

## Applicability of the Deed of Agreement for Unilateral Termination of the Build Operate Transfer (Bot) Cooperation Agreement After the Court's Decision

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### Abstract

The Government of Indonesia uses the Regional Revenue and Expenditure Budget to finance infrastructure development and regional development. To avoid high development costs, the government opens up opportunities for the private sector to invest in state assets (land) with the Build Operate Transfer system (hereinafter referred to as BOT). In the BOT model, the government permits the private sector to build and operate the project for a certain period. As an unnamed agreement, there has been no specific arrangement regarding cooperation with the BOT system. Therefore, the BOT agreement was born based on the freedom of contract as regulated in Article 1338 of the Civil Code. This agreement tends to cause legal problems such as unlawful acts. This research method is normative with secondary data sources using primary, secondary, and tertiary legal materials. In the event of unilateral termination of the BOT agreement, it still refers to Article 1266 of the Civil Code. If one of the parties has not fulfilled all the elements contained in Article 1266, the responsibility for unilateral termination is compensation.

**Keywords:** Unilateral Termination; Build Operate Transfer, Enforcement of Deed of Agreement.

### Abstrak

Pemerintah Indonesia menggunakan Anggaran Pendapatan Belanja atau Daerah dalam membiayai pembangunan infrastruktur maupun pembangunan daerah. Untuk menghindari biaya pembangunan yang tinggi pemerintah membuka kesempatan kepada swasta untuk menanamkan investasi pada aset negara (tanah) dengan sistem Build Operate and Transfer (selanjutnya disebut BOT). Dalam model BOT, pemerintah memberikan izin kepada swasta untuk membangun dan mengoperasikan proyek dalam jangka waktu tertentu. Sebagai perjanjian tidak bernama, sampai saat ini belum ada pengaturan secara khusus mengenai kerjasama dengan sistem BOT. Oleh karenanya perjanjian BOT lahir berdasarkan kebebasan berkontrak yang diatur dalam pasal 1338 KUHPER. Perjanjian ini cenderung menimbulkan permasalahan hukum seperti perbuatan melawan hukum. Metode penelitian ini bersifat normatif dengan sumber data sekunder menggunakan bahan hukum primer, sekunder dan tersier. Dalam hal pemutusan secara sepihak perjanjian BOT tetap mengacu pada Pasal 1266 KUHPER. Jika salah satu pihak belum memenuhi seluruh unsur yang terdapat pada Pasal 1266 maka pertanggung jawaban terhadap pemutusan sepihak adalah ganti rugi.

**Kata kunci:** Pemutusan Sepihak; Build Operate and Transfer, Keberlakuan Akta Perjanjian.

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### Introduction

Infrastructure development in Indonesia, both the private sector and the government, is often preceded by an agreement between the owner of capital and the development implementer. The agreement is called Build Operate Transfer (referred to as BOT). As an unnamed agreement until now, there has been no specific regulation regarding the construction of a government-owned or private project financed through the BOT system (Kamilah, 2014).

The practice of juridical BOT agreements has not been thoroughly regulated, but it still has a legal basis. That is initiated by the Decree of the Minister of Finance Number 248/KMK.04/1995 (Wirana, 1995-1996) followed by Government Regulation

Number 28 of 2020 concerning Amendments to Government Regulation Number 27 of 2014 concerning Management of State/Regional Property and Regulation of the Minister of Home Affairs Number 19 of 2016 concerning Guidelines for the Management of Regional Property. The establishment of Permendagri Number 19 of 2016 is the authority given by Government Regulation Number 27 of 2014 to issue policies related to the management of the regional property as the implementation of the provisions of Article 59 paragraph (3), Article 90 paragraph (3), and Article 98 paragraph (5) of the Regulation Government Number 27 of 2014. (Isnaeni, 2013).

An example of a partnership problem is a BOT agreement made with a Notary Deed between a private party PT. Korea World Center Indonesia (PT. KWCI) with the DKI Jakarta Regional Owned Enterprise, that is, PT. Pulo Mas Jaya (PT. PMJ). The agreement is a partnership for the development and operation of The HighEnd City Korea Town Pulo Mas, East Jakarta. However, a conflict occurred over time as a result of PT. PMJ's unilateral termination of the agreement on the basis that PT. KWCI had failed to meet the development deadline.

