

THE ROLE OF THE CONSTRUCTION DISPUTE BOARD IN THE SETTLEMENT OF CONSTRUCTION DISPUTES

Jeffry Yuliyanto Waisapi

Universitas 17 Agustus 1945 Surabaya, Indonesia

Email: jeckojeffry@gmail.com

ABSTRACT

This study aims to analyze the role of the dispute board in the construction dispute resolution system in Indonesia. This study uses descriptive research methods. This method is used to describe and explain the phenomena that occur. The dispute board exists as an alternative to resolving construction disputes that can provide various benefits, such as saving time. The settlement of construction disputes in Indonesia is regulated in Article 88 of Law Number 2 of 2017 concerning services. In the settlement of construction disputes, the dispute Board has an important role in the settlement stages, such as mediation, conciliation, and arbitration. The dispute board can also play a role in maintaining justice and resolving disputes in a simple and friendly manner. This study analyze the position of the dispute board in the construction dispute resolution system in Indonesia and assess the existing arrangements. The results show full construction disputes occur in a contract because of differences in perception between service providers and service users so that it is necessary for a third party to be used as a facilitator to explain to each party in determining the contents of the agreement and its It is hoped that the results of this study can provide a better understanding of the role of the dispute board in the settlement of construction disputes in Indonesia.

KEYWORDS construction dispute; dispute board; settlement



This work is licensed under a Creative Commons Attribution-ShareAlike 4.0 International

INTRODUCTION

Indonesia is a country that is developing economic growth and national development. Even through the orders of the president of the Republic of Indonesia Mr. Joko Widodo intensify development evenly throughout Indonesia in order to support regional development and improvement of public welfare (Tinaningsih et al., 2021). Development intensified by the Government of the Republic of Indonesia includes government buildings, public facilities, and public housing.

How to cite: Waisapi, J. Y. (2023). The Role of The Construction Dispute Board in The Settlement of Construction Disputes. *Journal Eduvest*. 3(8): 1498-1505
E-ISSN: 2775-3727
Published by: <https://greenpublisher.id/>

In a development of course there is a cooperation contract between the provider of construction services with users of construction services. The relationship between service providers and service users is included in a construction work contract which contains agreements between both parties (Jannah & Musjtar, 2019). However, it is not uncommon for a contract to have problems, whether it comes from the internal of each party or is guilty of external problems arising from the implementation of construction services. Which then the problem resulted in a construction dispute.

In an effort to answer the problem of construction disputes, the Indonesian government through the Ministry of Public Works and public housing has created a construction dispute Council to resolve construction disputes based on deliberation or can be simplified as a mediation effort to get win-win solution (Hutahaeon & Hardjomuljadi, 2021).

The rules or mechanisms for resolving construction disputes through the construction Dispute Resolution Council are outlined in the regulation of the Minister of Public Works and public housing of the Republic of Indonesia number 11 of 2021 on procedures and technical instructions of the construction dispute Council, as the executor of the provisions of Article 96 paragraph (6) of Government Regulation Number 22 of 2020 Implementation regulation of Law No. 2 of 2017 on construction services as amended by Government Regulation No. 14 of 2021 on amendments to Government Regulation No. 22 of 2020 on implementation regulation of Law No. 2 of 2017 on construction services and Article 85 paragraph (3) of Presidential Regulation No. 12 of 2021 on amendments to Construction Services Presidential Regulation Number 16 of 2018 concerning government procurement of goods/ services (Ayunda et al., 2021; Wirawan, 2021).

This has answered the problems that arise when construction service providers and construction service users find a problem in their work contracts, because previously when there was a problem, the party who felt aggrieved always directly delegated the solution through civil law and ended up at the green table, even though the legal route is the last resort in solving a problem. So in this article I will explain how the role of the construction dispute board in resolving a construction dispute. The study aims to find out what is the role of the construction dispute board in resolving construction disputes?

RESEARCH METHOD

This research focus on the role of the construction dispute board in the settlement of construction disputes. This study uses descriptive research methods. This method is used to describe and explain the phenomena that occur. This study uses a qualitative approach. This approach is used to understand the role of the dispute board in the resolution of construction disputes in depth and contextually.

This research uses library study techniques. This technique is used to collect secondary data through books, documents, and literature related to the role of the dispute board in the settlement of construction disputes in Indonesia. The data sources used in this study are documents relating to the role of the dispute board in

the settlement of construction disputes in Indonesia. The data collected will be analyzed using descriptive analysis. This analysis will be used to describe and explain the role of the dispute board in the settlement of construction disputes.

