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## Legal Protection against Bouwheer in a Contract for the Outsourcing of Work with a Bank Guarantee

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**Abstract:** Bank guarantee is a guarantee in a work outsourcing agreement that protects the bouwheer from the contractor's default. However, in practice, the disbursement of bank guarantees often faces obstacles, especially when the contractor goes bankrupt. Banks often refuse disbursements for administrative reasons that do not have a clear legal basis, thus creating legal uncertainty for bouwheer. This research uses normative legal methods with legislative, conceptual and case approaches. This approach is used because there are vague norms in the arrangement of bank guarantees, especially regarding legal protection for bouwheer. Although there are regulations on bank guarantees, the existing rules focus more on the responsibility of banks without explicitly regulating bouwheer's rights in the disbursement of collateral. The results of the study show that legal protection for bouwheer is divided into preventive and repressive protection. Preventive protection includes strict contractual clauses, the selection of credible banks, and supervision of the execution of guarantees. Repressive protection is carried out through non-litigation and litigation channels in the event of disbursement denial without a valid reason. Decision No. 159/Pdt.G/2023/PN Ptk emphasizes that banks are still obliged to disburse guarantees even if the contractor is bankrupt, and rejection without legal basis can be categorized as default by banks.

**Keyword:** Legal Protection, Bouwheer, Bank Guarantee, Default, Bankruptcy.

### INTRODUCTION

In the world of business and development, large projects often involve many parties with complex agreements (Septi Rose Mayanti Putri Mayshal, 2023). One of the important instruments used to provide protection to employers (bouwheer) is bank guarantees. The bank guarantee allows the bouwheer to have a guarantee that the contractor will fulfill its obligations as per the agreement, and in the event of a default, the bouwheer can file a claim with the bank as a guarantor. In this case, the bank guarantee serves as a form of conditional engagement that

provides a sense of security to the bouwheer against the risk of default or negligence of the contractor.

Bank guarantee is a form of guarantee given or received by a bank to an individual or business entity, where the bank states that it will fulfill the obligations of the secured party to the guarantor if the secured party fails to fulfill its obligations (default) (Yosi Mandagi, 2021). The bank will only issue a bank guarantee after there is an initial transaction that requires a guarantee, which is a principal activity that requires a bank guarantee for a certain period until the relevant party fulfills its obligations. The bank guarantee serves as a guarantee to ensure that the obligation is fulfilled (Kinanthi et al., 2024; Tejawati, 2012).

Bank guarantees in practice in Indonesia consist of bank guarantees, standby letters of credit, and demand guarantees. A company often requires a bank guarantee in domestic or international business transactions to secure contractual obligations under the underlying contract. Bank guarantees are issued for economic purposes to secure the payment of the underlying contract. However, legal provisions related to bank guarantee payments are sometimes problematic in practice (Ginting, 2022).

According to Law Number 7 of 1992 jo Law Number 10 of 1998 concerning Banking (Putra et al., 2024) Bank Guarantee functions as an implementation is one of the services provided by the Bank, where the Bank provides a guarantee to the Guarantor, if the Guaranteed Party is injured promised, with the aim of providing facilities to support the business of customers who will make transactions that do not require money in cash that the Bank can facilitate with credit from the Bank. Bank guarantee for the party issuing the bank guarantee is a written acknowledgment or written promise whose content agrees to bind itself to the guarantor in order to fulfill the guaranteed obligation within a certain period of time, in the form of payment of a sum of money if it is guaranteed later on that it turns out that it does not fulfill the obligation to the guarantor (Butar, 2020) (Asikin, 2015).

Before issuing a bank guarantee by the bank, an agreement is first signed between the bank and the customer requesting the bank guarantee (Anwar, 2022; Widyorini, 2013). So based on this agreement, the bank issues a bank guarantee to the customer (Kusnaedi et al., 2020; Nurleva & Shofiyah, 2024). The agreement of the guarantee bank with the guarantee bank itself is separate from each other (Tendra, 2023). The content of the bank guarantee agreement is the terms and conditions that determine the rights and obligations of each party as a whole. Meanwhile, in bank guarantees, it only contains a few basic things. The willingness of the bank to take over these obligations, of course, is not free of charge, but also uses counter-guarantees or counter-guarantees. The counter-guarantee or counter-guarantee can be in the form of cash or securities from the customer which are guaranteed to be at least equal to the amount of guarantee provided by the bank with a third party.

