the form of Negative Impact Compensation (KDN).The provision of KDN was carried out for the first time in 2019 since it was first operated in 1993.

In 2021 Negative Impact Compensation (KDN) will be given to 3 villages with the following details¹⁷:

Table I: List of negative impact compensation recipients (KDN)

No	Village	Subdistrict	Negative impact compensation in 2021 (IDR)	Amount
1	Sukaprosperity	Gerung	119,362,000	119,362,000
2	Banyumulek	Kediri	119,362,000	119,362,000
3	Ayu park	Gerung	64,128,800	64,128,000
	Amount			302,852,800

Source: Attachment I to the Governor's Decree Number 900-272 of 2021

The use of KDN financial assistance funds for Banyumulek Village and Sukamakmur Village, West Lombok Regency, in budget includes activities:¹⁸

- a) Development of Unit/Village Garbage Banks (minimum 25% of the total funds proposed);
- b) Improving public health (minimum 25% of the total funds proposed);
- c) Village infrastructure development;
- d) Community economic development;
- e) Other activities.

Compensation negative impacts are paid in stages through a transfer/overbooking mechanism from the West Nusa Tenggara Provincial General Treasury account to the village treasury account. KDN is paid for 2 times in 1 year, i.e. in stage I disbursement 50% will be paid to each village and in stage II 50% will be paid.

CONCLUSION

Based on the results of the research, it was concluded that: (1) the government's legal responsibility related to waste, is not only limited to the development of waste infrastructure but also to the impacts arising from the existence of this waste infrastructure, especially related to the environment; (2) Based on the Decree of the Governor of NTB No. 900-32 of 2019 regarding the provision of financial assistance to the NTB provincial government to compensate for the negative impacts of the Kebon Kongok TPAR operations on Sukamakmur and Banyumulek Villages, the negative impacts that can be caused by the existence of the Kebon Kongok TPAR include Water pollution, air pollution, landslides, fires, methane gas explosions, and other things that have a negative impact. Negative Impact Compensation (KDN) is calculated based on the amount of waste that enters the Kebon Kongok TPAR which is paid by the West Lombok Regency government and the Mataram City government through the NTB provincial government through financial assistance to the village government. KDN financial assistance on in 2019 were given to Banyumulek Village and Sukamakmur Village according to an agreement between the NTB Provincial Government and the West Lombok Regency government and the Mataram City government.

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