Next PT. KWCI sued PT. PMJ to the East Jakarta District Court and continues to the Supreme Court because of PT. KWCI suffered a loss for it had made a large amount of investment.

There is a difference in the verdict, and the District Court decided that the unilateral termination was legally valid. Still, the high court decided that the unilateral termination of the agreement was invalid and was an unlawful act, confirmed by the Supreme Court's decision. This raises the question, is it true that unilateral termination of the agreement is an act against the law? Furthermore, what steps must be taken by the parties for the validity of the deed of agreement?

Based on the legal issues above, it is considered essential to know what are the legal consequences of unilaterally terminating the agreement, which results in the deed of agreement.

### **Research Problems**

Based on the description above, the focus of this research is: first, whether unilateral termination in the BOT agreement is an unlawful act, and second, how is the validity of the notarial deed after the District Court and High Court decisions.

### **Research Method**

This study uses a normative juridical method, which is a method that can be interpreted as a research method on the laws and regulations (vertical), as well as the harmonious relationship between the laws and regulations (horizontal) concerning the applicable laws and regulations. In this study, the statute approach is used by examining regulations related to the legal issues studied (Peter Mahmud Marzuki, 2005).

## Discussion

### Legal Consequences of Unilateral Termination of BOT Agreement

Since 1919 in the Netherlands and likewise in Indonesia, unlawful acts have been widely interpreted to include one of the following acts: (Munir Fuady, 2013)

- a. Legal acts are contrary to the rights of others.  
Acts that are contrary to the rights of others are one of the acts prohibited by article 1365 of the Criminal Code. Such violated rights are the rights of a person recognized by law, including but not limited to the following rights:
  - 1) Personal rights;
  - 2) Property rights;
  - 3) Right to freedom; and
  - 4) The right to honor and good name.
- b. Actions that are contrary to their legal obligations.
- c. Acts against morality.
- d. Actions that are contrary to prudence or necessity in good social relations.

R. Suryatin said, Article 1365 of the Criminal Code contains several elements that must be fulfilled, to determine the existence of an unlawful act. The first element is that the act must violate the law. The second element of the act causes harm so between the action and the effect there must be a cause and effect. The third element is that there must be an error on the part of the perpetrator. (Munir Fuady, 2013)

In the BOT Agreement, the things that are agreed to be carried out are formulated in the contents of the agreement. The freedoms possessed by the parties must be based on legal actions that must not conflict with the law, morality, and public order, because this will result in an unbalanced situation. Meanwhile, related to the implementation aspect of the agreement, it is proper that a contract must be fulfilled by the parties in good faith. Other complementary factors are appropriateness and feasibility. In the BOT Agreement, good faith must be prioritized in the implementation of the Agreement, taking into account changes in circumstances that affect the fulfillment of the agreed achievements. (Munir Fuady, 1990)

Based on the decision number 486/Pdt.G/2015/PN.Jkt.Tim unilaterally terminated the agreement by PT. PMJ on the BOT cooperation agreement with PT. KWCI, the judge at the first level decided that the unilateral termination was legally valid, and decided that PT. Legally KWCI has defaulted on the lapse of 11 days during the construction period of the building. However, it is necessary to underline whether PT. KWCI has fulfilled the element of default in carrying out the cooperation agreement. Article 1 paragraph 1.13 and article 5 paragraph 5 of the agreement deed reads:

Article 1 paragraph 1.13: The construction period is the period of the physical construction of the building including the completion of the planning, which is 2 (two) years as of the signing of this agreement

Article 5 paragraph 5 reads: In the event that after the lapse of time at the latest in the extension of the 18 months mentioned above, the Second Party has not completed the building, the second Party is declared in default, and therefore the First Party has the right to unilaterally terminate this agreement in connection with the termination of the agreement.

If it is connected with the argument from the Appellant or PT. PMJ stated that PT. KWCI defaulted on the fact that there was no formulation of the consequences of losses suffered by PT. PMJ as a result of the default of PT. KWCI for the violation of Article 1 paragraph 1.13 and Article 5 paragraph 5.

