

THE EFFECTIVENESS OF DISPUTE RESOLUTION THROUGH THE DISPUTE BOARD IN CASES OF FAILURE TO FULFILL TKDN COMMITMENTS IN PT PLN (PERSERO) CONTRACTS

Ronald Lapasau¹⁾

¹⁾Master of Construction Law, Pekalongan University,
Sriwijaya Street No.3, Pekalongan City, Central Java, 51119
E-mail: ronald.lapasau@gmail.com

Abstract

The implementation of Domestic Component Level (TKDN) is one of the strategic policies of the Indonesian government to enhance the competitiveness of local products and drive national economic growth. However, the implementation of TKDN in procurement contracts often faces challenges, including the inability of suppliers to meet the committed value specified in the contract. This research examines the effectiveness of dispute resolution through arbitration in a case of failure to meet TKDN in the construction contract of Extension 2 LB GI 150 kV Balikpapan to GIS Kalimantan between PT PLN (Persero) as the goods/services user and PT Jaya Utama as the supplier. This dispute was resolved through a Dispute Board, as stipulated in the contract clause. This study explores the arbitration mechanism used, the implementation of administrative and financial sanctions, and the legal and business implications of the arbitration award. The results show that the arbitration mechanism through a Dispute Board is an effective alternative dispute resolution if supported by clear regulations and the commitment of the parties to resolve the dispute constructively.

Keywords: *Dispute Resolution, Dispute Board, Domestic Component Level (TKDN), Construction Contract*

Abstrak

Penerapan Tingkat Komponen Dalam Negeri (TKDN) merupakan salah satu kebijakan strategis pemerintah Indonesia untuk meningkatkan daya saing produk lokal dan mendorong pertumbuhan ekonomi nasional. Namun, implementasi TKDN dalam kontrak pengadaan barang/jasa sering kali menghadapi kendala, termasuk ketidakmampuan Penyedia Barang/Jasa memenuhi nilai komitmen yang telah ditentukan dalam kontrak. Penelitian ini membahas efektivitas penyelesaian sengketa melalui arbitrase dalam kasus kegagalan pemenuhan TKDN dalam kontrak Pekerjaan Pembangunan Extension 2 LB GI 150 kV Balikpapan arah GIS Kalimantan antara PT PLN (Persero) sebagai Pengguna Barang/Jasa dan PT Jaya Utama sebagai Penyedia Barang/Jasa. Sengketa ini diselesaikan melalui Dewan Sengketa, sebagaimana diatur dalam klausul kontrak. Kajian ini mengeksplorasi mekanisme arbitrase yang digunakan, pelaksanaan sanksi administratif dan finansial, serta implikasi hukum dan bisnis dari putusan arbitrase. Hasilnya menunjukkan bahwa mekanisme arbitrase melalui Dewan Sengketa merupakan alternatif penyelesaian sengketa yang efektif jika didukung oleh peraturan yang jelas dan komitmen para pihak untuk menyelesaikan sengketa secara konstruktif.

Kata Kunci: *Penyelesaian Sengketa, Dewan Sengketa, TKDN, Kontrak Konstruksi*

INTRODUCTION

The development of the electricity infrastructure in Indonesia plays a vital role in supporting national economic growth. To enhance the competitiveness of domestic

products, the government mandates the use of domestic components through the Domestic Component Level (TKDN) policy. PT PLN (Persero), as a state-owned enterprise in the electricity sector, consistently implements the TKDN policy in all its procurement contracts.

In the case of the Extension 2 LB GI 150 kV Balikpapan to GIS Kalimantan project, PT Jaya Utama, the supplier, failed to meet its TKDN commitment. Despite stating a commitment to achieve a TKDN level of 64.45%, the verification results showed a realization of only 22.47%. This discrepancy led to a dispute regarding the imposition of sanctions as stipulated in the contract.

The contract stipulates the Dispute Board as a mechanism for resolving disputes during the contract execution period. This research aims to analyze the effectiveness of this mechanism in resolving disputes arising from the failure to meet TKDN commitments.

