

LEGAL REASONING OF THE JUDGE'S DECISION IN CASE No. 272 / PDT.G / 2017 / PN.BDG REGARDING GOVERNMENT PROCUREMENT CONTRACT GUARANTEE CLAIM

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Abstract

The decision is a written legal text made by an authorized judge, and its legal product is categorized as a crown. However, despite being considered a crown, a judge's decision is not exempt from examination by legal scholars. The optics used in the examination process are based on various perspectives, including hermeneutics as the fundamental basis for interpreting the text (decision). Substantively, hermeneutics has three main streams of thought, namely as a theoretical (methodological), philosophical, and critical hermeneutics, each with different understandings. Hermeneutics as a method focuses more on the effort to capture and reveal the meaning of the text, while philosophical hermeneutics goes beyond that and emphasizes "capturing meaningful meaning," implying that the meaning of the text can be continuously produced through a dialectical process. On the other hand, critical hermeneutics focuses on the aspect of disclosing the meaning of the author's ideological interests. This research aims to examine the legal reasoning in Decision No. 272 / PDT.G / 2017 / PN.BDG regarding the Government Procurement Contract Guarantee Claim from the perspective of Hans Georg Gadamer's Hermeneutic Circle. The research type is normative doctrinal, using secondary data sources consisting of primary, secondary, and tertiary legal materials with a conceptual approach, statutory approach, and case study. The research findings suggest that the process of claiming a bank guarantee through the judicial institution can be carried out by the Procurement Committee (PPK) as long as they obtain authorization from the Budget User, who is the owner of the work (bouwheer). This is due to the hybrid nature of government procurement contracts, which distinguishes them from private contracts, and the clarity of the scope of authority of the Budget User serves as the establishment of formal justice, acting as a bridge (epistemology) toward substantive justice. For all parties, especially those representing the government, it is essential to be aware of the limits of authority when executing the procurement of goods/services within government contracts, particularly in cases involving hybrid characteristics.

Keywords: Government Procurement Contract, Hermeneutic Circle, Formal Justice, and Substantive Justice

INTRODUCTION

Indonesia is a unitary state that is not based solely on power (*Machsstaat*) but is founded on law (*Rechtsstaat*) (Article 1 Paragraph (3)), it aims to genuinely promote the well-being of its citizens, known as a welfare state (*welfarestaat*), where the state is obligated to realize the essence of well-being for its citizens.

Conformity State participation in realize equitable welfare, has *manifested* Preamble to the 1945 Constitution in paragraph to IV which is operational contained in Article 33 paragraph (3) of the 1945 Constitution, namely By firm mentions Earth and water and wealth natural contained therein controlled by the state and used For big prosperity of the people. The ideal of a welfare state that, no free from the ideas and ideas of the founders nation *founding father* who realized If achievement prosperity and justice as point reject that Keep going continuously fought on the frame diversity .

In dialectics achievement of the welfare state, no If in practice there is clash of two poles interest between rights and obligations, so on the situation the country is present To use give protection law for the residents his country as holder rights and obligations. State Protection against its citizens, of course No just stop at the aspect *public* , but also in aspects civil.

On the basis Thus, the State in give respect to mark basic for its citizens universally participated as well as become participant International Covenant on Civil and Political Rights (International Covenant on Rights Ratified Civil and Political Affairs (ICCPR). through Constitution Number 12 of 2005 concerning Ratification of the International Covenant on Civil and Political Rights (International Covenant on Rights Civil and Political), which was promulgated in the 2005 State Gazette of the Republic of Indonesia Number 119 dated 28 October 2005 .

The existence of the ICCPR is *existence* to confession right basic human , the one inside explanation the article pregnant mark *philosophy* If *international Covenant on Civil and Political Rights* (Covenant International about Rights Civil and Political) and *the International Covenant on Economic, Social and Cultural Rights* (Covenant International on Economic, Social and Cultural Rights) are two components that are not can separated One with others , the consequences that all right base humans, no can revoked, but must protect, include and exclude limited mark basic For recognized his position as the same person in front of law (Article Number 12, 2005).

Despite in trajectory history confession right civil has ratified, however rights civil law contained in it Civil Code, still still recognized its existence based on provision transition Fourth Amendment to the 1945 Constitution of the Republic of Indonesia. the implication, in fact essential , right right existing basis in the The Civil Code can also applied as base in the relationship process legal nature civility. Including in context connection contract commercial, which is *essential* article 1338 Book III Civil Code has formulate aspect freedom the wishes of the parties in in *formulate* connection contract.

Freedom contract here must interpreted as will free for the parties For make or No make contract, throughout has fulfil condition *autonomy* and *hetronome* contained in the provisions article 1320 of the Civil Code, which contains contain characteristic No forbidden for some reason *Constitution nor norm the laws that apply within society. However, despite in cross enforceability will free in contract has been acknowledged his nakedness , in fact simultaneously will free protected through instruments faith good (bona fides) as content Article 1338 paragraph (3) of the Civil Code says " agreements must held with faith good "*.

