

**COMPENSATION FOR CANCELLATION OF THE WINNER OF THE
CONSTRUCTION WORK TENDER (DECISION STUDY NO. 1/PDT.
G/2017/PN. LB)**

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ABSTRACT

Keywords:	Winner Invalid Decision;	This article aims to determine the legal remedies available to the winner of a construction contract tender when its award is revoked through an invalid administrative court decision. This research is of a normative legal nature and involves a legislative approach and a case approach. The data sources used include primary legal materials related to the procurement of goods and services and principles of civil law, especially those related to compensation for wrongful acts and court decisions. Secondary legal sources were obtained from books and journal articles using a literature review data collection technique. The research findings indicate that a tender winner whose award has been revoked through an invalid administrative court decision can seek compensation by filing a lawsuit in a district court. The compensation obtained may include material compensation, which arises from actual losses suffered by the plaintiff, and immaterial compensation, which is calculated based on the expected profits that could have been obtained if there had been no wrongful act. In the judgment in case number 1/Pdt.G/2017/PN.Lbt, the judge determined that the defendant had committed a wrongful act but awarded the plaintiff only immaterial compensation.
Cancellation; Administrative Compensation.		



Introduction

Procurement of goods and services through the auction or tender process is one of the essential mechanisms in state financial management. This process is the basis for the government to provide fair and equitable opportunities to parties with the potential to provide the necessary goods or services. However, sometimes, there are situations where the determination of the winner of the tender is cancelled with a decision, not by the provisions. In this paper, we will discuss legal remedies that can be taken by tender winners whose determination is cancelled with a decision, not by the provisions.

In order to ensure legal certainty in the implementation of supplier selection through LPSE, it is essential to carry out factual assessments of documents and field data from business actors. This includes evaluating aspects such as the existence of offices or places of business (legal relations between business actors and business locations), business qualifications such as the availability of equipment or supporting facilities, and the availability of personnel/personnel in the company, including aspects of legal certainty related to limits on the use of experts in various companies (Bahmid & Khairunnisa, 2021).

In 2018, within the Semarang City Government, there was an event cancellation of the tender winner due to a budget miscalculation, so it was estimated that it was no longer

enough to finance the activities that had been tendered (Hadi, Gandryani, & Indriastuti, 2022). If reviewed based on Presidential Regulation No. 16 of 2018 as amended by Presidential Regulation 12 of 2021, government officials are not allowed to carry out actions resulting in APBN/APBD expenditures if they are unavailable or have insufficient budget. So, the party who cancelled the issuance of his SPPBJ cannot file a TUN lawsuit. The next thing that can be done is to file a lawsuit with the general court for losses caused by the unilateral cancellation of SPPBJ (Hadi et al., 2022).

As Hadi et al. argue, the Goods and Services Grant Order (SPPBJ) is a form of agreement between the Job Owner and business actors (Hadi et al., 2022). However, on the other hand, it can be interpreted that SPPBJ is a document signed and issued by the KDP work unit to the winner of the tender that has been determined by the selection working group, which contains the appointment of the winner of the tender as a provider of goods/services so that there has not been an agreement between the two parties. A letter or decree signed and determined by an official representing the government is a form of state administrative decision so that its issuance and cancellation can be disputed in the state administrative court.

Disputes related to budget users' cancellation of tender winners also occurred at the Lembata Regency Public Works Office in 2015. The case has been decided by the Kupang State Administrative Court by stating that the state administrative decree number PU.600/06/I/2015, dated January 12, 2015, concerning the cancellation of the auction, is invalid, and ordered the Acting Head of the Public Works Office of Lembata Regency to revoke the letter. Henceforth, the Lembata Regency Public Works Office is required to continue the work that PT has won—Wahyu Graha Persada as Plaintiff I and Plaintiff II. However, after the cassation decision had permanent legal force, the Lembata Regency Public Works Office did not implement the decision, so PT. Sinar Lembata, as the aggrieved party, filed a lawsuit against the law to the District Court.

The Lembata District Court, through its decision number 1/Pdt.G/2017/PN.Lbt stated that the Defendant had committed legal action and ordered the Defendant to pay immaterial damages to the plaintiff. The Kupang High Court and the Supreme Court also upheld PN Lembata's decision.

