

The Influences Of The Indonesian Culture In The Process Of Finding The Dominant Factor In The Dispute Resolution In The Indonesian Construction Contract

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Abstract: The Increasing of infrastructure development in Indonesia, and the need of facilities and infrastructure for the resident, and also upgrading and advancing the technology, every subject need to have a proper contract, and this may result in prolonged disputes, when in to a project contract and disputes that are not handled carefully, especially when associated with a broad of territory of Indonesia that has diverse cultures, languages, and customs. Referring to Act no. 18, 1999 on Construction Services, Act no. 30, 1999 on Arbitration and Alternative Dispute Settlement, and Act No.2 of 2017 concerning Construction Services, that is Indonesia path of law for construction disputes settlement Legal culture in Indonesia, among others, consensus for consensus as one of the legal component also greatly affect the work of the legal system. Attitudes of eastern society that put forward the values of harmonization for the application of law in solving the problem. The eastern people tend to reject the application of the third party to solve the construction dispute, because the court is considered as the rifters of social relations of society. The value of harmony and tend to close the problem is the culture of the eastern society, and this is certainly very different from the way of view and attitude of western society in looking at the law. The modeling given the variables which need to be observed so that the conflicts can be minimized. The results of the questionnaires modeled with the model proved statistically to provide information that dispute resolution with the dispute board is the preferred system of society in the scope of the study area. This is to increase awareness or prevent the happening of dispute. So dispute resolution could resolve quickly and appropriately and must be handled from the beginning of contract by independent experts, trusts and people respect to it. So the project continues, but the settlement of claims and / or disputes is still being processed.

Index Terms: claim, dispute resolution, construction projects.

1 INTRODUCTION

Increased infrastructure development in Indonesia, need of facilities and infrastructure for the resident, upgrading and technological advancement, and this may result in prolonged disputes, when in to a project contract and disputes that are not handled carefully, especially when associated with a broad of territory of Indonesia that has diverse cultures, languages, and customs. In order for its development to be useful and timely and right on target and not to leave a problem, then the problems that arise must be solved by using the right method and quickly. The construction project work process is a dynamic process, as well as a complex that has a life cycle and does not happen again. Each construction project has different problems,

2. DISPUTE RESOLUTION IN INDONESIA

Indonesia has a path of law for construction disputes settlement:

a. Act no. 18, 1999 on Construction Services, Article 36 as follows:

- Paragraph (1) The settlement of construction service disputes may be made by the Court or without the Court on the basis of the voluntary option of the Parties to the dispute.

- Paragraph (2) The settlement of disputes without the court as referred to in paragraph (1) shall not apply to criminal offenses in the implementation of construction works as regulated in the Criminal Code.
- Paragraph (3) If the choice of dispute resolution attempt without the court of action can only be taken if the action is declared unsuccessful by one or the parties to the dispute
- b. Act no. 30, 1999 on Arbitration and Alternative Dispute Settlement,
 - Article 6 (1) Disputes or differences of civil opinion may be settled by the parties by an alternative dispute resolution based on good faith to the exclusion of a litigation settlement at the District Court.
- c. Act no. 2, 2017 on Construction Services (renewal).
 - Article 88 states that alternatives to dispute resolution that may be elected are Mediation, Conciliation, Arbitration, and may appoint the Dispute Board.

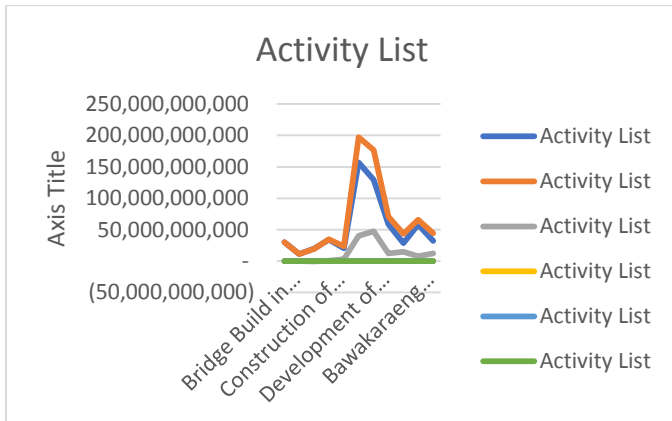
Prior to the condition, the dispute resolution stage of Law No. 18 Year 1999 was initiated through mediation and conciliation process. The results of this process issued a recommendation-which, if not agreed, will continue into the Arbitration or Litigation process. The existence of Dispute Board, as an alternative to dispute resolution stage, other than mediation and conciliation, is expected to resolve disputes during the construction period and not prolonged. This is to anticipate and provide security against the emergence of complicated problems, so as to provide a decision or recommendation and is expected to solve the problem of dispute.

