

**ALTERNATIVE DISPUTE RESOLUTION IN
CONSTRUCTION THROUGH ARBITRATION (BADAPSKI:
INDONESIAN CONSTRUCTION ARBITRATION AND
ALTERNATIVE DISPUTE RESOLUTION BOARD) IN THE
PROJECT OF PLTU 3 BANGKA BELITUNG (2X30 MW)**

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Abstract

Construction project The Steam Power Plant (PLTU) 3 Bangka Belitung (2x30 MW) is facing various technical and administrative challenges that have led to disputes between the project owner and the contractor. Dispute resolution in construction projects becomes crucial to maintain project continuity and prevent delays that could potentially harm various parties. BADAPSKI (Indonesian Arbitration and Alternative Dispute Resolution Board for Construction) as a specialized arbitration institution in the construction sector offers quick, efficient, and industry-specific dispute resolution solutions. This article discusses the background of the dispute in the PLTU 3 Bangka Belitung project, the resolution mechanism through BADAPSKI, and the advantages of arbitration as an alternative compared to litigation. Through a qualitative descriptive method, this research analyzes the arbitration process conducted, the obstacles faced, and the final outcome of the dispute resolution. The discussion results show that arbitration through BADAPSKI not only accelerates the resolution process but also maintains professional relationships between the disputing parties. This conclusion emphasizes the importance of BADAPSKI's role in supporting dispute resolution in Indonesia's construction sector, particularly in large-scale projects such as coal-fired power plants (PLTU).

Keywords: Construction Dispute, PLTU 3 Babel, Arbitration, BADAPSKI, Dispute Resolution.

INTRODUCTION

The PLTU 3 Bangka Belitung Coal-Fired Power Plant Project with a capacity of 2x30 MW is a strategic initiative aimed at meeting the electricity needs in the Bangka Belitung region, its located at Air Anyir Village, Merawang District, Bangka Regency, Bangka Belitung Island. This project plays a crucial role in enhancing the availability of stable and sustainable energy for local communities and the industrial sector. However, like other large-scale construction projects, its implementation is not without challenges, including the potential for disputes between the project owner and the contractor.

Construction disputes are a common phenomenon in large infrastructure projects, where differences in contract interpretation, design changes, delays, as well as technical and administrative issues act as key triggers. If not properly addressed, such disputes can lead to project delays, increased costs, and even project termination. Therefore, an effective and efficient dispute resolution mechanism is essential to ensure project continuity and to avoid more significant negative impacts.

One of the most widely used mechanisms for resolving construction disputes in Indonesia is arbitration. BADAPSKI (Indonesian Construction Arbitration and Alternative Dispute Resolution Board) serves as an arbitration body specifically dedicated to handling disputes in the construction sector. BADAPSKI offers a fast, professional, and solution-oriented approach, making the dispute resolution process more effective compared to litigation in court.

This article aims to analyze dispute resolution in the PLTU 3 Bangka Belitung project through arbitration at BADAPSKI. The primary focus is to understand the arbitration process applied, the factors leading to disputes, and to evaluate the outcomes and impacts of the dispute resolution on project implementation. Through this analysis, the article is expected to provide valuable insights for construction industry stakeholders regarding the importance of selecting the right dispute resolution mechanism to ensure the smooth execution and success of construction projects.

Construction Disputes

A construction dispute refers to disagreements arising in connection with the execution of construction service contracts between parties bound by a construction contract, which is internationally known as a "construction dispute." In this context, construction disputes fall under civil law jurisdiction, as stipulated in Article 5 of Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, which grants authority to resolve such disputes through arbitration or other alternative dispute resolution (ADR) mechanisms. (Nazarkhan Yasin, "Understanding Construction Claims and Dispute Resolution," 2004).

Construction disputes may arise from unresolved claims, such as delays in payment, project completion, differences in contract document interpretation, or the technical and managerial incompetence of the parties involved. Additionally, disputes can occur due to the negligence of service users in project management or lack of financial support. In general, construction disputes emerge from breaches of contract or defaults by one of the parties.

Dispute resolution is a crucial aspect of construction projects, as it significantly impacts project efficiency. Large-scale construction projects in Indonesia often involve multiple parties, including service users, contractors, subcontractors, and consultants. In such situations, the potential for disputes is almost unavoidable, primarily due to inefficiencies, work disruptions, additional work, or differing interpretations of contract terms.

