

ALTERNATIVE DISPUTE RESOLUTION (ADR) IN CONSTRUCTION FAILURE CASES AND LEGAL CONSEQUENCES

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Abstract

This paper analyzes a construction failure case related to the collapse of a transmission tower during erection tower due to a landslide and highlights the potential disputes between the involved parties. This study uses a comparative legal analysis method between Civil Law and Common Law. The Results and Discussion show that in Civil Law, force majeure is interpreted strictly, while Common Law is more flexible by considering mitigation factors. Mediation is effective in reducing conflicts and maintaining cooperative relationships, while arbitration offers a quick and binding resolution compared to litigation. ADR is superior to litigation in terms of time and cost efficiency, making it the preferred choice in construction disputes. The results of this study emphasize the importance of drafting specific contract clauses and selecting appropriate ADR mechanisms. Further research is recommended to evaluate the duration and cost of ADR in various types of infrastructure projects.

Keywords: *ADR, Construction Failures, Force Majeure, Civil Law, Common Law*

Abstrak

Makalah ini menganalisis kasus kegagalan konstruksi terkait robohnya tower transmisi saat erection tower akibat tanah longsor dan menyoroti potensi sengketa antara pihak-pihak terkait. Studi ini menggunakan metode analisis hukum komparatif antara Civil Law dan Common Law. Hasil dan Pembahasan menunjukkan bahwa dalam Civil Law, force majeure diinterpretasikan secara ketat, sementara Common Law lebih fleksibel dengan mempertimbangkan faktor mitigasi. Mediasi efektif untuk mengurangi konflik dan menjaga hubungan kerja sama, sementara arbitrase menawarkan penyelesaian yang cepat dan mengikat dibandingkan litigasi. ADR lebih unggul dari litigasi dalam efisiensi waktu dan biaya, menjadikannya pilihan utama dalam sengketa konstruksi. Hasil penelitian ini menekankan pentingnya penyusunan klausul kontrak yang spesifik, dan pemilihan mekanisme ADR yang sesuai. Penelitian lanjutan disarankan untuk mengevaluasi durasi dan biaya ADR di berbagai jenis proyek infrastruktur.

Kata Kunci: *ADR, Kegagalan Konstruksi, Force Majeure, Civil Law, Common Law*

INTRODUCTION

Large-scale infrastructure projects, such as the construction of High Voltage Overhead Transmission Lines (SUTT), involve various technical and legal risks. One of the main risks is construction failure, which can trigger disputes between service users and service providers. One of the construction failure cases in SUTT is the collapse of the transmission tower during erection due to the tower's foundation shifting because of a

landslide. This can certainly become a source of dispute. PLN, as the user of goods/services, stated that the failure was caused by procedural negligence in the construction execution. On the other hand, the provider of goods/services argues that the incident falls under force majeure due to heavy rainfall at the project site, as supported by data from the Meteorology, Climatology, and Geophysics Agency (BMKG). This potential dispute reflects the legal risks in the execution of construction contracts, which often involve complex contractual and procedural interpretations.

The construction failure that triggered this dispute reflects the challenges in implementing contract clauses, particularly regarding contractual responsibilities and the interpretation of force majeure. Alternative Dispute Resolution (ADR) plays a very important role, especially in resolving disputes quickly and efficiently without going through lengthy litigation (Gupta et al., 2020; Hashem et al., 2021). In this context, dispute resolution mechanisms such as Alternative Dispute Resolution (ADR) become the preferred option to avoid lengthy and costly litigation processes. However, the ADR approach under the Civil Law and Common Law frameworks has significant differences that affect the final outcome of dispute resolution. In the Civil Law legal system, the interpretation of contract clauses is often rigid, referring to the text of the agreement literally. In contrast, in Common Law, the practice of interpretation is more flexible, taking into account the context and other supporting evidence. This difference affects the approach to dispute resolution involving ADR, particularly arbitration. (Bunni, 2021; Keane & Caletka, 2022).

Based on this, the problem formulation to be discussed further in this paper is:

1. How is contractual liability in construction failure cases such as the collapse of this transmission tower interpreted in Civil Law and Common Law?
2. Can the incident of the tower collapse be considered from different legal perspectives?
3. How can the ADR mechanism, particularly arbitration, be applied to resolve construction disputes like this case?

The objectives of the research conducted in this paper include:

1. Analyzing the differences in legal approaches to handling contractual liability in construction failure cases under the Civil Law and Common Law systems.
2. Exploring the application of force majeure in resolving construction disputes by considering the specific conditions of the project.

3. Evaluating the effectiveness of ADR, particularly arbitration, in resolving disputes related to construction failures, and providing recommendations for improving construction contract clauses.