The Panel of Judges at the appeal level also explained that a default resulted in losses suffered by the creditor, both loss costs and interest which must have a direct relationship (causality relationship) with the broken promise (Article 1248 of the KUHPER), and which losses can be suspected or should be suspected at the time of the engagement was made. Then, the judge at the appeals level thought that the unilateral termination had resulted in losses to PT. KWCI for the payment of profit contributions that are always made by PT. KWCI in accordance with Article 7 of the Agreement to PT. PMJ of Rp. 45,072,811,371 (Forty-Five Billion Seventy Two Million Eight Hundred Eleven Thousand Three Hundred Seventy-One Rupiah) or at least Rp. 40,867,300,000,- (Forty Billion Eight Hundred Sixty-Seven Million Three Hundred Thousand Rupiah).

On the other hand PT. PMJ, although it has submitted several several evidence letters, no evidence can be considered by the Appeals Panel of Judges regarding the losses suffered due to the default in question as the reason for the unilateral termination of the agreement with the appellant/Plaintiff. Therefore, the Judge at the Appeals level considers that Article 1 paragraph 1.13 and Article 5 paragraph 3, paragraph 4 and paragraph 5 in this agreement do not have the power to apply because it is not in line with Article 6 paragraph 1 and Article 20 of the Agreement which gives rights to PT. KWCI to manage for 30 years.

The difference in the consideration of the Panel of Judges at the first level and the level of appeal led to two legal actions, namely the default by PT. KWCI for the delay in the construction of the object of the agreement and the unlawful acts committed by PT. PMJ has unilaterally terminated the cooperation agreement. The Minister of Finance Regulation Number 78/PMK.06/2014 regulates defaults by partners/investors but does not regulate the consequences of default on the part of the government. The result of a default by the partner/investor is the unilateral termination of the agreement by the goods manager/government.

Unilateral termination by PT. PMJ is proven not to be based on justified reasons according to the agreement of the parties as stipulated in Article 1338 (2) of the KUHPER that the agreement cannot be decided unilaterally if it is not based on the agreement of the parties in the agreement and is also not in accordance with the Regulation of the Minister of Finance Number 78/PMK.06 /2014 to be able to decide unilaterally on the BOT agreement which can be done if it has fulfilled the elements

of default, namely in the form of not making or being late in making annual contribution payments to the Government 3 times in a row without notification.

Based on the understanding of unlawful acts, the author describes the unilateral termination action carried out by PT. PMJ has fulfilled the elements of unlawful acts including the following:

- a. The act is contrary to or violates the rights of others.

People in civil law positions can be interpreted as legal subjects consisting of *natuurlijk persoon* and/or *rechts* persons. The rights violated include property rights or property. The author's property rights mean material rights that arise because of the relationship between one legal subject and another and the relationship between these legal subjects can be valued in money. Property rights that arise between PT. KWCI and PT. PMJ is based on the existence of an engagement in which each has achievements. Property rights owned by PT. KWCI, namely immovable objects in the form of buildings that stand on land owned by PT. PMJ. In the deed of agreement, it is stated that those who have the right to manage the building object for 30 years are PT. KWCI after the construction period is over. With the unilateral termination, PT. KWCI will lose the right to manage the buildings that have been built, therefore PT. Pulo Mas has violated the property rights or property of PT. KWCI. The right of freedom to manage the object of the agreement is also not found by PT. KWCI because of the order to empty the object of the agreement by PT. PMJ as stated in letter number 39/PMJ/XII/2015 dated December 10, 2015

- b. Actions that are contrary to legal obligations.

What is meant by an act contrary to legal obligations is an act that is contrary to the law or other regulations that are legal and have binding power. BOT cooperation contract between PT. KWCI with PT. PMJ applies as a law for the parties as regulated in Article 1338 (1) of the KUHPER. The formation of the cooperation contract has fulfilled the legal requirements of the agreement in the KUHPER. However, the unilateral termination by PT. PMJ contradicts Article 1338 (2) of the Civil Code which explains that the agreement cannot be withdrawn unless based on the agreement of the parties.

- c. Acts against morality.

- d. Actions that are contrary to propriety, thoroughness, and prudence.

