



Juridical Analysis of Business Dispute Resolution in Strategic Technology and Services Procurement Contract Disputes through the Indonesian National Arbitration Board (BANI)

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Abstract

This research examines legal issues arising from business disputes in contractual agreements, specifically focusing on the Availability Payment (AP) Service Level Agreement (SLA) between PT Palapa Ring Barat and the Ministry of Communication and Informatics of the Republic of Indonesia. Disputes emerged due to differing interpretations of tax clauses, where PT Palapa Ring Barat demanded additional VAT (10%) on AP payments, while Kemenkominfo argued the payments already included VAT. This study employs a normative juridical method, analyzing primary sources such as BANI Decision No. 45016/II/ARB-BANI/2022 and relevant legal frameworks, including Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution. Findings indicate that arbitration plays a critical role as an effective, binding dispute resolution mechanism, as demonstrated by BANI's decision, which affirmed the validity of the agreement and ordered Kemenkominfo to pay additional VAT. The case highlights the importance of clear contractual clauses, particularly regarding taxation, to prevent disputes. In comparison, other dispute resolutions, such as mediation, are evident in cases like the collaboration between RSUD Mataram and CV. Ijen Perkasa on hospital information system management. This research contributes to the field by emphasizing the need for clear, comprehensive contracts and effective dispute resolution mechanisms. The findings provide insights for businesses and policymakers to develop contracts that minimize potential conflicts while promoting adherence to legal frameworks.

1. INTRODCUTION

The innovation-driven business landscape, technology procurement contracts and strategic services have become the backbone of the success of man organizations(Zumbansen, 2023). This kind of contract is not just a business transaction, but also a long-term investment that has a significant impact on the company's performance. Through this contract, companies can gain access to cutting-edge technology, specialized expertise, and the resources necessary to improve operational efficiency, develop new products, and enter new markets (Tjipto et al., 2021; Sidik, 2024). Thus, strategic procurement contracts play a crucial role in driving business growth and maintaining the company's competitiveness in the digital era (Suryadi & Santiago, 2022).Technology and strategic services procurement contracts also have far-reaching implications for enterprise risk management. Increasingly complex and fast-changing technologies present unique challenges in terms of data security, vendor dependency, and regulatory changes (Paramita & Ditta, 2024). Through comprehensive contractual agreements, companies can better manage these risks. Clear contractual clauses regarding responsibilities, obligations, and sanctions can provide legal protection for companies in the event of disputes or breach of agreements (Knörich & Berger, 2014). In addition, a good contract can also ensure

that the vendor provides adequate technical support and makes repairs in case of problems. Thus, strategic procurement contracts are an important instrument in maintaining business continuity and minimizing potential losses (Hakim et al., 2024; Ghozali & Ispriyarso, 2021).

Cooperation agreements in business are designed to provide legal certainty and ensure the performance of the parties' obligations (Hakim et al., 2024). However, in the implementation of the cooperation agreement, disputes can still occur. This can occur due to differences in the interpretation of agreement clauses, breach of agreement, or other external factors (Rahmawati et al., 2024). One form of dispute that often arises is related to disputes over contracts for the procurement of technology or strategic services, as seen in the case of availability payment (AP) Service Level Agreement (SLA) between PT Palapa Ring Barat and the Ministry of Communication and Information of the Republic of Indonesia.

The implementation of technology and strategic service procurement contracts is often faced with various challenges that have the potential to trigger disputes. The ever-evolving complexity of technology, differences in interpretation of contract clauses, changes in technical specifications, and market uncertainty are some of the factors that can trigger disputes between the parties involved in the contract (Zumbansen, 2023). In addition, differences in work culture, time zones, and different regulations between the vendor's country of origin and the user's country can also be a source of conflict. The lack of clarity in determining the responsibilities of each party, as well as the lack of effective communication, can aggravate the situation and trigger the escalation of disputes (Tjipto et al., 2021).

Disputes in contracts for the procurement of strategic technology and services can cause significant losses to both parties. Delays in project completion, product or service quality that does not meet specifications, and additional costs incurred due to disputes can disrupt business operations and damage the company's reputation (Benali & Villesèche, 2024). In addition, the lengthy and complicated dispute resolution process through the courts can hinder the continuation of the project and create legal uncertainty. Therefore, it is important for the parties to make efforts to prevent disputes from the planning and execution stages of the contract, as well as to choose an effective and efficient dispute resolution mechanism in the event of a dispute (Sidik, 2024).

