

Abstrak

Kerjasama *Build Operate And Transfer* (BOT) atau bangun guna serah, merupakan perjanjian yang dibuat berdasarkan kebebasan berkontrak, dimana apabila BOT melibatkan barang milik negara atau daerah, maka diatur oleh Peraturan Pemerintah Nomor 28 Tahun 2020 tentang Pengelolaan Barang Milik Negara/Daerah. Seperti yang terjadi pada kasus pembangunan dan pengusahaan hotel transit di Bandar Udara Sultan Aji Muhammad Sulaiman Balikpapan antara PT Angkasa Pura I (Persero) dengan PT Sepinggian Sarana Utama melalui Kerjasama BOT, dimana disebabkan oleh operasi terminal Bandar Udara Sepinggian dipindahkan sehingga pendapatan PT Sepinggian Sarana Utama atas Hotel Transit yang menjadi obyek BOT tidak seperti yang direncanakan sebelumnya. Atas kondisi tersebut, PT Sepinggian Sarana Utama mengajukan permohonan penyelesaian sengketa melalui Badan Arbitrase Nasional Indonesia (BANI) untuk menyatakan perjanjian Kerjasama pembangunan dan pengusahaan hotel transit tersebut berakhir dan meminta PT Angkasa Pura I (Persero) membayar kerugian sehingga terbitlah Putusan Arbitrase No 982/X/ARB-BANI/2017 tanggal 5 Juli 2018. Penggantian kerugian pada akhirnya mengganti biaya tanpa penggantian *loss opportunity*, sehingga perlu dikaji kesesuaian ganti kerugian dalam BOT sesuai peraturan perundang-undangan yang mengatur BOT secara khusus maupun ketentuan yang berlaku dalam KUHPerdara, serta yurisprudensi yang ada dalam praktik, serta penerapannya dalam Putusan Arbitrase. Melalui metode penelitian berupa yuridis normatif, maka diharapkan penelitian ini dapat menyelesaikan masalah bagaimana peraturan perundang-undangan mengatur perhitungan ganti kerugian dalam hal terjadinya wanprestasi atas perjanjian *Build Operate And Transfer*, dan bagaimana Majelis Arbitrase dalam kasus PT Sepinggian Sarana Utama melawan pihak PT Angkasa Pura I (Persero) menetapkan ganti kerugian atas wanprestasi perjanjian *Build Operate And Transfer*. Penelitian ini melihat bahwa ganti kerugian atas terjadinya wanprestasi mengacu pada Pasal 1247 Kitab Undang-Undang Hukum Perdata yaitu ganti kerugian terhadap biaya, kerugian, dan bunga, dengan keharusan untuk mempertimbangkan hak dan kewajiban dari seluruh pihak sehingga penentuan besaran ganti kerugian memenuhi kepastian hukum dan perlindungan hukum bagi para pihak.

Kata kunci: *Build Operate And Transfer*, ganti kerugian, arbitrase.

Abstract

The Build Operate And Transfer cooperation is an agreement made based on freedom of contract. When Build Operate And Transfer (BOT) involves state or regional property, then it is regulated by Government Regulation Number 28 of 2020 concerning Management of State/Regional Property. As happened in the case of the construction and exploitation of transit hotels at Sultan Aji Muhammad Sulaiman Airport Balikpapan between PT Angkasa Pura I (Persero) and PT Sepinggan Sarana Utama through the BOT Cooperation, which was caused by the operation of the Sepinggan Airport terminal being moved so that the revenue of PT Sepinggan Sarana Utama at the Transit Hotel which became the object of the BOT was not as previously planned. Based on this condition, PT Sepinggan Sarana Utama submitted a request for dispute resolution through the Indonesian National Arbitration Board (BANI) to declare the cooperation agreement for the construction and exploitation of the transit hotel ended and asked PT Angkasa Pura I (Persero) to pay the losses so that the Arbitration Decision No. 982/2017 was issued. Compensation in the end only replaces costs without replacing loss opportunities, therefore this research will figure the case compensation in the BOT in accordance with the laws and regulations that specifically regulate BOT and the provisions applicable in the Civil Code, as well as existing jurisprudence in practice, as well as its application in the Arbitration Award. Through the research method in the form of normative juridical, it is hoped that this research can solve the problem formulation, namely how the legislation regulates the calculation of compensation in the event of a default on the build operate transfer agreement, and how the Arbitration Tribunal in the case of PT Sepinggan Saran Utama against PT Angkasa Pura I (Persero) stipulates compensation for defaults on the build operate transfer agreement. This study itself note that compensation for the events of default refers to the Civil Code, especially Article 1247 which regulates compensation for costs, losses, and interest, where in determining compensation must also consider the rights and obligations of all parties involved. parties so that the determination of the amount of compensation meets legal certainty and legal protection for the parties.

Keyword : Build Operate And Transfer, compensation, arbitration