In this study, descriptive research methods were used to describe and explain the role of the dispute board in the settlement of construction disputes. A qualitative approach is used to understand the role of the dispute board in depth and contextually. Data will be collected through library study techniques and analyzed using descriptive analysis. The data sources used are documents relating to the role of the dispute board in the settlement of construction disputes in Indonesia.

RESULT AND DISCUSSION

Indonesia is a country of law. Constitutionally this is confirmed in Article 1 Paragraph (3) of the 1945 Constitution. Even historically the state of law (*Rechtsstaat*) is a state idealized by the founders of the nation as later outlined in the general explanation of the 1945 Constitution before the change (Konstitusi, 2016).

Article 1 Paragraph (3) of the 1945 Constitution states firmly that the state of Indonesia is a state of law. This is in accordance with paragraph 4 of the Preamble of the 1945 Constitution which states "...then the independence of the Indonesian nation was drafted in an Indonesian constitution...". As a state of law, all actions of state officials and citizens must be in accordance with applicable legal rules. This is the principle of democracy in the 1945 Constitution.

Since the beginning of the idea of forming an independent Indonesian state, one of the ideas as the basis of independent Indonesia is the understanding of constitutionalism and the legal state (Konstitusi, 2016). If it is said that the existence of a constitution is a consequence of acceptance of the concept of a state of law, then when the founders of this Republic drafted a constitution, it means that they consciously chose the concept of a state of law (Basuki & Subiyakto, 2022). This is because the Constitution as a legal norm serves to limit the power of government so as not to violate human rights and exceed the powers granted by the Constitution. However, the text of the 1945 Constitution passed by PPKI does not contain a clear statement about the rule of law adopted by Indonesia.

Indonesia is a developing country that is being seriously and continue to develop, at this time has been implemented in all areas of development in both physical and non-physical fields evenly (Manan, 2014). Therefore, the results of development must be enjoyed by all the people of Indonesia as an effort to improve the welfare of both physically and mentally fairly and evenly for the realization of welfare and create prosperity for all the people of Indonesia.

The success or failure of development depends on the participation of all people, which means that development must be carried out equally by all levels of society (Djumaldji, 1996). One of the areas of development is development in the economic sector which is realized in the form of physical development in the form of office buildings, housing, ports, industries, roads, bridges and others.

No one wants to argue or argue with anyone. But in a business relationship or an agreement, each party must anticipate the possible emergence of disputes that

can occur. Disputes that arise in the background by several things including differences in interpretation both on how to implement the clauses of the agreement and the contents of the provisions in the agreement, or due to other things (Soemartono, 2006).

Disputes can happen to anyone and anywhere. Disputes can occur between individuals and individuals, between individuals and groups, between groups and groups, between companies and companies, between companies and countries, between countries and each other (Primadoni, 2021). In other words, disputes can be public or civil and can occur both locally, nationally and internationally. Dispute is a case that occurs between the parties to the dispute in it contains a dispute that must be resolved by both parties (Sarwono, 2012).

Construction disputes are common, especially considering that the practice of construction services is fraught with risks and the implementation of the construction project begins with a construction contract that has outlined the conditions in the event of a construction dispute and the procedure for handling it. Construction disputes tend to arise when one party considers that the other party has violated its obligations and responsibilities (Hansen, 2017).

To resolve disputes or disputes in court is more to have legal certainty, but it will definitely take a long time and actually cause new problems and losses for one party because there is a winning party and there is also a losing party, so most in a dispute people prefer win-win solution out of Court (non litigation).

Legal settlement nonlitigation (argumentum analogium) is attempt to resolve disputes outside the court through peace and dispute prevention with good contract drafting. Non-litigation dispute resolution covers a very broad field and even covers all aspects of life that can be resolved legally (Wiryawan et al., 2010). Non-litigation dispute resolution is an out-of-court dispute resolution that is based on the law, and the settlement can be classified as a high-quality settlement, because disputes that are resolved in such a way will be able to be completed completely without leaving a residue of hatred and resentment. Thus, non-litigious dispute resolution is the resolution of legal issues legally and conscientiously, so that the law can be won and the conscience of people is also subject to obey the Agreement/peace voluntarily without anyone feeling defeated. Dispute resolution through an out-of-court process produces an agreement that is "win-win solution", guaranteed confidentiality of the Parties' Disputes, avoided delays caused by procedural and administrative matters, resolving problems comprehensively in togetherness and still maintaining good relations.