Faith Good itself, is joints important in something agreement, cause his position as implementation from propriety and appropriateness in carry out existing contractual instruments agreed by the parties (Purqosusilo, 2017). So that position faith Good is effort For limit subject law For No just leaning on the back free, but to be deep its implementation based on consciousness *objective* form mark propriety (*billikheid , redelijkheid*), (Purqosusilo, 2017) in society .

Thereby as is the case with contracts procurement goods and services government, for one form *protection* aats presence principle faith good (*bona fides*), namely for involved parties yourself in the procurement process goods and services government required exists ability For presenting letter the guarantee includes guarantee offer , guarantee refute appeal, guarantee implementation , down payment guarantees and guarantees maintenance . This means that good faith protection in the implementation of these activities is not only at the contract implementation stage, but also pre-contract (Peden, 2001). This is reflected in the provider's obligation to include a bid guarantee and appeal objection guarantee at the tender process stage.

Historically, the position of collateral cannot be separated from the collateral law itself. In Dutch it is called *zakerheiddessteling* which is classified as a nominat agreement. In activities held by the National Legal Development Agency regarding mortgages and guarantees from 20 July to 30 July 1977 in Yogyakarta, legal experts have reached an agreement that guarantee law is categorized as material guarantees and individual guarantees, which are essentially subject to (Salim HS, 2017)

personal *guarantees*. in the provisions of Article 1820-1850 of the Civil Code, which regulates the position of third parties for the benefit of creditors, who are willing to promise to pay off the *debtor's debt* in the event of a breach of promise. In practice, guarantees can take the form of letters of guarantee issued by banking institutions or companies operating in the insurance sector and institutions operating in the deposit insurance sector (Isnaeni, 2017).

However, even though there is protection in the form of bank guarantees in the implementation of the procurement of goods and services, it is not uncommon for there to be obstacles in the claims process, because firstly there are differences of opinion regarding *default*, *secondly* there is objection from the goods/services provider to withhold the disbursement of the performance guarantee by reasons for dispute over the main agreement in court. Even the position of who has the right to be a party to a bank guarantee claim dispute in court has become a discourse in the bank guarantee claim space (Pratama, 2016).

Thus, in this research, in the 2016 Fiscal Year Implementation Activities for the Arrangement and Dredging of the Labuhan Haji Port Pier, the Commitment Making Officer (PPK) has determined that PT. GKN as the winner of the auction, which was followed up by signing agreement (contract) No: 07/PPK/Dermaga-Lb.Haji/DPU/2016 dated 12 August 2016 between PPK at the Regional Government of East Lombok Regency and PT. GKN.

In the special contract conditions (SSKK), it has been agreed to provide a down payment of 20% (twenty percent) of the contract value, namely 20% (twenty percent) x contract value of Rp. 38,104,500,000,- = Rp. 7,620,900,000 (*seven billion six hundred twenty million nine hundred thousand rupiah*), which is paid after signing the contract and the provider submits a request for a down payment accompanied by (a) a detailed plan regarding its use and needs (b) a guarantee for the down payment issued by a commercial bank in accordance with applicable provisions (c). The guarantee must be valid until the entire down payment is returned in full, and the PPK has the authority to exercise control over the use of the down payment in accordance with the usage plan that has been mutually agreed between the PPK and the provider.

In fact, the down payment for the procurement contract for this activity has been given to PT. GKN is equipped with a Bank Guarantee for Advance Payment for Work on Arranging and Dredging the Labuhan Haji Port Pier issued by PT. BNI Branch Jl. Pioneer Bandung Independence, with Bank Guarantee code No. 16 / OJR / 059 / 5780 / Monday, Code A 696718 dated 5 September 2016. However after down payment accepted by PT. GKN, implementation activity Work Arrangement and Dredging Labuhan Haji Harbor Pier Year The 2016 budget does not can held fully so that by PPK as responsible party answer regarding management contract, publish letter termination contract with letter no. 01/PPK/ Pier Lb.Haji /DPU/2017 dated 03 January 2017 Subject Termination Contract .

On the basis termination contracts based on no resolved work then the PPK does it bank guarantee claim to PT. BNI Bank Jl. Printis Independen Bandung Branch, will but BNI does not can realize claims made by PPK (*Beneficiary*), so on base said , Govt East Lombok Regency via Official Maker Commitment submit lawsuit to Bandung District Court with hope that the issuing bank can melt bank guarantee in implementation activity the with reason provider / (*Applicant*) does deny it promise (*default*).

