

EARLY NEUTRAL EVALUATION IN THE CONTEXT OF ALTERNATIVE DISPUTE RESOLUTION IN COMMON LAW AND CIVIL LAW SYSTEMS IN CONSTRUCTION DISPUTES; CONTEXT AND POTENTIAL IN INDONESIA

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Abstract

Early neutral evaluation is a non-binding form of Alternative Dispute Resolution mechanism, is becoming well known in both common law and civil law systems, and has emerged as a valuable tool in Alternative Dispute Resolution processes. It designed to serve as a basis for further and fuller negotiations, or, at the very least, help parties avoid further unnecessary stages in litigation. This paper will derive into the unique challenges of construction dispute and examine how Early Neutral Evaluation can address these challenges, where expert evaluation is necessary to meet dynamic of the technical complexities and multi stakeholder. This paper attempts to explore the integration of Early Neutral Evaluation into Indonesia's construction disputes framework, comparing the relevance in common law and civil law systems and describe key challenges and implementation opportunities. By understanding the benefits and limitation of Early Neutral Evaluation, stakeholders in the construction industry can make informed decisions about its implementation and maximized its potential to resolve disputes effectively.

Keywords: *Early Neutral Evaluation, Alternative Dispute Resolution, Construction Disputes, Indonesia*

Abstrak

Evaluasi awal yang netral adalah bentuk mekanisme Alternatif Penyelesaian Sengketa yang tidak mengikat, yang telah dikenal baik dalam sistem common law maupun civil law, dan telah muncul sebagai alat yang berharga dalam proses-proses Alternatif Penyelesaian Sengketa. Evaluasi ini dirancang untuk menjadi dasar bagi negosiasi yang lebih lanjut dan lebih lengkap, atau, paling tidak, membantu para pihak menghindari tahap-tahap yang tidak perlu dalam proses pengadilan. Makalah ini akan membahas tantangan-tantangan unik dalam sengketa konstruksi dan mengkaji bagaimana Evaluasi Netral Early dapat mengatasi tantangan-tantangan tersebut, di mana evaluasi ahli diperlukan untuk menghadapi dinamika kompleksitas teknis dan multi pemangku kepentingan. Makalah ini mencoba untuk mengeksplorasi integrasi Evaluasi Netral Dini ke dalam kerangka kerja sengketa konstruksi di Indonesia, membandingkan relevansinya dengan sistem common law dan civil law, serta menggambarkan tantangan utama dan peluang implementasi. Dengan memahami manfaat dan keterbatasan Evaluasi Netral Dini, para pemangku kepentingan dalam industri konstruksi dapat membuat keputusan yang tepat tentang pelaksanaannya dan memaksimalkan potensinya untuk menyelesaikan sengketa secara efektif.

Kata Kunci: *Evaluasi Netral Dini, Alternatif Penyelesaian Sengketa, Sengketa Konstruksi, Indonesia*

INTRODUCTION

Construction disputes are complex and often involve significant financial stakes and emotional stress for all parties involved. Traditional litigation can be more time-consuming, costly, and adversarial, leading to strained relationships and delays in project completion. Alternative Dispute Resolution mechanism, such as mediation and arbitration, offer more efficient and flexible approaches to resolving construction disputes. However, these methods may not always be suitable for complex cases that require early intervention and expert assessment.

Early Neutral Evaluation is an Alternative Dispute Resolution process that involves a neutral third-party evaluator who provides an impartial assessment of the strengths and weaknesses of each party's case. This assessment can help parties to gain a realistic perspective of their legal position and encourage settlement negotiation. Early Neutral Evaluation is particularly effective in construction disputes, where technical expertise and early intervention can significantly impact the outcome of the case.

This paper will explore the application of Early Neutral Evaluation in both common law and civil law systems, highlighting its potential to streamline dispute resolution and promote efficient outcomes. The paper will explore the unique challenges of construction disputes and examine how Early Neutral Evaluation can address these challenges. Furthermore, it will analyze the potential of Early Neutral Evaluation in the Indonesian construction industry, considering the country's legal framework and the specific needs of its construction sector.

