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Efforts to settle government project construction work contract disputes through mediation

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ABSTRACT

This study aims to identify and analyze the procedures for resolving government project construction contract disputes between service users and service providers through arbitration and to analyze the legal force of arbitration decisions on disputes in construction contracts. The research approach used in this research is empirical and normative legal research. The population in this study were all contractors in the Papua Province, while the sample of this study was the party representing the government as the assignor of the Public Works and Public Housing (PUPR) in Papua Province. The data analysis method used in this study is a qualitative descriptive analysis method. The conclusion that can be drawn from this research is the settlement of construction contract disputes between PT. Kusman Jaya Papua and the Public Works Department to pay for the lack of payment for the construction of the Autonomous Office Building. Settlement of disputes through arbitration must be agreed upon by both parties. The verdict is to grant the petitioner's claim, namely regarding compensation for late payments, punish, and pay fines for the delay in the construction of the autonomous office building.

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Introduction

Infrastructure development is one of the driving forces behind Indonesia's increased competitiveness, and it has a significant multiplier effect on the local economy. One part of the business that experienced development in infrastructure development is the construction service business (Yamali, 2017). Construction services are community activities to create buildings that function as supporting infrastructure for social and economic activities of the community to support the realization of national development goals. Construction services are regulated by a separate law and must adapt to the times. The word "construction" is used to describe any activity that leads to a finished building or structure that fits in with the land it is on, whether it is a home or a business (Lature, 2018). Technical construction work in the procurement of government goods and services is an example of infrastructure development. The APBN/APBD pays for the work to be done, which starts with figuring out what needs to be done and ends when the job is done (Latada et al., 2022).

The Construction Services Law regulates the implementation of Construction Services with the aim of providing a direction for the growth and development of Construction Services in order to realize a solid, reliable, highly competitive business structure and quality Construction Services results. Construction services are actually an important part of the formation of construction products because construction services are a meeting place between service providers and service users. In the area of service providers, there are also a

number of important factors that influence development in the construction sector, such as business actors, workers, and supply chains that determine the success of the process of providing construction services that drive socio-economic growth (Wulandari, 2018).

Business activities in the service industry A construction that involves both sources Human resources, natural resources, and financial resources cannot avoid disputes at every stage of the construction work (Muskibah & Hidayah, 2021). The implementation of construction services is carried out based on the principles of honesty and fairness, benefits, equality, harmony, balance, professionalism, independence, openness, partnership, security and safety, freedom, sustainable development, and environmental insight. The implementation of construction services is also intended to realize an orderly implementation of Construction Services that ensures equality of position between Service Users and Service Providers in carrying out their rights and obligations, as well as increasing compliance in accordance with the provisions of laws and regulations; realizing increased public participation in the field of Construction Services; organize a Construction Services system capable of realizing public safety and creating a comfortable built environment; ensure good governance of the implementation of Construction Services; and create the integration of added value from all stages of the implementation of Construction Services.

One of the prevention of problems in the implementation of construction work is to carry out the initial stages of the contract properly. By carrying out all stages properly, it is possible to mitigate the risks that may occur. Mitigation of risk as early as possible is a step that can be taken so that the civil rights and obligations of the Parties can be fulfilled. The fulfillment of the rights and obligations of the Parties is a prerequisite for the Contract to avoid criminal charges or in contemporary language it is called contract criminalization. So according to Bambang Sutiyoso, "in principle, the parties involved in a contract are given the freedom to determine which law applies and which dispute resolution forum applies when a dispute arises in the future" (Sutiyoso, 2019).

One of the main problems in the implementation of construction in Indonesia is the existence of construction disputes that occur between service users and contractors as service providers. The tendency for this dispute to occur is considering that construction contracts are dynamic and different from other contracts. Disputes that occur in construction projects are detrimental to the disputing parties. Therefore, efforts to prevent disputes from occurring are a challenge for construction service industry players. In general, the methods used still refer to personal knowledge and experience, not yet supported by a framework with proven methods.

One alternative method of resolving construction contract disputes is arbitration. Arbitration is a method of problem solving that is formed through a contract and involves experts in the field of construction. These experts join the arbitration body. This body will regulate the parties who have signed a contract with an arbitration clause in it to conduct arbitration and enforce the decision of the arbitrator. The project duration is relatively long, complex, agreed size and price, as well as the number of jobs that can change at any time during the construction contract period, are some examples of factors that cause construction contracts to be prone to disputes and their settlement tends to take a long time. In dealing with construction contract disputes, it must be remembered that settlement by deliberation is far better than filing a claim. The goal to be achieved is not to prove who is right but to solve the existing problem.

In Law Number 2 of 2017 concerning Construction Services, it is stated that one way to resolve disputes is through conciliation efforts. The term conciliation is regulated in Article 1 point 10 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution Conciliation is defined as an effort to make peace or the initial step of peace before a court hearing (litigation) is carried out and the provisions for peace are regulated in the Civil Code. Potential disputes occur when individuals or groups have a common relationship or interest in objects of ownership that cause legal consequences between one and the other. Disputes can also occur because one of the parties feels right and the other party is deemed guilty (Enggraini, 2022).

