

Dispute Resolution in Green Building Projects: Civil Law Perspective in Indonesia

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Abstract

Within the context of Indonesia's civil law system, this article examines dispute resolution in green building projects. The goal of the study is to address the growing legal complexity brought on by sustainability criteria, such as certification standards, appropriate site development, energy efficiency, water efficiency, material resource and cycle, indoor health and comfort, building environment management.

The research methodology employed in this study is a Mixed Method, which includes expert judgment and a literature review on construction law and green building regulations in Indonesia.

The lack of precise rules for resolving conflicts in green building projects and the limited incorporation of sustainability principles into Indonesia's legal system are two of the main problems. The paper assesses current conflict resolution procedures, highlighting the function of substitute strategies like adjudication and mediation.

Keywords: civil law, dispute, resolution, green building, sustainability

Abstrak

Dalam konteks sistem hukum perdata Indonesia, artikel ini membahas resolusi sengketa dalam proyek bangunan hijau. Tujuan dari penelitian ini adalah untuk menangani kompleksitas hukum yang semakin meningkat akibat adanya kriteria bangunan hijau keberlanjutan, seperti standar sertifikasi, pengembangan lahan yang memperhatikan lingkungan, efisiensi energi, efisiensi air, sumber daya material dan daur ulang, kesehatan dan kenyamanan dalam ruangan, serta manajemen lingkungan bangunan.

Metode dalam penelitian ini adalah Mix Method yang terdiri dari pertimbangan ahli dan studi kepustakaan tentang hukum konstruksi dan bangunan hijau yang berlaku di Indonesia.

Peraturan yang kurang jelas untuk menyelesaikan konflik dalam proyek bangunan hijau dan keterbatasan integrasi prinsip-prinsip keberlanjutan ke dalam sistem hukum Indonesia merupakan dua masalah utama yang ada saat ini. Artikel ini mengevaluasi prosedur resolusi konflik yang ada, dengan menyoroti kontribusi strategi alternatif seperti adjudikasi dan mediasi.

Kata Kunci: hukum perdata, sengketa, resolusi, bangunan hijau, keberlanjutan

1. Introduction

Sustainability has become a cornerstone of modern construction projects, influencing design, execution, and management approaches. Among these, green building practices have emerged as a global priority, incorporating sustainability criteria like appropriate site development, energy efficiency and conservation, water conservation, appropriate material selection, indoor air quality and comfort, building environment

management . Indonesia is adopting green building principles aligns with the nation's commitments to sustainable development, addressing environmental challenges such as urbanization and resource depletion (Indonesia, 2014)

Indonesia's legal system, rooted in civil law, poses unique challenges in managing the complexities of green building projects. Unlike common law jurisdictions, which rely on precedents and flexibility, Indonesia's civil law framework depends on codified regulations, which are often slow to adapt to emerging issues like sustainability. As green building projects introduce sophisticated requirements—ranging from certification standards to compliance with green building standard like energy and water efficiency protocols—the potential for disputes escalates, requiring tailored mechanisms for resolution.

Dispute resolution in the context of green building involves unique challenges. These include interpreting and enforcing certification requirements, balancing stakeholder interests, and ensuring compliance with legal frameworks. Current Indonesian construction laws, such as the Civil Code and Law No. 2 of 2017 on Construction Services, do not explicitly address sustainability principles, leaving a regulatory gap. This paper explores the legal and procedural implications of green building disputes, focusing on alternative mechanisms like mediation and adjudication, This study employed Mixed Method, which includes expert judgment and a literature review on construction law and green building regulations in Indonesia. The findings highlight the absence of specific regulations for green projects and the limited integration of sustainability principles into Indonesia's legal system. By evaluating existing dispute resolution frameworks, the study aims to provide insights into aligning Indonesia's legal practices with the evolving demands of sustainable construction.

Problem Formulation:

1. Disputes arising in green building projects to comply with the Indonesian civil law system.

2. The challenges in integrating sustainability principles (such as energy efficiency, water efficiency, and eco-friendly materials) into the Indonesian legal system, particularly in the context of dispute resolution in green building projects.
3. Inadequate regulations for resolving conflicts in green building projects in Indonesia.

Research Questions:

1. What factors contribute to the lack of clarity in regulations regarding the resolution of disputes in green building projects in Indonesia?
2. How can the existing dispute resolution procedures be optimized to handle disputes involving sustainability principles in green building projects?
3. What is the role of alternative strategies such as adjudication and mediation in resolving disputes in green building projects in Indonesia?

Research Objectives:

1. To identify the factors causing the lack of clarity in regulations regarding the resolution of disputes in green building projects in Indonesia.
2. To describe how existing dispute resolution procedures can be optimized to handle disputes involving sustainability principles in green building projects.
3. To describe the role of alternative strategies, such as adjudication and mediation, in resolving disputes in green building projects in Indonesia.

