

PENYELESAIAN PERSELISIHAN PERJANJIAN PEMBANGUNAN PEMBANGKIT LISTRIK TENAGA MINIHIDRO (PLTM) BONEHAU 2 X 2000 kW

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Abstract

Disputes or disputes are perceptions of differences in the level of interest or trust between two or more parties that have not been reached simultaneously. Republic of Indonesia Law No. 2 of 2017 regulates the stages of resolving construction disputes as a strong legal basis for institutions in Indonesia to resolve existing disputes. During the construction of power plants within PT PLN (Persero), there were many disputes or disagreements between PLN and the implementing contractors. In the case study raised is a dispute over the Bonehau Mini hydro Power Plant (PLTM) construction project with a capacity of 2x2000 kW. In this case, a flash flood occurred which caused damage to the generating machine which required repair costs of 17.4 billion rupiah. So there was a dispute between PLN and the Contractor regarding who was responsible for repairing the machine. Through a qualitative method approach and a theoretical approach to dispute resolution to the case studies raised, it was concluded in the contract agreement for the construction of the Bonehau mini hydro power plant (PLTM) between PLN and the Contractor that it was agreed that if a dispute occurred, the first way to be taken was to resolve the dispute through deliberation, mediation, and a mutually agreed arbitration body. After 2 years of deliberation and mediation, no agreement was found, the dispute resolution mechanism that both parties ultimately tended to agree on was dispute resolution through an arbitration body. In principle, resolving disputes or disagreements through arbitration is an alternative dispute resolution with the aim of obtaining a fair agreement for both parties.

Keywords: *Dispute Resolution, Power Plant Construction Agreement, Dispute Resolution Theory, Law No. 2 of 2017, Dispute Resolution in Arbitration*

Abstrak

Sengketa atau perselisihan merupakan persepsi perbedaan tingkat kepentingan atau kepercayaan antara dua pihak atau lebih yang belum tercapai secara simultan. Undang – undang RI no 2 tahun 2017 mengatur bagaimana tahap penyelesaian sengketa konstruksi sebagai dasar hukum yang kuat bagi institusi di Indonesia menyelesaikan sengketa yang ada. Pada pembangunan pembangkit listrik di lingkungan PT.PLN (Persero) banyak ditemukan sengketa atau perselisihan antara PLN dengan kontraktor pelaksana. Pada studi kasus yang diangkat adalah sengketa pada proyek pembangunan Pembangkit Listrik Tenaga Minihydro (PLTM) Bonehau dengan kapasitas 2x2000 kW. Pada kasus ini terjadi banjir bandang yang menyebabkan kerusakan pada mesin pembangkit yang membutuhkan biaya perbaikan 17,4 miliar rupiah. Sehingga terjadi perselisihan antara PLN dan Kontraktor terkait siapa yang bertanggung jawab terhadap perbaikan mesin. Melalui pendekatan metode kualitatif dan pendekatan teori penyelesaian perselisihan terhadap studi kasus yang diangkat, disimpulkan didalam perjanjian kontrak pembangunan pembangkit listrik tenaga minihydro (PLTM) Bonehau antara PLN dan Kontraktor disepakati bahwa jika terjadi perselisihan maka jalan pertama yang ditempuh adalah penyelesaian sengketa melalui musyawarah, mediasi, dan badan arbitrase yang disepakati Bersama. Setelah 2 tahun melalui musyawarah dan mediasi tidak ditemukan kesepakatan maka mekanisme penyelesaian sengketa yang akhirnya kecenderungan kedua belah pihak sepakati adalah

penyelesaian sengketa melalui badan arbitrase. Secara prinsip penyelesaian sengketa atau perselisihan melalui arbitrase merupakan salah satu alternatif penyelesaian sengketa yang dengan tujuan untuk mendapatkan prinsip kesepakatan yang adil bagi kedua belah pihak.

Kata Kunci: *Penyelesaian Perselisihan, Perjanjian pembangunan pembangkit listrik, Teori Penyelesaian Sengketa, Undang – Undang no 2 tahun 2017, Penyelesaian Sengketa di Arbitrase*

INTRODUCTION

A Dispute Board (DB) is a widely used alternative dispute resolution (ADR) mechanism in construction projects, designed to resolve disputes quickly and efficiently, typically during the course of the project. Dispute Boards are particularly common in large, complex construction projects where disputes may arise frequently due to the scale, technical complexity, or differing expectations of the parties involved (owners, contractors, subcontractors, etc.).

The main objective of a Dispute Board is to prevent disputes from escalating into lengthy, costly, and formal litigation or arbitration. A DB aims to provide a neutral, expert forum that can resolve issues as they arise, helping to keep projects on track and avoid delays.

Composition Dispute Board is typically consists of three members, though it can sometimes be a single member or two members (depending on the parties' agreement). The members are usually independent experts with experience in construction, engineering, and law. Ideally, they will have technical expertise related to the specific project. The board is appointed at the start of the project and remains available to resolve disputes that arise during the course of the work.