By understanding the benefits and limitations of Early Neutral Evaluation, stakeholders in the construction industry can make informed decisions about its implementation and maximize its potential to resolve disputes effectively.

METHODS

RESULT AND DISCUSSION

1. Early Neutral Evaluation in Common Law and Civil Law Systems

a. Common Law Systems

In common law systems, Early Neutral Evaluation has been widely adopted as an effective tool for resolving disputes, including construction disputes. Courts in common law jurisdictions often encourage parties to participate in Early Neutral Evaluation as a means of promoting early settlement and reducing the burden on the court system. Neutral evaluators in common law systems typically have legal backgrounds and are experienced in handling complex disputes.

b. Civil Law Systems

Early Neutral Evaluation is less prevalent in civil law systems. It has gained increasing recognition in recent years. Civil law systems tend to rely more on written codes and legal precedent, which can sometimes lead to more formal and rigid approaches to dispute resolution. However, as the complexity of construction projects has increased, there has been a growing demand for more flexible and efficient dispute resolution mechanisms. Early Neutral Evaluation can provide a valuable tool for resolving construction disputes in civil law systems by offering a neutral and expert assessment of the case.

2. Early Neutral Evaluation in Construction Disputes

Early Neutral Evaluation has become an increasingly popular tool in construction law to resolve disputes efficiently and cost-effectively. By involving a neutral third-party evaluator, Early Neutral Evaluation can help parties to gain a better understanding of their legal positions, identify key issues, and facilitate settlement negotiations. Construction disputes are often characterized by technical complexity, high financial stakes, and emotional tension. These factors can make it difficult to reach a mutually agreeable settlement.

Early Neutral Evaluation can help to address these challenges by providing the following benefits:

- a. *Early Assessment:* Early Neutral Evaluation allows parties to obtain an early assessment of their case from a neutral third party. The neutral evaluator can provide an early assessment of the strengths and weaknesses of each party's case, helping to avoid unnecessary legal proceedings.

- b. *Identification of Key Issues*: The neutral evaluator can help to identify the key issues in dispute, focusing the parties' attention on the most critical matters, and prioritize them for negotiation.
- c. *Promotion of Settlement*: Early Neutral Evaluation can facilitate settlement by providing a neutral forum for parties to discuss their realistic assessment of the strengths and weaknesses of each party's case and explore potential compromise solutions.
- d. *Reduced Litigation Costs*: By promoting early settlement, Early Neutral Evaluation can help to reduce the costs associated with litigation, such as legal fees, expert witness fees and court costs.
- e. *Preservation of Relationships*: Early Neutral Evaluation can help to preserve relationships between the parties by providing a confidential and non-adversarial forum for discussion.

Early Neutral Evaluation is a powerful tool in construction law that can significantly impact the resolution of disputes. By involving a neutral third-party evaluator, Early Neutral Evaluation offers a structured approach to assess the merits of a case, identify key issues, and encourage early settlement. Several key benefits of Early Neutral Evaluation in construction law as:

- a. *Appointment of the Neutral Evaluator*: The parties agree on the appointment of a neutral evaluator, who should be a qualified professional with expertise in construction law and dispute resolution.
- b. *Submission of Materials*: The parties submit relevant documents, such as contracts, correspondence, and expert reports, to the neutral evaluator.
- c. *Evaluation Process*: The neutral evaluator reviews the materials and may conduct meetings with the parties to discuss the key issues in dispute.
- d. *Evaluation Report*: The evaluator prepares a written report, which typically includes an assessment of the strengths and weaknesses of each party's case, identification of key issues, and potential settlement options.
- e. *Settlement Negotiations*: The parties use the evaluation report as a basis for settlement negotiations, with the assistance of the neutral evaluator if necessary.

Early Neutral Evaluation can be incorporated into construction contracts through various mechanisms, such as:

- a. *Dispute Resolution Clauses*: The contract can specify Early Neutral Evaluation as a mandatory or optional step before resorting to arbitration or litigation.
- b. *Project-Specific Agreements*: Parties can agree to use Early Neutral Evaluation on a case-by-case basis, particularly for complex or high-stakes disputes.

