

RINGKASAN

Noor Chalimah Hapsari, Program Studi Magister Hukum, Fakultas Hukum Universitas Jenderal Soediman, Tinjauan Yuridis *Post Bidding* Sebagai Perbuatan Melawan Hukum Dalam Pengadaan Barang/Jasa Proyek Pembangunan Lingkungan Rumah Tahfiz Paya Tampah (Studi Putusan Mahkamah Agung Nomor 1210 K/Pdt/2023), dibawah bimbingan Prof. Tri Lisiani Prihatinah, S.H., M.A., PH.D. dan Prof. Dr. Sulistyandari, S.H., M.Hum.

Kasus dalam pengadaan barang/jasa proyek pembangunan Jalan Lingkungan Rumah Tahfiz Paya Tampah di Aceh Tamiang Tahun 2021 menimbulkan sengketa hukum antara CV Ingat Mati dan Pokja. CV Ingat Mati digugurkan secara sepihak oleh Pokja dengan alasan dokumen teknis tidak sesuai, tanpa pemberitahuan atau klarifikasi, yang dianggap sebagai tindakan *post bidding* dan perbuatan melawan hukum. CV Ingat Mati merasa dirugikan karena digugurkan tanpa pemberitahuan dan klarifikasi dari Pokja dalam proses tender. Setelah mengajukan sanggah banding ke Pengguna Anggaran (PA), pemohonannya ditolak, sehingga ketidakpuasan mereka semakin meningkat karena merasa haknya dilanggar. Untuk mencari keadilan, CV Ingat Mati kemudian mengajukan gugatan yang prosesnya berjalan melalui tiga tingkat peradilan, yaitu Pengadilan Negeri, Pengadilan Tinggi, dan Mahkamah Agung. Gugatan ini bertujuan menuntut kejelasan dan perlindungan hukum atas tindakan pengguguran yang dianggap tidak sesuai prosedur dan merugikan penggugat. Penelitian ini mengkaji aspek yuridis *post bidding* berdasarkan putusan Mahkamah Agung Nomor 1210 K/Pdt/2023.

Penelitian ini bertujuan menganalisis hakim dalam mengkualifisir *post bidding* oleh Pokja, PA, Inspektorat sebagai Perbuatan Melawan Hukum (PMH) dalam pengadaan barang/jasa pemerintah pada Putusan Mahkamah Agung Nomor 1210 K/Pdt/2023. Selain itu, penelitian juga menganalisis pertimbangan hukum hakim dalam mengabulkan gugatan ganti rugi *post bidding* sebagai Perbuatan Melawan Hukum pada Putusan Mahkamah Agung Nomor 1210 K/Pdt/2023 tersebut. Jenis penelitian yang digunakan yaitu yuridis normatif dengan pendekatan perundang-undangan, pendekatan kasus, dan pendekatan konseptual. Spesifikasi penelitian menggunakan penelitian preskriptif dengan bahan hukum primer dan sekunder yang diperoleh melalui studi kepustakaan dengan pengolahan bahan melalui langkah editing, klasifikasi dan sistematis, kemudian analisis menggunakan normatif kualitatif.

Hasil yang diperoleh dalam analisis penelitian ini yaitu hakim Pengadilan Negeri (PN) dan Mahkamah Agung mengkualifikasikan *post bidding* oleh Pokja sebagai Perbuatan Melawan Hukum (PMH) karena menggugurkan penawaran tanpa klarifikasi yang termaktub dalam PerPres Nomor 12 Tahun 2021 perubahan atas Perpres 16 Tahun 2018, Peraturan LKPP Nomor 12 Tahun 2021, serta modul Pemilihan Penyedia Barang/Jasa Pemerintah, yang dikeluarkan oleh LKPP adalah sudah tepat. Sedangkan, hakim Pengadilan Tinggi (PT) menilai bahwa bukan tindakan *post bidding* tetapi merupakan tindakan klarifikasi atas dokumen yang diajukan oleh Penggugat sebagai peserta Lelang serta tidak melanggar aturan didasarkan Peraturan LKPP Nomor 12 Tahun 2021 sebagai landasan hukum adalah tidak tepat. Selain itu, diperoleh analisis Pertimbangan hukum hakim dalam mengabulkan gugatan ganti rugi *post bidding* sebagai Perbuatan Melawan Hukum (PMH) menekankan bukti kuat adanya pelanggaran hukum dan kerugian materiil yang dialami penggugat. Hakim menilai berdasarkan Pasal 1365 KUHPdata unsumya terpenuhi, bahwa di PN dan MA hakim mengabulkan ganti rugi materiil Rp. 150.265.765,00 sebagai ganti kompensasi sedangkan di PT hanya biaya perkara saja Rp.150.000,-.

