CONSTRUCTION DISPUTE RESOLUTION THROUGH DISPUTE BOARDS (Case Study: Power Plant Project in Indonesia)

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Abstract

Disputes related to construction projects are inevitable given the complexity and high value of such projects, which often result in financial losses for the parties involved. Construction disputes encompass cost disputes, time disputes, scope of work disputes, combined disputes involving changes in cost, time, and scope of work, as well as administrative disputes. Dispute resolution is often pursued through legal channels or court processes, which are typically time-consuming and costly. Dispute Boards have emerged as an alternative mechanism to resolve construction disputes quickly and effectively before escalating to court or arbitration. This study aims to explore the mechanisms and effectiveness of dispute resolution through Dispute Boards. A mixed-methods approach was employed, including surveys, interviews, and case study analyses. The findings indicate that resolving disputes through Dispute Boards can reduce dispute duration, improve cost efficiency, and maintain good relationships between the parties involved. Recommendations include raising awareness of the benefits of Dispute Boards and integrating Dispute Board clauses into construction contracts.

Keywords: *construction, dispute resolution, Dispute Board, court, arbitration*

Abstract

Sengketa yang berkaitan dengan proyek konstruksi tidak dapat dihindari mengingat kompleksitas dan nilai proyek yang tinggi, yang sering kali mengakibatkan kerugian finansial bagi para pihak yang terlibat. Sengketa konstruksi meliputi sengketa biaya, sengketa waktu, sengketa lingkup pekerjaan, sengketa gabungan yang melibatkan perubahan biaya, waktu, dan lingkup pekerjaan, serta sengketa administratif. Penyelesaian sengketa sering kali ditempuh melalui jalur hukum atau proses pengadilan, yang biasanya memakan waktu dan biaya. Badan Penyelesaian Sengketa telah muncul sebagai mekanisme alternatif untuk menyelesaikan sengketa konstruksi dengan cepat dan efektif sebelum meningkat ke pengadilan atau arbitrase. Penelitian ini bertujuan untuk mengeksplorasi mekanisme dan efektivitas penyelesaian sengketa melalui Badan Penyelesaian Sengketa. Pendekatan metode campuran digunakan, termasuk survei, wawancara, dan analisis studi kasus. Temuan menunjukkan bahwa penyelesaian sengketa melalui Badan Penyelesaian Sengketa dapat mengurangi durasi sengketa, meningkatkan efisiensi biaya, dan menjaga hubungan yang baik antara para pihak yang terlibat. Rekomendasi yang diberikan meliputi peningkatan kesadaran akan manfaat Dewan Sengketa dan pengintegrasian klausul Dewan Sengketa ke dalam kontrak konstruksi.

Kata kunci: *konstruksi, penyelesaian sengketa, Dewan Sengketa, pengadilan, arbitrase*

INTRODUCTION

The construction sector in Indonesia plays an important role in national infrastructure development. According to data collected through the Central Statistics

Agency, the massive development in Indonesia has made the construction sector one of the sectors that has had a major influence on economic growth in Indonesia. According to data from the Central Statistics Agency (BPS), in the Construction Indicator for Quarter IV-2023, the contribution of the construction sector to the Indonesian economy is in fifth place as seen from the percentage of the construction sector in Indonesia's Gross Domestic Product (GDP) in 2023 of 9.92 percent. (*Badan Pusat Statistik, Indikator Konstruksi TW IV 2023*, n.d.)

In the implementation of construction services, in addition to providing quite a lot of positive impacts, there is also a fairly large risk if a dispute occurs in the construction process. Often in a construction project facing various disputes between Contractors, subcontractors, and Project Owners. If this is not handled immediately, it will cause various losses for both parties, starting from losses of costs, time, productivity, as well as popularity and relations. Therefore, the resolution of construction disputes needs to be handled quickly, economically in terms of financing and does not cause bad relations between each other.