In the model supplier selection document for construction work, chapter 38 of the IKP chapter on tender follow-up failed; it is stated that the Budget User/Power of Budget User, Commitment Making Officer, and Selection Working Group are not allowed to compensate bidders if the bid is not accepted or the selection of suppliers is declared unsuccessful. However, Djodirjo in Djatmiko et al. explained that in civil law methods, compensation could arise due to a default in an agreement or an Unlawful Act (Djatmiko, Setyaningrum, & Zainudin, 2022). Losses can be identified in two forms, namely material losses and immaterial losses.

Two things cause compensation: breaking promises and unlawful acts (Apriani, 2021). In examining case number 1 / Pdt.G / 2017 / PN. However, evidence explains that the plaintiff has suffered material losses in the form of costs incurred to take care of the guarantee of the implementation of work. Also, the purchase of materials/work materials,

but in his decision, the judge gave immaterial compensation to the plaintiff in the amount of Rp.300,000,000, - and did not provide material damages. Departing from the background above, the author is interested in examining the problem: What is the judge's consideration in providing immaterial compensation to the plaintiff, and why material losses in the form of costs of managing the implementation guarantee and purchasing materials/materials are not given? Furthermore, can immaterial losses in the form of potential profits that can be obtained in the future be given to the plaintiff if the project is implemented?.

Research Methods

This article is normative legal research conducted by examining secondary data obtained from primary legal materials in the form of laws and regulations related to procuring goods/services and the decision of the Lembata District Court No. 1/Pdt.G/2017/PN—lot as well as secondary legal materials in the form of books and previous research results.

In this article, the author adopts a case-based research approach (case approach). A case-based approach is a method that involves an in-depth analysis of cases related to the issue being studied and has become a court decision that has a fixed legal force. Within the framework of this approach, Peter Mahmud Marzuki explains that the main focus is on Ratio-decidenti, which refers to the legal arguments used by the judge to reach his decision. It involves examining cases relevant to the analysed legal issue, becoming a court decision with permanent legal force (Marzuki, 2017, p. 134).

Results and Discussion

Before discussing further, exploring the understanding and central aspects of organising tenders is essential. The ideal tender is not only about preventing corruption but also involves actions to eliminate opportunities for fraud and conflicts of interest that are difficult to detect (Ustmani, Rachman, Salsabila, Harahap, & A'la, 2023).

Tenders are generally intended for competent business actors who can meet government needs. Through this process, the government hopes to get the best bid value by considering the lowest price and the quality and fulfilment of the expected requirements.

However, there are situations where the determination of the winner of the tender can be cancelled through a decision that is not by the provisions. This can occur due to various factors that affect the decision-making process. For example, there is inaccuracy from the selection working group in carrying out the supplier selection stage, especially in evaluating qualifications and offers from participants, which can affect the determination of tender winners. In this situation, the party that should have won the tender will be disadvantaged and lose its rights that should have been protected.

In protecting the civil rights of tender winners whose determination is cancelled by a decision, not by the provisions, it should be emphasised that in a just legal system, each

party has the right to protect their interests through applicable legal mechanisms. Tender winners who feel their rights are harmed can file a lawsuit in court to obtain proper justice.

The legal system in Indonesia provides freedom for citizens to fight for their rights, including, in this case, the winner of the tender whose decision was cancelled. Legal procedures in these cases usually involve judicial proceedings considering solid legal evidence to support claims and ensure decisions are based on applicable provisions. The judge in charge of adjudicating must uphold the profession's integrity and ensure that the decision taken is justice obtained by the winner of the tender, who is genuinely entitled.

On the other hand, the government must also play an active role in preventing situations where the determination of the winner of the tender can be cancelled by a decision that is not by the provisions. This prevention effort can be done by increasing transparency in the procurement process of goods and services using tender mechanisms and strengthening the judicial system in handling tender disputes to avoid the intervention of irresponsible parties.

According to Musa Darwin Pane, there are at least three legal aspects in the procurement of government goods/services (Pane, 2017), namely: (1) Aspects of state administrative law, namely related to the issuance of state administrative decisions related to the process of procurement of goods/services whose stages start from planning to handover of work results, (2) civil law aspects, namely regarding civil relations between employers and the implementation of work as outlined in contract documents, (3) aspects of criminal law, namely related to the potential for crime and violations of procurement principles to cause state losses such as corruption, collusion, and nepotism.

