
Mediation In The Resolution Of Construction Disputes In The 500 Kv Sumatra Transmission Project

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Abstract

Infrastructure construction projects frequently experience disputes between various involved parties, including project owners, contractors, and third parties. The 500 kV Sumatra transmission construction project serves as a relevant example, where delays in completion, route changes, and contractual issues related to the return of equity funds and interest payments (Interest During Construction/IDC and Interest During Payment/IDP) sparked disputes between PT PLN (Persero) and the contractor. Mediation was chosen as an alternative dispute resolution (ADR) method to avoid lengthy and costly litigation processes. This article examines the effectiveness of the mediation facilitated by the State Attorney General's team, which resulted in significant agreements, including the return of 80% equity to the contractor before the issuance of the Taking Over Certificate (TOC) and the resolution of the remaining 20% afterward. The effectiveness of mediation was influenced by various factors such as voluntary participation of the parties, mediator competence, communication quality, and openness of information. However, several challenges were identified, including the imbalance of power between the parties and the risk of mediation being used as a delaying tactic. This research provides an in-depth understanding of the role of mediation in resolving construction disputes in Indonesia, particularly for large-scale projects. The findings show that mediation is an effective method for maintaining project continuity while preserving good business relationships between the parties involved.

Keywords: *Mediation, Construction dispute, 500 kV Transmission, alternative dispute resolution*

INTRODUCTION

Construction disputes are a common issue in infrastructure projects. Construction projects typically involve multiple parties, such as project owners, main contractors, subcontractors, suppliers, consultants, and other third parties. The complexity of contractual relationships, the significant investment value, and uncertainties in project execution often trigger disagreements. These disputes may relate to various aspects, including differences in contract interpretation, delays in project completion, non-compliance with quality standards, and claims for additional costs. If not resolved promptly, construction disputes can hinder project progress, increase costs, and jeopardize long-term business relationships between the parties involved (Hardjomuljadi, 2020).

The 500 kV Sumatra transmission project, starting from New Aur Duri - Peranap - Perawang, serves as a concrete example of the complexity of infrastructure projects in Indonesia. This project is designed to strengthen the power grid in the Sumatra region, with a total contract value reaching up to IDR 6.5 trillion. It aims to bolster Sumatra's electricity network, which is crucial to supporting the region's economic growth. The project is funded through a tripartite financing scheme, with 70% financed via syndicated bank loans and 30% sourced from equity funds provided by the contractor. However, the project has faced significant challenges during implementation, including delays in completion, changes in the transmission route, and contractual issues related to equity fund reimbursement as well as the payment of equity interest (Interest During Construction/IDC and Interest During Payment/IDP).

In accordance with Law No. 2 of 2017 on Construction Services, any legal issues in construction projects must be resolved using approaches that minimize negative impacts on project implementation. The 500 kV Sumatra transmission project has achieved over 99% completion. However, the project has faced several significant challenges during implementation, including contractual issues related to the return of equity funds and the payment of interest during construction (IDC) and interest during payment (IDP). Additionally, challenges in obtaining the Taking Over Certificate (TOC) have triggered disputes between PLN and the contractor.

Similarly, the issue of rerouting the transmission network near oil/gas wells owned by PT Pertamina has become one of the main challenges causing delays in obtaining the Taking Over Certificate (TOC). Additionally, there are complex negotiation processes related to changes in the Terms of Payment (ToP), as these involve PLN's obligations regarding equity funds and equity interest payments governed by the equity contract.

In resolving construction disputes, litigation in court is often considered a last resort due to its time-consuming, costly, and labor-intensive nature. Litigation also has the potential to disrupt the established business relationships between the parties. Therefore, alternative dispute resolution (ADR) methods are becoming a more preferred option, with mediation being one of them. Mediation offers a more flexible and collaborative approach to resolving disputes, focusing on the interests and needs of the parties rather than the position-based conflict inherent in litigation (Gayo, 2024).