Although normatively bank guarantees provide legal protection for bouwheer, in practice there are still many challenges that can reduce its effectiveness. One of the main problems is the mechanism for providing credit guarantees by banks to contractors as the basis for issuing bank guarantees. This credit guarantee is usually in the form of cash, deposits, or other assets. If the contractor defaults or the credit is stuck, the bank faces risks that can affect the ability to disburse the warranty claim. In this condition, bouwheer as the beneficiary also faces legal uncertainty related to the implementation of the guarantee.

The phenomenon of legal protection against bouwheer in the issuance of bank guarantees supported by credit guarantees is a crucial issue seen in the case of Decision Number 159/Pdt.G/2023/PN Ptk. This case includes a dispute between the Ministry of Public Works and Public Housing cq. Directorate General of Highways cq. West Kalimantan Province National Road Implementation Center cq. West Kalimantan Provincial Border Parallel Task Force as the plaintiff, and PT Bank Pembangunan Daerah Kalimantan Barat Pontianak Main Branch Office as the defendant. This dispute stemmed from the implementation of the border road construction contract, in which PT Conbloc Infratecno (in bankruptcy) acted as a service

provider, with the payment of the contract guaranteed through the issuance of a bank guarantee by PT Bank Pembangunan Daerah Kalimantan Barat.

In the contract, the bank issued a bank guarantee that served as a guarantee for the execution of the work and the advance payment provided by PT Conbloc Infratecno. The terms of the contract require that the bank as the guarantor is obliged to disburse the value of the guarantee if the secured party fails to fulfill its obligations. However, when there was a default by PT Conbloc Infratecno, the bank rejected the claim for disbursement of the bank guarantee submitted by the plaintiff, even though the warranty provision was unconditional clause.

The legal tension arose because the plaintiffs claimed that the bank's reasons for refusal related to "document incompatibility" were irrelevant. The Bank is considered obliged to comply with the disbursement conditions as stipulated in the contract and applicable provisions. Further, the plaintiff also emphasized that the bank's actions of delaying the claim caused significant material and immaterial losses. The claim value includes the disbursement of the implementation guarantee of IDR 15,035,889,500.00 and the remaining advance guarantee of IDR 14,820,780,900.00.

The Pontianak District Court in its decision stated that the defendant, PT Bank Pembangunan Daerah Kalimantan Barat, had committed a default because it failed to disburse the guarantee in accordance with applicable regulations. This ruling affirms that the bank guarantee must function as a guarantee instrument that provides legal certainty for the parties involved. This case illustrates the legal challenges in the tripartite relationship between employers, contractors, and banks as guarantors, especially related to the fulfillment of conditions for unconditional disbursement of guarantees.

This phenomenon highlights the potential for double risk in the implementation of bank guarantees that can affect legal certainty and trust in guarantee mechanisms in large projects. The first risk relates to bad credit on the credit guarantee on which the issuance of bank guarantees is based. When the credit fails to be repaid by the secured party, the bank's ability to meet the guarantee disbursement obligation becomes hampered, even if the claim is filed in accordance with the provisions. The second risk is the legal risk arising from differences in interpretation in handling disputes related to bank guarantee claims. In many cases, differences of opinion between bouwheer, contractors, and banks regarding the fulfillment of claim documents or procedures can be a major obstacle in the implementation of disbursement.

In this situation, bouwheer as the beneficiary of the bank guarantee is often the most disadvantaged. The legal uncertainty arising from such disputes not only complicates the protection of bouwheer's rights, but also reduces confidence in bank guarantees as instruments that are supposed to provide financial security in the implementation of large-scale projects. This shows the need to strengthen regulations and governance related to the issuance and execution of bank guarantees, in order to ensure that this guarantee mechanism is able to provide fair legal protection for all parties involved.