Law No.2/2017 concerning Construction Services has regulated various aspects in the implementation of construction services in Indonesia. One of the problems regulated in this law is the resolution of disputes in construction. Regarding the resolution of construction contract disputes, it refers to Article 88 of Law No.2/2017 concerning Construction Services, namely in the case of efforts to resolve disputes not stated in the construction work contract, the disputing parties make a written agreement regarding the dispute resolution procedure to be selected. So that if during the construction process and a dispute occurs at the same time, the parties do not need to be confused about resolving the problem and it can be resolved quickly and efficiently.

Construction disputes are problems that arise as a result of the implementation of a contract regarding construction services between service users and service providers. Construction disputes occur as a result of different understandings of the agreed contract. As a result, this difference of understanding can cause problems that can impact the course of the construction process.

The cause of construction disputes themselves can be obtained from external factors and internal factors. External factors themselves are factors that come from outside which cannot be changed and influenced. External factors that can cause legal disputes include

unstable political, economic and security factors, changes in legal regulations, environmental factors, and unfavorable weather factors. (Nency, 2019)

In addition to external factors, there are also internal factors that can be a cause of a dispute. Internal factors themselves are factors that come from the parties who have agreed to a contract, namely service users and service providers. Examples of causes of disputes through internal factors are differences in understanding the contents of the contract that has been agreed upon and when the work is carried out it is not in accordance with expectations in terms of quality, time, and cost.

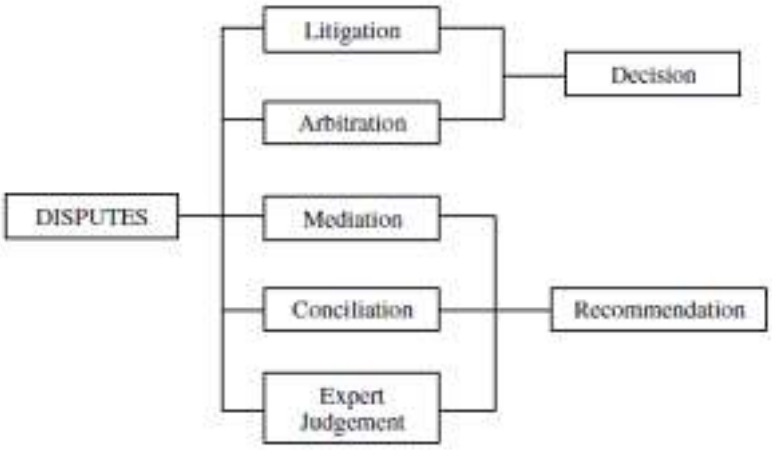
The object of the disputed problem by the parties in terms of construction services is regarding changes in quality, changes in price, and changes in costs from what has been previously agreed upon. If the dispute has been successfully handled, the agreement will be changed, and the contract will be renewed. However, if both parties do not reach an agreement, the dispute resolution must be carried out through a third-party intermediary.

In general, dispute resolution is divided into two mechanisms, namely through litigation and non-litigation. Resolving a dispute through litigation means resolving a problem through the courts. While through non-litigation means resolving a problem outside the courts. Resolving disputes through litigation often takes a lot of time, money, and work that should be done can be neglected while the dispute has not been resolved. Meanwhile, resolving disputes through non-litigation is to shorten the time to resolve the problem, save the costs required to handle the dispute, and find a middle ground to resolve the problem to achieve a win-win solution. (Priyambodo, 2021).

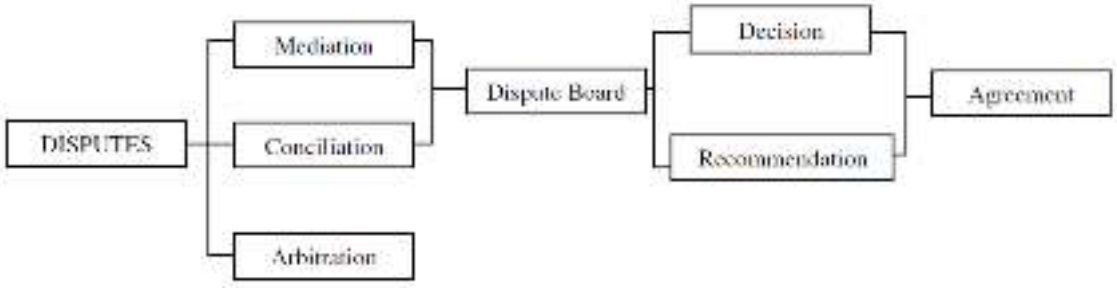
The Dispute Board is an idea of the International Federation of Consulting Engineers or FIDIC for dispute resolution by a third party with the hope of not taking sides with both parties in dispute. Not only deciding, but the Dispute Board will also function as a decision maker and recommendation provider. (Hadi & Sarwono, 2018).

