



IMPLEMENTATION OF ALTERNATIVE DISPUTE RESOLUTION IN RESOLUTION OF DISPUTES DUE TO BUILDING FAILURE IN BUILDING CONTRACTING AGREEMENTS

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ABSTRACT

There is a building failure in terms of the time period after the construction work was handed over for the last time (FHO), when viewed from the substance of the work, the building failure has occurred in part or in full malfunction of the results of the construction work from a technical, benefit, safety and health perspective Work; in summary the time after the FHO, due to non-functioning construction work results. The specifications of the research used are descriptive analysis and normative legal research. The technique of collecting legal material that will be used as a source in this study is library research, namely collecting legal material by reading laws and regulations, official documents, journals, articles from the internet, as well as other literature that is closely related to The issues discussed are based on secondary legal materials. The implementation of the project or building construction involves various parties who take part in it, namely the employer, the architect and the contractor. A contracting agreement is an agreement between one party (the contractor) and another party or (the contractor) in which he binds himself to carry out a work regarding the manufacture of a work (het maken van werk) by receiving a price according to the specified price. Efforts to settle alternative dispute resolution in the settlement of contracting disputes through several efforts such as arbitration, negotiation, mediation or by making efforts or applying court channels if they are not resolved out of court.

Keywords: *Application, Dispute, Contractor*

A. INTRODUCTION

The Indonesian economic system has experienced quite rapid development. This can be seen from the many types of transactions carried out by the parties. One of them is the sale and purchase transaction. As is known, buying and selling is an agreement, by which one party binds himself to surrender an object and the other party to pay the price that has been promised. The current rapid pace of development requires the world of construction to always come up with new performances. The technical capabilities of the contractors must have been proven by international certification (ISO), as well as the financial capabilities of the contractors must really be proven in front of the project owner as a benchmark for trust in cooperation. The safety of project owners in the world of construction is prioritized. This can be seen from the regulations issued by the government, almost all of which are aimed at the safety of project owners. Guarantees in contract agreements (stated in the Construction Services Law No. 18 of 1999) are the most important thing in protecting the project owner.

Based on the laws and regulations above, the scope of construction failure is in the contract period, to be exact since the contract was signed until the final/second handover of work (FHO), because during this contract period the legal agreement between the service user and the service provider is still ongoing. Previously, it was necessary to correctly understand the notion of building failure in carrying out construction work because it is believed that there are still many parties who are confused in understanding building failures and construction failures, as stated in Law 18 of 1999 Article 1 paragraph 6 that what is meant by building failure is the state of the building after it has been handed over. -received by the service provider to the service user becomes non-functioning either in part or in whole and/or does not comply with the provisions contained in the

construction work contract or its utilization is distorted as a result of the provider's and/or service user's mistakes.

Whereas according to PP 29 of 2000 Article 34 defines building failure as a condition of a building that is not functioning, both in whole and in part from a technical perspective, benefits, occupational safety and health and or public safety as a result of Provider and/or User error after the final handover of construction work (FHO, Final Hand Over). It is clear that the failure of the building in terms of the time period after the construction work was handed over for the last time (FHO), when viewed from the substance of the work, the failure of the building has occurred in part or in full for the results of the construction work from a technical, benefit, safety and health perspective. Work; in summary the time after the FHO, due to non-functioning construction work results.

B. FORMULATION OF THE PROBLEM

1. How is the implementation of the charter agreement?
2. How is the guarantee of the charter agreement reviewed from the security of the project owner?
3. How is the settlement of disputes due to the failure of the contract contract agreement?

C. LITERATURE REVIEW

Work chartering agreement is a reciprocal agreement between rights and obligations, in which there is an agreement between one party, the contractor, binds himself to carry out the work, while the other party who contracts, binds himself to pay a specified price. This agreement is consensual, which means that the agreement/contract was born or existed since there was an agreement between the two parties. With this agreement, the contracting agreement is binding on both parties, meaning that the parties cannot cancel the contracting agreement without the consent of the other party. If the chartering agreement is canceled or decided unilaterally, then the other party can sue it. A free form work charter agreement (*vormvrij*) means that a work charter agreement can be made orally or in writing. *Alternative Dispute Resolution* (ADR) is a concept of cooperative conflict or dispute resolution out of court which is directed at an agreement or solution to a conflict or dispute that is a win-win solution. ADR is a settlement of disputes or differences of opinion that are resolved through an agreement procedure by the parties which is carried out outside the court by way of consultation, negotiation, mediation, conciliation or expert judgment.