The conciliation process in construction disputes must be led by an expert and competent in carrying out mediation activities as well as experts and experience in the implementation of construction services. The conciliator can carry out a conciliation process that is deemed appropriate, taking into account factors, namely the situation and conditions of the case, the wishes of the parties, including the wishes expressed by the parties verbally, and the need for prompt processing (Rusli, 2012). When mediation mechanism in dispute resolution has a fairly argumentative theoretical basis and can be accounted for (Jamil, 2020). This aims to obtain clarity on the rationale of the opposing party's thoughts and obtain a common ground that is considered to be the least detrimental to the parties. An expert who acts as a conciliator is a neutral third party and is trusted by all disputing parties because in the conciliation process not only facilitates meetings between the parties, but also provides advice on solutions based on facts and settlement mechanisms. Dispute issues are often resolved through litigation at handled by non-construction experts, resulting in an unfair decision. Therefore, it is necessary to form a dispute council for every construction work, especially the Ministry of PUPR, so that the

construction business climate in Indonesia is more conducive. Construction services are actually an important part of the formation of construction products because construction services are a meeting place between service providers and service users. In the area of service providers, there are also a number of important factors that influence development in the construction sector, such as business actors, workers, and supply chains that determine the success of the process of providing construction services that. This development and progress in the field of development also has a great influence on the development of the law. A construction dispute is a dispute that occurs in connection with the implementation of a construction service business between the parties in a construction contract, which in the Western world is called a construction dispute. This occurs between the parties to the construction contract, preferably using the principle of deliberation to reach consensus.rive socio-economic growth (Chandra, 2021). Because a construction project is very complex, it requires the participation of many individuals with various ranges of abilities and skills. This allows the occurrence of problems caused by dissatisfaction, both from the task giver and from the task recipient. This, of course, has a negative impact on the overall project completion. If this is not handled properly, it will cause a dispute between the two parties (Indramanik, n.d.).

There are many ways to resolve disputes in a project. It takes an open minded attitude and a strong desire to solve problems from the parties involved. There is an awareness that in completing the project on time, cost and quality standards and specifications in accordance with the previous agreement is the main goal. If one of the parties does not meet the requirements that have been met, then the dispute will not be resolved.

Currently, the method of dispute resolution through the judiciary has received sharp criticism, both from practitioners and legal theorists. The roles and functions of the judiciary are considered to be overloaded. Slow and a waste of time. Expensive costs (very expensive) and less responsive (unresponsive) to the public interest. Or considered too formalistic (formalistic) and too technical (technically). Construction claims, conflicts and disputes are common in construction projects. Claims arise when a request from one party to another is not facilitated. This can lead to conflict and ultimately lead to disputes.

One alternative method of resolving construction contract disputes is arbitration. Arbitration is a method of problem solving that is formed through a contract and involves experts in the construction field. This body will regulate the parties who have signed a contract with an arbitration clause in it to conduct arbitration and enforce the decision of the arbitrator. This study aims to determine and analyze the procedures for resolving government project construction work contract disputes between service users and service providers through arbitration and to analyze the legal force of arbitration decisions on disputes in construction contracts. Because the position of the principle of law in a statutory regulation has a very important and strategic position because, in fact, the position of the principle of law is higher than the legal norm itself (Supeno et al., 2019).

Research conducted by (Ihyamuis et al., 2022) stated that the settlement of land disputes between the Karunsi'e Dongi community and PT Vale, which was carried out through alternative dispute resolution mechanisms, namely mediation, had not been effective, so that the dispute continued. This is because neither side is very committed or willing to follow the mediation agreement. The purpose of this study is to find out and analyze the procedures for resolving government project construction contract disputes between service users and service providers through arbitration and to analyze the legal force of arbitration decisions on disputes in construction contracts, so the title of this research is "Efforts To Settle Government Project Construction Work Contract Disputes Through Mediation".

Method

The data analysis method used in this study is a qualitative descriptive analysis method (Sugiyono, 2018), which is done by collecting data obtained from legislation and literature related to construction services and construction contract law then linked to data obtained from the field in the form of respondents' opinions. The legal approach used in this research is empirical and normative legal research (normative legal research). The study was conducted at the Public Works and Public Housing (PUPR) office of Papua Province, the location of this research was chosen because large projects with large budgets have the potential to cause contract violations which result in contract disputes.

The population of this research is all contractors in the province of Papua while the sample of this study is the party who represents the government as the assignor of the Public Works and Public Housing (PUPR) office of the province of Papua to contractors to carry out construction projects in the province of Papua. Sampling in this study was conducted by means of non-probability sampling, ie not all individuals in the population have the same opportunity to become members of the sample. The type of non-probability sampling used is purposive sampling, in which the author uses his own judgment armed with sufficient knowledge about the population to select sample members.

