

## SURETY COMPANY'S SETTLEMENT OF CLAIMS AND SUBROGATIONS AGAINST PRINCIPLES OF DEFAULT IN THE SURETY BOND AGREEMENT

Abdul Rahman  
Anjar Sri Ciptorukmi Nugraheni

### ABSTRACT

*This research aims to examine the problems in the disbursement of Surety Bond claims by obligee against PT Askrindo Persero against the principal who wanprestasi in the implementation of the funneling work. As for this research, using empirical methods and descriptive analytical that provide an overview of certain symptoms in order to get the data as accurate as possible. Data collection techniques are carried out by Literature material Studies and Interviews to Underwriting Staff. The results of the study, against the settlement of Conditional Claims are not in line with Presidential Regulation No. 12 of 2021 which requires one of them is easy to disburse. The problem of recovery implementation experienced by Surety Company in surety bond guarantee is the absence of special arrangements regarding subrogation rights owned by Surety Company as a guarantor.*

*Keywords:* Surety Bond, Claim, Subrogation.

### INTRODUCTION

Regional development is implemented through a program and activity referred to as a government project. The project addresses all aspects of the community's needs, including infrastructure and facilities. Of course, it is impossible to separate the process of buying goods/services and other acquisition-related activities from the implementation of a project. Procurement of goods and services from the public sector can be divided into two categories including procurement of goods and services in the construction industry (referring to architects, contractors, and building supervisory authorities) and procurement of goods and services outside the construction industry (Arpan, 2003). As a result, the role of regional and central governments in the implementation of physical development is needed in order for it to be successful and run smoothly. However, community participation, in this case the private sector or known contractors/contractors, is still required for implementation. The wholesale system is frequently used to implement development since it is seen to be much more efficient and effective at speeding up the development of a particular object (Aminah & Suryono, 2017).

Regulations concerning the Implementation of Contracting Contracts for Construction in the procurement of goods and services have specifically been stated in Presidential Regulation No. 12 of 2021 Amendment to Presidential Regulation No. 16 of 2018 concerning Government Procurement of Goods / Services. Meanwhile, the general provisions of the agreement with the wholesale system have been regulated in Burgerlijk wetboek (Civil Law) in article 1601. "Work chartering is an agreement, whereby one party, the contractor, binds himself to carry out a job for the other party, the party who buy up, by accepting a specified price." In the Implementation of Works with the Chartering system, usually the Employer (Obligee) requires a guarantee to the Contractor / Work Executor (Principal) to state his ability to carry out the work agreed in the Contract Clauses. This is a sort of protection if the principal (executive work) cannot complete the work / does not fulfill his achievements in certain jobs (Sianipar & Pinontoan, 2003).

The guarantee required in the Work Implementation Agreement against the principal to the obligee according to Presidential Regulation No. 12 of 2021 concerning Government Procurement of Goods/Services. Guarantees offered by banks in the form of bank guarantees, insurance companies in the form of surety bonds, and guarantee corporations are among the three forms of guarantees (Adhitia, 2011). Surety bonds were chosen as the most ideal guarantee alternative with the enactment of the regional autonomy policy because the guarantee does not require the Principal to submit a guarantee or collateral first, whereas the Bank Guarantee requires the Principal to submit a guarantee or collateral first. As a result, surety bonds are thought to be the best option (Wicaksono & Paulus, 2021).

A surety bond is a joint and several liability agreement, which means that the surety company, as the guarantor, will be responsible for paying compensation if a claim arises in accordance with the contract clause, requiring the surety company to make compensation payments to the obligee in the occurrence of the Principal defaulting with a value of Value Guarantee. So, based on the above description, in the implementation of Surety Bond Guarantees, which were initially believed to be the most important aspect in the development of a region, there are still issues that arise due to the length of the Disbursement Process (Claims). Therefore, the researcher examines the problems of the Claim Disbursement Process and the Problems in the implementation of Subrogation to Job Security through Surety Bonds.

### RESEARCH METHODS

In order to acquire data as accurately as possible, this study employed an empirical and descriptive analytical method that provides an overview of specific symptoms. This research was conducted at PT Asuransi Kredit Indonesia, Magelang Branch, Jalan Jendral Sarwo Edhie Wibowo No. 31, Sarangan, Banyurojo, Kec. Mertoyudan, Magelang City, Central Java Province. The researcher gathered secondary data from library resources in the form of primary and secondary resources for this study. Studying library resources and conducting interviews with underwriting staffs are used as data collection techniques.