All government actions must be based on . These laws and regulations must exist and apply first or precede the acts committed. Thus, every administrative act must be based on and procedures. So that this does not make the bureaucracy too rigid, it is also recognized the principle *frijsermessen* which allows state administration officials to develop and set their own *beleidregels* or policy-rules that apply internally in order to carry out the duties imposed by valid regulations (Asshiddiqie, 2005).

One of the solutions offered by the Indonesian government in the settlement of construction disputes outside the court is the establishment of a construction dispute Board created specifically to resolve construction disputes. To run it, the

Government of Indonesia needs to make its rules regarding the procedures and technical instructions of the construction dispute board must be promulgated to guide the implementation of construction dispute resolution through the construction dispute Board. It is regulated in the regulation of the Minister of Public Works and public housing of the Republic of Indonesia number 11 of 2021 concerning procedures for technical instructions of the construction dispute Board. The regulation was made as an implementation of the provisions of Article 96 paragraph (6) of Government Regulation Number 22 of 2020 concerning Implementing Regulations of Law Number 2 of 2017 concerning construction services as amended by Government Regulation No. 14 of 2021 concerning amendments to Government Regulation No. 22 of 2020 concerning implementation regulations of Law No. 2 of 2017 concerning construction services and Article 85 paragraph (3) of Presidential Regulation No. 12 of 2021 concerning amendments to Presidential Regulation No. 16 of 2018 concerning procurement of government Goods/Services.

In the general provisions of Article 1 regulation of the Minister of Public Works and public housing of the Republic of Indonesia number 11 of 2021 on procedures for technical instructions of the , which is hereinafter referred to as the dispute (Rusfayanti, 2022).

The dispute board was formed as one of the efforts to prevent and resolve contractual disputes formed through the dispute board work agreement (Rusfayanti, 2022). Dispute board work agreement is a tripartite engagement document that regulates the legal relationship between service users, providers, and members of the dispute board in the implementation of Construction Services (Rusfayanti, 2022). So before the contract is made, the construction dispute Board is formed first, which will later become an additional construction dispute settlement agreement in the event of a dispute between the service provider and the service user, and the agreement becomes a procurement preparation document.

In Article 4 regulation of the Minister of Public Works and public housing of the Republic of Indonesia number 11 of 2021 on procedures for technical instructions of the construction dispute board, is used in the case of:

- 1) integrated construction works in which part or all of the funds are sourced from domestic loans or domestic grants received by the government and/or local governments; and/or
- 2) integrated construction works that are partially or fully financed from foreign loans or foreign grants, unless otherwise provided in the foreign loan agreement or foreign grant agreement.

In accordance with Article 5 of the same regulation, the establishment and use of a construction dispute Board is an agreement of both parties, it does not have to be in a construction contract that a construction dispute Board is formed. So that the selection of construction dispute resolution can be a choice whether not determined, determined in court, or determined using the construction dispute Board.

The duties and activities of the construction dispute Board are mentioned in Article 6 paragraph (1) of the same regulation, namely preventing disputes between the parties, resolving disputes through giving professional consideration to certain

aspects as needed, or resolving disputes through formulating formal conclusions as outlined in the decision of the dispute Board. Here it is clear that the task of the construction dispute board in addition to resolving disputes they also have a duty to prevent disputes, so that the role of the construction dispute Board also provides input on the contents of the construction service provision agreement so that in the future there is no dispute due to different perspectives from both parties.

In the work agreement, the construction dispute board must explain its duties and mechanisms, both the prevention mechanism and the settlement mechanism must be set forth in the agreement, so that the contracting parties understand what the process will be undertaken by the construction dispute Board. The prevention mechanism in question starts from reviewing documents, field visits, notifications, hearing meetings, and giving advice. This is done in order to provide information to service providers and service users on potential disputes that will occur which will be considered by both parties and will become an agreement in the employment contract.

Then in the case of dispute resolution mechanism construction is done through the notification of the occurrence of a dispute from one party to the dispute board no later than 7 calendar days since the knowledge there is a dispute, document review, hearing attended by the service providers and service users of the dispute board as a facilitator to listen to their respective field conducted to ascertain the cause of the dispute, the internal dispute board meeting, then the issuance of a formal decision of the dispute Board which will later be a guideline for the parties the outcome of the dispute settlement.

Regarding the issuance of a formal decision of the dispute Board shall be made no later than 42 (forty-two) calendar days from the date of the hearing, if after the issuance of the decision is accepted by the service provider and service user within 28 (Twenty-eight) calendar days there is no objection, the decision shall be final and binding to both parties. Then if there is an objection to the formal decision issued by the dispute board, the party who feels the objection must submit the objection in writing to the dispute Board within a maximum period of 28 calendar days in which to explain the reasons for the objection, either in part or in whole. In the case of objections to the overall formal decision of the dispute board, the objecting party may take other dispute resolution in accordance with the provisions of the regulations per law.