Results and Discussions

Procedures for Settlement of Government Project Construction Work Contract Disputes Between Service Users and Service Providers Through Arbitration

Causes of Construction Disputes

No one wants disputes with other people. But that ideal condition is difficult to realize because humans are unpredictable creatures. However, disputes still occur in common life. The distribution of rights and obligations that have been mutually agreed upon can be violated at any time in the future. Disputes also arise and result in a number of losses between the disputing parties.

To anticipate the emergence of disputes and/or resolve disputes that arise, humans take various ways. One of them is by way of functioning "law" to the level of practical life. Law is used as a means to anticipate the possibility of disputes arising and/or resolving disputes. The legal form can be seen, among others, in written agreements (contracts), judicial power institutions, or alternative dispute resolution mechanisms. Dispute is a term commonly used in the civil realm. Each civil dispute has characteristics and peculiarities. Construction disputes also have their own peculiarities. One of the reasons for this particularity is the existence of "claims".

The definition of claims in the construction sector is different from the notion of claims in the sense of the general public. In the construction sector, disputes can arise if "claims" are not properly facilitated. In addition, construction disputes can also be caused by the following: a) Unbalanced risk allocation (unfair risk allocation); b) Unclear risk allocation; c) Unrealistic cost, time and quality targets (unclear risk time/cost/quality by client); d) Uncontrollable external events; e) Competition due to culture (adversariaindustry culture); f) Unrealistic tender pricing; g) Inappropriate and imperfect contracts (inappropriate contract type); h) Lack of competence of project participants; i) Lack of professionalism of project participants; j) The client does not get the correct information so he is doubtful (client's lack of information or decisiveness); dan k) Providing unrealistic information expectations by contractors.

The description above only presents a small part of the causes of disputes in the construction sector. The list above could be added again due to the complexity of the construction services sector itself. However, the brief description above is at least able to show that construction disputes are mainly caused by human factors. For example, one of the parties is harmed because the other party does not carry out its commitment in facilitating the "claim", the inability or unskilledness of the project participants, and the lack of professionalism. According to Hellard (1987), construction disputes can be divided into 4 (four) categories, namely: 1) Disputes related to time (delay in progress); 2) Disputes relating to finance (claims and payments); 3) Disputes related to work standards (design and work results); 4) Conflicting relationships with people in the construction industry.

In general, the above-mentioned disputes will be related, either directly or indirectly, to technical matters. Basically a construction work contract is a special contract which contains many technical aspects. For example, a dispute related to payment with a work progress percentage system as a payment condition, of course, requires technical aspects related to determining the progress of work that can be claimed. Thus, in the settlement of construction disputes, not only legal experts are needed, but experts in other disciplines, especially technical aspects, are needed to understand the root of the problem.

Construction disputes can arise, among others, due to claims that are not served, such as late payments, late completion of work, differences in interpretation of contract documents, technical and managerial incompetence of the parties.

The following are the results of research on a contract dispute case that occurred in Papua between PT. Kusman Jaya Papua with the Public Works Department of Mamberamo Raya Regency with Contract Agreement Number 641.03/KONT/PGDO-TIII/DPUP2E/VI/2010, dated June 10, 2010, with a contract value of Rp. 7,992,500,000,- (seven billion nine hundred ninety-two million five hundred thousand rupiah).

Contract Agreement Surat

PT. Kusman Jaya Papua, which has the address at Jalan Raya Burmeso, Mamberamo Tengah district, Mamberamo Raya Regency, participated in the auction for the Phase III Autonomous Office Building Construction at the Mamberamo Raya Regency Public Works Agency for the 2010 fiscal year. Mamberamo Raya Regency allocated Rp. 8,000,000,000.00 (eight billion rupiah).

The implementation of the procurement of goods and services adheres to the provisions of Presidential Decree No. 54 of 2010 in the implementation of the procurement of goods and services PT. Kusman Jaya Papua was declared the winner of the auction. As the basis for the implementation of activities, the two parties between PT. Kusman Jaya Papua and the Public Works Department of Mamberamo Raya Regency agreed to enter into an agreement as stated in the Contract Agreement Number 641.03/KONT/PGDO-TIII/DPUP2E/VI/2010,

dated June 10, 2010, with a contract value of Rp. 7,992,500,000,- (seven billion nine hundred ninety-two million five hundred thousand rupiah)

The Mamberamo Raya district government, through the Department of Public Works at the end of 2010, through the budget revision session carried out budget optimization in all sectors of activity, including the construction of Phase III of the Autonomous Office Building. In the budget optimization activity, the cost for the construction of the Autonomous Office Building was cut to Rp. 5,460,000,000 (five billion four hundred and sixty million rupiah).