In the context of Good Corporate Governance (GCG), mediation has the potential to improve business relationships between parties, avoid lengthy litigation processes, and ensure the smooth implementation of projects. This aligns with the principles of Law No. 30 of 1999 concerning

Arbitration and Alternative Dispute Resolution, which encourages the use of alternative methods such as mediation to resolve disputes efficiently and effectively.

Mediation in construction disputes offers several advantages, including lower costs compared to litigation, faster resolution times, and a more informal and participatory process. In the case of the 500 kV Sumatera transmission project, mediation was chosen as the dispute resolution option by both parties. The mediation was facilitated by the Attorney General's Office of the Republic of Indonesia through the State Attorney's Team, acting as mediators. The mediation aimed to reach an agreement on the return of equity funds and the settlement of equity interest payments without the imposition of IDP (Interest During Payment). One of the outcomes of the mediation was an agreement for PLN to return 80% of the Contractor's equity portion before the TOC (Taking Over Certificate), with the remaining 20% to be settled after the TOC is issued.

A neutral and competent mediator plays a crucial role in facilitating constructive dialogue between disputing parties, with the aim of reaching a mutually beneficial agreement. Additionally, mediation holds the potential to preserve or even improve business relationships between the parties, something that is often difficult to achieve through formal litigation processes (Kurniawan et al., 2023).

However, despite the many advantages mediation offers, its effectiveness in resolving construction disputes is not always guaranteed. Several factors can influence the outcome of mediation, including the complexity of the dispute, the willingness of the parties to negotiate honestly, and the mediator's skills and experience in understanding the technical and legal nuances of construction. Furthermore, mediation may prove ineffective if there is a power imbalance between the parties or if one party is not fully transparent in sharing critical information relevant to resolving the dispute. For example, in this project, there was an agreement not to impose Interest During Payment (IDP), which was the result of intense negotiations during the mediation process.

Given the importance of mediation as a method for resolving construction disputes, there remains a gap in research that comprehensively examines the factors influencing the effectiveness of mediation. The availability of competent mediators in the construction sector, transparency of information from the parties involved, and analysis of power imbalances in mediation are among the critical aspects that require further exploration to enhance the success of mediation in construction disputes.

Mediation as an alternative dispute resolution mechanism, as regulated under Supreme Court Regulation No. 1 of 2016, underscores the importance of resolving disputes outside of litigation, particularly for large-scale construction projects such as the 500 kV Sumatra transmission

development, which involves multiple parties and significant contractual values. In addition to avoiding the lengthy and costly litigation process, mediation offers flexibility for the parties to reach mutually beneficial solutions while adhering to the principles of Good Corporate Governance (GCG).

This research is necessary to address the challenges faced in implementing mediation in construction disputes. A comprehensive theoretical and empirical study on the effectiveness of mediation, as well as the factors influencing it, will make a significant contribution to optimizing the resolution of construction disputes. Furthermore, this research is expected to provide practical recommendations for stakeholders in the construction industry to enhance the efficiency and success of the mediation process.

RESEARCH METHODS

This study employs a qualitative-descriptive approach aimed at analyzing the effectiveness of mediation in resolving construction disputes in the 500 kV Sumatra transmission project. The data used in this research includes both primary and secondary data. Primary data was obtained through in-depth interviews with parties directly involved in the mediation process, including mediators from the State Attorney Team, representatives of PT PLN (Persero), and contractors. Additionally, observations were conducted during the mediation process to understand the dynamics of interactions and negotiations that took place.

Secondary data was collected from official documents related to the 500 kV Sumatra transmission project, including contracts, meeting minutes, mediation agreement records, and internal company reports. The analysis also encompasses a review of amendment agreements and changes to the agreed payment terms (Terms of Payment) as reflected in the addendum agreements between the two companies. These documents provide insights into how complex contractual agreements can be adapted to achieve mutually beneficial resolutions.

The results of this analysis are expected to provide a deeper understanding of the effectiveness of mediation in resolving construction disputes, particularly in the context of large-scale infrastructure projects.

The qualitative approach was chosen because it offers flexibility in identifying critical factors that may not be detected through quantitative methods. Furthermore, this method allows for a detailed exploration of the interaction and negotiation processes that occur during mediation, providing a comprehensive perspective on the dynamics of dispute resolution outside formal litigation channels.