Most construction contracts now in the process of dispute resolution and in the dispute, pipeline is under Law No.18/1999, because their contract agreements were signed before the Law No.2/2017 was in force. The method of dispute resolution stipulated in the contract as pactum de compromittendo must be followed and respected; however, if the method was not prescribed in the contract, then the Law No.2/2017 should be used as a reference. (Sarwono, 2020).

Based on Law No.18/1999 and Law No.30/1999, the choices for the dispute resolution process are mediation, conciliation, and expert assessment; in Law No.2/2017 the stages of dispute resolution are (1) mediation, (2) conciliation (in certain cases both of the first two stages can be replaced by a dewan sengketa as a modified DB), and (3) arbitration; the output of arbitration proceedings is a decision made by a third party, the arbitration tribunal. In cases of mediation, conciliation, and expert assessment, the output is a third party's recommendation regarding a decision between the disputing parties. The differences in the product of the dispute resolution process between Law No.18/1999 and Law No. 2/2017 are shown in Fig. 1 (for Law No. 18/1999) and Fig. 2 (for Law No. 2/2017).



Gambar 1. Dispute resolution for construction (based on Indonesian Law No. 18/1999)



Gambar 2. Dispute resolution for construction (based on Indonesian Law No. 2/2017)

Construction Services Law No.2/2017 has also regulated the flow of dispute resolution, dispute resolution is more directed to be resolved through non-litigation channels. Dispute resolution through non-litigation also varies, there are mediation, conciliation, and arbitration. However, if examined again, the contents of the law have limitedly provided limitations on the recommended dispute resolution methods. There are

several ways to resolve construction disputes as stated in Article 88 paragraph (3), namely through mediation, conciliation, and arbitration. Which in paragraph (4) of the same article also explains that in addition to mediation and conciliation, the parties can form a Dispute Council as an effort to resolve disputes. Therefore, alternative dispute resolution outside the court can be considered through the Dispute Council with the aim of achieving a faster, cheaper, and fairer solution. Below are the steps for resolving construction disputes based on those regulated in the Law No.2/2017.

The formulation of the problem raised in this study is how the mechanism for resolving construction disputes through the Dispute Board and how effective the resolution of construction disputes through the Dispute Board is (case study on a power plant construction project).

This study aims to understand how to resolve construction disputes through the Dispute Board and analyze the effectiveness of resolving construction disputes through the Dispute Board as an alternative in resolving disputes.

RESEARCH METHOD

This study uses a mixed approach, respondents are limited to Project Owners and Contractors involved in dispute resolution. Data collection through surveys, interviews, case study analysis. The analysis technique in this study is quantitative data analysis using descriptive statistics, while qualitative data is analyzed through a thematic approach which is then used to reach conclusions that can answer this research question.

RESULT AND DISCUSSION

In the 2017 FIDIC Construction Contract Standard, the Dispute Board has been regulated as an alternative dispute resolution, namely through the Dispute Avoidance/Adjudication Board (DAAB) which has been fully regulated in the general conditions, special conditions, and the DAAB Agreement Form has been determined and the procedure for its proceedings has also been determined in the 2017 FIDIC Construction Contract Standard.

The Dispute Board as explained in Article 88 paragraph (5) of the Construction Services Law Number 2 of 2017 is a team formed based on the agreement of the parties

since the binding of the construction service to prevent and mediate disputes that occur in the implementation of the contract.