With the change in development costs, it is as if the Public Works Office of Mamberamo Raya Regency made a Work Addendum which was originally valued at Rp. 7,992,500,000,- to Rp. 5.460.000.000,-. This was revealed when there was an examination from the Indonesian Republic of Indonesia Financial Examiner Agency (BPK-RI) Representative of Papua.

Job Addition

The Public Works Office of Maamberamo Raya Regency, ordered to change the implementation of the construction work of the Phase III Autonomous Office Building as follows: 1) Replacement of ceiling from plywood ceiling to Gypsum ceiling; 2) Replacement of roof paint which was originally red (original) to be uniformed into blue, with the change order, it will certainly have an impact on development financing.

From the additional work activities for the construction of 2 (two) phase III autonomous office buildings, namely the Social Service and Population office buildings, a fund of Rp. 460.653,276 (four hundred and sixty five million two hundred and seventy-six rupiah). With the following details: 1) Replacement of ceramic material to Granito : Rp. 148.335.000; 2) Ceiling replacement; Rp. 209,886.408; 3) Roof painting : IDR 102.431.868

2011 Budget

In addition to the 2010 budget, in accordance with regional financial conditions, in 2011, through the Mamberamo Raya Regency main budget, the government budgeted again to complete the construction of the Phase III Autonomous Office Building. a) Account code 1.03.1.03.01.02.53 continued development of the Autonomous Service Office (DAK); Rp. 1.800,000,000 (one billion eight hundred million rupiah); b) Account code : 1.03.0.03.01.02.56 continued development of the Autonomous Service Office (DAK companion) : Rp. 180,000,000 (one hundred and eighty million rupiah); c) In the Revised APBD, the government of Mamberamo Raya Regency added the cost of implementing the construction of the Phase III Autonomous Office building with account code: 1.03.1.03.01.01.02.58, amounting to Rp. 1.095 million, - (one billion ninety five million rupiah).

Payment Submission

In accordance with the rights and obligations of both parties between the Public Works Department of Mamberamo Raya Regency which in the contract agreement letter is referred to as the First Party and PT. Kusman Jaya Papua, which in the letter of agreement is referred to as the second party, both agreed to carry out their respective rights and obligations, where PT. Kusman Jaya Papua has the right to receive compensation/payments as stated in the contract article 8 with the following conditions: 1) Advance Payment is given to the second party in the amount of 30% (twenty percent) after the Second Party has submitted a deposit guarantee of 30% of the contract value or Rp. 2,397,750,000 (two billion three hundred ninety-seven million seven hundred and fifty thousand rupiah); 2) Payment of the next term in accordance with the progress of the work in the field. After the advance payment of PT. Kusman Jaya Papua has submitted two terms, namely: a) The first term is: Rp. 1,970,250,000; b) The second term is: Rp. 1,092,000,000; c) Total bill : Rp. 3,062,250,000

Based on the Contract Agreement Number 641.03/KONT/PGDO-TIII/DPUP2E/VI/2010, dated June 10, 2010, with a contract value of Rp. 7,992,500,000,- (seven billion nine hundred ninety-two million five hundred thousand rupiah), then PT. Kusman Jaya Papua still has a payment shortfall of Rp. 2,532,500,000,-

In July 2011, PT. Kusman Jaya Papua collects Rp. 1,905,000,000 (one billion nine hundred and five million rupiah) in accordance with SP2D number: 0597/SP2D-LS/DAK/1.03.01/2011, dated July 15, 2011. So the total payment is Rp. 7,365,000,000,- (seven billion three hundred sixty five million rupiah) based on this third term, the underpayment from the government of Mamberamo Raya Regency is: 1) Shortage of paying the old contract : Rp. 627,500,000; 2) Lack of additional work pay: Rp. 460.653,276; 3) Total : Rp. 1,088,153,276 (one billion eighty-eight million one hundred fifty-three thousand two hundred and seventy-six rupiah).

As a result of this lack of payment, the party who feels disadvantaged in this case is PT. Kusman Jaya Papua resolves Construction Contract disputes through the Arbitration institution through the stages specified in Law Number 2 of 2017 concerning Construction Services.

Settlement of Construction Contract Disputes Through Arbitration

Broadly speaking, the steps taken in dispute resolution can be taken through court institutions (litigation) and non-litigation institutions (non-litigation), namely through arbitration, depending on the choice of the disputing parties. Things that need to be underlined before resolving disputes through courts and arbitration, efforts are made to be able to resolve them with the basic principles of deliberation and consensus. Clauses related to this are of course included in the construction work contract.

In practice, the mechanism for resolving disputes outside the court is regulated in more detail in Law Number 2 of 2017 concerning Construction Services. The contract will be a guideline (standard of conduct) for the parties involved. Whatever happens, it must refer to the mutually agreed contract, including the settlement pattern in the event of a default in the future. Law Number 2 of 2017 concerning Construction Services prioritizes the settlement of cases out of court in the event of a construction dispute.