RESULTS AND DISCUSSION

The Effectiveness of Mediation in Resolving Construction Disputes

The Effectiveness of Mediation in Resolving Construction Disputes, particularly in the 500 kV Sumatra Transmission Development Project, demonstrates how this alternative dispute resolution method can address conflicts that have the potential to delay or even halt the progress of major projects. Mediation as a dispute resolution method is governed by Supreme Court Regulation (Perma) No. 1 of 2016 on Mediation Procedures in Court, which provides the legal framework for conducting mediation in Indonesia (Gayo, 2023).

For instance, research indicates that in the context of construction work contracts in Indonesia, mediation can promote more efficient resolutions through a win-win solution approach that prioritizes sustainable relationships between the parties involved (Purnomo, 2016). In this project's context, the effectiveness of mediation is clearly reflected in resolving disputes between PT PLN (Persero) and the Contractor regarding the return of equity funds, the payment of equity interest (Interest During Construction/IDC and Interest During Payment/IDP), and the handover of work (Taking Over Certificate/TOC).

Furthermore, Waisapi (2023) emphasizes the critical role of the Dispute Board in ensuring the smoothness and fairness of the dispute resolution process in construction projects, including through mediation as a simpler and more amicable resolution effort. Mediation is often used as an initial step before arbitration procedures, where parties can achieve a peaceful solution that avoids the time and cost burdens of formal litigation (Lewiandy et al., 2023).

Mediation becomes highly important as litigation methods are considered inefficient in terms of time and cost, and may potentially harm the business relationship between the parties (Huda et al., 2023). As stipulated in Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, mediation provides a fast and amicable solution. The process of resolving business disputes through mediation offers efficiency and speed, while providing a win-win solution for the parties involved, making it a preferred alternative to litigation. (Kurniawan et al., 2023). The effectiveness of mediation not only depends on the process but also on the involvement of the mediator, who plays a crucial role in maintaining good relations between the parties. In the context of this project, mediation successfully resolved potential larger conflicts, where PT PLN and the contractor agreed that 80% of equity returns would be made before the issuance of the TOC, while the remaining 20% would be settled afterward.

Voluntary Involvement of the Parties

Voluntary involvement is the key to the success of mediation in this project. Supreme Court Regulation (Perma) No. 1 of 2016 emphasizes the importance of voluntary participation by disputing parties in the mediation process. Both parties, PLN and the Contractor, agreed to engage in mediation with the aim of resolving the dispute constructively. Voluntary involvement is crucial to achieving mutually beneficial outcomes. In this case, the mediation successfully brought together both parties, despite their differing contractual positions, with PLN and the Contractor agreeing to return 80% of the Contractor’s equity funds before the issuance of the TOC, while the remainder would be paid after the TOC. The willingness to participate and negotiate voluntarily became a determining factor in reaching an agreement that benefited both sides.

The mediation process, involving the active engagement of the parties, offers a better chance of achieving positive outcomes, as parties are more likely to commit to solutions they have agreed upon themselves. Law No. 30 of 1999 supports this by reinforcing legal protection for mediation outcomes achieved through voluntary participation. In this case, the agreement to return equity funds before the TOC issuance demonstrates how the voluntary involvement of the parties can lead to solutions that are advantageous for both sides.

Competent and Neutral Mediator

The success of mediation in this construction dispute also heavily depends on the competence of the involved mediator. A neutral mediator from the State Attorney’s Office plays a crucial role in facilitating the mediation process and maintaining integrity and impartiality throughout the discussions. Perma No. 1 of 2016 stipulates that mediators must be neutral and possess adequate competence in dispute resolution, particularly in cases involving technical issues such as construction. Competent and experienced mediators in the construction industry are capable of understanding complex technical and contractual aspects, thereby providing effective guidance during negotiations. In the context of this 500 kV transmission project, the presence of an experienced mediator enabled more open and effective dialogue between PLN and the contractor, leveraging the flexibility provided by Perma No. 1 of 2016 to manage complex dynamics and resolve disputes more quickly than formal litigation. The competence and impartiality of the mediator in this case became a determining factor in achieving a mutually beneficial agreement (Sudini, 2016).

