

Building The Independence of The Defense Industry Through the Subcontractor System (Study of Indonesian-British Cooperation in The Development of The AH140 Frigate)

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Abstract

More complex forms of threats, not only in the form of military threats but non-military threats, are increasingly sophisticated due to the presence of increasingly new technologies and targets of cybercrime which also target various business sectors such as construction companies because of the great value in their cooperation. In 2021, Indonesia will cooperate with the United Kingdom to develop the AH140 frigate through the Merah Putih Frigate, outlined in a Joint Operation Agreement. What is interesting is Babcock Marine's concern as the party cooperating with PT. PAL in subcontracting this project. In order to answer these concerns, a study is needed regarding the subcontractor system in Indonesia, which can be used as a contribution to building the independence of the Indonesian defense industry. The research method used in this study is a descriptive approach, a qualitative research type using library research methodology through credible books, journals, and news to be used for research studies. It can be concluded that the subcontractor system in defense industry projects has contributed to the government's efforts to build defense industry independence. However, subcontractors need more support in developing their capabilities

Keywords: Non-Military Threats, Defense Industry, Subcontractors, Threat Trends

INTRODUCTION

As a beginning, it cannot be denied that threats in every country, including Indonesia, are growing through various media, one of which is non-military threats, which are the cause and effect of globalization. Currently, threats are not only limited to the military but non-military threats. Suppose a military threat is a threat that uses weapons as its medium. In that case, it is different from non-military threats, which do not use weapons but instead use abstract non-military factors that can endanger state sovereignty.

Technological developments contribute to possible threats, for example, cybercrime that seeks to target construction, engineering, and infrastructure companies because these business lines have high transaction value and significant data to drive these crimes (Mamduh, 2022). In 2021 PT. PAL entered a Joint Operation Agreement or JOA with England in the Merah Putih Frigate program. This cooperation is the first export cooperation for the AH140 warship. The scheme was carried out in the JOA with the PT. PAL for the AH140 design is PT. PAL is responsible for designing warships needed by the TNI from a contract made by PT. PAL with the Ministry of Defense of the Republic of Indonesia. This collaboration is carried out with Babcock Marine or Rosyth Royal Dockyard Ltd., which transfers design data in stages with the proportion of license payments by PT. PAL, in addition to Babcock Marine, provided additional design and additional assistance as outlined in a separate agreement.

PT. PAL is also responsible for procurement activities and meeting the needs of materials and services. To fulfill this need, one of the efforts that can be done is subcontracting. Every business activity requires understanding accountability in binding oneself to other parties to provide legal certainty. As we know in Section 87 3rd article Presidential Decree Number 4 of

2015 about Procurement of state-owned asset(s) states that providers are prohibited to transferring the main object based on the contract by subcontracting the work to third party(ies), unless the work is specialist in one field. JOA is another form of the concept of the agreement itself. An agreement is a legal action in which one or more people bind themselves to one or more people.

In every legal action, it is necessary to have the highest and best use in cooperation from a legal perspective. Therefore, it is necessary to understand the legal consequences that arise both from the jurisdiction aspect to the contract's clauses, which can result in the contract being null and void. In order to create independence in the defense industry, PT. PAL is required to be ready to fulfill the Republic of Indonesia Ministry of Defense Strategic Plan for 2020-2024, which can be used as a basis through strategic partners in acquiring technology transfer and optimizing the implementation of local and offset content as stipulated in Presidential Regulation Number 54 of 2010 and Law Number 16 of 2016. About the subcontractor system, the researcher finds a previous research that relevant to the research. The journal title is “Subcontract in Procurement State-Owned Asset (s) by Dea Putri Fajarini from Faculty of Law of Airlangga University. Dea Putri as researcher of the paper concluded that in Presidential Decree about Procurement of state-owned asset(s) need to including the consequences of not fulfil the work or default by any reason. The difference between Dea Putri’s paper is in the object, this paper focused on defense industry which mean a strategic asset that need to be prioritized for security reason.

RESEARCH METHODS

The study in this writing uses a qualitative approach with a literature study methodology. As we know qualitative research is an approach that allows the researcher to be included in people’s experiences with detail observation by using specific methods such as in-depth interviews, FGD (forum group discussion) observation and many more (Hennink, Hutter, & Bailey, 2020).

This paper uses both sources, primary and secondary data sources. Sources of secondary data in this writing was reviewed through the Defense University of the Republic of Indonesia's Foreign Work Lecture and several books, articles, scientific journals, and media coverage. Primary data collection commonly collected by questionnaires, interview, focus group, case studies and experimental methods in detail. (Taherdoost, 2021) The primary data are collected by interview through overseas field study in The Republic of Indonesia Defense University by asking several questions that related to this paper during the discussion and joining several forum group in several sources which related to this paper.