Timely dispute resolution helps ensure project continuity according to schedule, minimizes the risk of additional costs, and guarantees the quality of work outcomes. Disputes arising during project implementation not only harm both parties but can also severely impact the service users. If the contractor wins the litigation process, the service

user bears significant legal costs, which, in the case of state-owned construction companies, may be considered a state loss. Conversely, if the service user wins, the contractor may escalate the case to the next level of resolution, potentially taking the matter to court.

Litigation through the district court often fails to satisfy both parties, as court rulings are general in nature, with judges who may lack expertise in construction matters. Prolonged litigation, involving appeals, cassation, or judicial reviews at the Supreme Court, can lead to unpredictable and inefficient outcomes.

Another common barrier is the lack of understanding or differences in interpretation of legal regulations. To address this, a dispute resolution mechanism that involves all stakeholders from the outset of the project is necessary to promote dispute avoidance.

Overall, efficient dispute resolution plays a vital role in the success and efficiency of construction projects in Indonesia. By expediting resolution, reducing costs, and maintaining positive working relationships between parties, projects can be completed on time and within budget. The implementation of improved dispute resolution mechanisms, supported by education for construction industry players, will significantly enhance project quality and efficiency.

Construction Dispute Resolution Methods

Construction dispute resolution typically involves several approaches, either through non-litigation (out-of-court) or litigation (court) processes. The following are commonly used methods:

1. Negotiation

Description: The disputing parties engage in direct discussions to reach an agreement without involving a third party.

Advantages: Fast, low-cost, flexible, and preserves cooperative relationships.

2. Mediation

Description: A neutral third party (mediator) assists the parties in finding a mutually agreed solution.

Key Feature: The mediator does not make decisions but facilitates communication.

Advantages: Confidential, quick process, and promotes win-win solutions.

3. Conciliation

Description: A conciliator, acting as a neutral party, proposes solutions to the disputing parties.

Key Feature: The conciliator actively offers opinions and suggestions, but the final decision rests with the parties.

Advantages: Saves time and costs while maintaining positive relationships.

4. Arbitration

Description: Disputes are resolved by an arbitrator or arbitration panel, whose decisions are final and binding.

Advantages: Faster than court proceedings, decisions are final, and arbitrators possess technical expertise in construction.

5. Adjudication

Description: An adjudicator provides a temporary binding decision until the dispute is permanently resolved.

Advantages: Quick process and offers interim solutions to ensure project continuity.

6. Expert Determination

Description: An independent expert is engaged to provide a technical assessment on specific aspects of the project.

Advantages: Efficient in resolving complex technical issues.

7. Litigation (Court Proceedings)

Description: Disputes are resolved through the judicial system.

Advantages: Provides legal certainty with strong enforcement powers.

Disadvantages: Lengthy process, high costs, and potential damage to cooperative relationships.

8. Dispute Board

Description: A team established at the start of the project that provides decisions or recommendations during project implementation.

Advantages: Proactive, prevents dispute escalation, and ensures project continuity.

BADAPSKI (Indonesian Construction Arbitration and Alternative Dispute Resolution Board)

With the rapid growth of construction projects in Indonesia, the need for an efficient and specialized dispute resolution forum in this sector has become increasingly urgent. BADAPSKI was established to provide more efficient and productive arbitration procedures for disputing parties, involving arbitrators with specific expertise in the field of construction.

BADAPSKI (Indonesian Construction Arbitration and Alternative Dispute Resolution Board) is a specialized arbitration body founded to handle construction disputes in Indonesia. The institution was established on August 19, 2014, by the Indonesian Chamber of Commerce and Industry (KADIN) and began issuing arbitration rules in 2015.

One of BADAPSKI's key advantages is its specialization (*lex specialis*) in the construction sector, distinguishing it from general arbitration bodies. Additionally, BADAPSKI offers more competitive fees and flexible payment methods, particularly for government institutions that rely on state or regional budgets (APBN or APBD).

The presence of BADAPSKI is expected to enable more efficient, fair, and industry-specific construction dispute resolution in Indonesia, aligning with the particular needs of the construction sector.

RESEARCH METODOLOGY

In this research, the author employs both normative juridical and empirical juridical approaches as follows:

1) Normative Juridical Approach

The normative juridical approach focuses on regulations and principles that govern construction dispute resolution. This involves analyzing laws, statutory regulations, contracts, and legal literature related to arbitration and alternative dispute resolution (ADR) in the construction sector. The goal is to understand the legal framework that underpins dispute resolution mechanisms and assess their application in construction projects.