In detail regarding the Dispute Board, it is also regulated in the Regulation of the Minister of Public Works and Public Housing (Permen PUPR) Number 11 of 2021 concerning Procedures and Technical Instructions for the Construction Dispute Board. What is meant by the Dispute Council in Article 1 paragraph (5) is that the Construction Dispute Council, hereinafter referred to as the Dispute Council, is an individual or team formed based on an agreement between the parties, from the beginning of the implementation of the Contract to prevent and resolve disputes.

In PUPR Ministerial Regulation Number 11 of 2021 Article 3 paragraph (1) it is explained that the Dispute Council is one of the efforts to prevent and resolve Contract disputes and in paragraph (3) it is explained that the number of members of the Dispute Council as referred to in paragraph (1) is an odd number of 3 (three) people. Article 6 paragraphs (1) and (2) explain the duties and activities of the Dispute Council and in Article 9 concerning the mechanism for preventing and resolving disputes.

The Dispute Council can be in the form of a "permanent" or "ad hoc" council. A permanent council is a Dispute Council appointed at the beginning of the project, while an ad hoc Dispute Council is a council appointed only when the parties refer a formal dispute to the council for resolution. The dispute resolution mechanism through the Dispute Council consists of one to three people selected from both the service user and the service provider. With the note that the selected Dispute Board must be independent/neutral and not allowed to take sides. The Chair of the Dispute Board is also selected based on the agreement of the parties therein. The qualifications of each member of the Dispute Board are one of the most important decisions faced by the parties in appointing the Dispute Board, and the characteristics of each member of the Dispute Board can have a significant impact on the effectiveness of the board as a whole. The Dispute Board is often a combination of engineers and lawyers who are experienced in the construction industry.

If a dispute occurs, both service users and service providers have the right to ask for advice from the Dispute Board if a dispute occurs. Then procedurally the Dispute Board will hold a hearing, present witnesses, ask questions, and provide recommendations according to the time agreed by both parties, unlike mediation,

conciliation, and arbitration whose completion time is limited. This is in accordance with what is stated in the explanation of Article 6 paragraph (6) and the explanation of Article 48 paragraph (1) of Law No.30/1999 concerning Arbitration and Alternative Dispute Resolution.

The decision given by the Dispute Council is in the form of a recommendation which in this case is non-binding. If agreed by both parties, then a contract amendment is needed, namely the addition of articles to the contract that have been mutually agreed upon at the beginning. This is done so that the decision has permanent legal force and applies as a law for the parties concerned. This is in accordance with the principle of "Pacta Sunt Servanda" which states that every Agreement becomes a law for those who agree to it.

Case study of construction dispute resolution through the Dispute Board in the Electricity Development Project in Indonesia.

1. Project background:

   The Riau Peaker Gas Engine Power Plant (PLTMG) Development Project with a capacity of 200 Mega Watt is a national strategic project. This project is part of the Indonesian government's 35,000 Mega Watt program to meet national energy needs. With an investment of around USD 180 million, the project agreement signed on November 20, 2017, and effective on December 16, 2020, involves international and national contractors, in the implementation of the project construction faced problems that resulted in a dispute between the Project Owner and the Contractor

2. Type of dispute that arose:

   The Project Owner did not approve the Contractor's additional cost claim related to the price adjustment submission. This problem arose due to a disagreement on the scope of work, namely differences in interpretation of the work contract regarding the responsibilities of each party.

3. Alternative Dispute Resolution:

   The Project Owner and Contractor agree to use the Dispute Board (DB) for dispute resolution. The application of the Dispute Board (DB) is based on the contract amendment clause. The DB panel in this dispute resolution is formed and consists of three independent expert members. The Contractor submitted the final referral to the DB on September 7, 2023, and the DB recommendation regarding the price

adjustment submission on January 22, 2024, the dispute resolution process for 137 days or 4.5 months and the period for submitting an objection letter to the recommendation for 28 days.

In accordance with the case study above, the author conducted an analysis of the effectiveness of dispute resolution through DB by collecting data through a questionnaire survey and interviews with the parties involved in the dispute resolution.

Data was taken from the results of a questionnaire with a total of 20 respondents consisting of Contractors and Project Owners, a number of questions in the questionnaire to measure respondents' perceptions of the four main aspects of construction dispute resolution through the Dispute Board, namely cost, time, legal certainty, and good relationship. Respondents rated each statement based on its level of importance, from "very unimportant" to "very important".

