

Putusan serta merta dispute adjudication board dalam federation internationale des ingenieurs conseils ("fidic") general conditions of contract for construction (1st edition, 1999) ditinjau dari undangundang nomor 30 tahun 1999 tentang arbitrase dan alternatif penyelesaian sengketa = "Immediate binding effect of dispute adjudication board's decision under federation internationale des ingenieurs conseils ("fidic") general conditions of contract for construction (1st edition 1999) viewed from the law number 30 of 1999 regarding arbitration and alternative dispute settlement" / K. Fathurahman P.N.J.

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Abstrak

ABSTRAK

Kontrak konstruksi merupakan jenis kontrak yang dinamis. Kompleksitas pekerjaan dan keterlibatan berbagai kepentingan menjadikan kontrak konstruksi memiliki potensi sengketa di setiap tahapan konstruksi. Oleh karena itu, para pihak dalam kontrak konstruksi harus mencari metode penyelesaian sengketa memastikan tidak terhambatnya kegiatan konstruksi. Dalam FIDIC General Conditions of Contract For Construction (1st Edition, 1999) dikenal mekanisme penyelesaian sengketa dalam bentuk Dispute Adjudication Board yang putusannya bersifat mengikat dan harus dijalankan terlebih dahulu oleh para pihak meskipun ada keberatan dari salah satu pihak. Dari sini terdapat dua permasalahan yang dijadikan objek penelitian, Pertama, kedudukan Dispute Adjudication Board dalam Undang-Undang Nomor 30 Tahun 1999 tentang Arbitrase dan Alternatif Penyelesaian Sengketa; Kedua, sifat putusan Dispute Adjudication Board yang harus dijalankan terlebih dahulu dibandingkan dengan putusan pengadilan yang bersifat serta merta berdasarkan Hukum Acara Perdata Indonesia dan pelaksanaannya berdasarkan sifat putusan yang diterapkan oleh beberapa lembaga adjudikasi di Indonesia. Penelitian ini merupakan penelitian yuridis normatif yang ditopang oleh analisa terhadap peraturan perundang-undangan dan doktrin hukum. Berdasarkan penelitian, ditemukan bahwa mekanisme Adjudikasi yang melandasi Dispute Adjudication Board belum diatur oleh UU Arbitrase. Meskipun demikian, terdapat beberapa peraturan sektoral yang mengatur serta beberapa institusi alternatif penyelesaian sengketa menjalankan adjudikasi. Terkait dengan putusan serta merta Dispute Adjudication Board dalam FIDIC General Conditions of Contract For Construction (1st Edition, 1999) dapat disimpulkan hal tersebut merupakan kewajiban kontraktual yang ditetapkan para pihak diawal kontrak. Hal ini yang membedakannya dengan putusan serta merta yang dianut dalam Hukum Acara Perdata Indonesia di mana putusan serta merta tersebut merupakan kewenangan hakim untuk menilai dapat atau tidaknya suatu putusan dijalankan terlebih dahulu.

Disamping itu, baik dalam peraturan sektoral yang telah mengatur adjudikasi maupun peraturan institusi alternatif penyelesaian sengketa dan arbitrase yang memberikan layanan adjudikasi pada umumnya menentukan putusan adjudikasi bersifat mengikat namun tidak selalu bersifat serta merta.

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ABSTRACT

Construction contract is a dynamic contract. The complexity of the work and the involvement of many interests make a construction contract has potential disputes at every stages. Therefore, the parties to the construction contract should seek the method of dispute resolution which can ensure that the dispute does not hamper the ongoing work. The FIDIC General Conditions of Contract for Construction (1st Edition, 1999), recognized a mechanism of alternative dispute resolution by the form of Dispute Adjudication Board whose decision is binding and the parties shall give promptly effect to it regardless any objections raised by one of the parties. From that point, there are two identified issues, as the object of this research, First, the position of Dispute Adjudication Board under The Law Number 30 of 1999 Regarding Arbitration And Alternative Dispute Settlement; Second, comparison the nature of immediate binding effect decision between the the Dispute Adjudication Board's decision under The FIDIC General Conditions of Contract for Construction (1st Edition, 1999) and court's decision under the Civil Procedure Code Indonesia. The comparison also considering the implementation of adjudication's decision by several adjudication institutions in Indonesia. The type of research is legal reseach by analyzing the regulations and law doctrine related to the issues. The result of this research are, First, the underlying mechanism of Dispute Adjudication Board, has not been regulated and governed under the Arbitration Act. Nonetheless, there are some sektoral rules which has govern the adjudication procedures and has also been conducted by several institutions of alternative dispute resolution and arbitration in Indonesia as part of their services. Second, the immediate binding effect of Dispute Adjudication Board's decision can be concluded as contractual obligations for the parties as set forth at the beginning of the contract. This is what distinguishes it from the immediate binding effect of court's decision as in the Civil Procedure Code Indonesia where the decision is under the judges authority. Besides that, both in the sektoral regulations that have been set and/or institutional adjudication of alternative dispute resolution and arbitration rules, in general, determine that the adjudication decision is binding but does not necessarily have immediate binding effect