Contractual agreements are contained in the Civil Code (KUH Perdata) from Articles 1601, 1601b and Articles 1604 to Article 1616, besides that they are also contained in other regulations such as Presidential Decree 29 of 1984 concerning the implementation of the State Revenue and Expenditure Budget. Dispute can not be separated from a conflict. Where there is conflict, there must be conflict. So many conflicts in everyday life. Either a small light conflict or even a big and heavy conflict. This is experienced by all groups, because life is not free from problems. Depends on how we react to it. Why should you learn about disputes? Because to be able to find out more about how a dispute is and how to resolve it.

D. RESEARCH METHODS

The research method used is a normative legal research method. As for the type of research conducted, from the point of view of its form, it is a prescriptive research aimed at obtaining suggestions on what to do to overcome certain problems. As a normative legal research, this research refers to the analysis of legal norms, in the sense that law as it is written in the books (law in laws and regulations). Thus the object being analyzed is legal norms, namely examining laws and regulations regarding freedom of contract. Analysis of the research material used is qualitative



analysis. Qualitative analysis means describing data in a quality manner in the form of sentences that are orderly, coherent, logical, not overlapping, and effective, so as to facilitate interpretation of data and understanding of analysis results. This research includes normative legal research, so the legal materials used are primary, secondary, and tertiary legal materials. The technique of collecting legal material that will be used as a source in this study is library research, namely collecting legal material by reading laws and regulations, official documents, journals, articles from the internet, as well as other literature that is closely related to The issues discussed are based on secondary legal materials. The legal material is then analyzed and formulated as supporting legal material in the form of scientific work

E. RESEARCH RESULTS AND DISCUSSION

1. Form of Contractual Agreement Implementation

Implementation of the agreement in addition to heeding the provisions in the Civil Code, also the provisions in the basic regulations. Such standard regulations insofar as they are concerned with the contracting of public works in Indonesia are stipulated by the authorities cq the department of public works. The standard regulations concern the juridical and technical aspects, while the provisions regarding the procedures for job tenders or direct appointments are contained in a Presidential Decree which is stipulated every year to encourage efficient and quality development. The existence of a form of chartering agreement between the government and the private sector, the related government and private parties are bound to mutually carry out their respective achievements which have previously gone through the process and have fulfilled several conditions determined by the government in order to maintain quality and accountability for work results, Apart from these parties, there are other parties who are indirectly bound by the existence of a contracting agreement. Both the parties who are bound, or those who are indirectly bound by the existence of a chartering agreement are called participants in the contracting agreement.

Related to the form of the charter agreement in its free form (*vormvrij*), it means that the charter agreement can be made orally or in writing. In practice, if a chartering agreement involves small wholesale prices, usually the charter agreement is made verbally, whereas if the charter agreement involves rather large or large wholesale prices, usually the charter agreement is made in writing either by private deed or by authentic deed (*deed*). Notary Public).

2. Guarantee of chartering agreement in terms of the security of the project owner

The implementation of the project or building construction involves various parties who take part in it, namely the employer, the architect and the contractor. A contracting agreement is an agreement between one party (the contractor) and another party or (the contractor) in which he binds himself to carry out a work regarding the manufacture of a work (*het maken van werk*) by receiving a price according to the specified price. This agreement is binding on both parties, which means that neither party can cancel the charter agreement without the consent of the other party. If the chartering agreement is canceled or terminated unilaterally, the other party can sue. In order for chartering service activities to be carried out properly, the contracting service agreement must contain provisions that have been agreed upon by the parties such as provisions regarding the rights and obligations of the parties, implementation of the agreement and termination of the agreement based on statutory provisions and implementing regulations.

These wholesale service providers also have a very important role in achieving various facilities to support the growth of various industrial sectors of goods and services needed in the implementation of construction work. Wholesale service providers are regulated in Law no. 2 of 2017 concerning Construction Services, which has the rights and obligations to complete the work that has been contracted out to him in accordance with the dates and conditions specified in the charter agreement. In the implementation of a

building charter agreement, it is possible that there will be delays by one of the parties, either intentionally or due to force majeure/overmacht. Delays in the implementation of the contracting work which result in delays in the utilization of the project because it is not in accordance with the initial plan that has been prepared for this, it is very necessary for the responsibility of the contractor to solve existing problems without complications.