Complexity of the Dispute

The complexity of the dispute, involving technical issues, changes to the transmission line route, and claims related to IDC (Interest During Construction) and IDP (Interest During Payment), made the mediation process more challenging. The dispute encompassed payment issues amounting to IDR 1.6 trillion and IDC of IDR 337.4 billion. This complexity was further exacerbated by challenges in resolving the TOC (Take-Over Certificate) due to changes in the transmission line route near oil well facilities owned by PT Pertamina. Despite the high level of complexity, the mediation successfully achieved a satisfactory agreement for both parties.

Mediation in construction disputes often involves complex technical aspects, making it crucial for mediators to have a deep understanding of infrastructure projects to resolve disputes effectively. Despite the challenges, the mediation successfully brought PLN and the contractor together to reach an adequate agreement regarding payments and project completion..

Information Transparency

One of the critical factors in the success of mediation is information transparency. In this project, PLN and the Contractor shared information related to equity fund details, IDC, and the potential impact of IDP. Perma No. 1 of 2016 requires mediators to ensure that the parties communicate honestly and openly to enable the mediation process to run effectively. Clear and transparent information allows both parties to assess the benefits and risks of every decision made.

This process facilitates more effective discussions and helps both parties reach realistic agreements. The mediation process in this project enabled the parties to share crucial information related to the return of equity funds and the resolution of IDC payments without incurring IDP, which could potentially burden PLN with IDR 554 billion. Information transparency in the mediation process is essential to prevent misunderstandings and build trust between the parties. This transparency allows PLN and the Contractor to reach realistic and mutually beneficial agreements.

The Relationship Between the Parties

In long-term construction projects such as the development of this power transmission, the relationship between the parties is a crucial factor that can influence the outcome of mediation. The 500 kV Sumatra transmission project involves a long-term relationship between PLN and the Contractor, where both parties must continue to collaborate to complete the project. Mediation allows

the parties to maintain their business relationship by resolving disputes peacefully and without escalating conflict. Through mediation, the business relationship between PLN and the Contractor remains intact, as both parties agree on the resolution of their contractual obligations without compromising the established working relationship (Irmanto & Priyono, 2024).

Factors Influencing Mediation Outcomes

Quality of Communication Between Parties

The success of mediation is greatly influenced by the quality of communication between the disputing parties. When both parties are able to communicate openly and honestly, the likelihood of reaching a mutually beneficial agreement significantly increases. In the context of the 500 kV Sumatra transmission project, open communication between PT PLN (Persero) and the contractor facilitated effective dialogue on critical issues such as equity return and the elimination of Interest During Payment (IDP). The willingness of both parties to engage in direct communication and discuss changes to the Terms of Payment (ToP) played a major role in achieving a mutually beneficial resolution. Lewiandy et al. (2023) Emphasizing the importance of openness in communication during mediation to achieve effective agreements, where transparency and the sharing of information can enhance the quality of mediation. For instance, Purnomo (2023) explains that mediation in construction disputes provides mutually beneficial solutions while preserving the sustainability of business relationships.

The Supreme Court Regulation (PERMA) No. 1 of 2016 on Mediation Procedures in Court underscores the significance of information transparency in mediation. Article 5 of PERMA No. 1 of 2016 states that the mediation process must be conducted with openness and active participation from the parties to reach a fair agreement. With honest and transparent communication, the parties involved in this project are able to avoid larger conflicts, maintain business relationships, and find solutions that are advantageous to both sides. (Gayo, 2024).

Open and constructive communication is a key element in any mediation process, especially in projects with high levels of complexity. With effective communication skills, parties can understand each other's interests and build solutions based on mutual benefits. In the case of this transmission project, honest and clear communication enabled PLN and the Contractor to reach an agreement regarding the return of 80% of equity before the TOC (Take Over Certificate) and 20% after the TOC.

The success of mediation largely depends on the parties' ability to maintain open information sharing and communication throughout the process. In construction disputes, information transparency often becomes a major obstacle as parties are reluctant to share information they consider strategic.

