

PENYELESAIAN PERSELISIHAN PERJANJIAN JUAL BELI TENAGA LISTRIK (*POWER PURCHASE AGREEMENT*) PEMBANGKIT IPP MELALUI INTERNATIONAL CHAMBERS OF COMMERCE (ICC)

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Abstract

Dispute is a perception of differences in interests or a belief that the aspirations of the conflicting parties cannot be achieved simultaneously. In several cases of IPP power purchase agreements, disputes were found, especially when entering the handover phase and disputes in interpreting the requirements that must be met for the payment process from PLN to the IPP Company. The case study conducted in this writing is a dispute resolution scheme outlined in the power purchase agreement for the Poso Hydroelectric Power Plant between PLN and PT Poso Energy. Through a qualitative method approach and a dispute resolution theory approach to the case study raised, it was concluded that in the Poso Hydroelectric Power Plant sale and purchase agreement between PLN and PT Poso Energy it was agreed that if a dispute occurs, the first step taken is to request a referral to an expert appointed by the International Chambers of Commerce, where the dispute resolution mechanism regulated in the agreement has a tendency to resolve disputes with problem solving, namely seeking alternatives that can satisfy both parties. Dispute resolution by experts through the International Chambers of Commerce is one of the alternative dispute resolutions outside of dispute resolution through the court process, which in principle dispute resolution through expert referral can be categorized as a dispute resolution that prioritizes the win-win principle for the disputing parties

Keywords: *Dispute Resolution, Power Purchase Agreement, International Chambers of Commerce, Dispute Resolution Theory, Poso Hydroelectric Power Plant*

Abstrak

Perselisihan adalah persepsi mengenai perbedaan kepentingan atau suatu kepercayaan bahwa aspirasi pihak-pihak yang berkonflik tidak dapat dicapai secara simultan. Pada beberapa kasus perjanjian jual beli tenaga listrik IPP ditemukan perselisihan khususnya saat memasuki fase serah terima dan perselisihan dalam menafsirkan persyaratan yang harus dipenuhi untuk proses pembayaran dari PLN kepada Perusahaan IPP. Studi kasus yang dilakukan dalam penulisan ini adalah skema penyelesaian perselisihan yang dituangkan pada perjanjian jual beli tenaga listrik untuk PLTA Poso antara PLN dengan PT Poso Energy. Melalui pendekatan metode kualitatif dan pendekatan teori penyelesaian perselisihan terhadap studi kasus yang diangkat, diperoleh simpulan dimana pada perjanjian jual beli tenaga listrik PLTA Poso antara PLN dan PT Poso Energy disepakati bahwa jika terjadi perselisihan maka jalan pertama yang ditempuh adalah meminta rujukan kepada ahli yang ditunjuk oleh International Chambers of Commerce, dimana mekanisme penyelesaian sengketa yang diatur dalam perjanjian tersebut memiliki kecenderungan penyelesaian sengketa dengan problem solving yaitu mencari alternatif yang dapat memuaskan kedua belah pihak. Penyelesaian sengketa oleh ahli melalui International Chambers of Commerce merupakan salah satu alternatif penyelesaian sengketa diluar penyelesaian sengketa melalui jalan bersengketa dipengadilan yang secara prinsip penyelesaian sengketa melalui rujukan ahli dapat dikategorikan penyelesaian sengketa yang mengedepankan prinsip win-win bagi pihak yang bersengketa.

Kata Kunci: *Penyelesaian Perselisihan, Perjanjian jual beli tenaga listrik, International Chambers of Commerce, Teori Penyelesaian Sengketa, PLTA Poso*