To answer this problem, this study focuses on analyzing how legal protection can be provided to bouwheer in the context of credit guarantee-based bank guarantees. This analysis includes an evaluation of existing legal mechanisms, including laws and regulations and bank policies, to ensure that bouwheer's rights are optimally protected. Through a comprehensive analysis, this research is expected to make an original contribution to strengthening the legal system that protects bouwheer rights.

## METHOD

The type of research used in this study is normative legal research (ABDULLAH et al., 2024; IRIANTORO & UTAMA, 2024) Because there are ambiguities (vague norms) in the arrangements related to bank guarantees, especially regarding legal protection of Bouwheer as a guarantor holder. Although there are already regulations regarding bank guarantees in the Indonesian legal system, these regulations focus more on the technical aspects and obligations

of issuing banks, without providing clear legal certainty regarding bouwheer's rights in the disbursement of guarantees. As a result, in practice, bouwheer often faces obstacles when banks refuse to disburse collateral without a compelling legal reason.

The approach applied in this research is a conceptual approach used to understand fundamental concepts related to legal protection, bank guarantees, and credit guarantee mechanisms in the Indonesian legal system,

The statutory approach (Budiartha et al., 2024) is applied to examine various provisions governing legal protection in the context of credit guarantee-based bank guarantees, particularly in the event of bad loans and the case approach is used to analyze the resolution of disputes related to the legal protection of bouwheer on bank guarantees issued by banks with credit guarantees.

One of the case studies that is the object of this research is Decision Number 159/Pdt.G/2023/PN Ptk. In this study, primary legal materials in the form of laws and regulations, court decisions and secondary legal materials in the form of books, scientific papers, and writings of legal experts will be used (Niko Riyan Saputra et al., 2024). All of these legal materials are collected by means of literature research and then analyzed by descriptive methods.

## RESULTS AND DISCUSSION

In any work outsourcing agreement, the bouwheer or employer has an important role as the party that provides the project and funds for the implementation of the work. As the party that entrusts the contractor to complete a project, bouwheer has a primary interest in ensuring that the work is carried out in accordance with the specifications that have been agreed in the contract.

To reduce the risk of default or failure of the contractor in completing the work, one of the commonly used legal instruments is bank guarantee guarantees. The bank guarantee serves as a financial guarantee that can be claimed by the bouwheer if the contractor does not fulfill its obligations as stipulated in the agreement. With a bank guarantee, bouwheer has stronger legal protection against potential losses due to contractor failure. However, in practice, bouwheer's position in a work outsourcing agreement with a bank guarantee often faces challenges, especially in the process of disbursing the guarantee. Some cases show that even if the contractor has been proven to be in default, the disbursement of the bank guarantee does not always go smoothly due to various administrative reasons or objections from the bank. This creates legal uncertainty for bouwheer, who should be entitled to optimal protection from such a guarantee mechanism.

In practice, there are several types of bank guarantees that are commonly used in work outsourcing agreements, including Bank Guarantee Tender (Bid Bond); Performance Bond; Bank Advance Payment Bond; and Retention Bond Bank (Siswanto, 2017). In the contract to purchase work with the guarantee bank, there are two commonly used guarantee disbursement mechanisms, namely Unconditional Bank Guarantee and Conditional Bank Guarantee (Dalimunthe, 2009).

Legal protection for Bouwheer in a contract for the outsourcing of work with a bank guarantee can be protected in two ways, namely preventive legal protection and repressive legal protection. Preventive legal protection aims to anticipate and prevent the occurrence of legal problems by establishing clear rules in the agreement and ensuring that bouwheer's rights are protected from the beginning. Meanwhile, repressive legal protection is a legal remedy taken after a violation of rights or default from another party, in this case the contractor or bank issuing the bank guarantee (Munsir et al., 2023).

Preventive legal protection for bouwheer in a work outsourcing agreement with the guarantee bank based on decision No. 159/Pdt.G/2023/PN Ptk can be realized through the following mechanisms:

#### a) Preparation of Clear and Firm Contract Clauses regarding Bank Guarantee

The drafting of clear and unequivocal contract clauses is a very important first step in preventive legal protection against bouwheer in a contract outsourcing agreement with a bank guarantee. This clause serves as a legal basis that regulates the rights and obligations of the parties in terms of disbursement of bank guarantees, so as to avoid differences in interpretation that can be detrimental to bouwheer.