RESULT AND DISCUSSION

The ArrowHead 140 frigate is a ship developed by Babcock Marine, a defense industry company from England. AH140 refers to the specific design and specifications of the vessel. This ship has various embedded weapon systems such as cannons, anti-ship missiles, air defense missiles, and electronic defense systems. This ship also has advanced navigation and communication systems to support military operations.

The Indonesian-British cooperation in developing the AH140 frigate is a collaboration between the two strategic industries of the two countries in building a sophisticated frigate-class warship. This project aims to enhance the maritime defense capability of the two countries and

strengthen bilateral relations in the field of defense. In supporting this collaboration, the parties will share knowledge, technology, and experience to design, develop and produce the AH140 frigate. This collaboration covers various aspects, including weapons design, navigation, communication, and ship protection.

In understanding more deeply to analyze existing problems, it is necessary to understand several things in the subcontracting conception, laws, and regulations related to subcontracting.

1. Subcontractors

The Federation Internationale des Ingenieurs-Conselis, or FIDIC, defines subcontractors as all people listed in the contract as subcontractors or anyone appointed as a subcontractor for a part of the work and a legal replacement for the positions of these people. Fahrurrazi defines a subcontractor as a subcontractor who is a partner of the company bound by a contract or work agreement. (Tanuwijaya & Sekarsari, 2018)

The appointment of a subcontractor can be made in 2 (two) ways, namely direct appointment and through a tender. Direct appointment if an agreement in the tender process already binds the subcontractor or if the fulfillment of the subcontractor's requirements is fulfilled, copy it through a tender if the subcontractor still needs to have a history/known and more than one.

2. Main Contractor

In (Tanuwijaya & Sekarsari, 2018), it is defined that the main contractor is the company responsible for implementing construction projects. In this case study, PT. PAL is the main contractor. PT. PAL is essential in overseeing all project stages, including planning, procurement of materials, construction, and completion. The main contractor carried out is responsible for coordinating work with subcontractors and ensuring that the project is completed according to the specified specifications, budget, and schedule.

3. Laws and regulations related to subcontracting

In understanding the extent to which laws and regulations regulate subcontractors, the following is a review of laws and regulations with the following objects:

A. Presidential Regulation Number 16 of 2018 concerning Government Procurement of Goods and Services

B. Presidential Regulation Number 12 of 2021 concerning Amendments to Presidential Regulation Number 16 of 2018 concerning Government Procurement of Goods/Services

It has been conveyed in the Foreign Work Lecture Presentation at the Faculty of Defense Science and Technology, Defense University of the Republic of Indonesia, that Babcock has collaborated with PT. PAL in developing the AH140 frigate, which is expected to be in the form of cooperation without subcontractors. On the other hand, using subcontractors has added value in Cooperation projects to fulfill each party's obligations. The concept of a subcontractor agreement needs to be understood more deeply, especially for external parties who still need a deeper understanding of the regulations applied in Indonesia. Through domestic business actors, they can create industrial specialization through subcontractors to provide opportunities for BUMS for the defense industry to develop.

The limitation of subcontracting liability, according to FIDIC, is regulated if the subcontractor's obligations have exceeded the validity period for quality defect notification and the engineer, before the due date, the subcontract gives instructions to the contractor to be responsible for the subcontractor's obligations for the benefit of the service user, so the contractor must carry it out.

The independence of the defense industry was confirmed through Presidential Decree No. 44 of 1989 concerning the Strategic Industry Management Agency. This agency has the task of providing technical guidance and developing strategic industries so that productivity technology and operational efficiency can support national development and national defense independence, coordinating the implementation of strategic industrial management policies, and supervising the

implementation of strategic industries. This is the starting point for creating an independent defense industry environment. In 1998, the issuance of Government Regulation Number 35 of 1998 concerning the Capital Participation of the Republic of Indonesia for the Establishment of a Limited Liability Company (Persero) in the Industrial Sector. This PP is a manifestation of the government's efforts to develop nationally where national industrialization is efficient and capable of high competitiveness in regional and global. Through government capital participation in 10 (ten) existing Persero, in 2002 through Government Regulation Number 52 of 2002 concerning State Equity Participation in PT. Indonesian Aerospace, PT. Pal Indonesia PT. PINDAD, PT. Dahana, PT. Krakatau Steel, PT. Barata Indonesia, PT. Boma Bisma Indra, PT. Railway Industry, PT. Indonesian Telecommunications Industry, and PT. Len Industri and Dissolution of the Company PT. Bahana Pakarya Industry Strategies as a form of government efforts to increase the effectiveness and efficiency of business activities in the 10 (ten) national strategic industries. (PT. Barata Indonesia Persero, 2023)

In 2010, the government issued Presidential Regulation Number 42 of 2010 concerning the Defense Industry Policy Committee or KKIP. KKIP has a role in formulating strategic national policies in the defense industry, controlling national defense industry policies, and coordinating foreign cooperation to advance the defense industry.