3. PHYSICAL GAP

Project Data for the 2005-2012 period indicating that from 2008 to 2012 there is a gap, to changes in costs and time that

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often bring to claims and disputes, especially in 2009. The gap must be minimized or eliminated and it is necessary to make the difference not happen again in the future, as shown below:



Source: field data

Figure 1. Project vs Cost

In general, Indonesia as a constitutional state, the use of the Dispute Board in the construction, can resolve disputes in a shorter time, and most of the project can be completed within the designated period of. A small number of the dispute will lead to court settlement/litigation. The traditional legal system is no longer popular due to the lengthen process which also lead to uncertain fee, What makes the parties choose to abandon the traditional legal system, instead of arbitration and subsequently as Alternative Dispute Resolution, because the Judicial process, justice are not immediately established. Nevertheless, the Dispute Board (FIDIC version) is rarely used as dispute resolution in Indonesia. This condition, caused by the lack of understanding about the Dispute Board; and there are of cultural discrepancy between the Board of Disputes and the Indonesian culture is deliberation for consensus. According Hardjomuljadi S, 2016, that a 50 Supreme Court decisions relating to construction disputes, turned out to 10 cases directly to the District Court, and ended up in the appeal and even a Review. While 40 cases are pursuing the effort to the Arbitration Institution, it ends at the level of Review. Culture of Indonesia in question is that concerning the relationship between humans, in the form of ways of thinking, how to discussion, take consensus and act. In the case of the society proposes deliberations for consensus, emphasizing the relationships between individuals, which tend to emphasize human rights, freedom and independence. This unanimous decision can be reach by a process in which the majority and minorities approach each other by making the necessary readjustment in their respective viewpoints, or by an integration in the constructing standpoints into a new conceptual synthesis (Koentjoroningrat 1967, Koici Kawamura 2011). What is the culture of Indonesia, deliberation for consensus, according Koentjoroningrat, 1990, that The base of the institution of mutual aid was the concept that: (i) the nature, this society people do not live alone, therefore, (ii) the need to always maintain good relations with each other and (iii) as far as possible not trying to stand alone. Furthermore, in making decisions, one should be oriented to his fellow reviewing the height of cooperation with others, without undermining the quality of the individual and without avoiding his own responsibility.

4. RESEARCH GAP

This study discusses the settlement of disputes that are influenced by the cultural and Indonesian legal base with Pancasila as the official, foundational philosophical theory of the Indonesian state. This study consists of 5 variables & 22 indicators and looking for a dominant factors that affect the settlement of disputes, as well as in search for the right model. This study uses FIDIC, DRBF variables related to dispute resolution with available and applicable conditions.

Table Difference between Litigation, Arbitration and Dispute Board

	Litigation	Arbitrage	Dispute Board
Cost	The totality is expensive, because need time's a long	High due to officially trial	Initially high, but can provide advice if there is potential for problems
Time	Long time, caused by the administrative data, Members are determined, and court time is determined by the court. Formed Ad Hoc, after a dispute and work must be stopped. The trial process need long time and can appeal until the Review.	Fast, time has been determined in the guide. Members are determined by the Parties, and could elect a time for trial. Formed Ad Hoc, after a dispute but work can continue.	Fast, have been certain on the guide. Formed in standing new harmonize, from the beginning of work and still can be continued. Contracted 3 ~ 4 days per month and provide input on potential problem areas.
Uncertainty	The court may execute the decision if it is not exercised.	If the decision is not executed, be give up to the Court.	If the decision is not executed, be give up to the Court.
Relationship	Not good, cause by it was decided by others (Judge).	Not good, cause by it was decided by others (Arbiter).	Good, because it was decided by the Parties themselves, with the recommendation by Dispute Board.