Before the contracting agreement for this building is carried out, a division will be carried out which consists of several stages, including:

- a. Based on the way in which a building contract agreement occurs, the implementation of a building contract agreement can be done in several ways, such as:
 1. Building contract agreements carried out by following the auction process for the bids submitted (competitive bid contract).
 2. Building chartering agreements carried out by appointment.
 3. Contractual agreements that occur due to negotiations between the employer and the contractor (negotiated contract).

The implementation of the chartering agreement must also be carried out with proper procedures, such as:

- a. Selection of Contractors by Negotiation Selection by negotiating directly with the wholesale service provider to ensure whether they are capable of working on the project with the various requirements provided by the employer. Elections in this way are considered more practical and informal because they only involve both parties.
- b. Selection of the contractor by holding a tender The selection by holding this tender system must be in accordance with the wishes of the employer. If using an open tender system, the employer must invite all contract service providers to participate by placing advertisements in the mass media and other print media. Meanwhile, if using a limited tender system, the employer only invites a number of wholesale service providers to participate, this method seems formal and is considered better because the fewer those who participate in this event, it will be easy to determine the best wholesale service provider best.

3. Settlement of Disputes Due to Contractual Contractual Failure

The new agreement can be said to end or delete if the objectives of the agreed agreement have been achieved or even have not been fully achieved. In Article 1381 of the Civil Code it is stated that the agreement can end if:

1. There is payment for the results of the work that causes the agreement to be deleted, but the agreement to carry out the sale and purchase has not ended because the agreement for the delivery of goods has not been implemented.
2. There is an offer to pay in cash as well as storage and safekeeping must be made if the creditor refuses payment.
3. There is a renewal of debt that is only given to people who are deemed legally competent to carry out contracts and do not occur because of suspicion. If this happens, then the privileges and mortgage rights cannot be maintained except for the goods for which the debt is renewed.
4. There is a meeting of debt or compensation that can occur if the debt is in the form of money or goods that will run out because of the usage period and the same type, so a time limit must be set.
5. There is a mixture of debts by debtors and debtors who gather in one person, generally occurs in heirs and heirs.
6. Carrying out a release of debt accompanied by evidence so that its validity can be proven.
7. The goods that are the object of the debt are destroyed and occur outside



8. The fault of the indebted party before being declared negligent by the indebted party.
9. The occurrence of an agreement cancellation from one of the parties or by agreement of the parties, this is the result of the presence of one party who is legally incompetent both in terms of age and because the party is under guardianship.
10. The enactment of a requirement to cancel the agreement resulting in the cancellation of the agreement.
11. The occurrence of expiration or expiration in the agreement resulting in the abolition of the contract carried out by the parties.

If one of the elements contained in the article is fulfilled, then the agreement can end and the parties are free from their respective rights and obligations. This method of deleting an agreement is deemed not to limit the parties from seeking other ways to delete the agreement. According to Mariam Darus Badruzaman, the provisions contained in this Article are incomplete because they do not include the termination of the agreement due to the death of a person. Each party that will make an agreement hopes that the implementation of the agreement can run perfectly and voluntarily. As a human plan, of course not everything that is planned can go well, as well as a project development plan that can be changed midway or even the plan can be cancelled. In order for the contents of the agreement to continue to be implemented, the employer can force the worker or contractor to carry out his achievements through a court decision. If the birth of an agreement is determined by an event that has not yet occurred, then it is called an agreement using tough conditions and the end of an agreement determined by an event that has not yet occurred is called an agreement with conditions void. This is in accordance with Article 1265 which states that "If a cancellation condition is met, it will delete the engagement and make everything return to its original state as if an engagement had never occurred and this requirement does not delay the fulfillment of an engagement, only if the event If this happens, the employer is obliged to return everything he has received.

In implementing the building contract agreement, disputes will inevitably arise between the employer and the contractor regarding rights and interests. A dispute over rights is a dispute that arises because one party does not fulfill the work agreement that has been agreed upon and violates legal provisions. Meanwhile, a conflict of interest is a dispute regarding the object agreed upon by making a change in the work to be carried out. In practice the settlement process is carried out by deliberation, if by way of deliberation no agreement is found then it will be resolved by the Peace Committee appointed by both parties as a mediator and decide the outcome of the dispute. If the results of the decision of the Peace Committee cannot be accepted by both parties, then the matter can be forwarded to court.

Juridically, the method for resolving contractual agreement disputes can be divided into three types, namely:

- a. Resolved By Deliberation Consensus

Settlement of disputes by way of deliberation is considered more effective than through courts which take months. Settlement of Construction Service disputes can be reached through court, also known as "Litigation" or outside the court based on the voluntary choice of the parties to the dispute.