2) Empirical Juridical Approach

The empirical juridical approach complements the normative analysis by examining how legal provisions are applied in real-life construction disputes. This involves collecting data and informations. The aim is to evaluate the effectiveness of legal norms in practice and identify challenges or gaps in the implementation of arbitration or ADR mechanisms.

By combining these two approaches, the research provides a comprehensive analysis that not only explores the theoretical and regulatory aspects of construction dispute resolution but also investigates how these regulations function in practice within the construction industry

RESULTS & DISCUSSION

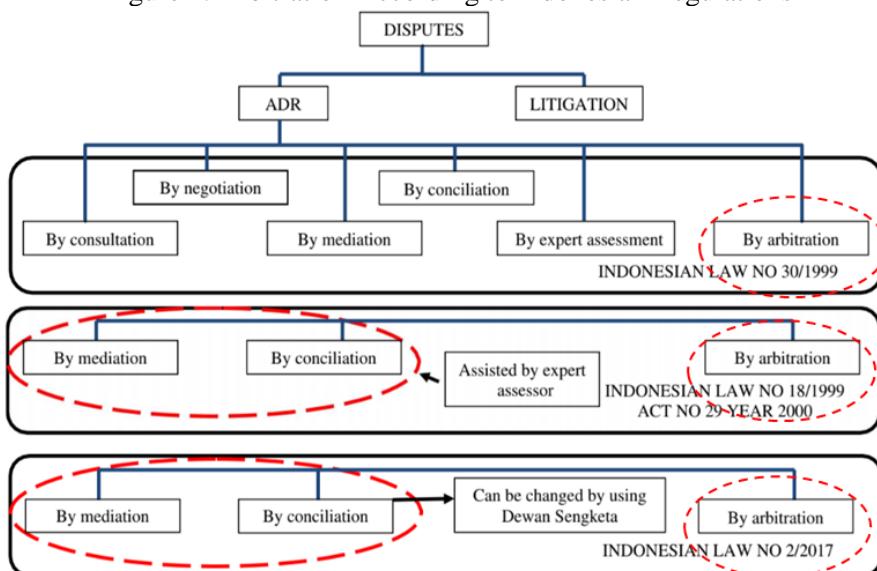
Construction Dispute Resolution in Indonesia is governed by three laws: Law No. 2 of 2017 and Law No. 18 of 1999 concerning Construction Services, as well as Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. The determination of applicable law in construction disputes is guided by Law No. 30/1999, which overrides Law No. 18/1999 based on the principle of *lex posterior derogate legi priori* (newer law

supersedes older law). However, since Law No. 18/1999 is specific to construction, it remains relevant under the principle of *lex specialis derogate legi generalis* (special law supersedes general law), and this law is still applicable in the construction sector. The newer Law No. 2/2017 fulfills both principles and therefore takes precedence in construction dispute resolution.

In practice, the application of law in construction dispute resolution still largely refers to Law No. 18/1999, as contracts were made prior to the enactment of Law No. 2/2017. Dispute resolution following *Pactum de compromittendo* (agreement to compromise) in contracts must be respected. If the dispute resolution method is not specified in the contract, it is based on references to Law No. 18/1999 and Law No. 30/1999, which include stages such as: Mediation, Conciliation, and Expert Opinions. Meanwhile, Law No. 2/2017 regulates stages such as: Mediation, Conciliation (which can be replaced by a Dispute Board), and Arbitration (the advantage of arbitration is that its decision is final and binding).

The difference in the dispute resolution outcomes between Law No. 18/1999 and Law No. 2/2017 lies in the mechanism and final outcomes, as shown in Figure 1 below.

Figure 1. Arbitration According to Indonesian Regulations



Arbitration in construction services is governed by several complementary laws, which are:

1) Law No. 2 of 2017 concerning Construction Services

Relevant Points on Arbitration:

- Article 88, Paragraph (1): Disputes in the implementation of construction work must be resolved step by step through deliberation for consensus.
- Article 88, Paragraph (2): If deliberation fails, disputes may be resolved through mediation, conciliation, arbitration, or court.
- Article 91: If a construction dispute is resolved through arbitration, the decision is final and binding.

2) Law No. 18 of 1999 concerning Construction Services

Relevant Points on Arbitration:

- Article 36, Paragraph (1): In the event of a dispute, resolution is done through deliberation.
- Article 36, Paragraph (2): If deliberation fails, resolution is done through arbitration or court.
- Article 37: Dispute resolution through arbitration must comply with applicable provisions.

3) Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution

Relevant Points on Arbitration:

- Article 1, Paragraph (1): Arbitration is a method of resolving civil disputes outside of the general court system based on an arbitration agreement made by the parties.
- Article 3: The district court does not have jurisdiction to adjudicate disputes between parties that are bound by an arbitration agreement.
- Article 11: An arbitration award is final and binding once it is issued by the arbitrator or arbitration panel.
- Article 60: An arbitration award can be submitted for enforcement to the district court, which is obligated to execute the decision.

Relationship Between Laws:

- Law No. 2 of 2017 and Law No. 18 of 1999 are *lex specialis* (special laws) for the construction services sector, while Law No. 30 of 1999 provides a general legal framework related to arbitration and alternative dispute resolution.
- In practice, construction disputes are often resolved through arbitration due to its faster process and the involvement of arbitrators with technical expertise in the field.

Thus, the resolution of construction disputes through arbitration is strongly supported by legal foundations and is regulated in an integrated manner across these three laws.

Dispute Resolution Mechanism Through BADAPSKI

The dispute resolution mechanism through BADAPSKI (Indonesian Construction Arbitration and Alternative Dispute Resolution Board) involves several structured stages to ensure an efficient, fair process that adheres to applicable legal principles. The following are the general stages in the dispute resolution mechanism through BADAPSKI:

a) Arbitration Agreement

- Before a dispute arises, the parties typically agree to an arbitration clause in their construction contract. This clause states that in the event of a dispute, the resolution will be conducted through BADAPSKI or an appointed arbitration institution.
- Once the arbitration clause is in place, the parties are bound to resolve the dispute through arbitration at BADAPSKI.

b) Submission of Arbitration Request

- The party seeking dispute resolution (Claimant) submits an arbitration request to BADAPSKI by filling out the application form and paying the initial administrative fee.
- The request must include the identities of the parties, the object of the dispute, and the claims or demands made.

c) Appointment of Arbitrator

- Upon receipt of the request, BADAPSKI will appoint an arbitrator or arbitration panel consisting of one or more arbitrators, depending on the agreement between the parties or the provisions in the contract.
- The parties may agree on a joint arbitrator, or BADAPSKI will select an arbitrator with the required expertise, especially in the field of construction.

d) Trial Process

- The arbitration trial can take place through face-to-face meetings or other media, such as teleconferencing, if necessary.
- During the trial, both parties will present arguments, evidence, and witnesses supporting their claims.
- Arbitration is more flexible than formal court proceedings, allowing the parties to schedule hearings that suit their needs.

e) Mediation or Conciliation (Optional)

- Before or during the arbitration process, the parties may opt to attempt dispute resolution through mediation or conciliation, guided by a mediator or conciliator from BADAPSKI.

- If mediation or conciliation is successful, the dispute can be resolved without proceeding to arbitration.

f) Arbitration Ruling

- After the trial process is concluded, the arbitration panel will issue a decision that is final and binding.
- This arbitration award has the same legal force as a court decision and cannot be contested, except in specific circumstances, such as a serious procedural error or fraud.

g) Enforcement of the Ruling

- Once the award is issued, if one party does not voluntarily comply, the winning party can apply for enforcement of the award to the local district court.
- The court will enforce the arbitration award, although the losing party can file for a review if a valid legal reason exists.

h) Other Alternative Dispute Resolution Methods

- In addition to arbitration, BADAPSKI also offers other alternative dispute resolution methods, such as negotiation, mediation, conciliation, or expert determination, which can be used based on the parties' agreement.
- These processes can occur before or during the arbitration procedure, helping to achieve a faster resolution and reduce tension between the involved parties.

Advantages of the BADAPSKI Mechanism

- Efficient: The arbitration process is generally faster than court proceedings.
- Flexible: Dispute resolution through BADAPSKI can be tailored to meet the needs and schedules of the parties.
- Specialized Expertise: The appointed arbitrators typically have specialized knowledge in the construction field, which is highly relevant to the disputes at hand.
- Preserves Relationships: One of the primary goals of BADAPSKI is to maintain good relations between the parties, which is crucial in the construction industry, where long-term collaboration is often involved.

Overall, the dispute resolution mechanism through BADAPSKI provides an efficient solution, prioritizes fair resolution, and preserves professional relationships between the disputing parties.