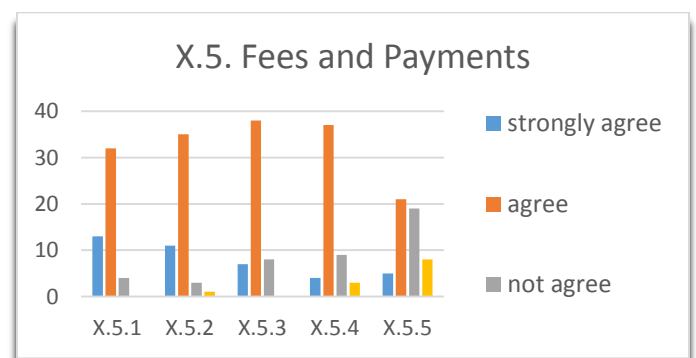
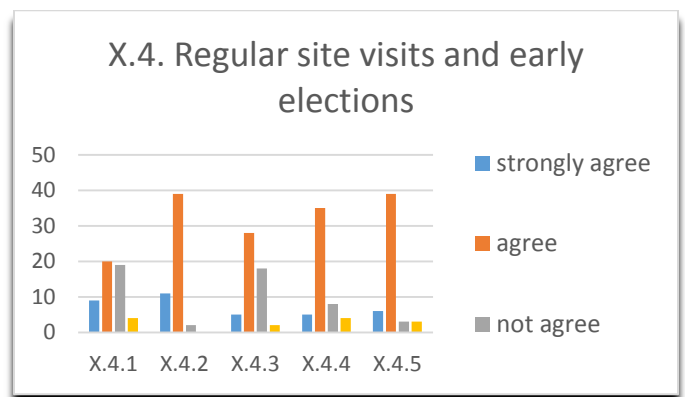
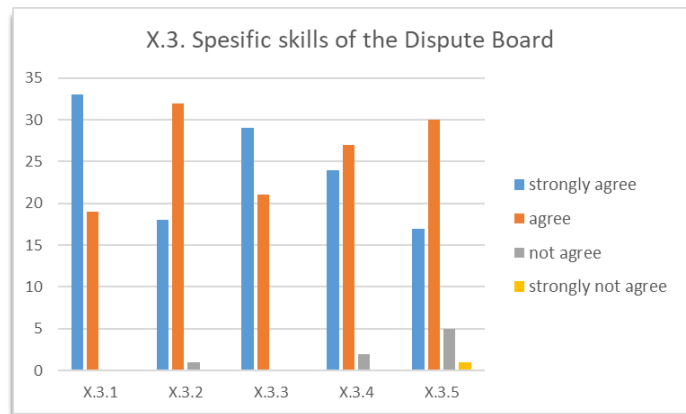
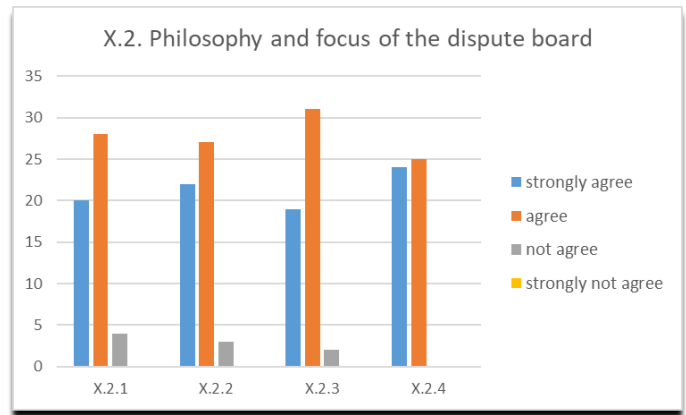
This study used SPSS 22, in preparing the construction contract, should be get more attention in order to avoid construction disputes.

Variables and indicators are:

Table Relationships between Variables and Indicators

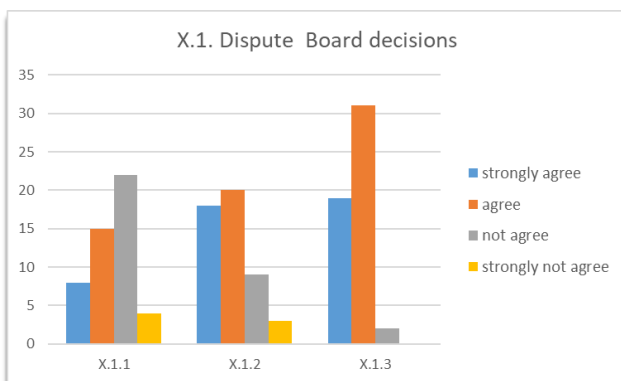
Variable	Indicator
X1. Decision of the Dispute Board	X1.1. The results are non-binding recommendations.
	X1.2. The result is a binding decision.
	X1.3. If the Dispute Board can not resolve a dispute, the dispute will be brought to the Arbitrator / Litigation.
X2. The philosophy and focus of the Dispute Board	X2.1. Dispute Board focuses primarily on preventing disputes.
	X2.2. The disputes are resolved amicable settlement.