RESEARCH METHOD

This research employed a qualitative approach using a case study analysis. Data was collected from contract documents, TKDN regulations, verification results from PT Sucofindo, and dispute resolution guidelines based on contract clauses. The analysis was conducted on:

1. Applicable TKDN regulations and policies.
2. Dispute resolution through the Dispute Board in PT PLN's contract.
3. The effectiveness of the Dispute Board in providing fair and efficient solutions.

RESULTS AND DISCUSSION

Applicable TKDN Regulations and Policies

Regulations related to Domestic Products (PDN) and Domestic Component Level (TKDN) in the development of electricity infrastructure (PIK) are regulated through several national and internal PT PLN (Persero) regulations:

1. Minister of Industry Regulation of the Republic of Indonesia Number 54/M-IND/PER/III/2012 concerning Guidelines for the Use of Domestic Products for the Development of Electricity Infrastructure.

2. Minister of Industry Regulation of the Republic of Indonesia Number 57/M-IND/PER/7/2006 concerning the Appointment of a Surveyor as the Implementation of Verification of the Domestic Component Level (TKDN) of Domestically Produced Goods/Services
3. Minister of Industry Regulation of the Republic of Indonesia Number 16/M-IND/PER/2/2011 concerning the Determination and Calculation of the Domestic Component Level
4. Minister of Industry Regulation of the Republic of Indonesia No. 33 of 2024 concerning the Revocation of the Minister of Industry Regulation Number 54/M-IND/PER/III/2012 concerning Guidelines for the Use of Domestic Products for the Development of Electricity Infrastructure, as amended several times, most recently by the Minister of Industry Regulation Number 23 of 2023 concerning the Second Amendment to the Minister of Industry Regulation Number 54/M-IND/PER/III/2012 concerning Guidelines for the Use of Domestic Products for the Development of Electricity Infrastructure
5. Minister of Industry Regulation of the Republic of Indonesia No. 34 of 2024 concerning the Calculation of the Domestic Component Level of Solar Module Products
6. Decree of the Minister of Energy and Mineral Resources of the Republic of Indonesia No. 191.K/EK.01/MEM.E/2024 concerning the Minimum Value of the Combined Domestic Component Level of Goods and Services within the Scope of Electricity Infrastructure Development Projects
7. Minister of Energy and Mineral Resources Regulation of the Republic of Indonesia No. 11 of 2024 concerning the Use of Domestic Products for Electricity Infrastructure Development
8. PT PLN (Persero) Director's Regulation No. 0002.P/DIR/2022 concerning the Strategic Policy on the Use of Domestic Products within PT PLN (Persero)
9. PT PLN (Persero) Director's Circular No. 0031.E/DIR/2022 concerning Standard Procedures for the Implementation of the Use of Domestic Products within PT PLN (Persero)

Failure of PT Jaya Utama to Fulfill TKDN Commitments

Based on the contract clause, PT Jaya Utama, as the goods/services supplier, was obligated to achieve a combined TKDN value of 64.39% for goods and services, as stated in the Letter of Commitment submitted by the goods/services supplier with a TKDN value of 64.45%.

However, after the contract was completed and the Domestic Component Level (TKDN) was verified by PT Sucofindo, the TKDN achieved by PT Jaya Utama was only 22.47%.

The verification process was conducted by PT Sucofindo as an independent surveyor, as stipulated in the Minister of Industry Regulation of the Republic of Indonesia Number 57/M-IND/PER/7/2006 concerning the Appointment of a Surveyor as the Implementation of Verification of the Domestic Component Level (TKDN) of Domestically Produced Goods/Services. The failure to achieve the TKDN target was caused by:

1. Reliance on imported products.
2. Weaknesses in self-assessment by the goods/services supplier.

The goods/services supplier, PT Jaya Utama, argued that they had prioritized and maximized the use of domestic products in terms of procurement of goods and labor. Therefore, the goods/services supplier objected to the imposition of sanctions as stipulated in the contractual provisions.