Dispute Resolution in PLTU 3 Bangka Belitung (2x30 MW) Through BADAPSKI (Indonesian Construction Arbitration and Alternative Dispute Resolution Board)

1. Brief Description of the Construction Dispute Resolution Agreement Through BADAPSKI

- PLN and the Contractor (Joint Operation) encountered a dispute at the end of the contract completion, and both parties agreed to resolve the contractual issues through arbitration at BADAPSKI in 2018.
- The agreement between both parties for dispute resolution via arbitration was formalized in an Acta Compromise, agreeing to accept whatever decision would be made by BADAPSKI.
- The arbitration award issued by the BADAPSKI panel has been communicated to both parties and registered with the District Court under Registration No. 01/Pdt.Arbitrase/2018/PN.Sgl.
- PLN requested the contractor to comply with one of the obligations as per the BADAPSKI award, but the contractor did not perform it within the time limit set by BADAPSKI through the District Court.

2. Dispute Items and BADAPSKI Ruling

1) Imposition of Liquidated Damages (LD)

Brief Explanation:

During the construction of PLTU 3 Babel, two extensions of time occurred, as stated in:

- Amendment No. 2/2012, dated February 27, 2012 (EOT-1)
- Amendment No. 7/2014, dated December 9, 2014 (EOT-2)

The COD target achievement table based on the last amendment is as follows:

| DATA | TARGET COD (AMD No.7/2014) | AKTUAL COD | KETERANGAN |
|---------|----------------------------|-----------------|------------|
| UNIT #1 | 28 JUNI 2013 | 13 OKTOBER 2015 | TERLAMBAT |
| UNIT #2 | 27 AGUSTUS 2013 | 21 JUNI 2013 | |

Contractor's Opinion:

The contractor claims that there were several factors beyond their control, leading to the two extensions of time. Moreover, PLN never issued a bank guarantee claim until now, which legally implies that PLN accepted the work after EOT-2 and agreed to the extension.

PLN's Opinion:

According to the contract's Clause 2.46.2 (Completion of Key Dates Obligations), Book I Part 3 Clause 3.4.1 (Liquidated Damages), and CDA No. COMM-011, the contractor should be subject to Liquidated Damages (LD) up to 10% of the Final Contract Price.

BADAPSKI's Ruling:

According to clause 3.4.1, LD is a contractual clause that must be adhered to according to the principle of *pacta sunt servanda* (agreements must be honored). Since Unit #1 was delayed for 777 days (exceeding the maximum delay time), the contract stipulates a 10% penalty from the unit price, totaling IDR 302,105,785.375 for Unit #1.

2) Commercial Impact of Contract Interpretation Differences Regarding Detailed Design Drawings (Deviation)

Brief Explanation:

- Some items had discrepancies in interpretation, such as:
- Jetty Structure
- Debris Filter
- Tank for Raw Water and Demin Tank
- Reverse Osmosis (RO) Water System (Demin Water)
- Fire Fighting System Protection
- Chlorination Plant

Contractor's Opinion:

- The specifications and design for the Jetty Structure were agreed upon and listed in the Approval Drawing.
- The construction of the Debris Filter adhered to the Approval Drawing.
- Installation of Raw Water and Demin Water Tanks complied with the Approved Drawing.
- RO installation met the Approval Drawing specifications.
- Fire Fighting installation followed the pre-design meeting agreements.
- The contractor installed according to the Approved Design Drawing, and any design changes were instructed by PLN, making responsibility for the old system no longer its Contractor.

PLN's View:

Differences in size, capacity, or dimensions and the absence of equipment are considered deviations from the contract, and the commercial impacts need to be assessed with the contractor.

BADAPSKI's Ruling:

Based on the evidence presented, the panel decided that the claims of deviation made by PLN and the contractor were not justified for the panel to grant them.

3) Contractor's Claims

Brief Explanation:

The contractor submitted several claims, including:

- Unavailability of Access Road
- Re-arrangement of Road Inside Power Plant
- Cost of Money Compensation Due to Progress Payment Delay
- Overhead Costs for Extension of Time-1
- Claims During Construction Process
- Claims During Commissioning Process (Operator)
- Unreliable Grid System in Bangka Island (Equipment Damaged)
- Variation Order (VO) Due to Boiler Unit #1 Chemical Cleaning
- Escalation Price Due to Delay in Effective Contract and Unavailability of Access Road
- Delay in Coal Supply from PLN (Overhead Costs)
- Unreliable Grid System at Bangka Island (Overhead Costs)
- Chemical Cleaning Delay
- Claim of Lost Opportunity – Effect of EOT 1 and EOT #2
- Lubrication Replacement of Unit #2
- Exciter Bearing Replacement
- Shortage of Demin Water
- Boiler Feed Water Pump
- FAC Payment of Unit #2 Overdue
- Boiler Refractory Repair
- Equipment Replacement & Installation Fee
- Maintenance During Warranty

BADAPSKI's Ruling:

Based on the evidence received, the panel decided to grant part of the contractor's claims.