In an agreement more than two parties are involved so that there are interests of the parties not only the interests of one party, then in carrying out the agreement, it must be in accordance with propriety, thoroughness, and prudence prevailing in society. Acts that fall into the category of contrary to propriety are:

- 1) Acts that harm others without proper interests.
- 2) Useless actions that cause harm to others based on normal thinking need to be considered. (R. Setiawan, 2002)

Unilateral termination by PT. PMJ against the cooperation agreement has caused great losses to PT. KWCI for the development costs that have been

incurred by PT. KWCI. In addition, some losses will be obtained by PT. KWCI has invested for the next 30 years. PT. PMJ which also does not show propriety is by giving coercive orders to PT. KWCI to immediately vacate the object of the agreement in the form of a building that has been built by PT. KWCI. The author feels that the emptying order is not only against propriety but also the lack of accuracy on the part of PT. PMJ in making such a decision can disrupt public order. With the order to vacate the building, it will not only cause harm to PT. KWCI, but will also cause losses to third parties as tenants who have made payments for the rent for the building.

Based on the description above, it can be seen if the act of unilateral termination by PT. PMJ against the BOT cooperation agreement has fulfilled the element of an unlawful act, therefore the claim for the act can be applied to Article 1365 of the KUHPER. In accordance with the provisions in Article 1365 of the Criminal Code, an act against the law must contain the following elements: (Munir Fuady, 2013)

- a. There is an action;
- b. This act is against the law;
- c. There is an error on the part of the perpetrator;
- d. There is a loss for the victim; and
- e. There is a causal relationship between actions and losses.

Based on the elements in Article 1365 of the Criminal Code if it is related to the case between PT. KWCI and PT. PMJ, there was an unlawful act in the form of unilateral termination by PT. PMJ which the author sees as a form of intentional error is contrary to Article 1338 (2) of the KUHPER and is not in accordance with Permekeu Number 78/PMK.06/2014 by issuing a unilateral termination letter number B-45/0.1.6.Gs/12/2015 and the warrant number 39/PMJ/XII/2015 regarding the emptying of the object of the agreement to result in material losses to PT. KWCI for the costs that have been incurred to finance the construction of the object of the agreement, investment costs, and contribution costs that have been received by PT. PMJ.

As a result of the unlawful act of unilaterally terminating the agreement, it will eliminate all obligations or rights arising from the agreement they had previously made. As explained that legal consequences are all consequences that occur from all legal actions carried out by legal subjects against legal objects or other consequences caused by certain events by the law concerned have been determined or considered as legal consequences.

In respect of an agreement that is canceled unilaterally by one of the parties without being accompanied by a valid reason, then if the agreement has lasted a long time, the party who is harmed by the cancellation can file a claim for compensation to the party who cancels the agreement unilaterally. The compensation proposed by the aggrieved party for the unilateral cancellation can be in the form of costs, losses, or interest for the losses suffered.

In decision Number 24/PDT/2017/PT.DKI the claim for compensation by PT. KWCI is not claim compensation in the form of money but asks the District Court judges and High Court judges to state the cooperation agreement with PT. PMJ is legal and binding as stated in the claims filed in the lawsuit, namely "Declare according to law it is legal and binding on the BOT agreement based on notarial deed number 3 dated April 4, 2012" and "Declare according to law the actions of Defendants I and II is an unlawful act".

Article 1365 of the Criminal Code provides for the possibility of several types of prosecution for unlawful acts, including (Moegni Djojodirdjo, 1982)

- a. Compensation in the form of money for the losses incurred;
- b. Compensation in kind or returned in its original condition;
- c. A statement that the act committed is against the law;
- d. Prohibit committing an act against the law;
- e. Eliminate something that is held against the law; and
- f. Announcement of a decision or something that has been fixed.

These claims can be filed cumulatively, i.e. several demands are filed at once, except that claims for compensation in kind may not be filed with compensation in the form of a sum of money. Therefore, the author sees that the decision of the Panel of Judges at the appeal level is correct by granting the claim for compensation of the plaintiff which states that PT. PMJ has committed an unlawful act and the Panel of Judges decided to compensate in kind, or restore the original situation by stating that the BOT cooperation agreement in the notarial deed number 3 dated April 4, 2012, concerning the Development and Management of The High-End City Korea Town Pulo Mas Jakarta East is legal and binding, but Article 1 paragraph 1.13, Article 5 paragraph 3, paragraph 4 and paragraph 5 which regulates the term of the agreement and Article 9 and Article 14 which regulates the rights and obligations of the parties do not apply because they do not have binding power. and is valid, changes must be made to the deed of agreement (with an addendum to the deed) so that the BOT cooperation agreement between PT. KWCI with PT. PMJ can apply in its entirety.

