

PERSPECTIVE FROM ALTERNATIVE OF CONSTRUCTION DISPUTE RESOLUTION THROUGH CONSTRUCTION DISPUTE COUNCIL IN INDONESIA

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Abstract

Indonesia experienced significant growth in the construction service industry, with market projections reaching Rp349,16 trillion in 2024, growing 4.68% from 2023. Construction projects involve resources and often have the potential to cause disputes. From 2017 to 2021, construction disputes increased from 2,153 to 3,880 cases, highlighting the need for non-litigation settlement alternatives. The research explores the role of the construction dispute board in providing solutions and perspectives of construction service providers towards dispute prevention. The Construction Dispute Council in Indonesia acts as an alternative to resolving construction disputes, according to the Ministerial Regulation of PUPR Number 11 of 2021. Consisting of a minimum of 3 members, this council is formed through an employment agreement. His duties include preparing schedules, studying contracts, field visits, and making reports and recommendations to prevent disputes. In addition to deliberation, the law also regulates settlement through mediation, arbitration, or court channels. Several related institutions include BANI, DSI, and PADSK. Construction service actors try to avoid disputes and disputes through the Dispute Board to obtain legal certainty. According to Permen PUPR No. 11 Year 2021, a dispute is a conflict between Service Users and Service Providers that can cause legal consequences. Although Law No. 2 of 2017 provides alternative solutions, | Dispute Councils are often considered to have no legal certainty due to reluctance to negotiations, distrust, and arguments that persist. Awareness of the needs of the mediator is needed to minimize disputes in construction contracts. Keywords: Indonesia, Construction Dispute, Dispute Board, Legal Certainty, Construction Contract

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Abstrak

Indonesia mengalami pertumbuhan signifikan dalam industri jasa konstruksi, dengan proyeksi pasar mencapai Rp349,16 triliun pada 2024, tumbuh 4,68% dari 2023. Proyek konstruksi melibatkan sumber daya dan sering kali berpotensi menimbulkan sengketa. Dari 2017 hingga 2021, sengketa konstruksi meningkat dari ± 2.153 menjadi ± 3.880 kasus, menyoroti perlunya alternatif penyelesaian non-litigasi. Penelitian ini bertujuan mengeksplorasi peran dewan sengketa konstruksi dalam memberikan solusi dan perspektif pelaku jasa konstruksi terhadap pencegahan sengketa. Dewan Sengketa Konstruksi di Indonesia berperan sebagai alternatif penyelesaian sengketa konstruksi, sesuai Peraturan Menteri PUPR Nomor 11 Tahun 2021. Terdiri dari minimal 3 anggota, dewan ini dibentuk melalui perjanjian kerja. Tugasnya meliputi penyusunan jadwal, telaah kontrak, kunjungan lapangan, serta pembuatan laporan dan rekomendasi untuk mencegah sengketa. Selain musyawarah, undang-undang juga mengatur penyelesaian melalui mediasi, arbitrase, atau jalur pengadilan. Beberapa lembaga terkait termasuk BANI, DSI, dan PADSK. Pelaku jasa konstruksi berupaya menghindari perselisihan dan sengketa melalui Dewan Sengketa untuk memperoleh kepastian hukum. Menurut Permen PUPR No. 11 Tahun 2021, sengketa adalah konflik antara Pengguna Jasa dan Penyedia Jasa yang dapat menimbulkan akibat hukum. Meskipun Undang-Undang No. 2 tahun 2017 memberikan alternatif penyelesaian,

Dewan Sengketa sering dianggap tidak memiliki kepastian hukum akibat keengganan perundingan, ketidakpercayaan, dan argumen yang bertahan. Kesadaran akan kebutuhan pihak penengah diperlukan untuk meminimalkan sengketa dalam kontrak konstruksi.

