

Aspek hukum perjanjian pinjaman antara RI dan Bank Dunia serta penerapannya dalam Hukum Nasional Indonesia Legal aspect of loan agreement between Republic of Indonesia and the World Bank and its implementation within the Indonesian National Law

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Abstrak

Disertasi ini mencoba untuk mempelajari masalah Aspek Hukum Panjanjian Pinjaman Antara Republik Indonesia (RI) dan Bank Dunia (BD) Serta Penarapannya Dalam Hukum Nasional Indonesia. Perjanjian Pinjaman antara RI dan BD merupakan perjanjian internasional yang tunduk pada hukum internasional (pasal 10.01 G.C. IBRD/IDA). Perjanjian pinjaman itu mengatur masalah tentang pinjaman uang maka ketentuan- ketentuan yang terdapat dalam perjanjian itu mirip dengan perjanjian pinjaman kumersial. Perbedaannya dangan perjanjian komersial biasa adalah adanya ketentuan-ketentuan yang terdapat dalam perjanjian pinjaman antara RI dan BD yang tidak terdapat dalam perjanjian kmmersial biasa, yaitu menyangkut masalah-masalah pelaksanaan proyek yang diatur oleh hukum administrasi negara. Oleh karena itu dalam melakukan pendekatan atas perjanjian pinjaman antara RI dan BD dilakukan secara transnasiunal. Bank Dunia dalam memberikan pinjaman berkepentingan agar pinjamannya dipergunakan seefektif mungkin. Guna mencapai tujuan tersebut maka Bank Dunia membuat peraturan-peraturan yang dijadikan padoman dalam memberikan pinjaman. Peraturan-peraturan standar tadi misalkan General Condition (B.C.), y-., Pedoman Prokuremen (G.P.) dan lain-lain. Ketentuan standar tadi marupakan ketentuan yang diperlakukan dalam perjanjian pinjaman, namun masih dapat dirundingkan untuk disesuaikan dengan sifat proyek yang dibiayai oleh pinjaman Bank Dunia. Adanya ketentuan- ketentuan dalam G.C. dan G.P, yang terdapat dalam perjanjian pinjaman ditambah adanya sistem Iifh cycle, maka BD dimungkinkan dapat campur tangan dalam pelaksanaan proyek. Hal ini tidak hanya manyangkut masalah teknis dan ekonomi, tetapi juga menyangkut masalah hukum. Perjanjian pinjaman antara RI dan BD merupakan perjanjian internasional yang langsung dapat berlaku setelah penandatanganan tanpa memerlukan ratifikasi oleh DPR. Hasil penelitian penulis menunjukkan bahwa perjanjian pinjaman RI dan BD didahulukan dari ketentuan perundang-undangan nasional (primat hukum internasional). Perjanjian pinjaman antara RI dan BD dalam suasana nasional masih diikuti oleh perjanjian lainnya, misalkan perjanjian penerusan dan perjanjian proyek. Masalah yang dihadapi dari penerapan perjanjian pinjaman antara RI dan BD adalah belum-adanya kemantapan dalam pengaturan nasional. Pengaturan pelaksanaan pinjaman luar negeri pengaturannya belum sesuai déngan rumitnya masalah yang dihadapi. Personil pelaksanaan proyek di lapangan banyak yang kurang memahami aturan-aturan yang harus dilaksanakan sesuai dengan perjanjian pinjaman.

.....This dissertation is trying to study the problem on the legal aspects of the loan agreement between the Republic of Indonesia and the world Bank and its implementation within the Indonesian National Law. The loan Agreement between the Republic of Indonesia and the World Bank constitutes an international agreement (article 10.10 G.C. IBRD/IDA). The loan agreement regulates problems concerning the loan, therefore the provisions reflected in the agreement are similar to those in commercial loan agreement. The differences with the normal commercial loan agreement are that in the loan agreement between the Republic of Indonesia and the World Bank there are some regulations which do not appear in the normal commercial

agreement, such as the regulations about the implementation of the project which are regulated by administration law. Therefore, the approach to study the loan agreement between the Republic of Indonesia and the world Bank should be done through transnational approach.

The World Bank in providing the loan has the interest that the loan should be used effectively. To achieve the said objectives, the world Bank made some provisions as a guidelines in providing loan. Those standard provisions are among others the General Condition (GC), Guidelines for Procurement (GP) etcetera. Those standard provisions have become the regulations applied in the loan agreement. However, it is negotiable in line with the nature of the project which are financed by the loan from the World Bank. The existence of those standard provisions (GC, GP) which appear in the loan agreement together with the life cycle system made possible for the world Bank to intervene in the execution of the financed projects. This was not only effecting the technical and economic matters but also involving legal matters. The loan agreement between the Republic of Indonesia and the World Bank is an international agreement which shall be directly come into force after signing, without ratification by the parliament.

The result of my research shows that loan agreement between the Republic of Indonesia and the World Bank is given high priority vis a vis the national law (primate of international law). The application of the loan agreement between the Republic of Indonesia and the World Bank in our national law is still followed by other agreements, such a subsidiary loan agreement and project agreement. The problems exist from the implementation of the loan agreement between the Republic of Indonesia and the World Bank have shown that there is no stability in the national regulations. The regulation of the execution of the foreign loan is not yet in line with the complexity of the problems faced. The executors at almost all fields mostly are not familiar with the regulations which have been done according to the provisions of the loan agreement.