Contractual Sanctions for Non-Compliance with TKDN Commitments

The contract stipulates that the goods/services supplier failing to meet the TKDN commitment shall be subject to the following sanctions:

1. Administrative sanctions, including:
 - a. Written warning
 - b. Blacklisting by PT PLN (Persero)
2. Financial sanctions if the verified TKDN value at the end of the project is lower than the TKDN value stated in the tender document:
 - a. 0.3 (zero point three) per mile of the contract value for every 0.01% (zero point zero one percent) shortfall in TKDN.
 - b. A maximum of 10% (ten percent) of the contract value with a maximum shortfall of 5% (five percent).

3. Both administrative and financial sanctions shall be imposed at the end of the project or before the issuance of the Final Acceptance Certificate.

Dispute Resolution Mechanism through a Dispute Board

In the event of a dispute during the contract execution period, the contracting parties may resolve the dispute through a Dispute Board. The Dispute Board serves as a mediation forum to reach an amicable settlement without resorting to lengthy and costly litigation.

The use of the Dispute Board in resolving disputes shall be governed by the following provisions:

1. Both the contracting authority and the goods/services supplier shall appoint members to the Dispute Board within 14 days of a failed mutual agreement.
2. The Dispute Board shall consist of three members, with each party appointing one member, and the two appointed members shall then appoint a third member to chair the board.
3. In the absence of any objection from either party, the Dispute Board shall issue its decision within 28 days of the dispute being referred to it. The decision of the Dispute Board shall be final and binding on both parties.
4. The costs of dispute resolution through the Dispute Board shall be borne equally by both parties, based on the rates set by the relevant professional association or government ministry.

Such costs shall be in addition to the contract price.

Effectiveness Analysis of the Dispute Board in Resolving Cases

The use of a Dispute Board in resolving disputes related to the failure to fulfill TKDN commitments in the Extension 2 LB GI 150 kV Balikpapan to GIS Kalimantan Construction Project contract is an alternative dispute resolution mechanism stipulated in the contract.

The effectiveness of using a Dispute Board in resolving this case can be seen from several aspects, as follows:

1. Speed of Resolution

The Dispute Board is able to resolve disputes in a relatively shorter time compared to the litigation process.

2. Cost of Resolution

The process through the Dispute Board is more economical as it avoids the high costs of litigation and legal representation.

3. Credibility and Expertise

The members of the Dispute Board, who are experts and independent, increase the likelihood of a fair and professional solution.

4. Preventing Escalation of Conflict

The Dispute Board is designed to address problems at an early stage before they escalate into major disputes.

5. Satisfaction of the Parties

Resolutions through mediation allow the parties to reach a mutually beneficial agreement.

6. Compliance with the Decision

Agreements reached are more likely to be complied with because they are the result of consensus.

7. Long-term Relationships

This approach promotes constructive resolution, thereby maintaining good relations between the parties.

CONCLUSION

Dispute resolution through a Dispute Board holds significant potential for effectively resolving disputes related to failure to fulfill with TKDN commitments. This mechanism offers a swift, cost-effective, and consensus-based resolution. However, its effectiveness depends on the commitment and cooperation of both parties, as well as clear and well-defined rules.

In the case of PT Jaya Utama, the Dispute Board can serve as a suitable forum to reach an agreement on the imposition of sanction or alternative solutions. It is crucial for both PT PLN (Persero) and PT Jaya Utama to engage in open communication and seek a fair solution for all parties involved.

Based on these conclusions, the recommendations that can be made are as follows:

1. Contract Refinement
Develop more specific contract clauses related to dispute resolution mechanisms and the imposition sanction.
2. Regulation Dissemination
Enhance the understanding of goods/services suppliers regarding TKDN obligations and the consequences of non-compliance.
3. Capacity Building for Goods/Services Suppliers
Training and mentoring programs aimed at minimizing TKDN violations through improved fulfillment and calculation of TKDN requirements
4. Strengthening the Role of the Dispute Board
Increase the involvement of the Dispute Board in effectively resolving disputes.

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