Establishing an independent defense industry has been accommodated by the existence of a special committee that handles policies related to the defense industry and coordinating foreign cooperation. W.I. Jenkins defines *public policy* here as a series of decisions by a person or group of political actors regarding the goals chosen and how to achieve them in a situation where the decisions are, in principle, still within the limits of the authority of the actor. (Abdoellah & Rusfiana, 2016) In addition, public policy is a series of policy decisions taken by individuals or groups to realize specific societal goals (Taufiqurakhman, 2014). Every public policy must be stated in writing in laws and regulations. This is because laws and regulations are coercive and binding so that everyone can implement the resulting policies. (Desrinelti & Gistituati, 2021)

Public policy in the defense industry is the realm of KKIP, as stated in Presidential Decree Number 42 of 2010, so KKIP carries out companies that wish to enter into a cooperative foreign cooperation agreement. However, content and technical implementation refer to the principle of freedom of contract, where both parties agree on their respective capacities. Subcontractor schemes in defense industry projects can still be carried out by considering the principles of agreements and government involvement in establishing cooperation.

This relationship becomes mutually beneficial or a win-win solution through subcontractors, for example, increasing relationships and reducing and sharing risks (Tanuwijaya & Sekarsari, 2018). The work carried out by the subcontractor is work that supports the main contractor who has unique or special expertise in their field, besides that in terms of efficiency and thorough quality. (Raditya, Hardjomuljadi, & Amin, 2021) This is an added value in considering whether to use a subcontractor, considering that the subcontractor has reliable experts in their field and is supported by work methods that meet the requirements (Raditya, Hardjomuljadi, & Amin, 2021). Subcontractors will give birth to potential business actors in related projects. For example, there is the ability of BUMS outside of PT. PAL has a history of implementing projects of good quality and quality, which can become a potential for developing the independence of the defense industry through collaboration between subcontractor business actors and PT. PAL itself.

Furthermore, understanding the importance of subcontractors in building the independence of the defense industry, the next step is knowing and monitoring during a contract. For this reason, legal certainty has an important role. Sudikno Mertokusumo interprets that the condition of concrete power certainty for the law is a form of legal certainty (Fitrihabibi, 2021). So this must be understood in mitigating the emergence of default before the parties fulfill their

respective rights and obligations. The Joint Operation Agreement or Joint Operation became known when the issuance of Minister of Public Works Regulation Number 50/PRT/1991 concerning Licensing of Foreign Construction Service Company Representatives, that JO is a business carried out between one or several Foreign and National Construction Service companies, temporary and handling one or several projects and not become a new legal entity based on Indonesian laws and regulations. This definition is not limited to infrastructure projects but has become a definition in various projects involving foreign parties. If, in a Joint Venture, the company establishes a new legal entity together as a company, this is different from a Joint Operation, where the parties only work together and do not form a new entity. (Addinda & Shubhan, 2018)

Joint Operation, through its characteristics as a business entity, all the assets of the parties are expressly separated, but any income or inbred remains the agreement of the parties involved in the Joint Operation, for example, a Joint Operation with an income ratio of 60%: 40% and so on. Suppose a default or loss results from an internal error in implementing the joint operation. Parties who commit defaults get legal consequences that arise in the Joint Operation contract. It is different if a loss is incurred to the state and results in new obligations being incurred to the state.

Then the Personality Principle applies. An agreement only applies to the parties who agree (Rahman, Innaka, Hernawan, Darmi, & Dewi, 2011). If a loss occurs, a third party cannot be involved to bear the loss. According to Richard Butron Sumatupang in (Utami, 2020), based on the regulation of business entities that are not legal entities, the Criminal Code and the Civil Code still have visible differences compared to legal entities. Business entities that are not legal require the parties' agreement without any legalization of the deed of establishment and other requirements.

CONCLUSION

The use of subcontractors in the development of the AH140 frigate project is consensual between the parties. The development of defense industry independence can be started from the form or scheme of cooperation between the defense industry and other parties regarding technological collaboration. Building independence can be reflected in cooperation using subcontractors. On the other hand, this needs to be further studied regarding the legal implications for subcontractors using production methods in terms of Law Number 30 of 2000 concerning Trade Secrets because trade secrets are intellectual property that must be protected in terms of legality in creating an innovative climate in advancing industry in various fields of trade. Also Presidential Decree about Procurement of state-owned asset(s) states need to be updated about the consequences in an event whereas the subcontractor is default, because as the Civil Law stated that contracts can be transfer to third party, but in several cases we find that the subcontractor can't finish the work on the agreed time. This event can affect the defense industry system to growth.

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