### **Enforcement of the Notary Deed After the Decision of the District Court and the High Court**

Article 1 paragraph 1.13, Article 5 paragraph 5 according to the Panel of Judges at the appellate level is considered inconsistent (inconsistent) with Article 6 of the same agreement, which agreed on -30 years to the Comparator as the management period, using the object of the agreement and building on the object of the agreement. Then the Panel of Judges also argued that in Article 9 and Article 14 of Deed No. 3 dated April 4, 2012, the agreement was contrary to Article 1337 and Article 1339 of the KUHPER. Even though these articles have been agreed upon by both parties consensually, they contain several violations of the legal principles of the agreement. Such as giving the right to the first party, namely the Appellant (PT. PMJ) to unilaterally terminate the agreement, which has violated the principle of equality

of rights and obligations as well as the principle of propriety as referred to in Articles 1337 and 1339 of the KUHPER.

Clauses that have been declared unenforceable by the Appellate Judge may be issued or amended by making changes to the deed. In the implementation of construction, changes to the contract are common. This can be caused by various factors that affect the implementation of the construction work itself. The large possibility of changes in the implementation of construction work causes the need for clear arrangements regarding changes to construction contracts. In the construction contract, changes to the contract are regulated in Article 87 paragraph 1 of Presidential Regulation Number 54 of 2010 concerning the Procurement of Goods and Services. There are 3 (three) ways that are often used to change contracts, namely: Addendum, Contract Change Order (CCO), and Variation Order (VO). (Aceng Maulana, 2016)

a. Addendum Contract

Addendum according to the Big Indonesian Dictionary (KBBI) has the meaning of additional volumes (in books), attachments, additional provisions, or articles, for example in a deed. Addendum is a term in a contract/agreement which means an additional clause or article that is physically separated from the main agreement but is legally attached to the main agreement. (Aptina, 2021)

According to Muhammad Syaifuddin, an addendum is a deed containing changes and/or additions to one or several certain articles of a master deed. (Muhammad Syaruddin, 2012) in this case, changes to the contract or agreement can be made after deliberation between the parties in the agreement. Even though the addendum is an additional agreement, its existence is outside the contents of the contract as the main agreement, but because the addendum includes things that are mutually agreed upon, so long as it fulfills the legal requirements of the agreement as referred to in Article 1320 of the KUHPER, the addendum in its implementation has binding force as binding on the law.

b. *Contract Change Order (CCO)*

CCO can occur from the beginning, middle, or end of the construction work. CCO is a letter of agreement between the project owner and the contractor to confirm that there are plan revisions, and the amount of cost compensation to the contractor incurred during construction, after the signing of the work contract between the owner and the contractor. Furthermore, that the Addendum and Contract are a follow-up product of the CCO. If there is a CCO, it means that a Contract Addendum will occur, whereas if a Contract Addendum occurs, it does not necessarily mean that a CCO has occurred. This is because the Addendum can only change or add to the contents or articles contained in the contract without changing the scope of work so that the Addendum is not always followed by the CCO based on Presidential Regulation Number 54 of 2010 concerning Government Procurement of Goods/Services.



c. *Variation Order*

Variation orders are all changes to the Work, which are ordered or approved as a change based on variations and adjustments. Meanwhile, adjustments are part of the variation which is divided into two types, namely adjustments due to changes in regulations and adjustments due to changes in costs. Changes in adjustments come from external project factors such as work delays due to changes in legislation and changes in project costs due to declining currency exchange rates.

Based on the above provisions see the events that occurred between PT. KWCI and PT. PMJ is also based on the judge's balance, it can be seen that the right way to make changes to the contract is the Contract Addendum method. Because the Addendum can only change or add to the contents or articles contained in the contract without changing the scope of work such as the CCO or Variation Order, namely by making changes to Article 1 paragraph 1.13 and Article 5 paragraph 3 paragraph 4 and paragraph 5 regarding the period of development implementation. and Article 9 and Article 14 which are not in line with Article 1337 and Article 1338 of the Civil Code and are not in accordance with the principle of balance and the principle of propriety in the agreement. Thus, the parties, namely PT. KWCI and PT. PMJ jointly and agreed to make an addendum or addendum deed before a notary based on the previous cooperation agreement deed (deed number 3 dated April 4, 2012).