2. Literature Review

2.1 Green Building Principles and Dispute Complexity

Green buildings are structures designed to minimize environmental impact while enhancing efficiency and occupant well-being. Global certification systems, such as LEED (Leadership in Energy and Environmental Design) in US and Green Mark, a green

building certification scheme developed by the Building and Construction Authority (BCA) of Singapore are designed to evaluate the environmental impact and sustainability of buildings. In Indonesia, the GreenShip Certification by the Green Building Council Indonesia (GBCI) provides similar criteria, focusing on: 1) sustainable site development; 2) energy efficiency; 3) water efficiency; 4) material resource and cycle; 5) indoor health and comfort; 6) building environment management. (Indonesia, 2014)

Disputes in green building projects often arise due to conflicting interpretations of sustainability criteria, non-compliance with certification standards, or failure to meet contractual obligations. For example, Hwang and Ng identified that sustainability-related disputes are exacerbated by the technical complexity and multi-stakeholder nature of green construction projects (Hwang & Ng, 2013)

2.2 Global Practices in Green Building Dispute Resolution

Common Law Systems

Common law jurisdictions like the US and UK have developed advanced mechanisms for resolving green building disputes. Notable practices include:

1) Green Building Addenda in Contracts

Contracts often include specific clauses addressing sustainability obligations. For example, the AIA E204 Sustainable Projects Addendum in the US provides guidelines for incorporating green building goals into project contracts (Mahmoud & Beheiry, 2021)

2) Role of Specialized Tribunals

Countries like Australia have established tribunals specializing in environmental and construction disputes. These tribunals integrate technical expertise into legal proceedings, ensuring fair outcomes (Preston, 2013)

2.3 Dispute Resolution Mechanisms in Civil Law Systems

Civil law systems, including Indonesia's, rely on codified statutes and prioritize written regulations over judicial precedents. This structure, while systematic, may lack the flexibility required to address nuanced and evolving issues like green building

disputes. In practice and its development, some judges in Indonesia have created laws to fill legal gaps, much like judges in common law countries. Thus, the judiciary in Indonesia is no longer entirely aligned with the civil law system, as it has adopted and applied certain characteristics that are identical to the common law judicial system, such as judicial decisions that update the law, including even criminal law, which adheres to the principle of legality. This condition or system has been shaped by the contemporary relationship between legal structures, legal rules, and society . (Ramadhan, 2018)

In civil law jurisdictions, litigation remains a primary mechanism for dispute resolution. However, litigation in green building projects often faces challenges such as prolonged timelines, high costs, and limited technical expertise among judges. (Cheung et al., 2006)

To overcome these limitations, Alternative Dispute Resolution Resolution (ADR mechanisms such as mediation, arbitration, and adjudication have gained prominence. Studies like emphasize the suitability of ADR in resolving construction disputes due to its flexibility and cost-effectiveness (Construction Management and Economics). (Chong et al., 2011)

In Indonesia, ADR is increasingly used in construction disputes. For instance, Arbitration under the auspices of the Indonesian National Board of Arbitration (BANI) provides a streamlined process for resolving complex disputes. However, ADR adoption for green building disputes remains limited due to a lack of regulatory clarity (Bayu et al., 2023)

Promoting adjudication and mediation as primary tools for dispute resolution in green building projects could alleviate the burdens of litigation. Public-private partnerships can play a crucial role in fostering ADR adoption.

2.4 Indonesian Green Building Disputes: Current Gaps Regulatory Deficiencies

Indonesia’s legal framework lacks explicit provisions for sustainability in construction. The Law on Construction Services (No. 2 of 2017) and Civil Code address general construction principles but do not incorporate green building criteria.

Judges and arbitrators in Indonesia often lack the technical expertise to address green building disputes effectively. Virgayanti highlight the need for specialized training and knowledge-sharing initiatives. Training judges, arbitrators, and mediators in green building principles is essential to improve dispute resolution outcomes. (Virgayanti, 2017)

International arbitration centers like the Singapore International Arbitration Centre (SIAC) and adjudication bodies such as the Dispute Board Federation (DBF) provide robust frameworks for resolving green building disputes. These mechanisms are particularly effective in multi-jurisdictional projects where diverse legal and sustainability standards apply. (Pryles & Waincymer, 2009)

GreenShip Certification, while widely recognized, lacks legal enforceability, making it challenging to resolve disputes related to non-compliance.

3. Research Methodology

The research methodology employed in this study is a Mixed Method approach, combining expert judgment with a comprehensive literature review. This methodology is chosen to ensure a balanced analysis of both theoretical frameworks and practical insights related to construction law and green building regulations in Indonesia.

The expert judgment component involves interviews and consultations with professionals in the construction industry, legal practitioners, and sustainability experts. These individuals provide valuable insights into the challenges and practices associated with resolving disputes in green building projects. Their expertise helps to contextualize the findings within Indonesia’s unique legal and regulatory environment.

The literature review focuses on analyzing relevant legal documents, such as the Indonesian Civil Code (KUH Perdata), and regulations on construction and sustainability, including Law No. 2 of 2017 on Construction Services. Additionally, the study reviews

international green building frameworks, such as LEED and GreenShip Certification, to identify best practices and gaps in the current Indonesian legal system.

By integrating qualitative data from expert judgment and doctrinal analysis of legal texts, this mixed-method approach provides a comprehensive understanding of how Indonesia’s legal system addresses the complexities of dispute resolution in green building projects. This methodology also highlights areas for improvement and alignment with global standards.

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