There are several stages regulated in the Construction Services Act in the event of a dispute, namely:

First, deliberation to reach consensus. This is regulated in Article 88 Paragraph (1) of Law Number 2 of 2017 which stipulates that disputes that occur in Construction Work Contracts are resolved with the basic principle of deliberation to reach consensus.

Second, complete in accordance with the contents of the construction service contract. In the event that the deliberation does not reach an agreement, the next step is to settle it in accordance with the mechanism regulated in the construction service contract as confirmed in Article 88 Paragraph (2) which determines that in the case of deliberation the parties as referred to in paragraph (1) cannot reach an agreement. , the parties take the stages of dispute resolution efforts listed in the Construction Work Contract.

Third, make a written agreement. Article 88 Paragraph (3) of Law Number 2 of 2017 states that in the event that dispute resolution efforts are not listed in the Construction Work Contract as referred to in paragraph (2), the disputing parties shall make a written agreement regarding the dispute resolution procedure to be chosen.

These stages are statutory orders that bind all citizens. However, the provision does not mention the legal consequences if it is not carried out in accordance with the provisions of the Construction Services Act. This means that the provision does not impose sanctions on parties who do not utilize the deliberation mechanism in resolving construction disputes.

The qualifications for dispute resolution at arbitration institutions are confirmed in the provisions of Article 5 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution which states: (1) Disputes that can be resolved through arbitration are only disputes in the trade sector and regarding rights which according to laws and regulations are fully controlled by the disputing parties; (2) Disputes that cannot be resolved through arbitration are disputes which according to the laws and regulations cannot be reconciled.

Based on the above provisions, it can be seen that disputes that can be resolved through arbitration are only disputes in the trade sector and regarding rights which according to laws and regulations are fully controlled by the disputing parties, while disputes that cannot be resolved through arbitration are disputes which according to the regulations legislation can not be held peace. The disputing parties, before submitting a request for dispute resolution through arbitration, must first agree to resolve disputes that arise between them through arbitration.

Article 7 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution states: The parties can agree on a dispute that has occurred or will occur between them to be resolved through arbitration. Referring to the explanation regarding dispute resolution in the implementation of the contract above, it appears that the out-of-court (non-litigation) mechanism is preferred because it has several advantages (LPJK, 2020) as follows: a) Confidentiality of dispute. Non-trial dispute resolution means that the results are not made public, so work can be resumed and the relationship between the disputing parties is maintained properly; b) Dispute breaker. In this case, the dispute breaker is the arbitrator (mediator, conciliator and arbitrator), so that the disputing parties have the option of choosing an arbitrator who can give a decision or get the right advice in overcoming the problem; c) Completion period. Court proceedings generally take a long time to settle, while Arbitration, mediation, conciliation or the Dispute Board can shorten the time for dispute resolution. This is also related to the continuity of the next work process and good relations between the two parties.

The stages of dispute resolution according to Law Number 2 of 2017 concerning Construction Services are: 1) The disputing parties first conduct deliberation to reach consensus; 2) If the deliberation is not reached, then the dispute resolution is adjusted based on the construction work contract; 3) If the dispute resolution is stated in the contract, then the dispute resolution is carried out through the following stages: Mediation; Conciliation, and; Arbitration 4) If the dispute resolution is not stated in the construction work contract, then the disputing parties make the chosen settlement procedure. The settlement of disputes over the construction of the Phase III Autonomous Service office building is carried out through an Arbitration institution with the following stages:

Registration and Application for Arbitration
Settlement of disputes through arbitration must be agreed by both parties. Before the file is submitted by PT. Kusman Jaya Papua, the Petitioner must first notify the Mamberamo Raya Regency Public Works Office that the dispute will be resolved through arbitration. Notification letter from PT. Kusman Jaya Papua is given in writing and contains complete information as stated in Law Number 30 concerning Arbitration article 8 paragraphs 1 and 2, namely: a) Full name and address of the Applicant and the Respondent; b) Appointment of the applicable arbitration clause; c)The disputed agreement; d) Basis of claim; e) Amount demanded

Appointment of Arbitrator
Referring to the Arbitration Act Article 8 paragraphs 1 and 2, PT. Kusman Jaya Papua and the Public Works Office of Mamberamo Raya Regency agreed that the appointment of the arbitrator should be left to the Indonesian National Advocacy Agency. This agreement is submitted in writing in the application for arbitration submitted by the Petitioner and in the Respondent's response.

The settlement of disputes over the construction of the Phase III Autonomous Office Building was resolved through the Assembly, in resolving this issue, the Petitioners and Respondents each appointed an arbitrator. Since the number of arbitrators must be odd, the arbitrator appointed by both parties must appoint one arbitrator to be the third arbitrator who will be the Chair of the Tribunal.

Respondent's Response
After the application file was registered, the Governing Body of the Indonesian National Arbitration Board (BANI) examined and decided to conduct an examination of the dispute, the construction of the Phase III Autonomous Office Building, then the Secretary of the Assembly was immediately appointed, to assist in case administration work. The Secretariat prepares a copy of the applicant's arbitration application and other attached documents and submits them to the Respondent. The Respondent submits a response within 18 days of the application. This is the responsibility of the Respondent. Included in the answer is the arbitrator's proposal.