RESEARCH METHODE

This research uses a qualitative approach with a comparative legal analysis method to compare the application of ADR in the Civil Law and Common Law legal systems in construction failure cases. This approach aims to explore the differences in the interpretation of force majeure, contractual liability, and the effectiveness of arbitration in resolving disputes.

The research population includes construction contracts involving ADR in dispute resolution in Indonesia (Civil Law) and England/United States. (Common Law). The sample was purposively selected, namely:

1. Contract for the Construction of 150 kV High Voltage Overhead Transmission Line (SUTT) at PLN UIP East Kalimantan where there is a construction failure case (Civil Law).
2. A similar arbitration case resolved at the International Chamber of Commerce (Common Law).
3. Technical investigation reports and supporting documents from both legal systems.
4. Relevant international legal journals published in the last five years.

Operational Definition of Variables according to the discussion in this paper is:

1. Force Majeure: An extraordinary condition that cannot be avoided even with reasonable efforts. In this study, force majeure is understood based on the criteria in Civil Law (Construction Service Law) and Common Law. (praktik industri).
2. Construction Failure: Physical or technical collapse that causes financial and operational losses to the project.
3. Effectiveness of ADR: Speed, cost, and satisfaction of dispute resolution through arbitration compared to litigation.

The Measurement and Data Collection Tools were carried out through document studies including construction contracts, investigation reports, force majeure clauses, arbitration decisions, and based on references from international legal journals from the last 5 years.

Subsequently, data analysis was conducted using the most appropriate methodological approach. The Data Analysis Methods chosen in this paper are:

1. Comparative Analysis: Comparing the interpretation of force majeure and contractual liability in Civil Law and Common Law.
2. Descriptive Analysis: Describing the patterns of construction dispute resolution through arbitration, including duration, cost, and satisfaction of the disputing parties.

RESULT AND DISCUSSION

This research yields several key findings presented in three main aspects: the interpretation of force majeure, contractual liability, and the effectiveness of arbitration in resolving construction failure disputes.

Table 1
Aspects of resolving construction failure disputes

| Aspect | <i>Civil Law (Indonesia)</i> | <i>Common Law (Inggris/AS)</i> |
|-------------------------------------|--|--|
| <i>Force Majeure</i> | Force majeure is interpreted literally, provided it meets three main elements: extraordinary event, unavoidable, and not caused by negligence. In this case, the failure to meet the "extraordinary event" element but proven to have procedural negligence. | a more flexible approach; considering additional evidence such as weather data and technical reports. However, service providers must still prove there was no negligence. |
| Responsibility | The service provider is fully responsible for procedural failures. Late penalties are applied according to the contract clause (1 per mille/day, maximum 5% of the contract value). | The service provider can request a renegotiation of the penalty if there are mitigating factors such as extreme weather conditions affecting the work. |
| Effectiveness of Arbitration | BANI arbitration is considered more efficient than litigation, but it is often hindered by rigid contractual interpretations. | ICC arbitration provides greater flexibility, including in resolving disputes based on industry practices. |

1. Interpretation of Force Majeure in Civil Law and Common Law

In the Civil Law legal system, force majeure is explicitly regulated by Law No. 2 of 2017 concerning Construction Services. There are three main elements that must be met to fulfill the criteria of force majeure, namely:

- a. Extraordinary Circumstances: Events that are beyond human control, such as natural disasters.
- b. Unavoidable: Even though preventive measures have been taken, the event could not be prevented.

c. No Negligence: If procedural negligence is proven, then force majeure does not apply.

Based on the PLN investigation report, the construction failure in the Development of the 150 kV High Voltage Overhead Transmission Line (SUTT) in PLN UIP East Kalimantan occurred due to procedural negligence, namely continuing the tower erection despite the soil around the foundation having experienced a drop in elevation due to heavy rain. Thus, this incident cannot be considered force majeure within the framework of Civil Law due to negligence.

Unlike Civil Law, the Common Law legal system provides flexibility in the interpretation of force majeure. The main focus is on the field conditions and the evidence of risk mitigation that has been carried out. In this case, extreme rainfall data from BMKG can be submitted as evidence of a significant external factor. However, the service provider is still required to prove that they have made maximum mitigation efforts, such as delaying the erection of the tower until the ground conditions are stable. Here is a comparative analysis table of the force majeure aspect in this construction failure case.