## DISCUSSIONS

### 1. The Process of Implementing Surety Bond Claims by PT Askrindo (Persero) Magelang Branch. The Main Problem

PT. Java Modern Technology, a Service Provider (Contractor) based in Sleman Regency, Special Region of Yogyakarta, won a tender organized by the Public Works and Spatial Planning Office of the Mentawai Islands Regency with agreement contract document number: 620/18/PKK-LMMY/DPUPR-KKM/ X-2018 for the Construction and Improvement of the Limu-Mapinang Road, South Pagai District with a Contract Value of IDR. 19,411,546,000 (Nineteen Billion Four Hundred Eleven million Five Hundred Forty Six Thousand Rupiah). Drainage construction, soil stockpiling, and condition repair work, as well as everyday minor tasks, are all detailed.

Furthermore, the Oblige provides a grace period of work to the Principal for 900 (Nine hundred) Calendar Days since the signing of the contracting agreement for all types of Activities, which will be completed on May 21, 2021, according to the agreement in the development agreement signed on December 03, 2018. However, in actuality, Principal did not complete the construction and improvement work of the Limu-Mapinang Road as negotiated with the Mentawai Islands Regency's Department of Public Works and Spatial Planning. According to the Obligation's field survey, the Principal's work progress was considered to be quite slow, and he only accomplished about 15% of the work agreement before ceasing operations.

The Department of Public Works and Spatial Planning of the Mentawai Islands Regency, as the Owner of the Work, had issued written subpoenas to the Principal 3 (three) times, according to information from PT Askrindo Persero's Underwriting Staff. However, the principal in this case PT. Java Modern Technology still has no good intentions in completing the work, so that based on the provisions and assessments of the PPK DPUPR Mentawai Islands Regency, the principal will not be able to complete the work as agreed. Thus, the oblige sends a letter terminating the employment contract, declaring the principal in default and filing a claim with the surety company.

In terms of the provisions, Presidential Decree No. 80 of 2003 specifies the amount of compensation for contract work implementation, which is the value of the guarantee or the value of 100 percent. Meanwhile, for contracting work that does not fall under the Presidential Decree's provisions, the compensation given is equal to the actual loss suffered by the job owner. This signifies that the security deposit slows down the progress of the principal's work. An Oblige account can also be used to make reparation payments (Naki, 2019).

According to the researcher, the surety company in this case, PT. Askrindo Persero, compensates the oblige with compensation disbursed to the oblige, namely the Public Works and Spatial Planning Office of the Mentawai Islands Regency, in the amount of Rp. 4,949,000,000 (Four Billion Nine Hundred Forty-Nine Million Rupiah), which is the amount of Advances for Work minus the principal's achievements by 15%. The compensation mentioned above relates to the results of the surety company team's analysis, in this case underwriting, to measure the current situation and analyze the work contract agreement.

The compensation is in line with the insurance principle, namely "Indemnity", which states that the insurance company (Surety Company) only replaces the real risk of loss experienced by the insured. However, because the surety bond guarantee is an unconditional bond according to Presidential Regulation No. 12 of 2021, it is simple to liquidate and must be disbursed by the guarantee issuer within 14 (fourteen) working days of receiving the order for disbursement from the Pokja Elections/PPK/Parties authorized by the Pokja Selection PPK. In actuality, the compensation process requires a feasibility survey on the implementation of the "loss situation" work, and in-depth calculations so that the disbursement process takes a relatively long time.

Therefore, based on the provisions of the legislation, the compensation process in guaranteeing the implementation of construction work should be in the form of an unconditional bond, so that if there are principals who do not perform as they should in the contract agreement, they can be sought immediately without conducting an in-depth survey and analysis both in the contract agreement and the circumstances, considering the types of work that are guaranteed in the implementation of development without any territorial limitations in the guarantee. So that the form of the conditional model disbursement of guarantees applied by PT. Credit Insurance Indonesia (Persero) Magelang Branch is considered not in accordance with the legislation.

### 2. The Problems of Implementing Surety Bond Subrogation in Construction Work Guarantee

Subrogation is the replacement of the claim that was originally on the insured party to the insurer. After the claim for the loss has been paid by the insurer to the insured, the insured's rights to third parties are transferred to the insurer. This means that the insurer has the right to collect the third party or who issued the loss according to the amount of the claim that has been paid to the insured party (Nopitayuni & Sukerti, 2017).