Kata Kunci: *Indonesia, Sengketa Konstruksi, Dewan Sengketa, Kepastian Hukum, Kontrak Konstruksi*

INTRODUCTION

With the rapid progress of the construction service industry in the world, Indonesia has become one of the countries with significant development growth. According to Ervianto (2002), construction projects are a series of activities that are only carried out once and generally have a short term. In the series of activities, there is a process that processes project resources into a result of activities in the form of buildings. The process that occurs in the series of activities certainly involves related parties, both directly and indirectly. Construction project (Gould, 2002, in Eka Danyanti, 2010), can be defined as an activity that aims to build a building that requires resources, both cost, labor, materials and equipment. Construction projects are carried out in detail and not repeated.

The total construction project market (Building and Civil projects, excluding Oil and Gas projects) in 2024 is estimated to grow by 4.68% compared to 2023. "The total construction market in Indonesia is estimated to reach Rp349,16 trillion in 2024, of which is 44.68% in the civil sector and 55.32% in the building sector." (BCI Central via National Research Manager, Cahyono Siswanto, 2024). This is an achievement for construction service business actors in Indonesia which can trigger the emergence of various cooperation between sectors and investment in the construction service sector. However, in the implementation of construction projects, there must be potential for disputes and construction disputes.

Conflict or dispute is a situation and condition where people experience each other factual disputes or disputes that exist in their perception only. (Fate of Rahmadi, 2011:1). From 2017 to 2021, construction disputes in Indonesia increased from ± 2,153 cases to ± 3,880 cases, with a small decrease in 2021. This figure shows that legal certainty has not been achieved in construction practice, although the Construction Services Law encourages non-litigation settlements such as mediation and arbitration.

Disputes that can arise and be experienced by construction service actors, it becomes a separate concern so that with the existence of alternative dispute resolution

that may be taken other than from the court, of course this is a good choice in preparing a draft construction cooperation that will run to avoid disputes and disputes.

This research aims to find out how the role of the construction dispute board is in providing alternative solutions to construction disputes in Indonesia and how the perspective of construction service providers in avoiding disputes and construction disputes through the dispute council in order to obtain legal certainty.

RESEARCH METHOD

This research uses a statutory approach and a case approach. While the primary legal materials that are used as references are Law No. 30 of 1999 concerning Arbitration and Alternative dispute resolution, Law Number 2 of 2017 concerning Construction Services and Regulation of the Minister of Public Works and Public Housing Number 11 of 2021 concerning Procedures and Technical Instructions of the Construction Dispute Council and several other technical instructions regarding construction contracts and construction services.

The data analysis method used is sourced from data taken through literature studies and other literature; books, journals, articles, news, legal books that are collected, examined and analyzed and searched so that they can support researchers in finding conclusions about consistent interpretations to provide appropriate advice according to the problem.

RESULTS AND DISCUSSION

1. The role of the construction dispute board in providing alternative solutions to construction disputes in Indonesia

Based on the Regulation of the Minister of Public Works and Public Housing Number 11 of 2021, it is stated that the Dispute Council is one of the efforts in the prevention and settlement of contract disputes with a minimum number of members or at least 3 (three) people and formed through the Dispute Council Employment Agreement. As for when the dispute board is used if;

- a. There is a procurement of construction work or integrated construction work which some or all of the funds are sourced from domestic loans or domestic grants received by the government and/or local government; and/or

- b. Procurement of construction work or integrated construction work that is partially or fully financed from foreign loans or foreign grants, unless otherwise provided in foreign loan agreements or foreign grant agreements.

In the Regulation of the Minister of Public Works and Public Housing Number 11 of 2021, it is stated that the Dispute Council has several duties and powers that become the basis for the dispute council to carry out its activities, while the duties of the Dispute Council consist of:

- a. Compile a schedule and agenda for the implementation of the Dispute Council's duties to be agreed upon with Service Users and Providers
- b. Conducting a review of Contract documents along with their completeness and work progress
- c. Study the information provided by the parties not only during periodic field visits
- d. Conducting periodic field visits
- e. Make recommendations for correction/repair of the entire Contract document according to its professional consideration to avoid Disputes
- f. Listen to the opinions of Service Users and Providers in the event of a Dispute
- g. Draw up a decision to resolve the Dispute
- h. Compile a report for each stage of the implementation of the tasks and activities of the Dispute Council
- i. Prepare periodic reports at least 1 (one) time in 3 (three) months and send it to Service Users and Providers; and
- j. Other activities that support the implementation of the Dispute Council's duties.