	X2.3. Agreements from the Dispute Board are generally of negotiation and take the middle ground, rather than win-lose.
	X2.4. The Dispute Council can work well in the good faith of both parties.
X3. Special expertise of Dispute Board	X3.1. A specific qualification is required in the selection of the Dispute Board.
	X3.2. All documents relating to the project contract should be available to each member of the Dispute Board.
	X3.3. Required Members of the Dispute Board should have experience from the point of view of the owner and contractor.
	X3.4. Where appropriate, an advocate with a qualification and construction background may be one of the Dispute Board members.
	X3.5. Required members of the Dispute Board who have the training qualifications of the famous Dispute Board organizations.
X4. Regular visits and early elections	X4.1. Dispute Council needs to be appointed and working from the beginning of contracting.
	X4.2. The appointment of members of the Dispute Board shall be made by agreement of the Service Provider and User.
	X4.3. Project visits should be conducted by the Dispute Board at least once every 140 days.
	X4.4. The Dispute Council project visit should be attended by representatives of contractors and employers.
	X4.5. At the project visit, both parties are entitled to issue difficulties or disputes experienced with the other party.
Variable	Indicator
X5. Cost and payment	X5.1. All fees and disbursements of the Dispute Board are should be paid equally by both parties.
	X5.2. The cost of accommodation, travel, or documentation issued for project visit come from by both parties.
	X5.3. The service fee of the Dispute Board consists of travel expenses, tax expenses, daily fee and monthly retainer
	X5.4. Dispute Board fees need to be paid since the Dispute Board works on the project, till the completion of the project.
	X5.5. The contractor pays the entire cost of the Dispute Board in the beginning , then half of it is replaced by the employer.



5. QUESTIONNAIRE RESULTS.

Recapitulation Questionnaire of respondents to 5 variables an 11 indicators, in research are as follows:



Multiple regression SPSS 212, indicates the following:

Pearson test of Correlations SPSS 22, provides correlation between indicators and only for values greater than 0.50, then

model selection. In Model Summary^t on SPSS, there are 19 models, but the model 14 is selected, because it has the highest Adjusted R Square and R Square values, which are 0.777 and 0.833, so that the value of R is = 9,913ⁿ, and from the value of n indicates the impact indicators are: n. Predictors: (Constant), x55, x12, x34, x13, x31, x21, x32, x53, x54, x52, x43 so the equation becomes:

Model Summary^t

Model	R	R Square	Adjusted R Square	Std. Error of the Estimate	Change Statistics				
					R Square Change	F Change	df 1	df 2	Sig. F Change
1	,920 ^a	,846	,661	,747	,846	4,568	2	2	,001
2	,920 ^b	,846	,677	,729	,000	,000	1	2	,998
3	,920 ^c	,846	,691	,712	,000	,001	1	2	,972
4	,920 ^d	,846	,705	,697	,000	,024	1	2	,879
5	,919 ^e	,845	,716	,683	,000	,051	1	2	,823
6	,919 ^f	,845	,727	,670	,000	,043	1	2	,837
7	,919 ^g	,844	,737	,658	-,001	,083	1	2	,775
8	,919 ^h	,844	,745	,647	-,001	,118	1	2	,734
9	,918 ⁱ	,843	,753	,637	-,001	,126	1	2	,726
10	,918 ^j	,842	,760	,628	-,001	,188	1	2	,668
11	,917 ^k	,841	,766	,620	-,001	,233	1	2	,633
12	,916 ^l	,839	,771	,613	-,002	,360	1	3	,553
13	,914 ^m	,836	,775	,609	-,003	,505	1	3	,483
14	,913 ⁿ	,833	,777	,605	-,003	,607	1	3	,442
15	,910 ^o	,828	,777	,606	-,005	1,086	1	3	,305
16	,906 ^p	,820	,774	,610	-,008	1,481	1	3	,232
17	,901 ^q	,812	,771	,614	-,008	1,501	1	3	,229
18	,895 ^r	,802	,764	,622	-,010	2,004	1	3	,165
19	,888 ^s	,788	,754	,636	-,014	2,632	1	3	,113

$$Y = a_0 + a_{12}X_{12} + a_{13}X_{13} + a_{21}X_{21} + a_{31}X_{31} + a_{32}X_{32} + a_{34}X_{34} + a_{43}X_{43} + a_{52}X_{52} + a_{53}X_{53} + a_{54}X_{54} + a_{55}X_{55} + \epsilon$$

In Coefficients^a on SPSS, model 14, Unstandardized Coefficients, Colom B, gives the following sequential coefficient values: 0.009, 0,198- 0,313 + 0,436 + 0,229 - 0,245 -0,258 + 0,406 + 0,402 – 0,240 + 0,194 + 0,161, and standard error = 1,358