Therefore, transparent and honest communication is a prerequisite for successful mediation (Kurniawan et al., 2023).

Timing of Mediation

The timing of mediation is a key factor in determining the success of resolving construction disputes. Mediation conducted at an early stage of the dispute often prevents the escalation of conflicts into larger and more complex issues. In the 500 kV Sumatra transmission project, mediation was carried out before the dispute reached the litigation stage, allowing PLN and the Contractor to resolve their issues without entering formal legal proceedings. As stated by Dr. Luh Putu Sudini, mediation plays a significant role in resolving business disputes in Indonesia in a faster and more cost-effective manner compared to litigation (Sudini, 2016).

Supreme Court Regulation No. 1 of 2016 also stipulates that mediation should ideally take place at the early stage of court proceedings, as regulated in Article 11, which states that mediation must be conducted before entering the substantive examination stage of the case. This highlights the importance of timing in mediation, as early mediation can prevent both parties from facing greater issues and prolonged litigation (Waisapi, 2023).

Early-stage mediation provides advantages in preventing project delays and avoiding additional costs that could arise from prolonged conflicts. One of the main benefits of mediation is its ability to resolve disputes quickly before they develop into more complicated issues that are harder to address through litigation. The right timing for mediation is critical to maintaining project continuity and avoiding cost escalation.

In this transmission project, the timing of mediation was crucial because resolving disputes before litigation allowed both parties to settle disagreements without delaying project progress. This is reflected in the agreement on equity return without Interest During Progress (IDP), which was reached before the TOC (Take Over Certificate) certification process, demonstrating the importance of conducting mediation at the right time.

Negotiation Power of the Parties

The negotiation power between parties often becomes a decisive factor in construction mediation. In the 500 kV Sumatra transmission project, PT PLN, as the financially stronger entity, potentially holds a more dominant negotiating position compared to the Contractor. This imbalance of power can pose a challenge, especially when one party possesses more legal and financial resources to support its position during the mediation process. According to Sudini (2016), the role of the mediator is

crucial in maintaining balance between the parties, ensuring that the mediation proceeds fairly despite the power imbalance.

Power imbalances can result in less equitable outcomes for the weaker party in mediation. To address this, the mediator's role becomes critical in maintaining equilibrium and ensuring that the agreements reached are fair and balanced. PERMA No. 1 of 2016 also emphasizes that mediators must remain neutral and impartial, acting as facilitators to ensure that both parties have an equal opportunity to present their views. In this project, a neutral mediator successfully addressed the power imbalance between PLN and the Contractor. The agreement not to pay the IDP (Initial Development Payment) was offset by a faster equity return to the Contractor, enabling both parties to benefit.

Power imbalances are often obstacles in construction mediation. However, with the involvement of a neutral and experienced mediator, these imbalances can be minimized, achieving a fair solution for all parties involved.

Readiness and Expertise of the Mediator

The expertise and readiness of the mediator are crucial factors in determining the outcome of mediation. Mediators with in-depth knowledge of the technical and legal aspects of construction projects can lead negotiations more effectively. In the 500 kV Sumatra transmission project, mediators from the State Attorney Legal Team played a critical role in ensuring the mediation process ran smoothly by addressing complex technical and legal challenges. Sudini (2016) highlights the importance of competent mediators with strong interpersonal skills to build trust among the parties.

A competent mediator must possess strong interpersonal skills to foster trust between the parties and the ability to focus on practical solutions. The mediator in this project was able to keep the process running smoothly and prevent deadlocks during negotiations. The readiness of the mediator was also evident in their ability to understand the technical nuances of the construction project and adapt their approach to meet the needs of the parties.

Competent mediators play a key role in ensuring fair and beneficial outcomes for all parties involved in construction disputes. The mediator's readiness to understand the project context and address the technical challenges faced by the parties becomes a decisive factor in the success of the mediation.

Critique of Mediation

Although mediation has proven effective in resolving construction disputes, several criticisms merit consideration. One of the primary weaknesses of mediation is its non-binding nature, meaning

that the outcomes of mediation are enforceable only if the parties agree to commit to the settlement. This can pose a problem if one party is unwilling to comply with the results of mediation, potentially causing the dispute to resurface.