All duties and authority of the dispute board will be listed in a document called the letter of employment agreement of the dispute board to ensure that the corridor of responsibility continues to run according to the agreement to fulfill this, service users and service providers must meet the established standards, namely providing information data about construction work or integrated construction work to analyze potential problems or disputes that occur to the Dispute Council; and must provide copies of documents, in the form of:

- a. Contract Document
- b. Progress report

- c. Change order
- d. Certificate and
- e. Other documents related to Contract performance.

Indonesia, there are several institutions or associations of experts in the field of law related to consultation and institutions that are located as construction dispute councils in Indonesia, as for some examples of such organizations or institutions, they are

- a. Badan Arbiter Nasional Indonesia (BANI)
- b. Perkumpulan Ahli Dewan Sengketa Konstruksi (PADSK)
- c. Dewan Sengketa Indonesia (DSI)

While construction disputes normatively are not defined in Law Number 2 of 2017 concerning Construction Services. However, Article 88 paragraph (1) states that disputes in construction work contracts are resolved through deliberation to reach an agreement. Thus, construction disputes are related to problems in the employment contract and the resolution is based on deliberation. However, this Law also recognizes settlement through court channels, as stipulated in the explanation of Article 47 paragraph (1) letter h, which includes deliberation, mediation, arbitration, or court.

2. The perspective of construction service actors in avoiding disputes and construction disputes through the dispute council in order to obtain legal certainty.

Article 1 number 8 PUPR Decree Number 11 of 2021 defines a dispute as a conflict submitted to the Dispute Board regarding claims or rights between Service Users and/or Service Providers against other parties. In terms of the term dispute is a conflict between two or more parties that starts from different perceptions of an interest or property right that can cause legal consequences for both of them (Chomzah, 2003)

According to S. Hardjomuljadi, 2020. Most of the disputed construction contracts still refer to Law No. 18 of 1999 concerning construction services which states that the settlement of construction disputes is mediation, conciliation, and expert assessment while in Law No.2 of 2017 the renewal of Law No. 18 of 1999 concerning construction services, the stages of dispute resolution are mediation,

conciliation (with certain conditions can be replaced by the Dispute Council), and arbitration. Even so, Law No.2 of 2017 should still be used as a reference in making construction contracts.

In its implementation, the Dispute Council is considered to have no legal certainty because it has several weaknesses triggered by interests that do not find a bright spot between the parties in dispute such as;

- a. Reluctance to negotiate
- b. Not reaching consensus
- c. Endure with each other's arguments
- d. Can be used as a tool to side with one of the interested parties
- e. Irrational distrust to the Dispute Council

In some literature it is mentioned that in addition to the reference to the appropriate and balanced draft construction contract and in line with the existing laws and regulations in Indonesia so that the minimum risk of disputes or disputes has not been popular in Indonesia, so it has an impact on the crisis of trust towards third parties such as the dispute council as a mediator or alternative to resolving construction disputes is considered not to have a strong legal certainty to be used as a support in carrying out construction contracts. Although the dispute council as an alternative to dispute resolution, this is reinforced by the number of disputed cases to the arbitration body that has not yet found a bright spot between the disputing parties even though this is allowed in the Law

It needs to be underlined that the awareness of the need for the intermediary in this case, the Dispute Council is necessary in construction projects, slowly construction service providers begin to present expert practitioners as a form of legal protection that is legitimate and certain for the implementation of the construction contract that is minimal, causing construction conflicts/disputes for the parties involved in this case, service users and service providers.

In the process of running the construction project in order to avoid conflict and the actors who are service providers and service users as well as other parties involved in the construction contract process take several literature sources that can be used as references such as;

- a. Law No.2 of 2017 about Construction Services

- b. Government Regulation Number 14 of 2021
- c. Module Basic knowledge of construction contract, Ministry of PU PR, and
- d. Draft construction contract issued by expert institutions or organizations (Fidic, Bani, PADSK, DSI, etc..)

