

APPROACHING ALTERNATIVE DISPUTE RESOLUTION NEGOTIATION METHOD IN CONSTRUCTION DISPUTE RESOLUTION ASPECT OF AMDAL STUDY IN ELECTRICAL INFRASTRUCTURE PROJECTS

Reza Rafly Sebastian¹⁾

¹⁾Master's Students of Construction Law, University of Pekalongan,
Sriwijaya Street No.3, Pekalongan City, Central Java – 51119
E-mail: sebastian.rafly@yahoo.com

Abstract

The growth of the construction industry has led to increased complexity in construction projects, presenting new challenges in efficiency for resolving construction disputes. One of the infrastructure construction projects in the electricity sector (Project X) in Indonesia faces complex issues ranging from contractors' loss of financial capability to complete the work to contract termination, which results in project completion delays. Utilizing an Alternative Dispute Resolution (ADR) approach, specifically through negotiation methods, offers a faster and more efficient solution compared to arbitration and litigation. Through the negotiation process, the parties involved in construction disputes can communicate, understand each other's arguments, and ultimately seek a way out (win-win solution). Environmental Impact Assessment one of the essential components in disputes related to electricity infrastructure construction, often becoming a source of conflict among the parties involved.

Keywords: *Alternative Dispute Resolution, Negotiation, Electricity Infrastructure Construction, Dispute, Environmental Impact Assessment*

Abstrak

Berkembangnya industri konstruksi menyebabkan bertambahnya kompleksitas proyek konstruksi, sehingga penyelesaian sengketa konstruksi menghadapi tantangan baru dalam efisiensi. Salah satu pekerjaan konstruksi infrastruktur ketenagalistrikan (Proyek X) di Indonesia telah memenuhi kompleksitas permasalahan mulai dari hilangnya kemampuan finansial kontraktor dalam menyelesaikan pekerjaan sampai dengan pemutusan kontrak yang berimbas keterlambatan penyelesaian proyek. Menggunakan pendekatan *Alternative Dispute Resolution* (ADR) yang lebih spesifik dengan metode negosiasi, merupakan solusi lebih cepat dan efisien jika dibandingkan melalui arbitrase dan litigasi. Dengan proses negosiasi, tentunya para pihak yang terlibat dalam sengketa konstruksi dapat berkomunikasi, memahami argumen masing-masing, sampai dengan mencari jalan keluar (*win win solution*). Studi AMDAL merupakan salah satu komponen penting dalam sengketa konstruksi infrastruktur ketenagalistrikan, yang sering menjadi sumber konflik antar pihak.

Kata Kunci: *Alternative Dispute Resolution, Negosiasi, Konstruksi Infrastruktur Ketenagalistrikan, Sengketa, Studi AMDAL*

INTRODUCTION

To meet the increasing energy needs in Indonesia from year to year, one of the government's main priorities is the development of electricity infrastructure. Projects involving electricity infrastructure are crucial for the sustainability of national development, as they can drive economic growth and improve the living standards of

the community. Additionally, the positive impact of this infrastructure development includes increasing the productivity of small businesses and industries, creating jobs, boosting economic growth, and expanding energy access to remote areas. However, alongside these positive impacts, there are several challenges that can hinder the progress of electricity system development, such as:

- The land acquisition process during project implementation;
- Community resistance related to environmental issues;
- Project financing.

Project X (a pseudonym) is one of the government's major initiatives aimed at building electricity infrastructure in Indonesia in accordance with the Electricity Supply Business Plan (RUPTL). The scope of Project X covers various stages, from investment (provision of funding) to the implementation of physical construction. Specifically, the construction work agreements/contracts within Project X include activities such as surveying, design, permitting, Environmental Impact Assessment (EIA/AMDAL) studies, land acquisition, compensation for crops and buildings, fabrication of equipment/materials, testing, insurance, transportation to the project site, installation, testing and commissioning, maintenance, and quality assurance. Each of these activities is interconnected and thus requires careful planning and execution to ensure that Project X proceeds as planned.

Project X has a main agreement/master contract that outlines the implementation of work, including any changes, as well as an agreement for the use of equity funds and other financing required by the Contractor. This article highlights that the greatest obstacle in Project X is insufficient funding or the contractor's inability to maintain financial capability to fulfill obligations in accordance with the agreements made by both parties. As a result of contractor financing sourced from loans not being secured, and relying solely on the contractor's equity, the construction work has stalled. This situation is further aggravated by design and technical changes that necessitate amendments to the AMDAL study. The inadequacy of the AMDAL study completion significantly impacts the progress of construction following the proposed design and technical changes. Many areas of work are affected by these obstacles; however, the discussion here will focus solely on the resolution of construction disputes regarding the AMDAL study in Project X.

The impact of this financial failure is the failure to meet project completion deadlines. This delay not only poses the potential for fines and blacklisting but also increases tensions and conflicts among the parties involved in the project. Conflict refers to disagreements or disputes that arise between individuals, which can potentially harm an organization (Ronquillo, 2023).