Dispute settlement outside the court does not apply to criminal acts in the implementation of construction works as regulated in the Criminal Code. If an out-of-court dispute resolution is chosen, a lawsuit through a court can only be pursued if the said attempt is declared unsuccessful by one or the parties to the dispute. Settlement outside the court through alternative dispute resolution through deliberation for consensus as follows:

- a. Negotiation

Negotiations can be carried out directly between the two parties to the dispute. Sometimes a third party is needed as an independent expert in assessing the problem. The results of the third party's assessment will be used as the basis for negotiations between the two disputing parties in resolving the dispute.

b. Mediation

Related parties will be accompanied by their respective experts and will enter into a negotiation process involving each Mediator as a catalyst in resolving disputes. All doubts that are contested will be exposed and a way out will be found.

c. Conciliation

Conciliation (Mini Trial) step which is popularly known as conciliation shows the spirit of togetherness to resolve a dispute. This step is a continuation

d. Arbitration

Settlement of disputes through Arbitration is the last way to resolve disputes outside the court process. Arbitration is a private court system in civil cases which means that it is the parties, and not the state, that oversees the powers and obligations of the parties.

Thus, the existence of Arbitration is a contractual method for resolving disputes in which the parties concerned create a forum, choose private judges who feel qualified, relinquish the right to investigate or prosecute, set aside incidents, and let various issues be determined by considerations of justice and equality of degree so that a decision is obtained through the judges they choose (arbitrators). Decisions by this Agency are final & binding, terminating disputes between the parties based on the agreement of the parties. In the explanation of article 3 paragraph 1 of Law no. 1411970 concerning the Basic Provisions of Judicial Power, it is stated that settlement of cases outside the court on the basis of peace or through arbitration is still permissible. Article 3 of Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution confirms that the District Court is not authorized to adjudicate disputes between parties who are bound by an agreement regarding arbitration.

If a dispute arises in the implementation of the contract agreement, both parties, namely the employer and the contractor, will try to resolve the dispute outside the court through arbitration, deliberation, mediation or conciliation. If the dispute cannot be resolved outside the court, the parties will carry out a settlement at the district court office according to the area (domicile) of the parties' position. Dispute resolution through the court is a dispute settlement that is carried out in court according to the domicile of the parties involved in the dispute and the decision is binding. Whereas settlement through alternative dispute resolution is a settlement carried out through a dispute settlement institution or difference of opinion through a procedure agreed upon by both parties, namely settlement outside the court or outside the expert court

4. CONCLUSION

1. Contract agreements can be made in written or oral form. In practice, if a chartering agreement involves large costs, the charter agreement is usually made in writing. For government projects, chartering agreements are usually made in writing, set forth in certain forms. Implementation of the agreement is an act of realizing or fulfilling obligations and obtaining rights that have been agreed upon by several parties so that their goals are achieved. Each party carries out the agreement perfectly and in good faith in accordance with the agreement that has been reached.
2. The implementation of the chartering agreement is carried out through the stages and processes before and after signing the contract. In the Dungus intersection road improvement project, it is carried out through direct appointment. Direct appointments are made by inviting selected companies or business actors who are capable of carrying out the work accompanied by technical negotiations and agreed prices. After going through several of these phases, the contracting agreement was agreed in the form of a construction work contract. After the contract documents were signed, a Work Commencement Letter (SPMK) was issued to the contractor, namely to immediately carry



out the project.

3. Settlement of disputes due to building failure in construction work agreements can be reached through court or out of court based on the voluntary choice of the parties to the dispute. Dispute settlement outside the court does not apply to criminal acts in the implementation of construction work as stipulated in the Criminal Code and efforts that occur disputes in the implementation of the contract agreement, then it is resolved by deliberation but if it does not reach a consensus it can be resolved by the stages of dispute resolution which stated in the contract by carrying out mediation, conciliation or arbitration efforts.

