

MECHANISM OF ALTERNATIVE DISPUTE RESOLUTION FOR CONSTRUCTION DISPUTES AT BADAPSKI (BADAN ARBITRASE DAN ALTERNATIF SENGKETA KONSTRUKSI INDONESIA)

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Abstract

Dispute resolution in construction projects often involves complex issues that, if not properly managed, can escalate into prolonged and costly problems. As an alternative, non-litigation approaches such as mediation offer a more efficient and amicable solution for parties involved in conflicts. The Indonesian Arbitration and Alternative Dispute Resolution Body for Construction (BADAPSKI) plays a strategic role in facilitating the mediation process for resolving construction disputes. This article aims to examine the mechanisms, benefits, and challenges of utilizing the Alternative Dispute Resolution services provided by BADAPSKI. The study employs a qualitative descriptive method to analyze BADAPSKI's role in resolving construction disputes, focusing on evaluating its effectiveness and identifying potential obstacles during the dispute resolution process. The findings of this article conclude that dispute resolution through BADAPSKI can serve as an effective solution for resolving construction disputes, offering conciliatory outcomes for the parties involved.

Keywords: *Dispute, Non-litigation, Mediation, Qualitative Descriptive*

Abstrak

Penyelesaian sengketa dalam proyek konstruksi sering kali melibatkan isu-isu kompleks yang, jika tidak dikelola dengan baik, dapat berkembang menjadi masalah yang berkepanjangan dan mahal. Sebagai alternatif, pendekatan non-litigasi seperti mediasi menawarkan solusi yang lebih efisien dan bersahabat bagi pihak-pihak yang terlibat dalam konflik. Badan Arbitrase dan Alternatif Penyelesaian Sengketa Konstruksi Indonesia (BADAPSKI) memainkan peran strategis dalam memfasilitasi proses mediasi untuk penyelesaian sengketa konstruksi. Artikel ini bertujuan untuk menelaah mekanisme, manfaat, dan tantangan dalam memanfaatkan layanan Alternatif Penyelesaian Sengketa yang disediakan oleh BADAPSKI. Penelitian ini menggunakan metode deskriptif kualitatif untuk menganalisis peran BADAPSKI dalam menyelesaikan sengketa konstruksi, dengan fokus pada evaluasi efektivitasnya dan mengidentifikasi potensi hambatan selama proses penyelesaian sengketa. Temuan artikel ini menyimpulkan bahwa penyelesaian sengketa melalui BADAPSKI dapat berfungsi sebagai solusi yang efektif untuk menyelesaikan sengketa konstruksi, menawarkan hasil yang mendamaikan bagi pihak-pihak yang terlibat.

Kata kunci: *Sengketa, Non-litigasi, Mediasi, Deskriptif Kualitatif*

INTRODUCTION

The rapid and complex growth of construction activities has led to various forms of collaboration in construction services. As the collaboration in construction services increases, the potential for disputes between the parties involved in the construction

agreement often arises. Disputes emerge for various reasons, primarily due to conflicts of interest between the parties. Prolonged construction disputes may lead to delays in project completion and result in additional costs beyond the original agreement. These disputes cannot be left unresolved, and therefore, alternative solutions must be found to prevent prolonged issues and significant losses.

Formally, construction disputes are resolved through litigation in the General Court, a process that is lengthy and time-consuming. Moreover, court rulings often follow a win-lose approach, which creates tension between the contracting parties, failing to offer a peaceful resolution for both sides.

Legally, the Government of Indonesia issued Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, which allows disputes in the civil sector to be resolved not only through the general court but also through arbitration and alternative dispute resolution methods. Arbitration is a method of resolving civil disputes outside the general court, based on a written arbitration agreement made by the disputing parties. Alternative Dispute Resolution refers to resolving disputes or differences through procedures agreed upon by the parties, such as consultation, negotiation, mediation, and conciliation, outside the judicial system.