The use of Alternative Dispute Resolution (ADR) can effectively resolve construction disputes through methods such as negotiation, mediation, and arbitration in line with the values of peace and justice to ensure fair and sustainable solutions for all parties involved (Asis, 2024). According to Law (Undang-Undang) No. 2 of 2017 concerning Construction Services in Chapter XI on Dispute Resolution, Article 88, Paragraph (1) states:

“Sengketa yang terjadi dalam Kontrak Kerja Konstruksi diselesaikan dengan prinsip dasar musyawarah untuk mencapai mufakat”

"Disputes arising in Construction Work Contracts shall be resolved based on the principle of deliberation to reach consensus."

ADR, particularly negotiation methods in construction disputes, has become increasingly relevant in Indonesia given the rising complexity of infrastructure projects and the number of disputes that arise. This method offers a more efficient, quicker, and cost-effective solution compared to litigation, which often requires a lengthy process and high costs. Through negotiation, the parties involved in construction contracts can communicate directly, understand each other's perspectives, and seek common ground toward mutually beneficial agreements (win-win solutions).

Through negotiation, parties can discuss aspects of the AMDAL study such as environmental impact management, community involvement, and compliance with licensing requirements. By reaching an adequate agreement, all parties can feel involved in the process. Thus, this process not only reduces tension but also enhances transparency and collaboration among the involved parties. The negotiation method can serve as an important solution to resolve some or even all disputes by bringing together all stakeholders related to the AMDAL study.

This article's research aims to convey that the resolution of construction disputes in large projects can be approached through the ADR negotiation method. Of course, this resolution is supported by factors that can create a conducive atmosphere such as

effective communication, good leadership, understanding of policies and regulations, flexibility and readiness to compromise, complete documentation, and a commitment to reach an agreement. This can provide experiences and recommendations for all stakeholders.

RESEARCH METHOD

This article employs a qualitative approach focusing on dispute resolution in construction projects, particularly in the context of AMDAL studies. The methods used in this research include literature studies, analysis of data in contracts and supporting documents, as well as direct observation during the negotiation process.

The initial step of the research involves gathering and analyzing literature discussing construction dispute resolution, ADR principles, and the importance of AMDAL in construction projects. This literature study aims to provide a strong theoretical foundation and explain the relevance of AMDAL aspects in dispute resolution. Next, an analysis is conducted on the contracts between the parties involved in the construction project. Other related documents analyzed include AMDAL documents and other supporting licensing documents that can provide information about the progress achieved, issues that arise, allowing for the identification of critical points that can be negotiated as sources of dispute.

This research also involves direct observation during the negotiation process among the parties involved in the dispute. Observation was conducted in several negotiation meetings held to resolve conflicts related to the AMDAL study resolution in the project. The researcher noted the dynamics of interactions, the strategies employed by each party, and the outcomes of the negotiations. This observation provides a deeper understanding of how the ADR approach through negotiation is applied in practice and the challenges faced.

The data obtained from the literature study, document analysis, and direct observation were then analyzed qualitatively. The researcher identified factors influencing the effectiveness of negotiations, the role of AMDAL in dispute resolution, and the ADR strategies used by each party. The results of this analysis are expected to provide new insights into construction dispute resolution and recommendations for better practices in the future. By applying this comprehensive research method, it is

hoped to achieve a better understanding of negotiation as ADR and the role of AMDAL in practical construction dispute resolution.

RESULTS AND DISCUSSION

Through the analysis of Project X, which focuses on resolving construction disputes in the context of Environmental Impact Assessment (EIA/AMDAL) studies, several key findings have been identified:

1. Budget Constraints

The main obstacle identified is the inadequacy of the budget to complete the project on time. This has resulted in various issues, including delays in completion and potential conflicts among the parties involved. With adequate budget allocation, the project could be completed on time and within the planned scope, minimizing delays and cost overruns (Yang, 2023). A significant factor affecting the performance of construction projects is improper fund allocation (Masoetsa et al., 2022).

2. Importance of Negotiation in ADR

Law (Undang-Undang) No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution (ADR) in Article 6, Paragraph 1 states:

“Sengketa atau beda pendapat perdata dapat diselesaikan oleh para pihak melalui alternatif penyelesaian sengketa yang didasarkan pada itikad baik dengan mengesampingkan penyelesaian secara litigasi di Pengadilan Negeri”.

“Disputes or civil disagreements can be resolved by the parties through alternative dispute resolution based on good faith, setting aside litigation in the District Court.”