The following is an example of an addendum deed format in a BOT cooperation agreement and its technical filling:

Figure 4.1

**ADENDUM**

**PERJANJIAN** \_\_\_\_\_  
Nomor: \_\_\_\_\_

**ADENDUM PERJANJIAN** \_\_\_\_\_ Nomor: \_\_\_\_\_ ini dibuat pada hari ini:

Hari : \_\_\_\_\_  
Tanggal : \_\_\_\_\_  
Bertempat di : \_\_\_\_\_  
("Adendum")

Oleh dan diantara:

(1) Nama : **PT.** \_\_\_\_\_  
Alamat : Nama/Nomor Jalan : \_\_\_\_\_  
RT/RW : \_\_\_\_\_  
Kelurahan : \_\_\_\_\_  
Kecamatan : \_\_\_\_\_  
Kabupaten/Kota : \_\_\_\_\_  
Provinsi : \_\_\_\_\_

Dalam Perjanjian ini diwakili oleh \_\_\_\_\_ dalam jabatannya sebagai Direktur, oleh dan karenanya sah dan berwenang untuk bertindak untuk dan atas nama **PT.** \_\_\_\_\_ (selanjutnya dalam Adendum ini disebut sebagai "**Pihak Pertama**").

(2) Nama : \_\_\_\_\_  
Tempat/Tanggal Lahir : \_\_\_\_\_

Source: legalakses.com

Figure 4.1 contains the title of the deed which explains that the deed is an addendum. The word, "ADENDUM" contains the agreement to be made, namely the addendum to the BOT cooperation agreement with the deed number determined by the notary making the deed. Furthermore, under the word "by and between"

contains information on the identity data of the parties to the agreement, namely PT. KWCI and PT. PMJ.

**Figure 4.2**

Alamat	:	Nama/Nomor Jalan	:	_____
		RT/RW	:	_____
		Kelurahan	:	_____
		Kecamatan	:	_____
		Kabupaten/Kota	:	_____
		Provinsi	:	_____
NIK	:	_____		

(selanjutnya dalam Adendum ini disebut sebagai "**Pihak Kedua**").

Pihak Pertama dan Pihak Kedua secara bersama-sama selanjutnya disebut sebagai "**Para Pihak**". Para Pihak dengan ini terlebih dahulu menerangkan hal-hal sebagai berikut:

1. Bahwa, Pihak Pertama dan Pihak Kedua sebelumnya telah saling mengikatkan diri dalam sebuah hubungan kerja sama berdasarkan perjanjian sebagai berikut:  
 Tanggal perjanjian : \_\_\_\_\_  
 Nomor perjanjian : \_\_\_\_\_  
 ("**Perjanjian**")

Source: legalakses.com

Figure 4.2 is the premise of the Addendum deed. It explains the purpose and objectives of the addendum deed. There is information that the two parties have agreed to agree with information on the date and number of the agreement that has been approved or the agreement that has previously been made, namely the BOT cooperation agreement with deed number 3 dated April 4, 2012. A sentence can be added to the premise of the deed: "About what has been notified beforehand, then the presenters further explain, hereby amending the deed of cooperation dated April 4, 2012 number 03".

**Figure 4.3**

**Pasal I**

Beberapa ketentuan dalam Akta Perjanjian Nomor 3 Tanggal 4 April 2012, diubah sebagai berikut:

1. Ketentuan pasal 5 diubah dengan penjelasan tabel semula menjadi sebagai berikut:

<i>Sebelum perubahan</i>	<i>Sesudah perubahan</i>	<i>Alasan perubahan</i>
.....	.....	.....

sehingga pasal 5 berbunyi sebagai berikut:

**Pasal 5**  
**Jangka Waktu Pembangunan Obyek Perjanjian**

Jangka waktu pembangunan obyek perjanjian yang terdiri atas:

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_ dst

*[diisi Jangka waktu pembangunan obyek perjanjian yang akan dilaksanakan]*

Source: writer

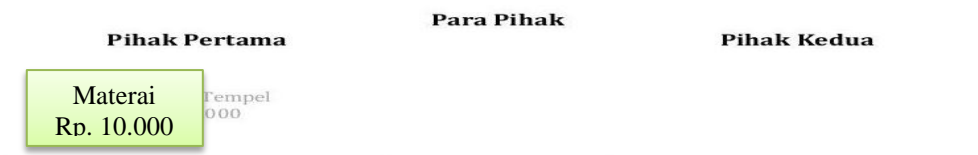
In Figure 4.3 in the contents of the deed, the articles that will be issued or replaced, namely Article 1 paragraph 1.13, Article 5 paragraph 5, Article 9, and Article 14 are listed after the parties have negotiated and reached an agreement to replace/add/delete the articles of the BOT cooperation agreement. So after that, the sound of the article before it was added (deed number 3 dated April 4, 2012) and the

sound of the article after it was added along with the reasons for the change in the article.