The parties involved in the lawsuit process the is Government East Lombok Regency Cq. User Power Budget Cq. Official Maker Commitment as Plaintiff while PT. GKN and PT. BNI Jl. Printis Independen Bandung Branch respectively as party Defendants and results lawsuit filed by officials maker the commitment represented by his attorney at LBH NTB, was stated by the Bandung District Court No can accepted, with consideration law that the plaintiff (PPK) did not own quality in submit lawsuit .

To decision the researcher want to study *legal reasoning* the judge 's decision seen from perspective circumference hermeneutics hans George Gadamer, who did not just focus on meaning text, but also on disclosure *meaning sense* (meaningful meaning) that is connected with characteristic contract on procurement goods and services government so that can obtain understanding related with decision No can accepted PPK lawsuit as the signing party contract with PT. GKN.

Based on the background mentioned above, the purpose of conducting this research is as follows: first, to understand the characteristics of contracts in the procurement of goods and services by the government; second, to determine the position of bank guarantees in government procurement contracts; and finally, to examine the legal reasoning behind the court decision No. 272/PDT.G/2017/PN.BDG regarding the bank guarantee claim in government procurement contracts for goods and services.

RESEARCH METHOD

This research falls into the category of juridical-normative legal research. This approach is often referred to as library research. In this research, two approaches are used: the regulatory approach and the case approach. The regulatory approach involves evaluating laws and regulations related to the Government Procurement Contract Guarantee Claim in Indonesia. Meanwhile, the case approach is conducted using the Gadamerian Hermeneutic Circle paradigm to analyze and critique the legal reasoning of the panel of judges in the Decision of the Judge in Case No. 272 / PDT.G / 2017 / PN.BDG. The results of this research are then systematically collected and classified based on the materials studied, which are subsequently analyzed qualitatively, taking into consideration their quality and accuracy.

RESULTS AND DISCUSSION

Epistemology Paradigm Circumference Gadamer's Hermeneutics (PLHG) In Creating Understanding

In his book Hans Georg Gadamer (1900-2002), is one thinker contemporary in study hermeneutics. Through his work "truth and method", Gadamer did not mean for make hermeneutics as method, on the other hand that's what Gadamer wanted to come up with is understanding that leads to levels ontological, no methodological. Because according to Gadamer, truth illuminate individual, temporary methods method No just hinders, but also hinders truth (Susanto, 2016). For Gadamer, truth is not achieved through methods but through dialectics. Because in a dialectical process there is more opportunity to ask questions freely than in a methodical process (Sumaryono, 1993).

As one of Heidegger's followers, Gadamer's thinking was heavily influenced by Heidegger. Through this work, Gadamer connected hermeneutics to aesthetics and to the philosophy of historical understanding. Gadamer argues against purely conceptual knowing. Because of this, Gadamer raised the concept of historical and dialectical experience as one of his foundations. In his conception, knowing is not just a river of perception, but an event, an encounter (Palmer, 2005).

Hermeneutics is an art, not a mechanical process. If understanding is the soul of hermeneutics, then understanding cannot be used as a complement to a mechanical process. Understanding and hermeneutics can only be applied as works of art. As an art, this kind of hermeneutics cannot be prepared beforehand, nor can it be predicted or said beforehand. Hermeneutics should produce the essence in terms of the mind which is the main and true reality. The essence in this matter is understood and expressed. This means that the author who creates a work may not necessarily be an ideal interpreter. So that in the synthesis Gadamer put forward that the interpreter is creation back (Sumaryono, 1993).

In the process of creation understanding, realizing or no, every understanding bound with strength the history he mentioned as *wirkungsgechichte* or awareness history so that in the process of understanding, in fact aware or no, I have face to face with A work history or historical data that preceded it and humans has find himself always There is in connection certain with what you want interpreted. On the basis that, by Gadamer provides view that in activity interpretation, prejudice to what will interpreted, it is in oneself interpreter, and with prejudice will give birth to horizon look at yourself interpreter (Hermawan).

Horizon is limitation look someone who Gadamer called the horizon. So the horizon is a non reaching basis limited to material, but immaterial, causes the horizon laid out by Gadamer contains understanding covers What only you can seen from point look someone. Based on awareness history horizon contemporary present and shaped by the traditions that constitute accumulation from horizons of the past in motion circular. So that horizon will Keep going circular through a process of interaction and dialogue, For avoid exists tension, cause text in essence have its history identified himself as the text horizon.

Gadamer, in understand text, has use *The hermeneutic circle* was first expressed by the later philosopher Heidegger popularized by Gadamer. Circumference hermeneutics (hermeneutic *circle*) is term in expresses the process of understanding (understanding/*verstehen*) a text (written and non-written) with nature of interpretation circular reciprocal spiral between part with overall, so can obtain understanding in a way comprehensive to text (Susanti, 2019).

Understand or *verstehen* (German), *understanding* (English), constitute point reject in interpretation. Understand in a way general means catch something. For Gadamer to understand is actions that are interpretative in nature so activity understand in circumference the hermeneutics he initiated required something presumption (prejudice), horizon and tradition.