A bank guarantee in a work outsourcing agreement is a form of guarantee provided by the bank at the request of the contractor to guarantee that the work will be completed in accordance with the terms of the contract. If the contractor fails to meet its obligations, bouwheer has the right to claim the disbursement of the guarantee from the issuing bank. However, in practice, the disbursement of bank guarantees does not always run smoothly due to the existence of ambiguous contractual clauses or does not expressly regulate the disbursement mechanism.

An unclear contract clause can be a legal loophole for banks to refuse to disburse bank guarantees, as happened in decision No. 159/Pdt.G/2023/PN Ptk. In this case, the Ministry of Public Works and Public Housing as bouwheer experienced difficulties in disbursing the bank guarantee from PT Bank Pembangunan Daerah Kalimantan Barat, even though the contractor, PT Conbloc Infratecno, has been proven to have committed default.

The bank refused to disburse the guarantee on the grounds of administrative irregularities, even though it had been stated in the contract that the bank guarantee had to be disbursed in the event that the contractor failed to complete the work. The indecisiveness in the contract clause related to the mechanism for disbursing the bank guarantee is one of the main causes of the inhibition of the disbursement of the guarantee in this case, so the bouwheer must take legal steps to enforce his rights.

The court decision finally stipulated that banks are obliged to disburse the bank guarantee and have no right to refuse disbursement based on administrative reasons not stipulated in the contract. This ruling set an important precedent in the contract of the outsourcing of work, which showed that a strict contractual clause regarding the disbursement of bank guarantees was indispensable to protect bouwheer's rights.

The drafting of clear and unequivocal clauses in the contract is essential so that there are no loopholes for the bank or contractor to avoid its obligations in the disbursement of the bank guarantee. This clause should regulate in detail the conditions of disbursement, the disbursement deadline, as well as the prohibition for banks to reject claims without valid legal grounds.

By drafting clear and firm contract clauses, bouwheer can strengthen its legal protection from the beginning and avoid unnecessary disputes in the future, so that the work outsourcing project can run more smoothly and in accordance with the legal interests of all parties involved.

#### b) Selection of Issuing Banks that are Credible and Have Transparent Disbursement Standards

In a work outsourcing agreement that uses a bank guarantee, the choice of the issuing bank is a very important factor in providing preventive legal protection for bouwheer (Mulada & Arba, 2020). Although bank guarantees aim to provide guarantees to the bouwheer in the event of a default from the contractor, not all banks have easy and transparent disbursement procedures. In some cases, banks actually hinder disbursements for administrative reasons or internal policies that are not in line with the provisions in the agreement.

These problems can be seen in the decision No. 159/Pdt.G/2023/PN Ptk, where bouwheer had difficulty in disbursing the bank guarantee issued by PT Bank Pembangunan Daerah Kalimantan Barat, even though the contractor PT Conbloc Infratecno had been proven to be in default. In this case, the bouwheer has fulfilled all the provisions of the work outsourcing agreement and filed a claim for the disbursement of the guarantee according to the agreed procedure. However, the issuing bank refused to disburse on the grounds that there was an administrative discrepancy in the submission of the claim.



The court's ruling finally corroborated bouwheer's position, asserting that banks should not refuse disbursement without clear legal reasons, especially if the contract stipulates that the collateral must be unconditionally disbursable. This case shows that the selection of an uncredible issuing bank can be a major obstacle in the disbursement of the bank guarantee, which ultimately harms bouwheer.

In order to prevent similar cases from recurring, bouwheer must be selective in choosing the issuing bank to use in the bank guarantee agreement. Therefore, the selection of a credible issuing bank that has transparent disbursement standards is an important step to ensure that bouwheer's rights are well protected.

c) Pengawasan terhadap Pelaksanaan Kontrak dan Jaminan Bank Garansi

In the contract for the purchase of work with a bank guarantee, supervision of the implementation of the contract and the mechanism for disbursing the guarantee are important aspects of preventive legal protection for bouwheer. This supervision aims to ensure that the contractor carries out its work in accordance with the agreement, as well as to ensure that the bank guarantee remains valid and can be disbursed in the event of a default (Nawir et al., 2023).