Availability Payment (AP) Service Level Agreement (SLA) is a term commonly used in commercial contracts, especially in infrastructure projects and information technology services. Availability Payment (AP) refers to a fixed payment mechanism provided to service providers or operators based on the availability of services in accordance with predetermined standards, regardless of the volume of use of the service (Rossi, 2023). A Service Level Agreement (SLA) is an integral part of a contractual agreement that details the performance standards, indicators, and responsibilities of the service provider in providing the agreed services. The Availability Payment (AP) Service Level Agreement (SLA) in this study is a payment mechanism regulated in the cooperation agreement between PT Palapa Ring Barat and the Ministry of Communication and Information of the Republic of Indonesia.

The mechanism is used in the construction and management of the Palapa Ring West Package fiber optic backbone network project, which is part of the Government Cooperation with Business Entities (PPP) scheme. The dispute arose because there was a difference in interpretation between the two parties regarding the status of Value Added Tax (VAT) in AP payments. PT Palapa Ring Barat collects AP SLA payments plus VAT of 10%, while the Ministry of Communication and Informatics argues that the AP SLA value listed in the agreement includes VAT. This phenomenon shows the potential for interpretation gaps in the preparation of agreement clauses, especially related to technical aspects such as taxation (Rifai, 2022; Knörich & Berger, 2014). This raises questions about why such disputes can occur despite carefully drafted agreements, as well as how arbitration mechanisms are able to provide fair

and binding resolutions. In addition, this case also highlights the need to evaluate the effectiveness of arbitral awards, especially in providing legal certainty and its implications for the implementation of cooperation agreements in the future.

Existing literature on dispute resolution in technology and services procurement contracts often focuses on general legal frameworks and theoretical aspects of arbitration (Tikoariaji, 2024). While studies have explored the role of arbitration institutions in various sectors, there is a dearth of in-depth research specifically analyzing the effectiveness of BANI in resolving disputes arising from strategic technology and services procurement contracts. Existing studies may lack a comprehensive examination of the unique challenges and complexities associated with this specific type of contract, such as intellectual property rights, data security, and rapid technological advancements (Paramita & Ditta, 2024). Furthermore, limited empirical research exists on the factors influencing the success or failure of dispute resolution through BANI in this context, such as the qualifications of arbitrators, the quality of legal representation, and the enforceability of arbitration awards. Based on this, this study aims to legal issues arising from business disputes in contractual agreements, specifically focusing on the Availability Payment (AP) Service Level Agreement (SLA) between PT Palapa Ring Barat and the Ministry of Communication and Informatics of the Republic of Indonesia.

2. RESEARCH METHODS

This research is a normative juridical research, which aims to analyze legal issues based on laws and regulations, legal documents, and arbitration awards related to business disputes. The main focus of the research is on the BANI Decision No. 45016/II/ARB-BANI/2022, which was resolved through a national arbitration mechanism. The research data consists of primary legal sources, such as arbitration awards and laws and regulations, including Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, as well as secondary legal sources in the form of legal literature, journal articles, and other academic references. The analysis was carried out in a descriptive and evaluative manner, highlighting the legality aspects, interpretation of contract clauses, and the legal implications of the decision on the resolution of business disputes in Indonesia. The data analysis in this study was carried out qualitatively. The data that has been collected will be compiled and grouped based on specific themes, such as the legal framework of arbitration, dispute resolution procedures at BANI, as well as factors that affect the success of dispute resolution. Furthermore, the data will be analyzed in depth using legal interpretation methods to identify strengths and weaknesses in the dispute resolution mechanism through BANI. The results of the analysis will be presented in descriptive and interpretive form, and concluded in the form of recommendations for improvement of the legal framework and arbitration practice in Indonesia.

3. RESULT AND DISCUSSION

The dispute between PT Palapa Ring Barat as the plaintiff and the Ministry of Communication and Information of the Republic of Indonesia (Kemenkominfo) as the defendant, the object of the dispute is in the implementation of the Cooperation Agreement Number 284/M.KOMINFO/HK.03.02/03/2016 and Number 002/PRB/PD-DIR/II/2016. The agreement was signed on February 29, 2016, regulating the construction and management of the West Package Palapa Ring Fiber Optic Backbone Network. At the heart of the dispute is a difference in interpretation of whether the Availability Payment (AP) payment value in the Service Level Agreement (SLA) includes Value Added Tax (VAT) or not. PT Palapa Ring Barat

collects AP SLA payments plus VAT of 10%, while the Ministry of Communication and Informatics argues that this value already includes VAT.