kata kunci: *post bidding*, perbuatan melawan hukum (PMH), ganti rugi.

SUMMARY

Noor Chalimah Hapsari, Master of Law Study Program, Faculty of Law, Jenderal Soedirman University, *Juridical Review of Post Bidding as an Unlawful Act in the Procurement of Goods/Services for the Environmental Development Project of the Paya Tambah Tahfiz House (Study of the Supreme Court Decision Number 1210 K/Pdt/2023)*, under the guidance of Prof. Tri Lisiani Prihatinah, S.H., M.A., PH.D. and Prof. Dr. Sulistyandari, S.H., M.Hum.

The case in the procurement of goods/services for the construction project of the Rumah Tahfiz Paya Tambah Environmental Road in Aceh Tamiang in 2021 caused a legal dispute between CV Remember Mati and the Working Group. CV Remember Mati was unilaterally dropped by the Working Group on the grounds that the technical documents were not suitable, without notification or clarification, which was considered a post-bidding act and an unlawful act. CV Ingati Mati felt aggrieved because it was dropped without notice and clarification from the Working Group in the tender process. After submitting a rebuttal to the Budget Users (PA), his application was rejected, so that their dissatisfaction increased because they felt that their rights were violated. To seek justice, CV Remember Mati then filed a lawsuit whose process went through three levels of justice, namely the District Court, the High Court, and the Supreme Court. This lawsuit aims to demand clarity and legal protection for abortion actions that are considered unprocedural and detrimental to the plaintiff. This study examines the juridical aspects of post bidding based on the Supreme Court decision Number 1210 K/Pdt/2023.

This study aims to analyze judges in qualifying post bidding by the Pokja, PA, Inspectorate as an Unlawful Act (PMH) in the procurement of government goods/services in the Supreme Court Decision Number 1210 K/Pdt/2023. In addition, the study also analyzes the judge's legal considerations in granting a post-bidding compensation lawsuit as an Unlawful Act in the Supreme Court Decision Number 1210 K/Pdt/2023.

The type of research used is *normatif juridical* with a legislative approach, a case approach, and a conceptual approach. The research specification uses prescriptive research with primary and secondary legal materials obtained through literature studies with material processing through editing, classification and systematic steps, then analysis using qualitative *normatif*.

The results obtained in the analysis of this study are that the judges of the District Court (PN) and the Supreme Court qualified post bidding by the Working Group as an Unlawful Act (PMH) because they aborted the offer without clarification as stipulated in Presidential Regulation Number 12 of 2021 amendments to Presidential Regulation Number 16 of 2018, LKPP Regulation Number 12 of 2021, and the Selection of Government Goods/Services Provider module, issued by LKPP. Meanwhile, the High Court (PT) judge considered that it was not a post bidding action but an act of clarification on the documents submitted by the Plaintiff as an Auction participant and did not violate the rules based on LKPP Regulation Number 12 of 2021 as a legal basis. In addition, an analysis of the judge's legal considerations in granting a post-bidding compensation lawsuit as an Unlawful Act (PMH) emphasized strong evidence of violations of the law and material losses suffered by the plaintiff. The judge assessed that based on Article 1365 of the Civil Code, the elements were met. that in the PN and the Supreme Court, the judge granted material damages of Rp. 150,265,765.00 while in PT only the case costs were Rp. 150,000,-.

keywords: post bidding, unlawful acts (PMH), compensation.