Legal actions in the procurement of goods/services, based on the principle of authority, are included in the scope of public law actions because the basis of authority and implementation is based on laws and regulations. In applying relevant legal principles related to the procurement of goods/services, it is also essential to understand them textually and contextually by developing existing administrative law. In addition, there are differences of opinion in applying laws related to legal products that arise in procuring goods/services. Especially in the context of winning auctions, there are two general approaches, namely the view that the jurisdiction of the PTUN is absolute by considering the development of administrative law and the view that the jurisdiction of the PTUN is not related to the theory of opposing or administrative remedies. To avoid disagreements, uniformity or standardisation measures in applying relevant legal and jurisprudential principles must be carried out consistently, especially considering the complexity and urgency of settlement in this context (Fahrudin, 2023).

In 2015, the Acting Head of the Public Works Office of Lembata Regency issued a letter Number PU.600/06/I/2015 dated January 12, 2015, concerning the cancellation/failure of the auction for the hadakewa-lamalela-bobu road improvement work won by PT. Sinar Lembata, based on BA Election Results Number 08.03/PAN-BA-HP/XII/2014, and PT won the waijarang-panama-tobotani road improvement work package. Wahyu Graha Persada based on BA Election Results Number 08.02/PAN-BA-HP/XII/2014.

Against the cancellation of the auction PT.SL and PT. WGP filed a lawsuit at the Kupang State Administrative Court. In the examination at the trial, it was revealed that on the minutes of the results of the selection of suppliers submitted by the working group for the selection of the work package provider, PPK issued a letter of appointment of the provider of goods/services (SPPBJ) number 01.13/SPPBJ/MY/XII/2014 and number 01.12/SPPBJ/MY/XII/2014. Then, I will follow up on the SPPBJ, PT. SL and PT. WGP takes care of the implementation guarantee letter as a prerequisite for signing the work contract. In addition, in preparation for the implementation of the work of PT. SL and PT. WGP has also entered into equipment lease agreements with third parties and purchased building materials/materials, assuming that the work can be carried out immediately, considering the implementation time is not too long.

The reason for the Defendant issuing the auction cancellation letter was the existence of a particular examination report (LHPK) from the Lembata Regency Inspectorate, which stated that there was negligence by the selection working group in evaluating the qualifications of tender participants, which was further proven in the trial that PT. SL and PT. WGP is included in the blocklist of goods/services providers determined through a letter from the Head of the Lembata Regency Public Works Office Number PU.600/30/SK/III/2013 since March 7, 2013, and is valid for two years. However, later in his judgment, the judge set aside the blocklist sanction decree that was still valid during the examination. Against the decision of the Kupang State Administrative Court, the Defendant filed an appeal, which the Surabaya High Administrative Court decided through decision number 138 / B / 2015 / PT. TUN. SBY with Ammar, which, in essence, upheld decision number 03/G/2015/PTUN-KPG. Then, a cassation was filed against the appeal decision, and the Supreme Court upheld the decision through decision number 76K / TUN / 2016.

According to Prasetya, the Blacklist Sanctions imposed on the company's head office will also apply to all branch offices or company representatives. Sanctions imposed on branch offices or company representatives will also impact branch offices or other representatives and company headquarters. However, sanctions applied to the parent company will not apply to subsidiaries. In contrast, sanctions imposed on subsidiaries will not impact the parent company. Blocklist sanctions will be effective from when the Decree is issued and will have no retroactive effect. Providers affected by Blacklist Sanctions can still complete other work if the work contract has been signed before the imposition of sanctions (Prasetya & Saleh, 2023).

In its ruling, the panel of judges argued that plt. The Head of the Public Works Office of Lembata Regency, in issuing the auction cancellation letter, ignored the limits of his authority by the provisions of the law on the procurement of goods/services and determined that the action was against the law so that the decree on the cancellation of the tender was invalid and ordered to be revoked, then henceforth the process of procurement activities for the goods/services of the work in question could continue. Against the decision of the Kupang State Administrative Court, the defendant filed an

appeal and cassation, but the appeal and cassation decision was upheld until it had permanent legal force.

Considering the course of the dispute, the author argues that the step taken by the Defendant by issuing a letter of cancellation of the tender is an inappropriate action, and it should be in the recommendation of the results of the examination, the inspectorate ordered a re-evaluation of the qualifications and offers of participants because the beginning of the problem was the error/omission of the selection working group at the qualification evaluation stage, especially for participants who entered the blacklist.