Regarding the above case, the Indonesian National Arbitration Board (BANI) issued Decision No. 45016/II/ARB-BANI/2022 on October 21, 2022, which became decisive in resolving the dispute between PT Palapa Ring Barat and the Ministry of Communication and Information Technology (Kemenkominfo). Amar stated that the Cooperation Agreement between the two parties is valid and legally binding. Furthermore, BANI emphasized that the *Availability Payment* (AP) payment in the *Service Level Agreement* (SLA) as stated in the agreement does not include Value Added Tax (VAT). Based on the decision, the Ministry of Communication and Information is required to pay an additional VAT of 10% to PT Palapa Ring Barat as the implementation of obligations in accordance with the agreement. This decision clarifies the legal position regarding the payment clause in the cooperation agreement, while underlining the role of arbitration as a final and binding dispute resolution mechanism (Knörich & Berger, 2014)

Business disputes in cooperation agreements related to the procurement of technology as mentioned above can also occur in the health sector, for example as happened between the Mataram Regional General Hospital (RSUD) and CV. Ijen Perkasa related to the Hospital Management Information System (SIMRS) In the agreement, both parties experienced defaults; Mataram Hospital is late in making payments for the services provided, while CV. Ijen Perkasa did not meet the amount of hardware as agreed. Dispute resolution is carried out through deliberation and the granting of reprimands, without escalation to the realm of formal law. According to Roscoe Pound, a prominent jurist, a good contractual agreement should reflect the principles of justice, legal certainty, and social effectiveness. The first principle is legal certainty. A contract must be formulated with clear, unambiguous, and unambiguous language to avoid differences in interpretation later on. The contract must also include all the important aspects of the agreement, including the obligations, rights, and consequences of breach of the agreement. Thus, the contract can provide a strong legal foundation for the parties.

The second principle is substantive justice. The content of the contract must reflect fairness for all parties involved. There should be no provision that unilaterally benefits one party and harms the other. In addition, the contract must take into account the circumstances and capacities of each party, including their bargaining position in the negotiation process. This is important to ensure that the agreement is not only legal but also morally fair.

The third principle is social effectiveness. Contracts must be designed to support the interests of society and maintain a balance between individual needs and collective needs. In the context of business, for example, contracts not only aim to benefit the parties, but also maintain economic stability and sustainable business relationships (Suryadi & Santiago, 2022). Thus, contracts are not only a legal tool but also an effective social instrument. The fourth principle is legitimate consensus. An agreement in a contract must be reached through a valid consensus without any coercion, fraud, or mistakes that could invalidate the agreement. The negotiation process must be conducted in a transparent and honest manner, ensuring that all parties understand the content and implications of the agreement. In this way, the contract can reflect an agreement that is actually agreed upon by the parties. The fifth principle is adaptability to change. Contracts must have the flexibility to accommodate changing situations, especially in the long term. Clauses such as force majeure or renegotiation need to be included to anticipate unforeseen conditions. This ensures that the contract remains relevant and enforceable despite significant changes. The last principle is enforcement and dispute resolution. The contract should include clear dispute resolution mechanisms, such as mediation, arbitration, or litigation, to ensure that conflicts can be resolved effectively if they

occur. Execution and sanctions clauses for default must also be carefully designed to provide legal certainty and prevent breaches (Rifai, 2022).

By following the above principles, a contractual agreement can serve not only as a legal tool but also as an instrument that supports the social order, meets the needs of society, and maintains healthy business relationships. Roscoe Pound's view emphasizes that contract law must evolve in line with social and economic dynamics, so that it remains relevant and effective in regulating relations between parties. To resolve business disputes, the arbitration mechanism is one of the alternatives that is expressly regulated in Indonesian law through Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. This legal basis provides a basis for the parties to choose arbitration as an out-of-court dispute resolution forum, which is final and binding. One of the main principles in arbitration is the binding force of the arbitral award, as stipulated in Article 60 of Law No. 30 of 1999. This article states that arbitral awards are final and cannot be appealed, cassated, or reviewed. Thus, the parties to the dispute are obliged to implement the content of the award in accordance with what has been decided by the arbitral tribunal. These provisions aim to provide legal certainty and efficiency in dispute resolution. In the context of business dispute cases involving *Availability Payment* (AP) in *Service Level Agreement* (SLA), this principle is the basis for the implementation of arbitral awards that affirm the validity of the cooperation agreement and the obligation of the parties to comply with the final decision that has been taken. Therefore, the binding force of the arbitral award is an important element in maintaining the integrity and continuity of the legal relationship between the parties.