Functions of a Dispute Board for early identification and resolution. The DB helps to identify potential issues early and provides a venue for the resolution of disputes before they escalate. This keeps the project moving forward without significant delays. Another functions is ongoing involvement, unlike other ADR mechanisms that only intervene once a dispute has arisen, DBs are involved throughout the life of the project. They may meet periodically to review progress and discuss potential issues. And make decision making, If a dispute arises, the DB can hear both parties' arguments and make a decision (binding or non-binding, depending on the type of DB). The DB's decision is intended to be quicker, less formal, and more cost-effective than traditional litigation or arbitration. Benefits of a Dispute Board :

1. **Timely Resolution:** Disputes can be resolved while the project is still in progress, preventing delays and helping to avoid costly interruptions.
2. **Expertise:** DB members are typically industry experts, meaning that they can provide informed decisions based on the technical and contractual aspects of the dispute.
3. **Cost-Effectiveness:** Compared to litigation or arbitration, using a DB is often a more economical and efficient way to resolve disputes.
4. **Preservation of Relationships:** By resolving issues early and with a neutral party involved, the DB can help preserve the working relationship between the parties, which is crucial in ongoing projects.
5. **Flexibility:** The DB process is generally more flexible and less formal than arbitration or litigation, making it easier to accommodate the needs of the construction project.

Alternative Dispute Resolution (ADR) in Indonesia's construction law, particularly in the context of **Undang-Undang RI No. 2 Tahun 2017** (Law No. 2 of 2017 on Construction Services), is a critical mechanism for resolving disputes in construction projects. This law establishes a legal framework for the construction industry in Indonesia, addressing various aspects such as licensing, standards, and the settlement of disputes in construction contracts.

Here's a breakdown of how Alternative Dispute Resolution (ADR) is addressed in Undang-Undang No. 2 Tahun 2017:

General Overview of Law No. 2 of 2017 regulates construction services in Indonesia, aiming to promote professionalism, quality, and fairness in the industry. It sets out the rules for construction contracts, contractors' rights and obligations, safety standards, as well as dispute resolution.

One of the key aspects of this law is its approach to resolving disputes arising from construction projects. It recognizes the importance of Alternative Dispute Resolution (ADR) mechanisms to resolve conflicts in a timely and efficient manner, especially in a sector known for its complex and multi-party nature.

While Law No. 2 of 2017 covers several methods of dispute resolution, it emphasizes the following ADR mechanisms:

1. Consultation (Musyawarah)

consultation or negotiation is encouraged as the first step in resolving disputes. The law promotes dialogue and communication between the parties involved in a construction contract to resolve conflicts before they escalate. This approach reflects the principle of good faith in Indonesian civil law, where parties are expected to resolve disagreements amicably, ensuring a collaborative environment. If the dispute cannot be resolved through consultation, the parties may proceed to the next level of ADR.

2. Mediation

Mediation is an important ADR tool under Law No. 2 of 2017. The law encourages parties to resolve disputes through mediation, where an independent third party (mediator) helps facilitate discussions and guide the parties towards a mutually acceptable solution. Mediation is voluntary and non-binding, meaning that the mediator's recommendations are not enforceable unless both parties agree to the settlement. Mediation is often quicker and less costly compared to arbitration or litigation, making it an attractive option in construction disputes.

3. Arbitration

Arbitration is another widely recognized method for resolving disputes under Law No. 2 of 2017. The law provides that construction contracts may include an arbitration clause to specify that disputes will be resolved by arbitration, rather than through litigation in court. Arbitration is more formal than mediation, but it still offers a quicker and more efficient alternative to court proceedings. The decision made by the arbitrator is binding on the parties, and it can be enforced through the courts. Arbitration may be conducted through established Indonesian arbitration bodies, such as the Badan Arbitrase Nasional Indonesia (BANI), Badan Arbitrase dan Alternatif Penyelesaian Sengketa Konstruksi Indonesia (BADAPSKI), or international arbitration institutions if agreed by the parties.

4. Dispute Boards

Dispute Boards (DBs) are not explicitly mentioned in the 2017 law, they are increasingly becoming a viable ADR option in Indonesia, especially for larger and more complex construction projects. The use of Dispute Review Boards (DRBs) or Dispute Adjudication Boards (DABs) has been gaining traction in the Indonesian

construction sector, particularly in projects involving international contractors or joint ventures. Dispute Boards allow for timely, binding (or non-binding) decisions, and are used to resolve issues as they arise during the course of the project.

5. Expert Determination

Expert determination is another method that may be used, where an independent expert is appointed to make a determination on a specific issue in dispute. This is typically used in situations where the parties require technical expertise or the dispute revolves around specialized construction matters (e.g., engineering, design, or cost issues). The expert's decision may be binding or non-binding, depending on the agreement between the parties.

The Indonesian government, through the Ministry of Public Works and Housing (PUPR), has a role in promoting and overseeing the implementation of ADR mechanisms in construction disputes. The government encourages the use of ADR as a way to reduce the burden on the courts and promote a more efficient construction industry.

The PUPR Ministry provides guidelines and encourages the use of ADR in contracts for public infrastructure projects and other large-scale construction works. In some cases, the Ministry also facilitates the mediation and arbitration process.