The lack of oversight of the performance of the contract and the guarantee bank guarantee can cause the bouwheer to face the risk of losing his right to the guarantee, especially if the contractor fails to complete the work, but the bouwheer does not have enough evidence to file a claim. In addition, if there is no strict supervision, the bank or contractor may look for loopholes to hinder the disbursement of collateral for administrative or technical reasons.

This is proven in the decision No. 159/Pdt.G/2023/PN Ptk, where bouwheer faced obstacles in disbursing the guarantee from PT Bank Pembangunan Daerah Kalimantan Barat, even though the contractor PT Conbloc Infratecno had been proven to be in default. One of the factors that causes obstacles in disbursement is the lack of oversight of the bank guarantee disbursement mechanism, so that banks can reject claims for administrative reasons that are not regulated in the contract.

To avoid similar problems, bouwheer must carry out strict supervision of the execution of the contract and the enforceability of the bank guarantee, by ensuring that the contractor carries out the work in accordance with the contract, so that in the event of a default, the bouwheer has strong evidence to file a claim for disbursement of the guarantee.

Then, periodically check the validity period of the bank guarantee, so that there is no gap for the contractor to avoid his obligations by allowing the guarantee to expire before the project is completed. Also, supervise the bank's compliance in carrying out its guarantee disbursement obligations, to ensure that the bank does not arbitrarily reject claims for unauthorized administrative reasons.

With good supervision of the implementation of contracts and bank guarantees, bouwheer can be better protected legally and avoid disputes that can hinder the running of the work outsourcing project.

d) Compliance with Regulations Governing the Disbursement Mechanism of Bank Guarantees

In a work outsourcing agreement that uses a bank guarantee, compliance with the regulations governing the mechanism for disbursing the bank guarantee is an important aspect of preventive legal protection for bouwheer. Clear and firm regulations regarding the disbursement of bank guarantees can prevent irregularities or unjustified administrative obstacles from the issuing bank. Therefore, both bouwheer, contractor, and issuing bank must ensure that all bank guarantee disbursement procedures are in accordance with applicable legal regulations.

In Indonesia, the disbursement of bank guarantees in work outsourcing agreements must refer to various regulations, including Article 1820 of the Civil Code; Financial Services Authority regulations and banking regulations that regulate the mechanism for issuing and disbursing bank guarantees by financial institutions; and Regulations related to the procurement

of government goods and services, such as Presidential Regulation No. 16 of 2018 concerning the Procurement of Government Goods/Services.

However, in practice, not all issuing banks comply with the bank guarantee disbursement regulations well, which ultimately harms bouwheer. Often banks hinder disbursements on the grounds of internal policies that are not regulated in the agreement, or even by rejecting claims without valid legal reasons.

This can be seen in the decision No. 159/Pdt.G/2023/PN Ptk, where bouwheer experienced obstacles in disbursing the bank guarantee from PT Bank Pembangunan Daerah Kalimantan Barat, even though the contractor PT Conbloc Infratecno had been proven to be in default.

In this case, the bank refused to disburse on the grounds of administrative irregularities, even though it was stated in the contract that the bank guarantee was unconditional guarantee. This refusal shows that the bank is not fully compliant with the regulations governing the disbursement mechanism of bank guarantees, which are supposed to provide legal protection for bouwheer.

The court in this decision finally determined that banks are obliged to disburse the bank guarantee and cannot refuse disbursement on administrative grounds that have no clear legal basis. This decision confirms that the regulations governing the disbursement of bank guarantees must be respected and complied with by all parties, including the issuing bank.

Therefore, to ensure compliance with the bank guarantee disbursement regulations, bouwheer needs to involve legal advisors or financial experts in drafting contracts, so that bouwheer's rights in disbursing bank guarantees are optimally protected. And monitor the bank's compliance with applicable regulations, especially in terms of the mechanism for disbursing guarantees, so that there are no irregularities or unjustified delays.

By ensuring that all parties involved in the bank guarantee agreement comply with applicable regulations, bouwheer can be better protected legally and avoid administrative obstacles that can hinder the disbursement of bank guarantees when needed.