However, the arbitration route is not the only way to resolve business disputes in cooperation agreements related to technology procurement. Business disputes in cooperation agreements, such as those that occurred between Mataram Hospital and CV. Ijen Perkasa regarding the procurement of Hospital Management Information System (SIMRS) technology, shows that both parties choose to resolve the problem through deliberation and giving reprimands, without escalation to the formal legal realm (Wahid, 2023). This approach reflects the efforts of both parties to maintain a professional relationship and find a more efficient solution and avoid the cost and time required in the legal process. The dispute resolution mechanism through deliberation is part of the alternative dispute resolution principle, which is recognized in Article 6 of Law No. 30 of 1999. In ADR, the parties are given the freedom to resolve conflicts peacefully and independently without the intervention of third parties. This method is often chosen in business relationships that want to maintain a long-term relationship, especially when the dispute is considered less complex or can be resolved through direct communication (Tjipto et al., 2021). However, in the legal context, settlement through deliberation has limitations, especially if one of the parties does not meet the results of the agreement. In cases like these, the absence of a formal mechanism to enforce compliance can be a constraint. Therefore, to prevent recurrence of disputes, the parties need to ensure that the clauses in the agreement include clear dispute resolution mechanisms, either through deliberation, mediation, arbitration, or litigation (Benali & Villesèche, 2024; Wahid, 2023).

The interpretation of agreement clauses is one of the important aspects in the implementation of legal relations between the parties, especially related to technical aspects such as taxation as well as the fulfillment of other payments. The clarity of clauses in the agreement, including those that regulate tax obligations such as Value Added Tax (VAT) can avoid differences in interpretation that can give rise to disputes. In detail when it comes to payments, ambiguity or ambiguity in a taxation clause is often a trigger for disputes, especially when one party considers taxes to be included in the contract value, while the other party interprets them differently. In the context of contract law, ambiguous clauses can be interpreted based on the intentions of the parties at the time the agreement was made or through

applicable legal principles. Therefore, the parties involved in the agreement should ensure that every provision in the agreement, particularly those concerning financial obligations such as taxation, is formulated in clear, unequivocal language and leaves no room for double interpretation. This aims to create legal certainty and prevent potential disputes that can be detrimental to both parties.

The legal implications of this decision include several important aspects for the parties involved and the business world in general. For PT Palapa Ring Barat, the BANI decision gives the right to receive an additional payment of 10% of the Value Added Tax (VAT) that has not been paid by the Ministry of Communication and Information Technology. If the Ministry of Communication and Informatics does not carry out its obligations, PT Palapa Ring Barat also has the right to request the execution of the decision through the court. Meanwhile, for the Ministry of Communication and Information, this decision requires the implementation of additional VAT payments in accordance with the BANI amar. In addition, the Ministry of Communication and Informatics needs to ensure the clarity of the agreement clauses in the future to avoid similar disputes that can hinder the implementation of the project. In a broader context, such as the healthcare sector related to technology procurement in hospitals, this case provides important lessons on the importance of clear, detailed, and comprehensive contract design. Ambiguity in tax clauses or other obligations can trigger disputes that are detrimental to all parties (Tjipto et al., 2021). This decision is also a relevant precedent in emphasizing the importance of clarity of taxation clauses and settlement mechanisms.

4. CONCLUSION

The conclusion of the study is that disputes related to availability payment (AP) service level agreements (SLAs) show the importance of clarity of business agreement clauses, especially in technical aspects such as taxation. Ambiguity in tax clauses, such as the inclusion or exclusion of Value Added Tax (VAT), can be a source of disputes that lead to legal disputes. BANI Decision No. 45016/II/ARB-BANI/2022 emphasizes the role of arbitration as a final and binding dispute resolution mechanism, providing legal certainty for the parties to the dispute. In addition, business disputes can also be carried out with mediation as shown in the case of Mataram Hospital and CV. Ijen Perkasa. The results of this research are expected to be a reference for business people in designing clearer, more detailed cooperation agreements, and anticipating potential conflicts in the future.

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