CONCLUSION

Full construction disputes occur in a contract because of differences in perception between service providers and service users so that it is necessary for a third party to be used as a facilitator to explain to each party in determining the contents of the agreement and its mechanisms. So this is where the role of the construction dispute Board is needed to prevent disputes or as a trusted party to resolve disputes that occur. If asked how important the dispute board in making construction work contracts, the authors argue is very important because the service providers and service users have been helped in analyzing the risk of disputes, so that the implementation of the contract will run smoothly and minimal disputes that will support the acceleration of national development.

REFERENCES

- Asshiddiqie, J. (2005). *Konstitusi dan Konstitusionalisme Indonesia*, edisi revisi. *Konpress: Jakarta*.
- Ayunda, R., Kosasih, V., & Disemadi, H. S. (2021). Perlindungan hukum bagi masyarakat terhadap efek samping pasca pelaksanaan vaksinasi covid-19 di Indonesia. *Nusantara: Jurnal Ilmu Pengetahuan Sosial*, 8(3), 194–206.
- Basuki, U., & Subiyakto, R. (2022). 77 Tahun Negara Hukum: Refleksi atas Dinamika Politik Hukum dalam Tata Hukum Menuju Masyarakat Hukum Indonesia yang Demokratis. *Supremasi Hukum: Jurnal Kajian Ilmu Hukum*, 11(2), 179–202.
- Djumialdji, F. X. (1996). *Hukum bangunan: dasar-dasar hukum dalam proyek dan sumber daya manusia*. Rineka Cipta.
- Hansen, S. (2017). *Manajemen Kontrak Konstruksi (New Edition)*. Gramedia Pustaka Utama.
- Hutahaean, M. M., & Hardjomuljadi, S. (2021). Dukungan Badan Pemeriksa Keuangan Republik Indonesia (Bpk Ri) Dalam Penyelesaian Sengketa Konstruksi (Merujuk UU No. 2/2017 PSL 88). *Konstruksia*, 12(2), 24–42.
- Jannah, M. P. N., & Musjtar, D. N. (2019). Penyelesaian Sengketa Wanprestasi Akibat Keterlambatan Pelaksanaan Perjanjian Kongsruksi Bangunan. *UIR Law Review*, 3(2), 41–49.
- Konstitusi, M. (2016). Modul Pendidikan Negara Hukum dan Demokrasi. *Jakarta: Pusat Pendidikan Pancasila Dan Konstitusi Mahkamah Konstitusi Republik Indonesia*.
- Manan, A. (2014). *Peranan hukum dalam pembangunan ekonomi*. Kencana Prenada Media Group.
- Primadoni, A. (2021). *Sengketa Berkepanjangan dalam Pandangan Antropologi Hukum*.
- Rusfayanti, R. A. (2022). *Analisis Yuridis Keputusan Menteri Pekerjaan Umum dan Perumahan Rakyat Nomor 1620/KPTS/M/2021 Pasca Putusan Mahkamah Konstitusi Nomor 91/PUU-XVIII/2020*. Universitas Hasanuddin.
- Sarwono. (2012). *Hukum Acara Perdata Teori dan Praktik*. Sinar Grafika.
- Soemartono, G. P. (2006). *Arbitrase dan mediasi di Indonesia*. Gramedia Pustaka Utama.
- Tinaningsih, R. O., Sah, M., Meilasari, J. P., Ardhi, N. R., Putri, D., Hafizhah, R. D. A., Huda, Y. K., & Windiarti, P. R. (2021). *Kemanusiaan dan kebohongan-kebohongan retorikanya*.
- Wirawan, A. W. (2021). *Tinjauan Yuridis Hak Pasien Terhadap Kewajiban Vaksinasi Covid 19 Dihubungkan Dengan Undang-Undang Nomor 36 Tahun 2009 Tentang Kesehatan Juncto Peraturan Presiden Republik Indonesia Nomor 14 Tahun 2021 Tentang Perubahan Atas Peraturan Presiden Nomor 99 Tahun 2020 Tentang Pengadaan Vaksin Dan Pelaksanaan Vaksinasi Dalam Rangka Penanggulangan Pandemi Corona Virus Disease 2019 (Covid 19)*. Universitas Komputer Indonesia.
- Wiryawan, I. W., Artadi, I. K., & Atmaja, M. J. (2010). *Penyelesaian sengketa di*

luar pengadilan. Udayana University Press.