Examination Session
In the process of arbitration examination, there are several important things that have been regulated in the Act, including: a) inspections are carried out in secret; b) use Indonesian; c) must be made in writing; and d) hear statements from the parties.

Due to its closed nature, in the settlement of disputes regarding the Phase III Autonomous Office Building Construction, third parties outside the merging arbitration agreement can be approved by the Assembly or the arbitrator. The participation of these third parties must of course have an interest related to the dispute in question. As stipulated in the Law, the maximum limit for examining a dispute is 180 days from the time the Assembly or arbitrator is appointed. The trial until the decision on the dispute over the Construction of the Autonomous Service Office Building is issued is carried out within 121 calendar days. With the grace of God Almighty, see and consider the existing data, both the request from the Petitioner, the answer from the Respondent and the statements of several witnesses.

The nature of the Arbitration award is final and has permanent legal force and is binding on the parties, therefore the decision must contain: The head of the decision which reads: 'FOR JUSTICE BASED ON THE ONE ALMIGHTY GOD' The Arbitration Panel of Judges decides the following matters: a) granting the Petitioners' demands, and requiring the Mamberamo Raya Regency Government, which in this case is represented by the Public Works Department, to pay the underpayment for the construction of the Phase III Autonomous Office Building in the amount of Rp. Rp. 1,088,153,276 (one billion eighty-eight million one hundred and fifty-three thousand two hundred and seventy-six rupiah), which consists of Shortage of Contract payment : Rp. 627,500,000 and Payment of additional work: Rp. 460.653,276; b) Granted the claim of the Petitioner regarding Compensation for late payment for 7 (seven) years in the construction of the Phase III Autonomous Office Building in the amount of Rp. 376.500.000,- (three hundred seventy six million five hundred thousand rupiah); c) Punish PT. Kusman Jaya Papua to pay a maximum fine for late construction of the Phase III Autonomous Office Building of Rp. 5% x Rp. 7,992,500,000 = Rp. 399,625,000 (three hundred ninety-nine million six hundred twenty-five thousand rupiah); d) Sentencing both parties to pay court fees of Rp. 29,293,065,- (twenty nine million two hundred ninety three thousand and sixty five rupiah).

In the settlement of a dispute through an arbitration institution, a claim or response or a claim based on law and facts. The parties must be able to corroborate the legal basis and the facts presented by presenting witnesses. Witnesses in this case are those who know firsthand what happened. Witnesses may be involved in arbitration disputes that are being examined only if ordered by the arbitrator, arbitral tribunal or at the request of the parties. Witness or expert witness who will give testimony must be sworn in first. Information given by expert witnesses can be given in writing to the arbitrator or arbitral tribunal. With respect to written statements submitted by

expert witnesses, the arbitrator or arbitral tribunal will forward several copies to the parties. Expert witnesses who have given written statements may be asked to attend.

Thus, the author is of the opinion that the dispute resolution in the 2017 Construction Services Act is still on the right track. Settlement of construction disputes is directed out of court (non-litigation) with the aim of achieving a "win-win solution". The 2017 Construction Services Law contains an article that authorizes the Government to encourage the use of Alternative Dispute Resolution (alternative dispute resolution) for the implementation of construction services outside the court (non-litigation).

Implementation of the Decision

On the stipulated day, which is 30 days after the examination of the case is declared sufficient and the examination is closed, the Arbitration Tribunal shall read out the arbitral award before the court. In accordance with the provisions of Article 54, Law. No. 30, 1999 Arbitration Award must contain: 1) The head of the decision must read "For Justice Based on the One Godhead"; 2) Full names and addresses of the parties; 3) Brief description of the dispute; 4) Stance of the parties; 5) Full name and address of the arbitrator; 6) Considerations and Conclusions of the arbitrator or the Arbitral Tribunal regarding the whole dispute; 7) The opinion of each arbitrator in the event that there is a difference of opinion in the Arbitral Tribunal; 8) Order the verdict; 9) Place and date of decision; and 10. Signature of the arbitrator or arbitral tribunal.

Based on Article 57 of the Arbitration Law, it is stated that the decision is pronounced within 30 (thirty) days after the examination is closed. In the event that the parties choose arbitration in accordance with the agreement of the parties as the settlement of the dispute, it will be carried out according to the rules and procedures of the chosen institution or in other words the dispute resolution process will be carried out according to the rules and procedures of the arbitration institution chosen by the parties, except by the parties are determined otherwise.