So preventive legal protection of bouwheer in a work outsourcing agreement with a bank guarantee is essential to ensure that bouwheer's rights are protected from the outset and reduce the risk of disputes in the future. With preventive mechanisms in place that include the drafting of clear contract clauses, the selection of credible issuing banks, supervision of the execution of contracts and bank guarantees, and compliance with applicable regulations, bouwheer can be more assured of obtaining effective legal protection.

Decision No. 159/Pdt.G/2023/PN Ptk is proof that the lack of preventive measures can hinder bouwheer's right to disburse bank guarantees, so preventive measures must be implemented more firmly and strategically. Without strong preventive legal protection, bouwheer risks suffering losses due to contractor defaults and facing administrative obstacles that can hinder the process of disbursing bank guarantees. Therefore, the implementation of comprehensive preventive legal protection can be an effective solution to create legal certainty and maintain stability in the implementation of employment outsourcing agreements.

In addition to preventive legal protection, repressive legal protection is also required for bouwheer in a contract to wholesale work with a bank guarantee. This repressive effort is often necessary because in practice there are many administrative obstacles and disputes that prevent the disbursement of bank guarantees. This repressive protection can be resolved in two ways, namely settlement outside the Court or settlement in Court.

In the face of disputes related to bank disbursement of guarantees in work outsourcing agreements, out-of-court settlements can be a faster and more efficient alternative for bouwheer compared to the lengthy and high-cost litigation process. According to the dispute resolution theory, out-of-court settlement aims to avoid complex legal formalities as well as create a more flexible and acceptable solution for all parties involved (Sudiarto et al., 2023). In a bank guarantee disbursement dispute, bouwheer and the issuing bank may use out-of-court settlement

methods such as negotiation, mediation, or arbitration to reach an agreement without having to go through court proceedings that could prolong the conflict.

a) Negotiation

Negotiation is a form of two-way communication between the parties involved to reach an agreement. Negotiations are carried out directly by the parties without the intervention of a third party (Romsan, 2016). In the disbursement of the bank guarantee, negotiations can be carried out between the bouwheer and the issuing bank to reach an agreement regarding the disbursement of the guarantee.

In negotiations, both sides should focus on each other's interests, not just rigid legal positions. The dispute settlement theory put forward by Fischer and Ury defines negotiation as a process in which two parties with different interests seek to reach a mutual agreement. Therefore, effective negotiations must prioritize mutual interests, such as maintaining business relationships and ensuring that projects continue to run smoothly.

However, in the case of decision No. 159/Pdt.G/2023/PN Ptk, negotiations failed to be a solution because the bank remained stuck to its internal policies that were contrary to the contract, so bouwheer had to find another solution route. This shows that negotiations will only be effective if both sides are cooperative and respect the principles of the agreement that have been agreed.

b) Mediation

Mediation, in Goodpaster's view, involves the active role of a mediator who has no interest in the dispute, thus being able to provide an objective view and help create a fair solution (Talli, 2015). If negotiations do not reach an agreement, the client may resort to mediation, which is dispute resolution involving a neutral third party to help find a solution acceptable to all parties.

In disputes over the disbursement of bank guarantees, mediation can be carried out through an official mediation institution, as stipulated in Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in Court, or through an independent mediation mechanism agreed upon by the parties. Through mediation, bouwheer can try to convince the bank that the disbursement of the collateral is its legal right under the contract, and the bank can provide clarification on the internal policies they have implemented.

However, in decision No. 159/Pdt.G/2023/PN Ptk, there is no indication that the mediation process has been carried out before bouwheer filed a lawsuit with the court. If mediation is done early, these disputes may be resolved more quickly without the need to go through a lengthy and risky litigation process.

c) Arbitration

Arbitration is a form of out-of-court dispute resolution, where the parties to the dispute agree to appoint one or more arbitrators who will issue a final and binding award. If there is an arbitration clause in the contract for the outsourcing of work, then the dispute over the disbursement of the bank guarantee must be resolved through an arbitration institution such as the Indonesian National Arbitration Board. However, if the arbitration clause is not listed in the contract, the bouwheer must obtain an agreement from the bank and the contractor to use arbitration as a dispute resolution method.