Paradigm prejudice in Gadamer's thoughts, related with prejudice or presumption . Where is the presumption is condition for understanding (conditions of *understanding*) (Shidarta, 2007). Which

is in the process of being formed *versetehen* from interpreter, influenced by pre knowledge, presumption (*vorstandis* pre knowledge) of si reader. In other words, presumptions can also be associated with pre-understanding. The need for pre-understanding is intended so that an interpreter is able to dialogue with the content of the text being interpreted. However, pre-understanding must be open to criticism, rehabilitation and correction by the interpreter himself when he finds out that his understanding is not in accordance with the meaning of the text being interpreted (Susant0, 2017).

Meanwhile, *horizon* concerns the process of interaction between *horizon* (text and interpreter) and *horizon fusion* in the sense that an interpreter must be aware that there are two horizons in a text, namely (1) horizon (knowledge) or horizon in the text and (2) horizon (understanding) or reader's attention. Where in the interpretation process, these two horizons must be present. A reader of a text starts with his hermeneutic starting point, but he must also pay attention that the text also has its own horizon, both of which must be communicated, in that process, the meeting or fusion of the two horizons occurs (Susanti, 2019). This aims to anticipate tensions to create objectivity in the text. In the dynamics of the interpretation process, pre-understanding and horizons can experience shifts in the sense of broadening, expanding and increasing in degree of depth, giving rise to the objectivity of the text in the form of the birth of new views from those captured by the process of pre-understanding and horizons of view.

In the context of horizons, in Gadamer's view, understanding means following the dynamics to get to what is being discussed. Because as a reader, it becomes a mode that allows oneself to exist in the world opened by texts. Gadamer views this as a fusion of horizons (*horistverschmelzung*) existing in historical knowledge (Ricoeur, 2021). Meanwhile, the text, interpreter and meaning are termed *tradiaks*, which are elements that are always connected in the circle of hermeneutics, in order to produce coherence in understanding. A coherence in understanding and as a criterion for understanding. In the hermeneutic circle diagram, Gadamer describes it as follows (Susanti, 2019):

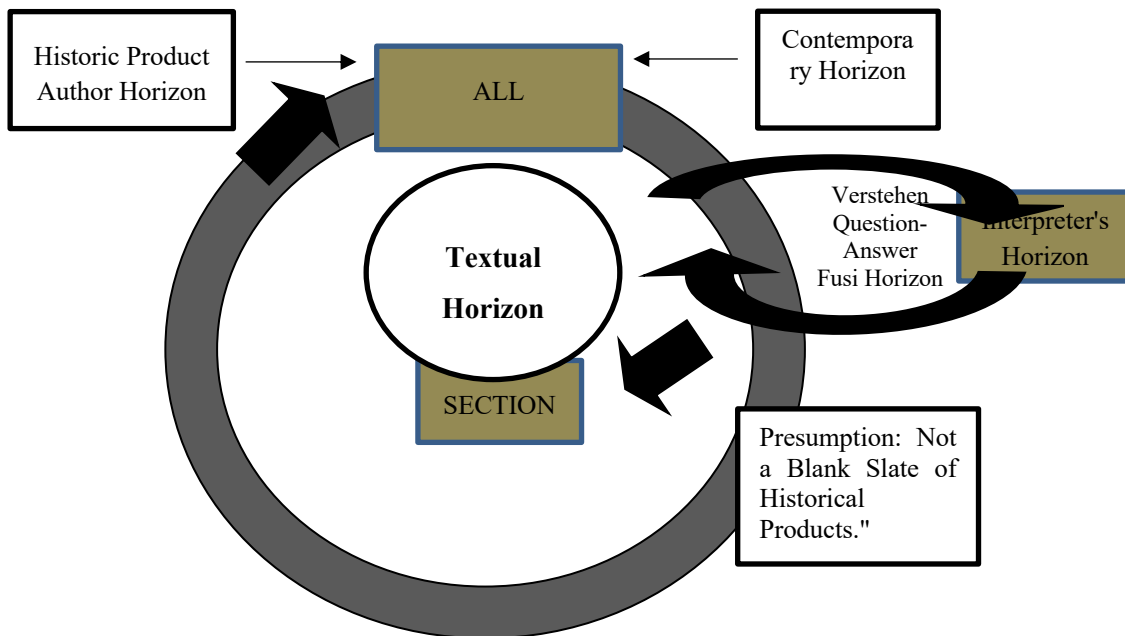


Chart 1. Gadamer

Departing from the view regarding *the hermeneutic circle* above, in analyzing the text in order to obtain meaningful meaning it can be formulated through the formulation X_1 (Object to be studied) while PLHG (paradigm of the hermeneutic circle) and how the "act of understanding" *perse* after obtain *meaning sense* or "meaningful meaning" in the interpreted text. The simple formulation is as follows:



Chart 2. Simple Formulation

Measuring Construction axiological Legal reasoning Panel of judges in Judge's Decision in Case No. 272 / PDT.G / 2017 / PN.BDG With. Paradigm Circumference Gadamer's Hermeneutics (PLHG)

Hermeneutical studies is something consequence ontological use constructivist (Denzim, 1994) paradigm . Apart from that , there is need will assessing research values (axiological). Therefore that is necessary approach science based on achievement the law has moral dimension . The purpose of approach This is For clear up understanding beginnin, corner views , and meaning produced by the judge in the interpretation process law, with objective reduce judge's subjectivity through adhere to underlying values system law. Through effort this, understanding together about how the judge interprets law can enriched, esp when there is difference between the judge's interpretation of law and interpretation based on values law or perspective justice received in a way general (*public face of justice*).

Base beginning in the judge's interpretation process is view personal judge against law That yourself. Questions that arise then, how the judge defines it law. Laws basically can considered as norm (Shidarta, 2006). The law can seen as series containing statement possible obligations (sollen). covers penalty If norm the violated. Law can too interpreted as *nomos* that is gathering existing statement as fact factual (Wignjosoebroto, 2013). Therefore that, concept law can seen from two sides : as rule in context normative and as regularity in context factual. Internal law context normative can differentiated between norm meta juridical law like justice, morality, or principles culture (*volksgeist*), and norms positive which is results from arrangement law, like legislation .

On the other hand, deep factual context as *nomos*, law can differentiated into two aspects : first , as *nomos*, namely , order in behavior related reality with problem law , incl the action that follows procedure formal laws and acts that have legitimacy socio-cultural ; secondly , as *nomos*, namely, as pattern behavior collective in interpretation related reality with law . When a judge carries out an interpretation process law in context activity court , ia tied to the concept law as formalized norms or positivization . However, a judge also has not quite enough moral and spiritual responsibility for create justice based on principle God Almighty, no only based on law positive . Therefore that, the judge can implement justice with based on moral outlook and heart his conscience in drop decision court , aside stick to the law positive .

In context this , a judge will face to face with question philosophical and moral about the meaning of justice . Justice substantial must can translated by the judge into in case moderate concrete he decided . This thing show that's the essence of law Actually is problem justice substantial and not only problem procedural *an sich* .

In business For develop interpretive models prioritizing law justice, no can avoided For refers to the concept law nature . Natural law is concept that focuses on law as part from related philosophical moral systems with understanding of divine ideas. Development thinking the law proposed by Thomas Aquinas presents perspective strict law connection with dimensions nature of life religious. However internal moral development law often becomes subject debate, esp when The law created by jurisconsult is represented by two different terms , namely " law " and " justice ." In context This is important For recognized that There is understanding that can happen nonconformity between law, which is deep context legistical interpreted as regulation legislation or called as *lex*, and more justice related with *ius* , i.e moral dimension or ethics in law. This reflects complexity in operate law, because often existing laws Possible No fully reflect or represent values expected justice in society . Therefore that's a task a judge often involves moral judgment for reach justice substantial, esp when formal law does not give clear guide or create injustice. This shows importance the role of the judge in evaluate and interpret law with consider moral and ethical dimensions To use reach true justice in situation concrete .

In context enforcement law, relationships between facts, norms, morals, and doctrine law in consideration the judge's decision has close and mutual connection influence One each other. The judge's decision must be reflect all component this. A the judge's decision accountable in a way scientific must fulfil condition main that has been taught by Josef Esser, viz own a consistent and fair system , esp in support legal and regulatory reform law.In context This ability in take something a judge 's decision is required maturity knowledge and experience a judge (Sisworo, 1988).

The judge's decision was no notice actual moral aspect ignore moral responsibility. On the other hand, the judge's decision was not consider doctrine law lost direction. Therefore that's a fact law, norms, morals, and doctrine law is instrument authentic For create good judge's decision. Instruments This is condition absolute (" *conditio sine qua non* ") for produce the judge's decision strengthens the sense of justice in society (sense of justice).

In perspective rationality law, judge's decisions and their relationship with facts, norms, morals, and doctrine can grouped become three type rationality law, that is formal rationality, rationality substantive, and rationality reflexive. Every type rationality law describe role and significance facts, norms, morals, and doctrine in context judge's decision. Currently, domination is taking place Still more inclined to direction rationality formal law. However, to front, inside effort achieving "good court governance," is necessary direct development law practical going to type rationality law reflexive. At a minimum, effort must done For shift pattern connection from rationality formal law to rationality law substantive, and ultimately to rationality law reflexive (Respationo, 2013).