In resolving conflicts related to the procurement of goods and services in the context of state administrative justice in Indonesia, there is a concept known as the "opposing theory." This theory refers to the understanding that any state administrative decision substantially related to the civil aspect, in practice, can be unified in the realm of civil law. Implementing this concept results in state administrative decisions with civil elements, especially those related to buying and selling transactions between government agencies and individuals or private parties, which cannot be the object of disputes that fall within the authority of administrative courts. With the application of this theory, the state administrative court can decide that disputes related to the procurement of goods and services by the government are not subjects whose reference is administrative justice (Sinaga & Erliyana, 2022).

There are variations in the approach used in handling government procurement cases in administrative courts in Indonesia. Some administrative courts apply the concept of "loss theory," which implies that they consider the resolution of disputes related to government procurement not to be the exclusive jurisdiction of administrative courts. On the other hand, the State Administrative Court also set aside this opposing theory and view that they have the authority to handle disputes related to the government's procurement of goods and services. In other words, there is a non-uniformity in views among administrative courts as to whether they have complete jurisdiction in handling government procurement disputes. This reflects the different challenges and interpretations in applying laws and regulations related to such cases in the administrative justice system in Indonesia (Sinaga & Erliyana, 2022).

However, in Law No. 30 of 2014 and PERMA No. 2 of 2019, it is explained that handling disputes arising from unlawful actions by government agencies/officials is the authority of the State Administrative Court (PTUN). This makes the opposing theory no longer relevant because unlawful acts (*onrechtmatigedaad*) and abuse of rights (*abuse de Droit*) are difficult to separate. In addition, Article 85 of the Government Administration Law states that disputes submitted to the general court but not tested should be transferred and resolved by the State Administrative Court. In the context of HAN, disputes over the procurement of goods and services are increasingly complex when the parties involved file a lawsuit with the PTUN but face uncertainty regarding the authority of the PTUN in deciding the dispute (Yudyaningrum & Damayanti, 2023).

Against the decision of the TUN, which has permanent legal force, the defendant did not carry it out, so PT.SL filed a lawsuit against the law to the Lembata District Court.

In his lawsuit, PT.SL stated that the Defendant had committed an unlawful act to cause losses to the Plaintiff. The compensation claim submitted is in the form of material compensation of Rp. 5,262,041,727, - detailed consisting of the use of equipment, materials/materials, overhead costs, and immaterial compensation of Rp.300.000.000.000,-.

By examining the case and evidence, the judges argued that the defendant had committed an unlawful act and sentenced the defendant to pay immaterial damages of Rp.300.000.000,-.

As the article reads, the elements of unlawful acts, namely unlawful acts, occur, there is a loss to one party caused by the error, and there is a causal relationship between the action and the loss experienced. Unlawful acts occur when specific individuals or legal entities take actions that result in losses to other parties. This occurs when any act that harms the individual or other legal entity is deemed wrongful or negligent. In the case of unlawful acts, the parties involved usually do not have a legal relationship before. However, the legal relationship arises because of an event not desired by one or both parties.

Two events can cause compensation, namely default and unlawful acts. Compensation caused by unlawful acts is compensation charged to subjects who have made mistakes and harmed other parties. In other words, the cause of the indemnity is due to a mistake and not because of an engagement (Amaliya, 2022, p. 20).

Indemnity is regulated in Civil Code Article 1239: "Every engagement to do something or not to do something, if the debtor does not fulfil his obligations, gets his settlement in his obligation to provide compensation for costs, losses, and interest."

According to the law, in determining the amount of compensation can be guided (Badrulzaman, 2011, pp. 32–33):

1. the amount of compensation is determined directly by law; if the performance includes the payment of a sum of money, the compensation given is limited to the payment of interest stipulated by law (moderator interest) (article 1250 of the Civil Code);
2. the amount of compensation is determined by the parties themselves (Civil Code article 249)
3. If not regulated by law or by the parties, the amount of compensation must be determined concerning the losses incurred, or it can be estimated so that the creditor's income is by if the debtor performs its obligations.

In the examination of the subject matter, the panel of judges set aside the fourth petition in the lawsuit seeking material compensation, considering that the building materials that had been prepared and were at the work site had not been based on the existence of a letter of agreement and a work start order (SPMK) from the Commitment Making Officer.