4) Disagreement Regarding the Validity Period of Performance Security

Brief Explanation:

According to the Contract Discussion Agreement (CDA) Clause 2.9 Performance Security Paragraph 5: "The performance security shall remain valid and in full effect for a period of sixty (60) days after completion of the contract."

Contractor's Opinion:

Referring to Clause 2.62 (Final Acceptance Certificate),

"The Owner will issue a Final Acceptance Certificate within thirty (30) days after receiving an application thereof, which the Contractor is entitled to make. If, due to reasons beyond the Contractor's control, the Acceptance Certificate of the respective part of the Work is not issued or is delayed, it shall be deemed issued thirteen (13) months after the Taking Over Certificate." Therefore, Unit #1 should receive the "deemed FAC."

PLN's Opinion:

Referring to CDA Clause 2.9, Performance Security must remain valid for 60 days after completion of the contract, which is defined by the issuance of the Last FAC.

The Last FAC cannot be issued due to:

- Delays leading to the contractor being subject to Liquidated Damages (dispute process).
- The contractor still having outstanding obligations (deviations).

- The contractor filing claims after the warranty period has expired.
- The contractor not requesting the issuance of the Last FAC from PLN.

BADAPSKI's Ruling:

The contractor does not need to extend the bank guarantee to fulfill obligations as per the BADAPSKI ruling.

Summary of Dispute Items and BADAPSKI Ruling as follows:

| NO | ITEM SENGKETA | NILAI SENGKETA | HASIL PUTUSAN | | |
|----|---|--|-------------------|----------------------|---|
| | | | KEWAJIBAN PLN | KEWAJIBAN KONTRAKTOR | STATEMEN BADAPSKI |
| 1 | Pengenaan <i>Liquidated Damages (LD)</i> | Rp. 73.883.176.142,40 (10% Final Contract Price) | - | Rp. 30.210.578.537 | Sesuai clause 3.4.1 LD adalah klausu kontrak yang harus diperlakukan sesuai prinsip pasca sunt servanda (perjanjian yang sudah ditandatangani harus dipatuhi), karena Unit#1 mengalami keterlambatan 777 hari (melebihi batas waktu keterlambatan maksimal), maka sesuai kontrak adalah 10 % dari harga Unit yang mengalami keterlambatan atau Unit #1 sebesar Rp. 30.210.578 |
| 2 | Pengenaan dampak Komersial Akibat Perbedaan Interpretasi Kontrak terhadap <i>Detail Design Drawing</i> (Devisasi) | PLN : Rp. 8.028.661.514 Kontraktor : Rp. 1.513.398.528 | Rp. 0 | Rp. 0 | Sesuai dengan bukti yang diterima Majelis, diputuskan bahwa dalil-dalil pemohon dan termohon mengenai tuntutan deviasi tidak beralasan bagi majelis untuk mengabulkannya. |
| 3 | Claim Kontraktor | Rp. 101.677.576.087 | Rp. 8.679.757.625 | - | Sesuai dengan bukti yang diterima Majelis, diputuskan bahwa Majelis dapat mengabulkan klaim yang disampaikan termohon sebagian. |
| 4 | Perbedaan Interpretasi terhadap Masa Validitas <i>Performance Security</i> | PLN : Diperpanjang s.d 60 hari setelah Kontrak Selesai (<i>Warranty Period</i>) Kontraktor : Nilai Jaminan Pelaksanaan dikembalikan kepada Kontraktor | - | - | Kontraktor tidak perlu memperpanjang bank garansi untuk melakukan kewajibannya terhadap putusan BADAPSKI |

CONCLUSION

1. The dispute resolution mechanism through BADAPSKI provides an efficient solution, prioritizes fair resolution, and maintains professional relationships between disputing parties in accordance with applicable legal principles.
2. In the case study of the construction dispute resolution of PLTU 3 Bangka Belitung (2x30 MW), choosing BADAPSKI as the resolution method successfully resolved disputes related to cost and time claims. This demonstrates BADAPSKI's advantage in specializing in construction disputes, offering flexibility in dispute resolution, and reducing costs and time compared to litigation. By utilizing this institution, disputes can be resolved more efficiently without disrupting project continuity, which is crucial in the construction industry often driven by tight deadlines

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