REFERENCES

BOOK:

- Syaubari, "Penyelesaian Sengketa Bisnis dan Relevansinya dengan ash-Shulhu (studi Analisis Pasal 7-11 UU No 30 Tahun 1999, tentang Arbitrase, *Skripsi* Fakultas Syari'ah IAIN AR-Raniry Tahun 2008.
- Sri Soedewi dan Masjchoen Sofyan, 1982, *Hukum Bangunan*, Perjanjian Pemborongan Bangunan, Liberty, Yogyakarta.
- Nazarkhan Yasin," Aspek Hukum dalam Penanganan Masalah Kerusakan Prasarana dan Bangunan," *makalah* Universitas Gadjahmada, Yogyakarta.
- Sunaryati Hartono, *Penelitian Hukum di Indonesia Pada Akhir Abad ke- 20*, Bandung, Alumni, 2014.
- Soerjono Soekanto, *Pengantar Penelitian Hukum*, Jakarta, UI-Press, tahun 2016.
- Arsyad Sanusi. 2001. *E-Commerce Dan Permasalahan Hukum Yang Mengikutinya*, Yogyakarta.
- Juju-Dominikus & Matamaya Studio. 2008. *Teknik Menangkal Kejahatan Internet*. Jakarta: PT Elex Media Komputindo. Jakarta.
- Mochamad Wahyudi- "Pengecekan terhadap keaslian suatu dokumen untuk menghindari kejahatan komputer (*Computer Crime*)-" *Jakarta*.
- Komisi Yudisial Republik Indonesia, 2014 Modul Pelatihan Kode Etik dan Pedoman Perilaku Hakim (KE-PPH), (Jakarta: Komisi Yudisial RI, Jakarta.
- Komisi Yudisial RI, 2017. *Problematika Hakim dalam Ranah Hukum, Pengadilan dan Masyarakat di Indonesia: Studi Sosio-Legal*, Komisi Yudisial RI. Jakarta
- Lawrence M Friedmann, 2011 *Teori-Teori Hukum Klasik Dan Kontemporer*. Ghalia Indonesia, Jakarta
- M. Solly lubis, 1994. *Filsafat Ilmu Dan Penelitian*, Mandar Maju, Bandung
- Mujahid A. Latief, et al, 2017, *Kebijakan Reformasi Hukum; Suatu Rekomendasi (Jilid II)*, Komisi Hukum Nasional RI, Jakarta
- Prof. Dr. Peter Mahmud Marzuki, S.H., M.H., LL.M, , *Penelitian Hukum edisi revisi*, Kencana Prenada Media Group, Cet. VIII, 2020.
- Soekanto, Soerjono & Mamudji, Sri. 2033, *Penelitian Hukum Normatif, Suatu Tinjauan Singkat*, RadjaGrafindo Persada. Jakarta
- Soerjono Soekanto, 2016. *Pengantar Penelitian Hukum*, UI-Press, Jakarta
- Sudarto, 2017, *Hukum dan Hukum Perdata* Cetakan Keempat,, Alumni Bandung
- Sunaryati Hartono, 2014. *Penelitian Hukum di Indonesia Pada Akhir Abad ke- 20*, Alumni, Bandung
- Soewartojo Junaidi. 2015. *Korupsi Pola Kegiatan dan Penindakan Serta Peran Pengawasan Dalam Penanggulangannya*. Restu Agung. Jakarta.

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Wildan Suyuthi Mustofa, 2019. *Kode Etik Hakim* (ed kedua), Kencana Prenamedia Group. Jakarta.

Journal:

Adi Nur Rohman, Palti Frederick Hasiholan Dll. 2021. “*Tinjauan Yuridis Penerapan Peraturan Mahkamah Agung Nomor 1 Tahun 2020 Tentang Pedoman Pemidanaan Pasal 2 Dan Pasal 3 Undang-Undang Pemberantasan Tindak Pidana Korupsi Dalam Mengkualifikasi Kerugian Negara Pada Tindak Pidana Korupsi (Analisis Putusan Nomor: 18/TIPIKOR/2020/PT.PD)*”. Vol 1, Nomor 1

Anistia Ratenia Putri Siregar. 2013. *Eksistensi Peraturan Mahkamah Agung Nomor 2 Tahun 2012 Tentang Penyesuaian Batasan Tindak Pidana Ringan Dan Jumlah Denda Dalam Kuhp Pada Peradilan Pidana*. Medan. Jurnal Ilmiah. Fakultas Hukum. Universitas Sumatera Utara.

Internet:

UU Perlindungan Konsumen Persulit Penyelesaian Sengketa <http://www.kompas.com/kompas-cetak/0105/29/iptek/uupe10.htm>,

<https://jdih.mahkamahagung.go.id>. Diakses pada tanggal 20 Desember 2021

Brin, Organisasi Riset Ilmu Sosial dan Humaniora Badan Riset dan Inovasi nasional, Penyelesaian Sengketa Melalui Forum Alternatif, <https://ipsh.brin.go.id>, Diakses Pada Tanggal 8 Oktober 2021, Pukul 21.00 Wib