Coefficients^a

Model	Unstandardized Coefficients		Standardized Coefficients	T	Sig.	Collinearity Statistics	
	B	Std.				Beta	Toleran

	(Constant)	Error			ce	
	,009	1,358		,007	,995	
X12	,198	,083	,208	2,387	,023	,668
X13	-,313	,203	-,144	1,543	,132	,584
X21	,436	,118	,294	3,705	,001	,806
X31	,229	,220	,087	1,042	,305	,733
X32	-,245	,186	-,115	1,320	,196	,664
X34	-,258	,134	-,175	1,925	,063	,614
X43	,406	,115	,373	3,525	,001	,452
X52	,402	,128	,302	3,146	,003	,550
X53	-,240	,143	-,154	1,679	,103	,600
X54	,194	,126	,166	1,538	,134	,436
X55	,161	,096	,164	1,670	,104	,522

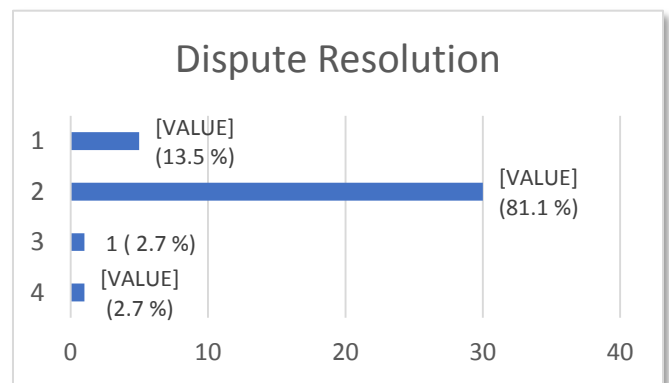
sources: statistic process SPSS 22.

so, the equation becomes:

$$Y = 0,009 + 0,198X_{12} - 0,313X_{13} + 0,436X_{21} + 0,229X_{31} - 0,245X_{32} - 0,258 X_{34} + 0,406 X_{43} + 0,402X_{52} - 0,240X_{53} + 0,194X_{54} + 0,161X_{55} + 1,358$$

In addition, respondents gave answers to the questionnaire to understand the community's understanding of the Settlement of Dispute, which confronted with two selections: the peoples answer to the users of construction services to what extent the peoples wishes on the outcome of the dispute Decisions: 1) Decided by a Third Party (Judge, Arbitrator or Dispute Adjudication Board) or 2) Decided by the Parties themselves with the recommendation of the Dispute Board Team.

The results are as follows:



6. CONCLUSION

The results of the research analysis of 5 variables and 11 indicators, concluded there are 8 indicators that give significant strengthening while 3 indicators provide weakening. Here are 8 strengthening indicators:

1. X1.2, The result is a binding decision, (19.8 %)
2. X2.1, Dispute Council focuses primarily on preventing disputes;(43.6%).
3. X3.1. A specific qualification is required in the selection of the Dispute Board; 22.9%.
4. X3.2, All documents relating to the project contract should be available to each member of the Dispute Board; -24.5%
5. X4.3, Project visits should be conducted by the Dispute Board at least once every 140 days; 40.6%.
6. X5.2, The cost of accommodation, travel, or documentation issued for project visit come from by both parties 40.2%.
7. X5.4, Dispute Board fees need to be paid since the Dispute Board works on the project, till the completion of the project 19.4 %.
8. X5.5, The contractor pays the entire cost of the Dispute Board first, then half of it is replaced by the employer; 16.1 %.

Results of indicators obstacles:

9. X1.3, If the Dispute Board can not resolve a dispute, the dispute will be brought to the Arbitrator / Litigation; of - 31.3%.
10. X3.4, Where appropriate, an advocate with a qualification and construction background may be one of the Dispute Board members; of -25.8%.
11. X5.3, The service fee of the Dispute Board consists of travel expenses, tax expenses, daily fee and monthly retainer; of -24.0%.

DISCUSSION PAPER No.308, Institute of Developing Economies.

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7. REKOMENDATION

Public understanding of the Settlement of Disputes, in the election: 1) Settlement of disputes that obtain recommendation from the Dispute Board Team but decided by the Parties, 81.1%, and 2) Dispute settlement decided by third parties (Judge, Arbitrator or Dispute Adjudication Board), get the value of 13.5%, and the others answers are not in accordance with the questionnaire. Dispute Board is indicated that it is good and useful complex activities in projects, large scale, and its implementation in multiyear.

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