Additionally, there is a risk that mediation may be used as a delaying strategy by one party with no genuine intention of resolving the dispute promptly. There have been instances where parties engage in mediation merely to postpone litigation processes without a clear commitment to reaching an agreement. While the mediation process in the 500 kV Sumatra transmission project was conducted effectively, the potential for such delaying tactics always remains a concern in any mediation process.

Another critique is the lack of uniform quality standards for mediators in some jurisdictions, including Indonesia. The absence of clear standards regarding the qualifications and experience of mediators can lead to ineffective mediation. In the context of this project, it is crucial that the mediators involved possess adequate qualifications and experience to handle construction disputes.

Taking these various factors into account, it can be concluded that mediation is an effective method for dispute resolution in the 500 kV Sumatra transmission project, with certain critical considerations that need to be addressed in future applications.

Considering these various factors, it can be concluded that mediation has proven to be an effective method for resolving construction disputes in the development of the 500 kV Sumatra transmission project. The success of this mediation demonstrates that the process can provide efficient and sustainable solutions for large-scale construction projects. As highlighted in the study by Irmanto & Priyono (2024), fundamental principles of mediation, such as freedom of choice, equality of position, and problem-solving oriented toward consensus, have been key factors in the success of mediation in projects involving complex interests.

CONCLUSIONS AND RECOMMENDATIONS

Conclusions

Based on the research findings on mediation in resolving construction disputes in the 500 kV Sumatra transmission project, it can be concluded that mediation is an effective dispute resolution method, particularly in large-scale infrastructure projects. Mediation successfully resolved disputes related to equity recovery and the payment of Interest During Construction (IDC) and Interest During Payment (IDP) without going through lengthy and costly litigation processes. The success of mediation in this project was supported by the voluntary involvement of the parties, the competence of neutral and experienced mediators, and the openness of information from both parties.

The complexity of construction disputes involving significant technical and financial aspects can be effectively managed through mediation. In the 500 kV Sumatra transmission project, mediation allowed for the peaceful resolution of disputes related to cost claims and equity recovery while maintaining the business relationship between PT PLN (Persero) and the contractor. This reflects the advantages of mediation in preserving good working relationships in long-term projects.

However, some weaknesses of mediation remain, such as its non-binding nature and the potential use of mediation as a delaying tactic. Nevertheless, mediation continues to be a preferred choice for resolving construction disputes due to its flexibility, time efficiency, and lower costs compared to formal litigation.

Recommendations

1) Enhancing Mediator Competence

There is a need to improve the standards and qualifications of mediators in Indonesia, especially those handling construction disputes. Mediators with technical expertise and experience in the infrastructure sector can facilitate negotiations and resolve disputes more effectively. Comprehensive training on the construction sector for mediators can enhance the quality of mediation. The enhancement of mediator qualifications can be implemented through specialized training that incorporates technical and legal aspects of construction projects, as regulated in Supreme Court Regulation No. 1 of 2016 concerning Mediation Procedures in Court. Establishing clear competency standards will improve the quality and effectiveness of mediation in resolving construction disputes.

2) Information Transparency in Mediation

Parties involved in mediation should prioritize information transparency to achieve fair and balanced solutions. Transparency enables a realistic evaluation of claims and provides both parties the opportunity to make informed decisions. In accordance with Supreme Court Regulation No. 1 of 2016, mediators must ensure that all parties provide relevant information to reach transparent agreements.

3) Early-Stage Dispute Resolution

Mediation should be initiated at the early stages of construction disputes to prevent conflict escalation that could affect project implementation. Resolving disputes early through mediation has

proven to be more efficient in maintaining project continuity and avoiding delays that may incur additional costs.

4) Further Research

It is recommended to conduct further research on the factors influencing the effectiveness of mediation in infrastructure projects in Indonesia. Empirical studies on the effectiveness of mediation in various types of infrastructure projects could provide broader insights into best practices for resolving construction disputes..

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