In endeavor For That required analytical with hermeneutic approach as system interpretation For find deep meaning there is an interpretation process the law must executed with tight, with control very strict argumentative. Hermeneutics, as method interpretation, role in overcome or relieve conflict in interpretation law, with objective reach what Gadamer called as "fusion of horizons" or unification of horizons. We have various different traditions and understandings about text law, and understanding This can diverse depending on the type interpretation used. However, it's important For remembered that we are too part from the same traditions and history that have been form understanding us. In context This is hermeneutics help We combine various view and understanding the For reach more understanding comprehensive about text law and in matter this judge through the verdict own very important role as interpreter objective from text law (Cahyono, 2023).

Depart on the framework think above, then invention meaning in judge's decision through consideration law constructed by judges with reasoning the law (legal reasoning) becomes important For done deeply matter This with use approach paradigm circumference heremeneutics gadamer (PLHG) namely For find understanding text deep law matter This ie with presents the reader's horizon (knowledge) and horizon (understanding) or horizon to anticipate tension to create text objectivity. For Gadamer, it is necessary to merge the horizons (*horistverschmelzung*) that exist in historical knowledge. Meanwhile, the text, interpreter and *tradition* are always connected within the circle of hermeneutics, in order to produce coherence in understanding.

In relation to court decisions, as mentioned in the section above, in this research, the court decisions that were subjected to a trial and error analysis and the discovery of the achievement of axiological value, namely the Judge's Decision in Case No. 272 / PDT.G / 2017 / PN.BDG. As for position the case, as following:

That PT. GKN is winner auction on Activities Implementation Work Arrangement and Dredging Labuhan Haji Harbor Pier Year Budget 2016 and as winner auction has sign contract (agreement) between PT. GKN as party provider with Official Maker Commitment (PPK) to the Regional Government of East Lombok Regency Number: 07/PPK/ Dermaga-Lb.Haji /DPU/2016 dated 12 August 2016.

On terms special contract (SSKK), has agreed about advance payment of 20% (twenty percent) of mark contract namely 20% (twenty percent) x value contract Rp. 38,104,500,000,- = Rp. 7,620,900,000 (*seven billion six hundred and twenty million nine hundred thousand rupiah*), which was paid after signatory contracts and providers submit advance payment request accompanied by (a) a plan details about use and necessity (b) advance payment guarantee issued by a commercial bank in accordance applicable provisions (c). Guarantee the must applies until with return entire down payment paid off, and the PPK is authorized do control on use of down payment the in accordance with plan use that has been Approved together between PPK and provider.

By factual, towards the down payment contract procurement in activity the has given to PT. GKN with Equipped with Bank Guarantee Employment Advances Arrangement and Dredging Labuhan Haji Harbor Pier published by PT. BNI Branch Jl. Pioneer Bandung Independence, with Bank Guarantee code No. 16 / OJR / 059 / 5780 / Monday, Code A 696718 dated 5 September 2016.

However after down payment accepted by PT. GKN, implementation activity Work Arrangement and Dredging Labuhan Haji Harbor Pier Year The 2016 budget does not can held fully so that by PPK as responsible party answer regarding management contract , publish letter termination contract with letter no. 01/PPK/ Pier Lb.Haji /DPU/2017 dated 03 January 2017 Subject Termination Contract .

On the basis termination contracts based on no resolved work then the PPK does it bank guarantee claim to PT. BNI Bank Jl. Printis Independen Bandung Branch, will but BNI does not can realize claims made by PPK (*Beneficiary*) , so on base said , Govt East Lombok Regency via Official Maker Commitment submit lawsuit to Bandung District Court with hope that the issuing bank can melt bank guarantee in implementation activity the with reason provider / (*Applicant*) does deny it promise (*default*).

The party sued by PPK is PT. BNI Jl. Printis Independen Bandung Branch as Defendant 1, and PT. GKN as Defendant 2 and after through processes (stages trial), at the verdict end (*eind verdict*), which is in tradition cammon law is is decision final verdict handed down by the panel of judges as end inspection matter . The deep one decision end said , the panel of judges at the Bandung District Court ruled the verdict state lawsuit plaintiff No can accepted (*niet onvankelijke verklaard*).

Under consideration law (*legal reasoning*) of Bandung District Court judges especially formerly consider legality plaintiff in submit the lawsuit technical judicial looked at as a *de herustical* and *de legitimatic* process ie something method reasoning in solution problem with method seek and find solution problem with the right way (Mappieasse, 2021). While at stage *de legitimatic* in general is activity For formulate fact law , inventory source law , analyze source law with method understand Meaning text and applied in case concrete , yes use interpretation (*hermeneutics*), law connect structure rule with structure fact law and the last is determination of the decision dictum from judge's opinion.