In the case of decision No. 159/Pdt.G/2023/PN Ptk, there is no mention of an arbitration clause in the contract, so bouwheer immediately takes the litigation route. If an arbitration clause is in the contract, then it is likely that the dispute can be resolved more quickly without having to go through the courts.

From the above analysis, it can be concluded that out-of-court settlement is a faster and more flexible method in resolving bank guarantee disbursement disputes. Through negotiation, mediation, or arbitration, disputes can be resolved without going through a lengthy and costly judicial process. However, in decision No. 159/Pdt.G/2023/PN Ptk, the out-of-court settlement method was not successful because the bank still refused to disburse for administrative reasons



that did not have a clear legal basis. This shows that an out-of-court settlement will only be effective if all parties have good faith to seek a fair solution.

If the out-of-court settlement efforts do not yield the expected results, then bouwheer needs to take the dispute resolution route through the court to obtain legal certainty of his rights in the disbursement of the bank guarantee. Therefore, it is necessary to conduct further analysis of the effectiveness of settlement through litigation in bank guarantee disbursement disputes.

In a dispute over the disbursement of bank guarantees, litigation is a legal settlement mechanism that can ensure that the agreement that has been agreed upon is strictly enforced in accordance with applicable legal principles. This route is usually taken if the issuing bank refuses to disburse the guarantee without a clear legal basis, so the bouwheer must file a lawsuit with the court to obtain legal certainty.

This lawsuit is based on the principle of *pacta sunt servanda*, as stipulated in Article 1338 of the Civil Code, which states that an agreement made legally applies as a law to the parties who made it. In other words, the bank does not have the right to refuse the disbursement of the guarantee if the agreement explicitly states that the bank guarantee must be unconditionally disburseable in the event of a defaulting contractor.

The court in its decision finally determined that the bank was obliged to disburse the guarantee to the bouwheer, because the contractor had been proven to have committed a default. Some of the main points in this ruling that strengthen the legal position of bouwheer as a beneficiary of the bank guarantee are as follows:

- a) The Bank is declared to have committed a default on its obligations as a guarantor, because it refuses to disburse the bank guarantee without valid legal reasons.
- b) The bank is obliged to disburse the guarantee to the bouwheer within a certain time, and must not delay the disbursement for administrative reasons not provided for in the contract.

The refusal of disbursement made by the bank is considered a violation of the legal principle of the contract, because the bank guarantee agreement that has been made should be binding and must be complied with by all parties.

Based on the above analysis, dispute resolution through the courts is the last step that can be taken by bouwheer when the out-of-court settlement does not provide satisfactory results. Decision No. 159/Pdt.G/2023/PN Ptk is proof that the court can be an effective legal instrument in enforcing bouwheer rights, especially if the issuing bank refuses to disburse the guarantee without a clear legal basis.

However, because the litigation process has a high risk of time and cost, it is best to first try to resolve through an out-of-court mechanism, such as negotiation or arbitration, before going down the litigation route. If non-litigation efforts are unsuccessful, then litigation remains a legal mechanism that can guarantee legal certainty and ensure that the issuing bank carries out its obligations in accordance with the agreed agreement.

## CONCLUSION

Legal protection for bouwheer in a work outsourcing agreement with a bank guarantee can be categorized into two forms, namely preventive and repressive legal protection. Preventive legal protection is carried out by ensuring that the contract that is drafted has a strict bank guarantee disbursement clause, choosing a credible issuing bank using the principle of prudence, and supervising the implementation of the agreement so that bouwheer's rights are protected.

Meanwhile, repressive legal protection includes dispute resolution mechanisms that can be taken when there are obstacles in the disbursement of guarantees, either through negotiation, mediation, or litigation in court. The main obstacle in disbursing bank guarantees often occurs due to differences in interpretation of the terms of the contract between the bouwheer and the issuing bank, which results in the bouwheer not being able to obtain his rights even if the contractor has been proven to be in default.

Analysis of Decision No. 159/Pdt.G/2023/PN Ptk shows that issuing banks often refuse to disburse bank guarantees for administrative reasons or internal policies that are contrary to the principle of legal certainty. This shows that legal protection for bouwheer in the implementation of work outsourcing agreements with guarantee banks has not been running optimally.

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