This article will analyze the legal aspects of Arbitration and Alternative Dispute Resolution, particularly in construction collaborations, as viewed through Law No. 30 of 1999 and Law No. 2 of 2017 on Construction Services.

In Indonesia, there is an arbitration institution that focuses on providing independent dispute resolution in the construction sector through arbitration and Alternative Dispute Resolution (ADR). This institution is BADAPSKI (Badan Arbitrase dan Alternatif Penyelesaian Sengketa Konstruksi Indonesia).

The construction industry is highly prone to disputes due to varying viewpoints among different parties, as construction is a complex field involving multiple disciplines, from the design process to the final handover of the construction work. It is not uncommon for disputes to arise after the completion and handover of the work, often leading to claims between the parties. This is the focus of BADAPSKI's services, which centers on the construction sector, using mechanisms like arbitration and ADR.

Based on the explanation above, the author is interested in discussing the "Mechanism of Alternative Dispute Resolution for Construction Disputes at BADAPSKI." The issues addressed in this article include:

1. What are forms of Alternative Dispute Resolution In the construction sector according to law No. 30 of 1999?
2. What factors drive the resolution of construction disputes through Alternative Dispute Resolution at BADAPSKI?

RESEARCH METHODOLOGY

The research method used in the preparation of this article is the normative legal method, which examines the applicable legal aspects. This normative legal research, also known as doctrinal legal research, studies the relevant legal rules and analyzes the legal principles to address the legal issues or topics at hand.

The approach used in this article is a normative legal approach, which aims to gather information on the legal topic through a statutory approach ("Statute Approach"). The data collection technique for this article is conducted through library research, which involves the acquisition of data from literature, legislation, and other sources relevant to the topic discussed.

RESULTS AND DISCUSSION

1. What are the Forms of Alternative Dispute Resolution in Construction, according to Law No. 30 of 1999?

In the mechanism for resolving construction disputes, the common routes are litigation (court) and non-litigation pathways. The litigation mechanism resolves construction disputes through the court system with a legal approach, facilitated by the court or authorized legal officers in accordance with the jurisdiction of positive law. Essentially, resolving disputes through litigation is a last resort when attempts at resolving the dispute outside the court do not yield a solution for the parties involved.

On the other hand, the non-litigation mechanism resolves disputes outside the court system, following an approach that aligns more closely with societal values. Non-litigation dispute resolution includes various methods such as negotiations,

discussions, peace settlements, customary dispute resolution, and others. Non-litigation methods are increasingly favored because these approaches tend to be more in line with the parties' sense of justice, as they avoid a win-lose solution.

Article 1, item 10 of Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution defines Alternative Dispute Resolution (ADR) as a dispute resolution body or method through procedures agreed upon by the parties, such as consultation, negotiation, mediation, conciliation, or expert assessment.

To describe various forms of out-of-court dispute resolution, the author will outline several forms of out-of-court dispute resolution, including:

a. Consultation

According to Black's Law Dictionary:

- (1) The act of asking the advice or opinion of someone (such as a lawyer).
- (2) a meeting in which parties consult or confer.
- (3) The Interactive methods by which states seek to prevent or resolve disputes

Consultation is a personal interaction between a client and a consultant, where the consultant offers their opinion on issues raised by the client. The client is not bound to follow the consultant's perspective but is free to make their own decision for their interests. The consultant's role is non-binding and subordinate in construction dispute resolution outside the court.

Legal basis for consultation as an Alternative Dispute Resolution method in construction can be found in Article 6, paragraph 3 of Law No. 30 of 1999. If a dispute or difference cannot be resolved, the parties may opt for resolution through the assistance of one or more expert advisors or a mediator.

b. Negotiation

Negotiation is regarded by law as the primary method for resolving disputes. It is the first approach the parties will take to resolve a dispute, as it is the cheapest and most private option compared to other methods. In national contracts in Indonesia, it is common to include a clause stating: "Any differences or disputes arising from the implementation of this agreement will be resolved through consultation to reach a mutual agreement." This shows that negotiation is chosen as the primary method for dispute resolution.