The Legal Power of Arbitration Award Against Disputes in Construction Contracts

The Arbitration Award is Independent, Final and Binding

Article 60 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution is reconstructed as follows: Article 60: (1) The arbitral award is a final decision and has permanent legal force and is binding on the parties (2) An arbitration award can only be submitted for review if there are reasons as referred to in Article 70 of this Law Elucidation of Article 60: (1) Decision arbitration is a final decision and thus cannot be appealed or appealed. (2) In order to provide a sense of justice, parties who are not satisfied with the arbitral award may undertake a review effort by taking into account the provisions of Article 70 of this law.

Arbitration decisions are independent, final and binding (such as decisions that have permanent legal force) so that the Head of the District Court is not allowed to examine the reasons or considerations of the national arbitral award. The authority to examine the Head of the District Court is limited to formal examination of the national arbitration award handed down by the arbitrator or arbitral tribunal.

With respect to the arbitral award, there is only one legal remedy that can be taken by a party who is dissatisfied with the arbitral award, namely to cancel as regulated in Article 70 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution which states that the parties to the arbitration award can apply for cancellation if the decision is suspected to contain the following elements: a) the letter or document submitted during the examination, after the decision is rendered, is admitted to be false or declared false; b) after the decision is taken, decisive documents are found which were hidden by the opposing party; or c) the decision is taken from the results of deception carried out by one of the parties in the examination of the dispute.

One of the interesting things in the dispute resolution process through arbitration is the absolute nature of the arbitration award which according to some legal experts is a logical consequence of the agreement of the parties bound in an agreement.

The Arbitration Award is Absolute

The arbitration institution, as described previously, is the body chosen by the disputing parties to give a decision regarding a particular dispute and can also provide a binding opinion regarding a certain legal relationship in the event that a dispute has not yet arisen. The arbitration institution is domiciled as an agency for the settlement of a civil dispute outside the general court based on an arbitration agreement made in writing by the disputing parties.

Based on the position above, the arbitration institution has the authority to resolve a civil dispute outside the general court based on an arbitration agreement made in writing by the disputing parties. Authority in the realm of theory, according to HD Scoud is the overall rules relating to the acquisition and use of government authority by subjects of public law in public law.

The authority of the arbitration institution in resolving disputes through arbitration is absolute, so that other institutions including the judiciary are not authorized to resolve this dispute. This is confirmed in the provisions of Article 3 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution which states that: "The District Court is not authorized to adjudicate disputes between parties who have been bound by an arbitration agreement".

The absolute authority of this arbitration institution has placed the arbitration institution in the legal capacity and legal position to resolve disputes arising from the agreement. The authority of this arbitration institution, although absolute but still limited, means that the authority is only for cases whose settlement is based on an arbitration agreement and only covers cases in the field of trade and regarding rights which according to law and statutory regulations are fully controlled by the party who dispute. This is expressly regulated in the provisions of Article 5 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution which states: Based on these provisions, it is understood that dispute resolution through arbitration can only be carried out against: 1) Disputes in the field of trade; 2) Regarding rights which according to law and legislation are fully controlled by the disputing parties.

Implementation of Arbitration Award and Court Relations

National Arbitral Awards The implementation of national arbitral awards is regulated in Articles 59 to 64 of Law Number 30 of 1999. Basically, the parties must implement the award voluntarily. In order for the arbitration award to be enforced, the award must be submitted and registered with the district court clerk, by registering and submitting the original or authentic copy of the national arbitration award by the arbitrator or his proxy to the district court clerk, within 30 (thirty) days after the arbitration award. be spoken.

Although arbitration is a way of resolving civil disputes outside the general court based on an arbitration agreement, arbitration institutions still have dependence on courts, for example in terms of implementing arbitration decisions. This happens because there is still a need to register the arbitration award in the district court. So this shows that the arbitration institution does not have any coercive efforts against the parties to comply with the decision.

The role of the courts in administering arbitrations based on Article 14 paragraph (3) of Law Number 30 of 1999, among others regarding the appointment of an arbitrator or a panel of arbitrators in the event that there is no agreement between the parties and in the case of the implementation of national and international arbitral awards which must be carried out through a system mechanism. court, namely registration of the decision by submitting an authentic copy of the decision.

An arbitral award can be enforced by force by means of the award must be submitted and registered with the clerk of the district court, by registering and submitting the original sheet or an authentic copy of the national arbitration award by the arbitrator or his proxy to the clerk of the district court. The submission and registration is carried out by recording and signing together at the end or at the edge of the decision by the clerk of the district court and the arbitrator or his proxies who submit and subsequently, the record becomes and constitutes the deed of registration of the national arbitral award.

The recording is the only basis for the implementation of the arbitral award by the parties who have an interest in the implementation of the arbitral award because the Arbitration Law stipulates that if the recording is not carried out within the specified period then the arbitral award cannot be enforced. Based on Article 59 of the Arbitration Law, the time limit for submitting and registering the national arbitral award is determined no later than 30 (thirty) days after the arbitration award is pronounced by the arbitrator or arbitral tribunal. In addition, the Arbitration Law also requires the arbitrator or his proxies to submit the decision and the original sheet of appointment as arbitrator or an authentic copy of it to the Registrar of the District Court.