Table 2
Comparative Analysis of Force Majeure Interpretation in Civil Law and
Common Law

| Aspect | <i>Civil Law (Indonesia)</i> | <i>Common Law (Inggris/AS)</i> |
|--|--|--|
| Force Majeure Definition | Rigid, following the contract clause. | Flexible, considering the field context. |
| Evaluation Focus | Procedural negligence is emphasized. | Risk mitigation becomes the main factor. |
| The Probability of Claim Acceptance | Low, if there is evidence of negligence. | High, with technical data support. |

2. Contractual Responsibilities and Dispute Resolution

In the Civil Law approach where disputes are resolved through BANI arbitration and the Dispute Council, contractual responsibilities strictly adhere to the contract clauses. Based on the contract, a delay penalty of 1 per mil per day up to a maximum of 5% of the contract value is applied if the delay occurs without valid reason. In this case, the goods/services provider is subjected to the full penalty because the delay is considered to be due to procedural negligence.

On the other hand, the Common Law approach through ICC arbitration is more flexible. The arbitrator can consider external factors such as extreme rain and its

impact on the project. In this case, renegotiation of delay penalties or project time extensions may be approved if the service provider provides strong evidence of the mitigation efforts undertaken.

3. The Effectiveness of ADR in Dispute Resolution

Mediation in construction failure disputes regarding the 150 kV High Voltage Air Line Construction (SUTT) at PLN aims to reach a mutually beneficial agreement without resorting to arbitration or litigation. The main focus of mediation is:

- a. Reducing the escalation of conflict between PLN as the user of goods/services and the provider of goods/services. PLN and the provider of goods/services can agree to reduce part of the penalty to compensate for unforeseen conditions.
- b. Achieving a quick and cost-effective solution, particularly regarding responsibility for construction failures and delay penalties. An agreement on the division of the costs for repairing the tower and foundation can be reached without damaging the cooperative relationship.
- c. Ensuring the continuation of the cooperative relationship to complete the project according to the initial goals.

If mediation has been conducted but there is still no resolution to the dispute between both parties, the next step that can be taken is to resolve the dispute through arbitration or the Dispute Board rather than through litigation. The analysis results show that arbitration is more efficient than litigation in resolving construction disputes. Furthermore, the resolution of disputes through arbitration can also be compared between the processes in Civil Law and Common Law arbitration. The duration and costs of arbitration in Civil Law and Common Law are compared in the following table:

Table 3
Comparative Analysis of ADR Effectiveness in Resolving Civil Law and Common Law Disputes

| Aspect | BANI (<i>Civil Law</i>) | ICC (<i>Common Law</i>) |
|-----------------------------|---------------------------|---------------------------|
| Duration (month) | 12 month | 10 month |
| Cost (% from dispute value) | 8% | 10% |

As for resolving disputes through litigation, it can take 2-3 years depending on the complexity of the case, including the appeals process. The costs incurred for litigation are also much higher, including attorney fees, trial time, and significant administrative

costs. Meanwhile, ADR costs are more controlled compared to litigation, although international arbitration such as ICC tends to be more expensive due to involving international standards. This research shows that ADR is superior to litigation in resolving construction disputes.

As a comparison between dispute resolution through arbitration and litigation, here is the comparative analysis according to the table below:

Tabel 4
Comparative Analysis of the ADR Effectiveness with Litigation

| Aspect | ADR (Mediation/Arbitration) | Litigation |
|-------------------------------|---|---|
| Duration | 6-12 months | 2-3 years |
| Cost | Moderate (8-10% of the disputed value). | High, involving lawyers and administrative fees. |
| Confidentiality | Closed process. | The trial is open in court. |
| Corporate Relationship | The relationship tends to be maintained. | Relationships often break down due to open conflicts. |
| Parti Satisfaction | High, due to the flexibility of the solution. | Low, because the decisions are often confrontational. |

CONCLUSION

In the Civil Law legal system, force majeure is interpreted rigidly, referring to contract clauses. Construction failures involving procedural negligence are difficult to meet the criteria for force majeure even with external conditions such as extreme rain. On the other hand, Common Law provides greater flexibility, allowing the use of technical data to prove the existence of force majeure. However, service providers remain responsible for demonstrating risk mitigation efforts. Mediation can reduce conflict escalation and maintain cooperative relationships, while arbitration provides a binding decision with a faster process compared to litigation. The combination of both provides time efficiency, cost reduction, and maintains important cooperative relationships in large projects such as the construction of electricity infrastructure.

The implication of the findings in this paper is that ADR allows for quick, cost-effective, and flexible dispute resolution, making it the preferred choice in construction disputes. The difference between the Civil Law and Common Law systems highlights the importance of selecting a legal approach that aligns with the project's conditions and the parties' needs. Regarding the improvement of contract clauses, the force majeure clause must include a more specific definition as well as clear conditions and proof mechanisms.

International standards such as FIDIC can be adopted to ensure clarity in the division of responsibilities and the management of construction risks.

Suggestions for further development and research include conducting quantitative studies on the duration and cost of ADR compared to litigation for various types of infrastructure projects, in order to provide a more comprehensive picture.

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