Advantages of ADR in Indonesian Construction Law :

1. Time Efficiency with ADR methods like mediation and arbitration are generally faster than litigation.
2. Cost-Effectiveness with ADR can be less expensive than court proceedings, reducing legal costs for all parties.
3. Confidentiality Unlike court cases, ADR processes are usually private, which can protect the reputation and business interests of the parties involved.
4. Flexibility with ADR offers more flexibility in choosing the procedure, scheduling hearings, and involving experts in specialized fields.
5. Preservation of Business Relationships with ADR mechanisms like negotiation and mediation are less adversarial, which helps maintain professional relationships between the contracting parties.

RESEARCH METHOD

The method used is a qualitative method approach and a dispute resolution theory approach, and particularly in the context of **Undang-Undang RI No. 2 Tahun 2017** (Law No. 2 of 2017 on Construction Services). 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

Case study of dispute resolution on projects at PLN. This case study is on the Bonehau PLTM project with a capacity of 2x2000 kW. This project is in Talopa Village, Mamassa Regency, West Sulawesi Province. This project was initiated and the contract was signed on December 4 2008, and the project began operating on May 7 2012 with the project maintenance period completed on April 13 2015. The case occurred when there was a flash flood at the construction site on April 16 2015 which caused damage. on the machine which caused repair costs of 17.4 billion rupiah. However, at that time the contractor had not submitted approval for the minutes of handover of the project for phase 2. According to PLN, it was still the contractor's responsibility because administratively there had been no handover of the project from the contractor to PLN. Meanwhile, according to the Contractor, even though there has not been an administrative handover of the project to PLN, the project maintenance period has ended on April 16 2015, so if damage occurs outside the maintenance period it is no longer the contractor's responsibility.

For 2 years there was no resolution of this dispute, so it was agreed that in 2017 the case would be resolved through an arbitration body. The parties agreed to use the Indonesian Arbitration and Alternative Construction Dispute Resolution Agency (BADAPSKI) and the case was registered on April 27 2018. On September 25 2018, the first hearing for reading the dispute application was held, followed by October 4 2018 verification of the evidence, to strengthen the evidence. There was a third trial in the form of evidence by witnesses or construction experts, and on February 25 2019 the decision was read out. BADAPSKI decisions include:

1. Accept and grant the Petitioner's request for no more than the demands submitted.

2. Declare that Contract No. 875/2008 dated 4 December 2008 between the applicant and the respondent is VALID ACCORDING TO LAW.
3. Order the Respondent to publish Minutes of Handover of Phase II to the Petitioner.
4. Order the Respondent to return the retention fee of 5% of the Contract Value to the Applicant.
5. Determine evidence of letters, minutes of meetings, documents and references to applicable regulations regarding the resolution of construction disputes for the construction of the Bonehau PLTM, according to the minutes of October 4 2018.
6. Charge both parties to pay half of the court costs each.
7. Declare that this Arbitration award is a decision at the first level and is related to and binding on the PARTIES.
8. Require the Petitioner and Respondent to implement the decision no later than 30 days after the decision.
9. Order the Secretary of the Assembly to register a copy of the arbitration award with the Registrar of the Mamuju District Court

This was decided at the arbitrator panel meeting on Monday, February 25 2019. From the results of the hearing on the reading of the application, verification of evidence, and the hearing on the submission of experts/witnesses to the reading of the results of the BADAPSKI decision, it was decided that at the time of the flash flood on April 16 2015, it was beyond the maintenance period according to the contract, even though administratively the contract had not yet been signed handover of the project for phase 2. So it was decided that repair costs would not be the responsibility of the Contractor. Arbitrator conclusion PLN must to return the retention money (maintenance guarantee) to the Contractor.



Figure 1. Flash flood PLTM Bonehau

CONSLUSION

Disputes or disputes are perceptions of differences in the level of interest or trust between two or more parties that have not been reached simultaneously. Republic of Indonesia Law No. 2 of 2017 regulates the stages of resolving construction disputes as a strong legal basis for institutions in Indonesia to resolve existing disputes. During the construction of power plants within PT PLN (Persero), there were many disputes or disagreements between PLN and the implementing contractors. In the case study raised is a dispute over the Bonehau Minihydro Power Plant (PLTM) construction project with a capacity of 2x2000 kW. In this case, a flash flood occurred which caused damage to the generating machine which required repair costs of 17.4 billion rupiah. So there was a dispute between PLN and the Contractor regarding who was responsible for repairing the machine. Through a qualitative method approach and a theoretical approach to dispute resolution to the case studies raised, it was concluded in the contract agreement for the construction of the Bonehau minihydro power plant (PLTM) between PLN and the Contractor that it was agreed that if a dispute occurred, the first way to be taken was to resolve the dispute through deliberation, mediation, and a mutually agreed arbitration body. After 2 years of deliberation and mediation, no agreement was found, the dispute resolution mechanism that both parties ultimately tended to agree on was dispute resolution through an arbitration body. In principle, resolving disputes or disagreements through arbitration is an alternative dispute resolution with the aim of obtaining a fair agreement for both parties.

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