#### Figure 4.4

- Adendum ini merupakan satu kesatuan dan bagian yang tidak terpisahkan dari Perjanjian.
- Ketentuan-ketentuan lain yang telah diatur dalam Perjanjian dan tidak ditentukan lain dalam Adendum ini tetap berlaku dan mengikat Para Pihak.
- Segala istilah yang digunakan dalam Adendum ini memiliki pengertian sebagaimana dimaksud dalam Perjanjian kecuali ditentukan lain dalam Adendum ini.

Demikian Adendum ini dibuat dan ditandatangani diatas meterai cukup pada waktu dan tempat sebagaimana disebutkan di bagian awal Adendum ini sebanyak 2 (dua) rangkap, masing-masing Pihak memperoleh 1 (satu) rangkap asli yang kesemuanya mempunyai kekuatan hukum dan pembuktian yang sama.



Source: legalakses.com

Figure 4.4 is the final part of the deed which contains an affirmation explaining that the addendum deed is an integral and inseparable part of the previous agreement and an explanation of other provisions in the addendum deed. Furthermore, at the end of the deed signed by the parties concerned in this case PT. KWCI and PT. Complete PMJ is given stamp duty.

#### Conclusion

Unilateral termination of the BOT agreement carried out by PT. PMJ is an act against the law in the decision of the High Court number 24/PDT/2017/PT.DKI. The consideration of the Panel of Judges, namely PT. KWCI is not proven to have defaulted on the BOT cooperation agreement, in addition to default there is a loss suffered by the opposing party who must have a direct relationship with the broken promise (Article 1248 KUHPER). In this case, there was no loss suffered by PT. PMJ, so there is no reason to unilaterally terminate the cooperation agreement deed. It can be seen that there is a potential for arbitrariness carried out by PT. PMJ in Article 1 paragraph 1.13, Article 5 paragraph 5, Article 9, and Article 14. These articles are not in accordance with the principles of proportionality and equality of rights with the obligations of the parties. Based on the reasons for the unilateral termination by PT. The PMJ contains arbitrariness, so it is included in an action against the law so that Article 1365 of the Criminal Code applies. In decision number 24/PDT/2017/PT.DKI, the Panel of Judges decided to punish PT. PMJ to comply with the BOT cooperation agreement as stated in deed number 3 dated April 4, 2012, by amending/addendum to several articles.

The High Court's decision number 24/PDT/2017/PT.DKI decided that several clauses of the cooperation agreement in the notarial deed number 3 dated April 4,

2012, could not be re-enacted, namely Article 1 paragraph 1.13, Article 5 paragraph 5, due to inconsistencies with Article 6 of the agreement. the same while Article 9 and Article 14 contradict Article 1337 and Article 1339 of the KUHPER and are disproportionate, but the deed is declared valid and must be enforced. The right way is done by PT. PMJ and PT. KWCI, namely adding an addendum to the BOT cooperation agreement. Addendum is done by making new articles in lieu of Article 1 paragraph 1.13, Article 5 paragraph 5, Article 9, and Article 14 which are written on separate sheets of paper and signed by PT. PMJ and PT. KWCI before a Notary. The addendum deed is inseparable from the notarial deed number 3 dated April 4, 2012, and other documents so that the parties can continue the cooperation agreement.

### Suggestion

Termination of the unilateral BOT agreement by PT. PMJ is an unlawful act because it has fulfilled the elements of an unlawful act, then the demands of Article 1365 of the Criminal Code apply. There needs to be a review by considering justice and the principle of balance and the principle of proportionality in the agreement, of course also taking into account Article 1338 and Article 1266 of the KUHPER in formulating the clauses in the BOT agreement by involving the parties.

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