By Article 1365 of the Civil Code, if a person commits an Unlawful Act, he is obliged to compensate for the losses caused. Unlike the claim for damages in default, in the case of Unlawful Action, the rules regarding compensation are not explicitly regulated. However, Article 1371 paragraph (2) of the Civil Code provides an implied

guideline stating that compensation is assessed based on both parties' position, ability, and circumstances. Furthermore, the rules related to compensation for Unlawful Acts can be found in Article 1372, paragraph (2) of the Civil Code, which emphasises that the Judge must consider the level of violation, social status, position, ability, and situation of both parties in the assessment of the case.

Prof. Rosa Agustina in *Hukumonline.com* explained that losses caused by unlawful acts are only limited to "scale." However, losses caused by defaults in Article 1246 of the Civil Code include costs, losses, and interest. Then, it is also explained that, as stipulated in the Civil Code, a person who suffers from unlawful acts can claim compensation for losses that have been experienced (material) or benefits and benefits that may be obtained in the future.

Moving on from the theory put forward, it can be concluded that unlawful acts can be subject to material compensation sanctions, and if it is related to the decision of Judge PN Lembata mentioned above, the author agrees with the reasons stated by the judge that the losses suffered by the plaintiff in the form of materials/building materials at the location and rental equipment cannot be compensated because they have not been based on work contracts and SPMK. However, the tribunal should also consider other losses that the plaintiff has suffered, namely the cost/cost of handling the guarantee letter for the implementation of work that has been examined at the evidentiary stage, because the management of the implementation guarantee is a continuation of the issuance of SPPBJ by KDP and the consequence if the guarantee is not submitted within 14 working days from the issuance of the SPPBJ is the cancellation of the appointment of the provider.

Furthermore, assuming that the plaintiff's good name has been tainted, the request for immaterial damages is considered by the panel of judges based on the lightness and severity of the defamation that has occurred, based on the position, position, and wealth of each party is granted in the amount of Rp.300.000.000,-.

Civil Code article 1248 mentions the elements that can be claimed in compensation, namely (Setiawan, 2015, pp. 21–22):

1. All costs that have been incurred, for example, the cost of advertising displays, building rent, etc.;
2. Losses suffered by creditors due to the debtor's negligence, for example, chickens obtained by buyers from sellers suffer from infectious diseases, and cause chickens owned by buyers to die;
3. As well as profit, it is a form of loss due to the destruction of profits that may and are expected to occur.
4. Departing from the theory of the imposition of immaterial damages, the author argues that the consideration used for the imposition of immaterial damages should not be from defamation alone but more appropriate if it is based on the benefits / overhead costs that can / may be obtained by the plaintiff in the future if the work project is carried out.

Overall, protecting the civil rights of tender winners whose decisions are cancelled by decisions, not by the provisions, is essential in realising justice and maintaining the

integrity of the procurement system. The aggrieved party must act by applicable legal provisions to protect these rights. On the other hand, the government must also involve itself in prevention efforts to prevent similar situations. Thus, the procurement system of goods and services through a tender mechanism will be able to provide fair space for all parties who have the potential to provide the necessary goods or services.

Conclusion

Based on the results of the study, it can be concluded that the winner/failed auction cancellation letter issued by the Budget User Authority after the Commitment Making Officer issues the SPPBJ is invalid and can be classified as an illegal act if the cancellation letter does not meet the elements listed in article 83 paragraph (3) of Presidential Regulation Number 70 of 2012 concerning the Second Amendment to Presidential Regulation Number 54 of 2010 concerning Government Procurement of Goods/Services (currently Provisions related to tender/selection fail to be regulated in Article 51 paragraph (2) of Presidential Regulation 12 of 2021 concerning Amendments to Presidential Regulation Number 16 of 2018 concerning Government Procurement of Goods and Services). Against these unlawful actions, a compensation claim can be filed in the District Court by the party who feels aggrieved. In examining case number 1 / Pdt.G / 2017 / PN.Lbt the panel of judges decided to provide immaterial compensation to the plaintiff considering that the plaintiff's good name had been tainted, but did not consider immaterial losses in the form of possible profits / overhead costs expected to be obtained by the plaintiff if the work won by the plaintiff can and is completed. In addition, the judge also set aside material losses suffered by the plaintiff even though the examination of evidence revealed that the defendant suffered material losses in the administration of the execution guarantee letter.

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