The negotiation process has proven effective in resolving disputes, particularly in the context of the AMDAL study for Project X. Negotiation is the most common self-help behavior after environmental disputes occur (He, Liu, & Gu, 2023). Negotiation provides space for all stakeholders to actively participate in the resolution process, thus creating better transparency and collaboration. In a significant decision regarding the formulation and enforcement of dispute resolution clauses, representatives from the parties meet and negotiate sincerely and in good faith with the aim of resolving the dispute or disagreement (Law Reform

Commission, 2010). The negotiations conducted in the AMDAL case study for Project X pertain to the performance that both parties are required to achieve regarding the AMDAL study resolution. The contractor desires to submit a 100% payment claim for the issuance of the Environmental Approval from the AMDAL study. In construction work contracts, a payment claim is a request for payment based on the progress of work and can only be submitted by someone or an entity that has performed work or provided goods and/or services (Hardjomuljadi, 2023). However, in this case, the payment claim cannot be billed at 100% because the User through the Field Management assesses the fulfillment of performance from the perspective of the compliance of the AMDAL study documents with the conditions of development on the site.

3. Impact of the Negotiation Process

Observations during the negotiation process indicated that effective communication and good leadership are key factors in reaching an agreement. The HSSE manager was appointed as the representative of the User of Goods/Services along with the HSSE Team to negotiate with the Legal and HSSE teams from the Contractor. Good leadership was demonstrated by an understanding of regulations and the important role of the AMDAL Study. Law (Undang-Undang) No. 32 of 2009 concerning the Protection and Management of the Environment and Government Rules (Peraturan Pemerintah) No. 22 of 2021 concerning the Implementation of Environmental Protection and Management have highlighted the importance of the AMDAL Study in the planning and implementation of sustainable projects. Moreover, there are points regarding sanctions, fines, up to the closure and revocation of business licenses that can be imposed on project initiators if the AMDAL study is not conducted or not in accordance with applicable regulations. In Project X, design and technical changes require a reevaluation of the AMDAL, thus directly impacting the project's progress. Understanding among the parties regarding environmental regulations brought discussions in negotiations focused on how to meet AMDAL requirements while still considering the desires of all parties, making AMDAL also play an important role in resolving the conflict. Negotiation skills through effective communication and good leadership were also demonstrated through the provision of complete documentation with evidence and data supporting

each party's position, particularly the documents related to the AMDAL study management that were crucial in reaching an agreement. Ultimately, an agreement concerning the AMDAL study was reached within the context of Project X, where the agreement was documented in a meeting record outlining the percentage allocated to the Contractor for performance payments adjusted based on the calculation of progress made in the AMDAL study that had been accepted by the Field Management, which will be used again in the subsequent AMDAL study process. The role of negotiation skills in conflict management is continually developed to improve the quality of problem-solving (Hendrayana, 2020).

CONCLUSION

From the analysis of Project X, which focuses on the resolution of construction disputes in the context of AMDAL studies, it can be concluded that two main factors are significantly influential: adequate budget allocation and an effective negotiation process. Budget constraints pose a significant obstacle, leading to delays and potential conflicts among the parties involved. Therefore, it is essential for project management to ensure that the allocated budget is sufficient to meet the needs for timely resolution and alignment with the planned scope.

In addition, the negotiation process as an alternative dispute resolution (ADR) approach has proven effective in fostering transparency and collaboration among stakeholders, particularly in the context of the AMDAL study for Project X. By actively involving all parties in open dialogue, agreements can be reached that are crucial for ensuring the project's compliance with applicable environmental regulations and minimizing the potential for future disputes. Consistency in applying effective communication and good leadership is also an important element in achieving mutually beneficial agreements.

However, risks remain in the implementation of this negotiation method, particularly if the supporting factors are not met. A lack of understanding among parties regarding AMDAL study regulations and poor documentation of each party's supporting evidence can result in AMDAL having no auxiliary role in conflict resolution.

Based on the above, several suggestions can be made to improve the management of future construction projects:

1. Each composition and amount (percentage) of project funding sources should be reviewed in terms of risks and impacts on project completion and the parties involved, in order to identify better funding source compositions for decision-making.
2. Progress meetings should be held regularly to measure the common perceptions of the progress achieved, the issues faced, plans for problem resolution, and potential risks and impacts that may arise, serving as moments for evaluation and feedback. These discussions should be documented in detail, clearly, and neatly for data completeness in future decision-making. Comprehensive and structured document management on projects, especially relating to AMDAL studies, should be prioritized, providing clear references for negotiations and facilitating dispute resolution processes. Regular meetings and their minutes also play a critical role in enhancing collaboration among stakeholders through discussions and early negotiations to prevent ongoing conflicts or disputes.
3. It is important for the parties to receive training in negotiation skills and effective communication. This will help them address potential conflicts in the future and improve the quality of the dispute resolution process, supported by the aforementioned factors.

By implementing these suggestions, it is hoped that the management of Project X and similar future projects can proceed more efficiently, with minimal conflict, and sustainably in the context of better environmental practices. The experience from Project X serves as a concrete example of how negotiation methods can be implemented to achieve desirable outcomes for all parties involved. However, further research is still needed on the factors that can influence the effectiveness of the ADR approach through negotiation in the practice of construction dispute resolution.

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