Registration and recording of the arbitral award will be very useful for parties interested in the implementation of the arbitral award, if one of the parties in the arbitral award does not implement the arbitral award voluntarily. So if the 30 days period as stipulated in Article 59 of the Arbitration Law, the arbitral award has not been executed, then the arbitral award is enforced by force. This enforced execution order was given by the Head of the District Court at the request of one of the disputing parties. The order of the Chairman of the District Court shall be written in the original and an authentic copy of the arbitral award. An arbitration award which has been affixed with an order from the Head of the District Court, may be enforced by force which is carried out in accordance with the provisions for implementing decisions in civil cases that have permanent legal force. The order for the implementation of the arbitration award by the Head of the District Court is given no later than 30 (thirty) days after the application for execution is registered with the Registrar of the District Court.

Principles of Ex Aequo Et Bono Elements of Justice in Arbitration Awards

The basic value of justice according to Socrates must be understood in terms of equality. This implies that something is only considered fair if both parties feel the same distribution. Although Aristotle emphasizes similarities, there are important differences in applying these similarities, namely:

Numerical similarity
Numerical equality equates every human being as a unit. This is what we now usually understand about equality and what we mean when we say that all citizens are equal before the law. All citizens have the same position in law and government and are obliged to uphold the law and government without exception.

Proportional equality
Proportional equality gives each person what he is entitled to according to his abilities, achievements, and so on. The Arbitrator's decision based on Ex Aequo Et Bono is a decision that takes into account the principles of justice and propriety. Basically, the disputing parties can enter into an agreement in determining the case will be decided based on legal provisions or based on justice and propriety (Ex Aequo Et Bono). In terms of obtaining authority, the arbitrators may issue an Ex Aequo Et Bono decision which can override the laws and regulations, except for coercive legal provisions.

The decision of Ex Aequo Et Bono is stated in Article 56 paragraph (1) of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, namely the arbitrator or arbitral tribunal can make decisions based on legal provisions, or based on justice and propriety". "The choice of making an arbitration award according to Ex Aequo Et Bono must be considered by the arbitrators and the disputing parties in resolving their dispute through the arbitration institution.

Basically, if the parties decide to resolve the dispute through an arbitration institution, based on the principle of pacta sunt servanda they must comply with the rules of the arbitration institution, including the rules in determining its decision. In general, the concept describes arbitration based on justice as a process of deciding a case in which the arbitrator in making a decision regarding the case tries to find a fair and appropriate solution. The search for a fair solution can be carried out outside of legal provisions, such as in moral, social principles or by looking at the real conditions of the problem in its context on the ground.

The Law of the Republic of Indonesia Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, article 56 paragraph (1) affirms, "The arbitrator or arbitral tribunal makes decisions based on legal provisions or based on justice and propriety." The explanation of this paragraph emphasizes that if the parties give freedom to the arbitrator to give a decision based on justice and propriety, then the statutory regulations can be set aside except in certain cases, coercive laws must be applied and cannot be violated. Based on this research, it can be taken the conclusion that the settlement of disputes over delays in fulfilling achievements on implementation of the Building Construction Agreement in the Special Region of Yogyakarta is based on the Decision Number: 87/Pdt.G/2013/PN.Bantul, with the result of the decision that the service provider is obliged to hand over building construction work to the Grhatama Library Pustaka to users, namely the Regional Library and Archives Agency (BPAD) of the Special Region of Yogyakarta in a proper condition, with interest to service users. Thus, mediation is a dispute resolution process involving a third party to reach a settlement agreement between the parties for the dispute that occurred. The mediator must be neutral and able to create a conducive atmosphere. The mediator can't force his opinion on the parties; it means an agreement to end the dispute remains with the parties (Jannah & Musjtar, 2019).

Conclusions

The conclusion that can be drawn from this research is that the settlement of construction contract disputes between PT. Kusman Jaya Papua with the Public Works Department to pay for the lack of payment for the construction of the Autonomous Office Building. Settlement of disputes through arbitration must be agreed by both parties. The Arbitration Decisions are: granting the claim of the Petitioner, granting the claim of the Petitioner regarding Compensation for late payment, punishing PT. Kusman Jaya Papua to pay a fine for the delay in the construction of the Autonomous Office Building, punishing both parties to pay court fees of Rp. The Legal Strength of the Arbitration Award Against Disputes in the Construction Contract between PT Kusman Jaya Papua and the Public Works Service are: 1) The Arbitration Award is Independent, Final and Binding; 2) The arbitral award cannot be appealed or cassed. To provide a sense of justice, parties who are not satisfied with the arbitral award can make an effort to reconsider; 3) The Head of the District Court is not allowed to examine the reasons or considerations of the arbitral award. The authority to examine the Head of the District Court is limited to a formal examination of the arbitration award handed down by the arbitrator or arbitral tribunal.

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