Negotiation comes from the English word "negotiation," which means discussion or deliberation. The person conducting the negotiation is called a negotiator.

Law No. 30 of 1999 places negotiation as an independent method for dispute resolution. Article 6, paragraph (2) states: "Disputes or differences through alternative dispute resolution as referred to in paragraph (1) shall be resolved in a direct meeting between the parties."

c. Mediasi

In Black's Law Dictionary, mediation is defined as: "A method of non-binding dispute resolution involving a neutral third party who tries to help the disputing parties reach a mutually agreeable solution."

In the Kamus Besar Bahasa Indonesia (Indonesian Dictionary), mediation is defined as: "The process of involving a third party in resolving a dispute as an advisor."

According to Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution, mediation is explained as one of the forms of Alternative Dispute Resolution that allows the parties to resolve disputes peacefully with the assistance of a neutral third party (mediator), as stated in Article 6, paragraph 3.

d. Konsiliasi

Conciliation is a form of dispute resolution conducted by one or more individuals or bodies (conciliation commission) known as conciliators. The conciliators facilitate and actively assist the disputing parties in resolving their conflict in a peaceful manner. In conciliation, the conciliators participate actively by proposing solutions to the dispute.

Conciliation is a dispute resolution process involving the intervention of a third party (the conciliator). The conciliator plays an active role by taking the initiative to devise and propose resolution steps to the parties involved. If the parties cannot agree on a resolution, the third party may offer a suggested solution to resolve the dispute. However, conciliators are not authorized to make a binding decision; instead, they are empowered to provide recommendations, the implementation of which depends on the goodwill of the parties involved..

e. Arbitration

Arbitration is a form of private adjudication, involving a third party (arbitrator) who is fully authorized by the parties involved to resolve the dispute, and is empowered to make final and binding decisions. The parties agree to submit their dispute to a neutral third party of their choice, who will make the final decision.

The key difference between arbitration and litigation (public adjudication) is that in arbitration, the parties select the arbitrator, ensuring neutrality and the ability to choose an expert in the relevant field. In contrast, in litigation, the judge is assigned by the court.

2. What are the Factors Driving the Resolution of Construction Disputes Through Alternative Dispute Resolution at BADAPSKI?

The urgency of resolving construction disputes outside the court system is marked by the tendency of the parties involved to utilize these methods, which are driven by several factors that offer various advantages, including economic factors, legal culture, the broad scope of issues that can be discussed, fostering good relations among the parties, and the procedural factors (Rachmadi Usman, 30-31).

a. Time and Cost Factors

Resolving construction disputes outside of court is economically more advantageous, as it is generally cheaper and faster than going through the court system. There is a saying, "If someone loses a goat and takes it to court, they might end up losing a cow." The time required to resolve a case in court also affects the costs that the party seeking justice must bear (justiciabellen). Therefore, economic factors must be carefully considered when choosing the appropriate dispute resolution method to avoid financial burdens for the parties involved.

b. Process and Scope Factors

Non-litigation construction dispute resolution is more flexible than court proceedings. It is better able to produce agreements that reflect the interests and needs of the parties (Pareto optimal or win-win solution).

c. Fostering Good Relations Among the Parties

Non-litigation construction dispute resolution emphasizes cooperative approaches, making it ideal for parties who seek to maintain or improve their relationships both during and after the dispute. This is particularly important in ongoing or future business collaborations.

CONCLUSION

Construction dispute resolution through the Indonesian Arbitration and Alternative Dispute Resolution Body (BADAPSKI) provides an effective solution with a non-litigation mechanism that is faster, cost-effective, and preserves the relationship between the parties involved. Alternatives such as mediation, negotiation, conciliation, and arbitration contribute to finding a conciliatory solution (win-win solution). Emphasizing flexibility and fairness makes this method superior compared to court-based dispute resolution. However, its effectiveness depends on the goodwill and adherence to regulations by all parties involved.

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