INTRODUCTION

Based on Rencana Umum Penyediaan Tenaga Listrik (RUPTL 2021-2030) by the Ministry of Energy and Mineral Resources (Kementerian ESDM), up to 2020, the total number of power plants built and operating was 6,609 units with a composition of 6,005 PLN-owned power plants, 254 leased power plants and 350 Excess Power / IPP power plants. In power plants provided by IPP (Independent Power Producer) companies, the electricity purchase and sale scheme is carried out in a power purchase agreement or PPA (Power Purchase Agreement) with PT PLN (Persero) as a BUMN appointed by the Government of Indonesia as the holder of the electricity business authority. In several Power Purchase Agreements made by PLN with IPP companies, the scope of electricity supply is not limited to the provision of power generated from the power plant built but also includes special supporting facilities needed in this case the transmission network connecting the IPP power plant with the grid system that has been built by PT PLN (Persero). The procedures and requirements for payment of electricity components sold by IPP to PLN including special facilities that will be handed over from IPP to PLN are regulated in the articles of the power purchase agreement. In several cases in the PPA (Power Purchase Agreement) of IPP power plants which include the scope of special facility provision, there was a dispute between the developer (IPP company) and PLN when the special facility handover process was to be carried out. Disputes that occur are generally caused by non-ideal conditions in the completion of special facilities provided by the developer company / IPP, where in PLN's view according to the requirements in the PPA if there are conditions that do not meet all the specified requirements, then the handover process of special facilities cannot be carried out which means that payment for component E related to special generating facilities cannot be made by PLN to the developer company / IPP. In the PPA used by PLN in the agreement with the IPP developer company, the articles related to the handover of special facilities are as follows; "The transfer of Special Facilities (SF) is subject to the terms and conditions in this Agreement, the Seller agrees to transfer the Special Facilities together with all related guarantees and warranties that have not expired (including any bonds or other guarantees for (such) guarantees and warranties) free and clear of any burden to PLN, and PLN will

take over control of the Special Facilities from the Seller on the Commercial Operation Date (COD), after the Certificate of Operational Eligibility for the Special Facilities has been issued and the takeover certificate has been signed in accordance with the Appendix...” . This article will discuss the settlement of disputes agreed upon in the power purchase agreement (PPA) between PLN and the developer company by Experts through the International Chambers of Commerce (ICC).

RESEARCH METHOD

The method used is a qualitative method approach and a dispute resolution theory approach, where the qualitative method approach used refers to a case study that occurred in the power purchase agreement (PPA) between PT PLN (Persero) and PT Poso Energy in the development of the Poso IPP PLTA power plant (515 MW) which is associated with a dispute resolution approach based on the theory of G Dean G. Pruitt and Jeffrey Z. Rubin. Data analysis techniques or methods are carried out using qualitative methods, then studied using a literacy approach to formulate conclusions on the research conducted.

RESULTS AND DISCUSSION

1. Dispute Resolution Theory

According to Dean G Pruitt and Jeffrey Z Rubin's opinion on the theory of dispute resolution, dispute resolution can be done in 5 (five) ways, namely:

- a. Contending, which is trying to implement a solution that is preferred by one party over the other.
- b. Yielding, which is lowering one's own aspirations and being willing to accept shortcomings from what is actually desired.
- c. Problem Solving, which is finding alternatives that satisfy both parties
- d. With Drawing, which is choosing to just leave the dispute situation, both physically and psychologically
- e. In Action, which is doing nothing.

2. Dispute Resolution by Experts through the International Chambers of Commerce (ICC)

In the Poso Hydroelectric Power Plant sales and purchase agreement between PT. PLN and PT. Poso Energy, is regulated regarding the procedure for resolving

disputes as stated in Article 17 concerning Settlement of Dispute where there are 2 schemes that will be taken by both parties in resolving disputes, namely through referral to an expert (Referral to an Expert) or through Arbitration (Arbitration). In terms of the hierarchy of the order taken by both parties if a dispute / disagreement occurs, it is prioritized through the expert referral scheme appointed by the International Chambers of Commerce (ICC). The procedure / mechanism for submitting a referral, up to the time limit given to the appointed expert is also stated in the agreement, including the steps to be taken if within a certain time limit, the appointed expert does not provide a referral to the dispute that occurs. Although the PPA also regulates the settlement of disputes / disagreements through arbitration with the consideration that if the settlement of disputes through expert referral does not achieve the goals expected by both parties.