The neutral evaluator plays a crucial role in the Early Neutral Evaluation process. Key responsibilities include:

- a. *Impartiality*: Maintaining neutrality and avoiding bias.
- b. *Confidentiality*: Keeping all information confidential.
- c. *Expertise*: Possessing relevant expertise in construction law and industry practices.
- d. *Facilitation*: Encouraging open communication and constructive dialogue between the parties.
- e. *Assessment*: Providing a candid and objective assessment of the strengths and weaknesses of each party's case.

3. Early Neutral Evaluation in Indonesia: A Potential Solution

Indonesia's construction industry has experienced significant growth in recent years, but it has also been plagued by delays, cost overruns, and disputes. Traditional methods of dispute resolution, such as litigation and arbitration, can be time-consuming and expensive. Early Neutral Evaluation offers a promising alternative for resolving construction disputes in Indonesia.

To effectively implement Early Neutral Evaluation in Indonesia, it is essential to establish a clear framework for its use. This framework should include guidelines for selecting neutral evaluators, conducting the evaluation process, and enforcing settlement agreements. Additionally, it is important to raise awareness of Early Neutral Evaluation among construction industry professionals and encourage its use.

1. Potential Benefits of Early Neutral Evaluation in Indonesia

- a. *Efficient Dispute Resolution*: Early Neutral Evaluation can expedite the resolution of construction disputes by providing an early assessment and promoting settlement.

- b. *Reduced Litigation Costs*: By encouraging early settlement, Early Neutral Evaluation can significantly reduce the costs associated with litigation.
- c. *Preservation of Business Relationships*: Early Neutral Evaluation can help to maintain positive relationships between the parties by providing a non-adversarial forum for discussion.
- d. *Promotion of a Positive Construction Culture*: Early Neutral Evaluation can foster a culture of cooperation and problem-solving in the Indonesian construction industry.

2. Challenges and Considerations:

To effectively implement Early Neutral Evaluation in Indonesia, several challenges must be addressed:

- a. *Legal Framework*: The Indonesian legal framework needs to be adapted to accommodate Early Neutral Evaluation as a viable dispute resolution mechanism.
- b. *Availability of Qualified Evaluators*: A pool of qualified neutral evaluators with expertise in construction law and industry practices must be developed.
- c. *Cultural Factors*: Cultural factors may influence the acceptance and effectiveness of Early Neutral Evaluation.
- d. *Cost and Time Considerations*: The costs and time associated with Early Neutral Evaluation should be carefully considered to ensure its affordability and efficiency.

3. Framework for Early Neutral Evaluation in Indonesia

To popularize Early Neutral Evaluation in Indonesia's construction industry, a strategic framework must be established:

- a. *Regulatory Foundation*: Enact laws and regulations that explicitly recognize Early Neutral Evaluation as a valid Alternative Dispute Resolution mechanism within the construction sector.
- b. *Evaluator Certification Programs*: Develop training programs to build a cadre of evaluators proficient in both construction law and technical complexities.
- c. *Awareness Campaigns*: Launch initiatives to familiarize industry stakeholders with Early Neutral Evaluation's benefits, addressing cultural biases and promoting Alternative Dispute Resolution adoption.

- d. *Integration into Standard Contracts*: Include Early Neutral Evaluation clauses in government and private construction project agreements, ensuring consistency and enforceability.

CONCLUSION

To effectively implement Early Neutral Evaluation in Indonesia, it is essential to establish a clear framework for its use, raise awareness of its benefits, and encourage its adoption among construction industry professionals.

Eventhough Early Neutral Evaluation does not result in a final decision, it offers a preliminary analysis disputes, focusing on critical aspects to encourage agreement and minimize litigation expenses. In the context of Indonesia's growing construction industry, Early Neutral Evaluation offers a promising opportunity to resolve disputes efficiently and effectively. By implementing Early Neutral Evaluation and raising awareness of its benefits, Indonesia can further strengthen its construction sector and promote sustainable development. By addressing these challenges and capitalizing on the potential benefits, Early Neutral Evaluation can become a valuable tool for resolving construction disputes in Indonesia and can significantly improve the efficiency and effectiveness of its construction dispute resolution processes.

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