Under consideration law said , the panel of judges at the Bandung District Court has linking Exhibit Code P - 3 in the form of Decree of the Head of the East Lombok Regency Public Works Service No. 600/22/DPU/2016 dated 29 January 2016 in carry out task as Official Maker Commitment (PPK) to Work Arrangement and Dredging Dock Labuhan Haji 2016 , no there is task For submit lawsuit if exists default in agreement contracts made by officials commitment that . so that on base code proof said , the panel of judges in The conclusion is that PPK does not authorized or not own quality For submit lawsuit that .

To consideration law The Bandung District Court , in fact textual show independence of judges in operate power judiciary . Because in rule procedural law , against material the exception is not requested by the defendant , no can assessed by a judge except about two things that is concerning authority *relative* and *absolute*. Which means essential arranged in the provision article 134 HIR and article 132 Rv juncto in accordance article 118 HIR, each time, since the inspection process started until before the judge's decision was handed down. However, the Bandung District Court judge has do interpretation For came to the reasoning that PPK does not own quality in submit lawsuit. remembering the defendants No Once submit exception about matter that. However role For stop case by the judge through such arguments and reasoning, those who assess PPK do not have quality in submit lawsuit has right. Remember in the judicial process, also get to know paradigm *sho belongs to what* (who entitled on what) in a lawsuit process sue (Asnawi, 2020).

Thereby case If researched through Paradigm Circumference Gadamer's Hermeneutics (PLHG), which is deep Gadamer's views have been abandon methodical processes in understand understanding (*verstehen*). Understanding process through the PLHG approach will can give birth to meaningful meaning through effort disclosure desired text reviewed. Meaning which means in Gadamer's view, is essence understand or understand something at a time as reflection analytical philosophy terms possibility for all experience and relationships man with reality. The implication, the attempt at understanding, is not stop at point methodical, as characteristic typical heremeneutics theoretical theory developed by FDE Schleirmacher and Wilhelm Dilthe.

Move on from the PLHG above, which is connected in process bank guarantee claim in procurement goods and services government, has a number of *variables* among them concerning about characteristics contract in procurement goods / services government That yourself, or

characteristic existing laws in a bank guarantee which is agreement join (*assecoir*) in context connection contractual in procurement goods and services.

It cannot be denied that the position of PPK as official procurement goods / services government own strategic position. On terms article 11 paragraph (1) Presidential Decree no. 12 of 2021 Concerning Changes to Regulations President Number 16 of 2018 Concerning Procurement of Government Goods/Services, mentioned that the PPK has task among them control contract, report implementation and completion activity to PA/KPA and submit results work implementation activity to PA/KPA with handover minutes. Whereas source The tasks held by PPK can be examined through provision article 9 paragraph (1) letter g which reads "User budget own duties and authority determine PPK, *juncto* article 10 paragraphs (1) and (3) are mentioned that the KPA is in carry out delegation in accordance with delegation from PA, can assign PPK to carry out his authority To use do resulting action expenditure budget shopping and hosting agreement with other parties within budget limits shopping that has been done set.

Leave from system norming that, the position of PPK in carry out contract procurement goods / services government, was born from nature of authority limited based on letter task. This thing become characteristic typical of contracts procurement goods / services government within it contain rule aspect public. in field law public, *public actors* who are born and have authority limited, the consequence is that public actors (PPK) are not can exceed action beyond the scope of the task at hand. Including context This in submit lawsuit civil case at the relevant Bandung District Court bank guarantee claim during implementation activity Work Arrangement and Dredging Labuhan Haji Harbor Pier Year 2016 Budget.

The picture above, no other , as form from color existing public in connection contract procurement goods / services Government, which is *essential* own difference based on the contract *private* in general. If on contract private, subject law own freedom will in do connection contractual, incl in matter do choice law when happen default in implementation contract. In aspect connection contractual procurement goods / services government, no contain freedom contracts in general as there is provision article 1338 Book III Civil Code, but freedom contractual nature limited , which is limited to aspects authority in field law administration .

Involvement government in connection contractual known with *government contracts*. The deep one a number of bibliography, contracts involving government become subject laws and objects agreed upon form procurement goods / services government has categorized to in *Government Contracts* too which is translated as contract government or agreement with ruler or contracts entered into by the government (Simamora, 2017). In a *Government Contract*, there are procedures connection contracts that are subject to regulations regulation procurement goods and services including Presidential Decree No. 12 of 2021 Concerning change Presidential Decree No. 16 of 2018 Concerning Procurement of Government Goods and Services. Which is deep structure official procurement on a *Government Contract* basis substance has determined regarding boundaries and authority as well as duties held by officials procurement. Where is the position ? official commitment comments (PPK) are associated as organization position administrative ie his position as executor authority that enters and is subject to the realm administration government (Purwosusilo, 2014). So that connection contractual agreement signed by the PPK on the contract procurement goods / services government, no Again as action law *private* , but rather on contract procurement goods and services government has own pattern a mixture (*hybrid*) of law encompassing *public* connection contractual that.