| Article 17 SETTLEMENT OF DISPUTES | |
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| 17.2 Referral to an Expert | |
| <p>17.2.1 If the Dispute cannot be settled by mutual discussion within the 30-Day period provided in Section 17.1, and the Parties do agree in writing, the Dispute shall be referred to an expert for determination.</p> <p>17.2.2 The Party specified in the relevant provision on having the right to refer a Party of no single Party is designated may give notice ("Notice of Intention to Refer") to the other Party of its intention to refer to the Dispute. This Party giving the notice is referred to herein as the "Applicant" and the Party to whom such notice is given is referred to herein as the "Respondent".</p> <p>17.2.3 A Notice of Intention to Refer shall include, inter alia:</p> <ul style="list-style-type: none"> (a) a description of the Dispute; (b) the grounds on which the Applicant relies in seeking to have the Dispute determined in its favor; (c) all written material which the Applicant proposes to submit to the expert; <p>provided that this Section 17.2.3 shall not be construed so as to prevent the Applicant from using or producing further written material which comes into existence or comes to the Applicant's attention after the Notice of Intention to Refer is given, but in such event the Applicant shall give the Respondent prior written notice of the Applicant's intention to use or produce such material and the Respondent shall be allowed a reasonable time to respond thereto.</p> <p>17.2.4 The Respondent shall, within forty-one (41) Days after receipt of the Notice of Intention to Refer, give to the Applicant a notice ("Notice of Intention to Defend") of its intention to defend such Dispute, which shall include:</p> <ul style="list-style-type: none"> (a) the grounds upon which the Respondent relies in seeking to have the Dispute determined in its favor; and (b) all written material which the Respondent proposes to submit to the expert; | <p>provided that this Section 17.2.4 shall not be construed so as to prevent the Respondent from using or producing further written material which comes into existence or comes to the Respondent's attention after the Notice of Intention to Defend is given, but in such event the Respondent shall give the Applicant prior written notice of the Respondent's intention to use or produce such material and the Applicant shall be allowed a reasonable time to respond thereto.</p> <p>17.2.5 If within fourteen (14) Days after Applicant's receipt of a Notice of Intention to Defend, the Parties have agreed on an expert and in the format under which the Dispute shall be referred, the Dispute shall be so referred. In the event that the Parties are unable within such fourteen (14) Day period to agree upon an expert to be appointed hereunder or upon the terms of such expert's reference or both, then either Party may request the International Chamber of Commerce (ICC) to appoint an expert, and the matter to be determined by such expert shall be those set out in the Notice of Intention to Refer and the Notice of Intention to Defend.</p> <p>17.2.6 Within seven (7) Days of the appointment of the expert, the expert shall designate a time and place for a hearing of the Parties on the Dispute, which time shall not be more than twenty-one (21) Days after the expert's appointment.</p> <p>17.2.7 The Parties shall not be entitled to apply for discovery of documents not shall be entitled to have access to the other Party's records, and shall in accordance with such Party's administrative need to prove its case.</p> <p>17.2.8 At the time contemplated for the hearing, each Party must appear before the expert and present its case. The Parties may each be assisted in such hearing by advisors of their choosing.</p> <p>17.2.9 The expert must render his decision on the Dispute as soon as possible after completion of the hearing and must forthwith advise the Parties in writing of his determination and his reasons therefor. The decision rendered shall constitute the final and binding determination of the Dispute, and shall be enforceable against both of the Parties at the expert's determination.</p> <p>17.2.10 Any evidence given or statements made in the course of the hearing may not be used against a Party in any other proceedings.</p> |

Figure 1. Poso Hydroelectric Power Plant PPA Clause regarding Dispute Resolution by Referral to an Expert

Based on the brief description above, in the case study of dispute resolution / disagreement in the electricity purchase agreement between PT PLN (Persero) and PT Poso Energy, if analyzed with the theory of dispute resolution according to Dean G Pruitt and Jeffrey Z Rubin, the first step taken by both parties is dispute resolution with a problem solving mechanism, where the agreement by referring to an expert (referral to an expert) appointed by the International Chambers of Commerce (ICC)

is expected to be an alternative that satisfies both parties or it can be said that the method put forward is the target of a win-win solution compared to the win-lose target carried out by both parties to litigate the dispute through the courts.

CONCLUSION

Disputes or disputes in an agreement, whether individual with individual, individual with group or group with group, can certainly occur, both civil disputes or general disputes. The theory of dispute resolution put forward by Dean G Pruitt and Jeffrey Z Rubin is a perception of differences in interests or a belief that the aspirations of the conflicting parties cannot be achieved simultaneously. In the case study of dispute resolution or disputes in the Poso Hydroelectric Power Plant PPA between PLN and the IPP Developer, both parties in good faith put forward alternative solutions that could benefit or be accepted by both parties rather than choosing a legal dispute path which in the end will decide the winning party and the losing party/punished or the win-lose principle.

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