Regarding the change of the guarantor's position in a result of the established guarantee, there will be 2 (two) rights owned by the guarantor as follows: (Adi Yasa et al., 2013).

a. The right of regress arises as a result of the Insurer's payment of the debtor's debt. "The guarantor who has paid, has been able to seek it back from the main debtor, whether the guarantor has been detained with or without the main debtor," says Article 1839 of the Civil Code.

b. The right of the Insurer is to replace the Creditor's Position due to Subrogation. This right is the basic right of the guarantor/guarantor as contained in article 1840 of the Civil Code "The insurer has paid and legally replaced the creditor's claim against the debtor".

This means that the surety company has fulfilled its obligation to compensate the obligor, and the obligor who receives the surety company's fulfillment of obligations for the principal's default waives his or her right to sue the principal because the principal's position has been transferred to the surety company (Pangaribuan S, 1986).

The implementation of Subrogation against the principal who does not fulfill his performance (Default) so that compensation payments arise to the obligee, is a form of automatic right of PT. Askrindo Persero as the guarantor company based on the indemnity agreement letter which states that the Principal is required to replace the value of the claim payment paid to the obligee. The implementation carried out by PT Askrindo Persero in subrogating the default principal has several obstacles, which is classified into two aspects:

#### 1) Juridical Aspect

It is an obstacle / problem that arises as a result of not complying with the rules in the form of legislation. In this case, the rules specifically on the mechanism regarding the Surety company's subrogation rights against principals who are negligent or do not fulfill the performance of the Work Implementation against the obligee.

2) It is an obstacle that arises due to certain conditions outside the legal aspect. This usually occurs like the principal's financial condition, so that subrogation recovery takes time that cannot be determined according to the principal's financial capacity. As a result, the subrogation carried out by surety companies did not run optimally to accept the rights and obligations of the principal.

Based on the provisions of Article 1839 and Article 1849 "KUH-Civil", it states that: (Prameswari et al., 2018).

"Insurers who have paid can demand what they have paid from the main debtor, regardless of whether the guarantee was carried out with or without the knowledge of the main debtor. This claim can be made both regarding the principal and regarding interest and fees. Regarding these costs, the insurer can only demand it back only within the time that it deems appropriate he has given notification to the main debtor about the claim directed against him. The insurer also has the right to demand compensation for costs, losses and interest if such reasons exist".

Article 284 of the Commercial Code contains:

"An insurer who has paid for the loss of an insured item replaces the insured in all rights he acquires against a third person in connection with the issuance of the loss, and the insured is responsible for any actions that can give the insurer rights of a third person".

The recovery carried out by PT Askrindo in relation to the compensation for claims paid to the obligor is as follows: To begin, send an invoice to the principal and request that he sign a statement of ability to pay PT Askrindo Magelang branch in installments and release him from the expenses and interest he has incurred. Second, with the help of linked parties, such as asking the obligee to acquire recovery from the Principal while the Principal still owes the obligee a bill, and then attempting to persuade the Principal to give him a Power of Attorney to collect the remaining invoice. The Oblige Principal is a principal who is in a position of responsibility.

According to the preceding statement, there are numerous conditions that cause the implementation of subrogation to the principal to fail. This factor is motivated by the insured's lack of understanding of surety bond agreements as a guarantee good or service, as a result of which the majority of principals in this case are uninterested in subrogation, and the principal and obligee in the implementation of chartering work only focus on their rights while ignoring their obligations. Furthermore, the principle anticipates that if something happens to cause losses to the obligee, there will be an insurance, in this case a surety company, to compensate the obligee. This might arise owing to a lack of information provided by the surety company prior to and during the surety bond agreement. On the other hand, the obstacle that often arises is the condition of the principal's financial ability which is unstable or experiencing losses, making it difficult to fulfill subrogation in the implementation of chartering work.

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The Code of Commerce Law.

Law Number 1 of 2016 on Guarantees.

Law Number 2 of 2017 concerning Construction Services.

Presidential Regulation Number 12 of 2021 concerning Procurement of Government Goods /Services.

Abdul Rahman

*Faculty of Law, Sebelas Maret University*

*Jl. Ir. Sutami No 36A, Jebres, Surakarta, Indonesia*

*Email: abrahman6193@gmail.com*

Anjar Sri Ciptorukmi Nugraheni

*Faculty of Law, Sebelas Maret University*

*JL.Ir.Sutami No 36 A, Jebres, Surakarta, Indonesia*

*Email: anjarsri@staff.uns.ac.id*