CONCLUSION

The role of the Construction Dispute Council in resolving construction disputes in Indonesia is regulated in the Regulation of the Minister of Public Works and Public Housing Number 11 of 2021. The Dispute Council, consisting of a minimum of three members, is formed through an Employment Agreement and is used specifically for construction projects financed by loans or grants both domestically and internationally. The duties of the Dispute Board include compiling schedules, reviewing contract documents, conducting field visits, providing recommendations, listening to related parties, issuing dispute decisions, and compiling periodic reports. Service users and service providers must provide information and related documents for analysis. In addition, several organizations such as BANI and PADSK play a role in dispute consultation. Although construction disputes are not explicitly defined in Law Number 2 of 2017, settlement can be through deliberation or court.

The perspective of construction service actors in avoiding disputes and disputes is focused on the role of the Dispute Board to create legal certainty. According to Permen PUPR Number 11 of 2021, a dispute is a conflict related to claims between Service Users and Service Providers. In the legal context, the settlement of construction disputes is regulated by Law No. 18 of 1999 and updated with Law No. 2 of 2017, which emphasizes mediation, conciliation, and arbitration. However, the Dispute Council is often considered not to provide legal certainty for reasons such as reluctance to negotiate and distrust of it. Awareness of the need for third parties in construction projects is increasing, where construction service providers begin to involve expert practitioners to protect contracts and minimize disputes. Referring to laws and related modules can help reduce potential conflicts in construction cooperation.

REFERENCES

- Achmad Chomzah, Ali. 2003. Seri Hukum Pertanahan III Penyelesaian Sengketa Hak Atas Tanah dan Seri Hukum Pertanahan IV Pengadaan Tanah Instansi Pemerintah. Jakarta: Prestasi Pustaka
- Fadillah, F. A., & Putri, S. A. (2021). Alternatif Penyelesaian Sengketa Dan Arbitrase (Literature Review Etika). *Jurnal Ilmu Manajemen Terapan*, 2(6), 744-756.
- Fredella, F. B., & Widiyastuti, Y. S. M. (2022). Kontrak Kerja Konstruksi Pembangunan Gedung GMB Ditinjau Berdasarkan Red Book FIDIC. *JURNAL YUSTIKA: MEDIA HUKUM DAN KEADILAN*, 25(02), 65-79.
- Hardjomuljadi, S. (2020). Use of dispute avoidance and adjudication boards. *Journal of Legal Affairs and Dispute Resolution in Engineering and Construction*, 12(4), 03720004.
- Husni Muhammad Fakhruddin. Pencegahan Sengketa Konstruksi <https://news.detik.com/kolom/d-6032775/pencegahan-sengketa-konstruksi>
- Imani, M. N., Agustina, S. H., & MH, P. Analisis Penyelesaian Sengketa Konstruksi Akibat Wanprestasi Dalam Perjanjian Jasa Konstruksi Ditinjau Dari Hukum Perdata. *Lex Patrimonium*, 3(1), 6.
- Komisi informasi pusat. Sengketa Informasi APIJ vs MA RI Selesai melalui Mediasi <https://komisiinformasi.go.id/read/23/05/2024/Sengketa-Informasi-APIJ-vs-MA-RI-Selesai-melalui-Mediasi>
- Poerdyatmono, B. (2007). Alternatif penyelesaian sengketa jasa konstruksi. *Jurnal Teknik Sipil*, 8(1), 78-90.
- Prawitasari, N. L. P. N. (2024). *Analisis Penyusunan Klaim Konstruksi Berdasarkan Fidic Red Book pada Proyek Jimbaran Greenhill* (Doctoral dissertation, Politeknik Negeri Bali).
- Septian Deny. PADSK Dorong Fungsi Pencegahan Terjadinya Sengketa Konstruksi <https://www.liputan6.com/bisnis/read/5649716/padsk-dorong-fungsi-pencegahan-terjadinya-sengketa-konstruksi?page=3>
- Winarta, F. H. (2022). *Hukum Penyelesaian Sengketa Arbitrase Nasional Indonesia dan Internasional: Edisi Kedua*. Sinar Grafika.