The implications to room scope duties and responsibilities the answer given to the PPK, if executed outside tasks given by PA and KPA especially in submit bank guarantee claim in court , can made reason strong For state that the PPK does not own quality For do deed law submission lawsuit to Bandung District Court . Because despite connection established law in context procurement goods and services have also been use rule law civil , however No can incarnate become entity private , but still entity law the public is also subject to principles in the field law public .

Thereby case in context guarantee , as has alluded to as introduction that agreement material enter to in regime book II BW. Whereas guarantee individual , come in to in Book III BW, known as

agreement underwriting ((*borgtocht*)) which is categorized to in agreement addition (*accessoir*). For the second guarantee model This can found in Chapter XVII Book III BW in the provisions Article 1820 BW to with article 1850 which is essential party third For interest creditors , ready tie self For pay off debt *debtor* if happen default on the agreement principal .

Kendatai in claim bank guarantee guarantee in the procedure nature No conditional (*unconditional*), easy disbursed ; and should disbursed by the publisher guarantee no later than 14 (four twelve) days Work after letter order melting from Working Group Selection of / PPK/ Parties given authorized by the Working Group election / PPK accepted . However, in reality, bank guarantee claims through banking institutions also often encounter problems. The implication is that legal action in the bank guarantee claim process must also be taken through judicial institutions. However, due to the legal nature of the bank guarantee as *an assessee* , bank guarantee claims through the courts are also subject to the main agreement, namely the contract for the procurement of government goods/services, which contains public law properties. So that the process of claiming a bank guarantee is also subject to the principles of public law as stated above. Concretely, the party who has the right to file a lawsuit for a bank guarantee claim in court is the Regent of East Lombok Regency, who in the procurement official structure has the position of PA, the exception is if the PA has expressly given special power to the PPK to take legal action regarding bank guarantee claims. in the District Court as a form of duty and authority in his position as a public actor.

Constructed considerations with approach reasoning the law used by the judge in the interpretation text the law stated to him , yes seen that , judge in discourse its epistemology in do harmonization between relatedness and attachment ontology value with axiology that relationship ontology value contractual is agreement of the parties party in connection contractual That worth holy (sacral) therefore must obeyed and respected by the parties , good condition skills in it (subjective) as well as related with content , which is not contradictory with law and order general (objective) except if found it there is exists violation from condition subjective and objective . And the connection with mark axiological that connection contractual must can realize justice substantive for the parties . However before achievement justice substantive moreover formerly must fulfilled justice deep formal matter This related with provisions room scope authority of the parties making it contract . Aspect This important To use ensure exists certainty law . If aspect This fulfilled new Then justice substantive That can enforced , that is that no become proper called as justice substantive if inside it there is violation justice formal . With that's what the judge said in his legal reasoning choose justice formal as bridge (epistemology) for going to justice substantive.

Starting from the analysis of the text of the decision above, it actually does not stop there, because the paradigm of Gadamer's hermeneutic circle (PLHG), contains a *meaningful sense* or "meaningful meaning" in the interpreted text, the implications of which do not stop at the meaning of the text, but also move to all phenomena. which contains its comprehensiveness. Including the search (*reason*) aspect, legal study is not trapped in *legalistic thinking methods* but more than that, namely displaying "meaningful meaning" through the hermeneutic circle process, which emphasizes the relationship between the part and the whole. Two movements from part to whole and from whole to part are the basis of the structure of interpretation and the interpreter's task is to create meaningful meaning for the whole.

CONCLUSION

From the discussion above, we can draw several conclusions. First, Legal Hermeneutics, as one of the approaches to interpreting texts, plays a crucial role, especially when using the Gadamerian Hermeneutic Circle Paradigm. In its application, this paradigm doesn't stop at merely understanding the text correctly (theoretical approach); it also strives to apply "meaningful meaning" to the reader or interpreter. According to Gadamer, to obtain "meaningful meaning" in analyzing a text, the emphasis lies in the relationship between the parts and the whole, with a movement from the parts to the whole and from the whole to the parts as the structural basis for interpretation.

This is expected to enable the interpreter to create meaningful meaning for the entirety, and this is considered the essence of "legal reasoning." Second, the legal reasoning in the decisions of the Bandung District Court displays the characteristic hybrid aspects found in Government Contracts. This distinction sets them apart from private contracts in general. In Government Contracts, the principle of

freedom of contract is limited and constrained by public law principles. Additionally, in their legal reasoning, judges choose formal justice as a bridge (epistemology) towards substantive justice. In summary, Legal Hermeneutics, guided by the Gadamerian Hermeneutic Circle Paradigm, serves as a valuable tool for interpreting legal texts. The decisions of the Bandung District Court in cases involving Government Contracts reflect the unique hybrid nature of these contracts and highlight the importance of balancing formal and substantive justice in legal reasoning.

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