Analysis based on aspects: cost, time, legal certainty, and good relationship with the results of the questionnaire responses so that the average value of the Likert scale score and the calculation of the Relative Importance Index (RII) were obtained to measure the level of importance of each statement. RII is a quantitative method used to determine the level of importance or priority of variables based on responses from a number of respondents. This method is often used in survey research to analyze ordinal data, such as the Likert scale, according to the following formulation:

$$RII = \frac{\Sigma W}{A \times N}$$

Description:

ΣW: Total score given by all respondents

A: Maximum score (5 on Likert scale)

N: Number of respondents

RII Interpretation:

RII > 0.80: Very Important

0.60 < RII ≤ 0.80: Important

0.40 < RII ≤ 0.60: Moderate

RII ≤ 0.40: Not Important

The RII value range is obtained by dividing equally into 5 (five) categories according to the Likert scale used. The average Likert scale score and RII range value can be seen in Table 1, as follows:

Table 1
Summary of the average Likert scale score and RII range

Aspect		Statement	Average Score	RII	Interpretation
Cost	a)	Dispute resolution through the Dispute Board significantly reduces the cost of dispute resolution.	4.2	0.84	Very important
	b)	The operational costs of the Dispute Board are more efficient compared to arbitration or litigation.	4	0.8	Important
	c)	The costs incurred are commensurate with the benefits obtained.	3.8	0.76	Important
Time	d)	Dispute resolution through the Dispute Board is faster than arbitration or litigation.	4.5	0.9	Very important
	e)	The time required to reach a decision can help the project stay on schedule.	4.3	0.86	Very important
	f)	The Dispute Board avoids project delays due to disputes.	4.35	0.87	Very important
Legal Certainty	g)	The Dispute Board decision provides temporary legal certainty until the problem is fully resolved.	4.2	0.84	Very important
	h)	The Dispute Board decision is respected by both parties.	3.6	0.72	Important
	i)	The Dispute Board mechanism provides legal transparency in dispute resolution.	3.95	0.79	Important
Good Relationship	j)	The Dispute Board maintains good relations between the Contractor and the work owner.	4.45 4.25	0.89 0.85	Very important
	k)	Dispute resolution through the Dispute Board is collaborative.			Very important
	l)	The Dispute Board helps reduce the potential for greater conflict in the future.	4.4	0.88	Very important

Based on Table 1, an analysis is then carried out on each aspect that is a parameter, as follows:

1. Cost
    a. Dispute resolution through the Dispute Board significantly reduces the cost of dispute resolution (RII: 0.84, Interpretation: Very Important). This shows that the Dispute Board is considered capable of reducing dispute costs in a significant way, compared to other dispute resolution methods such as litigation or arbitration.

b. The operational costs of the Dispute Board are more efficient compared to arbitration or litigation (RII: 0.8, Interpretation: Important). The operational costs of the Dispute Board are more economical than other methods, providing greater benefits for projects with limited budgets.
c. The costs incurred are commensurate with the benefits obtained (RII: 0.76, Interpretation: Important). Although the cost of dispute resolution through the Dispute Board is relatively affordable, the benefits obtained, especially in terms of time and relationship efficiency, are considered worthwhile.

2. Time
   a. Dispute resolution through the Dispute Board is faster than arbitration or litigation (RII: 0.9, Interpretation: Very Important). This result indicates that the Dispute Board is faster in resolving disputes than other methods, which can be very beneficial for projects that require a quick resolution.
   b. The time required to reach a decision can help the project stay on schedule (RII: 0.86, Interpretation: Very Important). Reducing the dispute time allows the project to continue without major disruptions, which is very important for the sustainability of the project.
   c. The Dispute Board avoids project delays due to disputes (RII: 0.87, Interpretation: Very Important). By avoiding delays, the Dispute Board keeps the project running smoothly, minimizing the risk of losses.
3. Legal Certainty
   a. The Dispute Board decision provides temporary legal certainty until the problem is fully resolved (RII: 0.84, Interpretation: Very Important). The Dispute Board provides a temporary solution that provides legal certainty until a final resolution is reached.
   b. The Dispute Board decision is respected by both parties (RII: 0.72, Interpretation: Important). This result shows that although the Dispute Board decision is accepted by both parties, the level of respect for the decision needs to be further improved.
   c. The Dispute Board mechanism provides legal transparency in dispute resolution (RII: 0.79, Interpretation: Important). This mechanism is considered to provide a transparent process, increasing the trust of the parties involved in dispute resolution.

4. Good Relationship
    a. The Dispute Board maintains a good relationship between the Contractor and the owner of the work (RII: 0.89, Interpretation: Very Important). The Dispute Board is highly valued for its role in maintaining a good relationship between the parties involved in the project.
    b. Dispute resolution through the Dispute Board is collaborative (RII: 0.85, Value: Very Important). This collaborative resolution allows both parties to feel involved in the dispute resolution process and maintain harmony.
    c. The Dispute Board helps reduce the potential for greater conflict in the future (RII: 0.88, Interpretation: Very Important). With the right mechanism, the Dispute Board is considered effective in reducing the risk of further disputes in the future.

The Dispute Board has proven to be effective in reducing the cost and time of dispute resolution. This is highly appreciated by contractors and owners involved in construction projects. The aspect of good relationship also plays an important role, with a high RII value. This shows that the Dispute Board functions well to maintain harmonious relations between parties involved in construction disputes. Legal certainty has a slight challenge regarding respect for the Dispute Board's decisions, but overall, this mechanism provides sufficient transparency.

CONCLUSION

From the research results, several things can be concluded, as follows:

1. Construction disputes can arise, among others, due to claims that are not served, for example late payment, late completion of work, differences in interpretation of contract documents, technical and managerial incompetence of the parties. In addition, construction disputes can also occur if the service user does not carry out management tasks properly and may not have sufficient financial support
2. To resolve construction disputes, there are two ways, namely through litigation and non-litigation. However, if the dispute is resolved through litigation, it will take a lot of time, money, and work that should be done can be neglected while the dispute has not been resolved. So that through the Construction Services Law No. 2/2017, dispute resolution is more directed to be resolved through non-litigation.

3. Alternative Dispute Resolution (ADR) through the Dispute Board has been regulated both in the FIDIC Construction Contract Standards 2017 and in the legal regulations in force in Indonesia, including Law No. 30/1999 concerning Arbitration and Alternative Dispute Resolution, Law No. 2/2017 concerning Construction Services and the mechanism and procedures for dispute resolution through the Dispute Board strengthened by the issuance of the Regulation of the Minister of PUPR No. 11/2021 concerning Procedures and Technical Instructions for the Construction Dispute Board.
4. From the results of the research analysis, it was found that based on the Cost and Time aspects, resolving construction disputes through the Dispute Board has proven effective in reducing the costs and time of dispute resolution with the highest RII value of 0.84 for the cost aspect and 0.9 related to the time aspect. Based on the Good Relationship aspect, it also has an important role, with the highest RII value of 0.89. This shows that the Dispute Board functions well to maintain harmonious relations between the parties involved in the construction dispute. Based on the Legal Certainty aspect, there are few challenges related to respecting the decision of the Dispute Board, but overall this mechanism provides sufficient transparency with the highest RII value of 0.84.
5. From the case study that has been discussed, the Project Owner and Contractor agreed to use the Dispute Board (DB) to resolve disputes by first carrying out a contract amendment process, where the Dispute Board formed is an "ad hoc" Dispute Board. In order to avoid disputes that arise, it is proposed to be able to integrate the DB clause in the construction contract in order to ensure this process becomes the standard for dispute resolution.

CONCLUSION

Based on the research, suggestions are given for further development and research to be carried out more comprehensively and in-depth by interviewing members of the Dispute Board and related parties to understand the challenges of DB implementation in the field, and in-depth research can be conducted to compare the effectiveness of the Dispute Board (DB) in Indonesia with other countries, especially those with more mature construction regulations.

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