Addendum to Contracts Legal Perspective Agreements in Indonesia

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Abstract. This research takes the theme of construction services which are now increasingly in demand by entrepreneurs in Indonesia. Construction services are more likely to buy. Of course, it is necessary to carry out various legal provisions when making a contract. This chartering contract certainly involves many service users and service providers by taking into account the basic principles in the contract. This research employs a normative legal method in conjunction with a literature review. The findings of this research, the parties who wish to make amendments/addendums to the chartering contract must pay attention to the nature of the contract as regulated in the laws and regulations in Indonesia.

Keywords: Contract addendum; chartering contract; contract basis

1 Introduction

Today, construction services are a business field that is in great demand by public members at various levels, as can be seen from the increasing number of companies engaged in the construction service business.[1] Related to the importance of construction services, the parties involved in the construction business, namely the contracting service, must pay attention to various legal provisions when making a contract.

A contract made in a business relationship has a nature that is no different from an agreement, namely a bond that has legal consequences. The legal consequence of a valid agreement (contract) is enacting the agreement as law for those who make it (pacta sunt servanda). The parties to the agreement may not leave the agreement unilaterally unless the parties have agreed upon it or if it is based on reasons regulated by law or matters agreed in the agreement. An agreement is binding for things that are expressly stated in it and binding for everything required by etiquette, custom, or law according to the nature of the agreement (contract).[2]

For this reason, every agreement (contract) that is agreed upon must be carried out in good faith and fair to all parties.[3] An agreement is declared valid if it meets the following criteria: a) there is an agreement from the parties agreeing, b) the parties must be competent, c) the agreement agrees on something, and d) the cause is lawful.

The agreement (contract) does not cause a dispute if carried out based on the agreements contained therein. However, sometimes differences in interpretation of the agreement can lead to disputes between the parties bound in it that interfere with its implementation. An agreement

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(contract) must contain several elements of the agreement, namely buying and selling transactions, namely: a. Essential elements, as the main elements that must agree, such as the identity of the parties that must be included in an agreement, including buying and selling agreements made electronically; b. the natural element is elements that are considered to agree even if they are not explicitly stated in the agreement, such as each party's good faith; c. The accedentialia element is an addendum to the agreement given by the parties, such as a sentence that reads, "goods that have been purchased." cannot be returned.[4]

An agreement (contract) must also be considered There are various types of principles that can be used, including: a. The principle of consent, or agreement, in which an agreement is assumed to exist immediately after it is reached there is an agreement; b. The principle of trust must be instilled between the parties agreeing: c. The principle of binding force, meaning that the parties to the agreement are bound by all the contents of the agreement and the applicable propriety; d. The principle of legal equality is that everyone, in this case the parties, has the same position in the law; e. The principle of balance, which states that each party's rights and obligations under the agreement must be balanced; f. The moral principle, which states that the parties who make and carry out the agreement must have a good moral attitude; g. The principle of legal certainty, which states that the agreement made by the parties applies as law to the makers; h. The principle of decency, which states that the contents of the agreement must not only be under the law;, as Article 1339 of the Civil Code, which states that an agreement is binding not only on things that are expressly stated therein, but also on everything that is required by etiquette, custom, or law according to the nature of the agreement; i. The principle of habit, which states that the agreement must follow the usual practice, is based on the contents of Article 1347 of the Civil Code, which states that things traditionally agreed upon are considered secret. This is a representation of the agreement's element of nature.

Chartering contracts involving service users and service providers must pay attention to the basic principles in such contracts. Likewise, if the parties wish to amend/addendum to the chartering contract, it cannot be separated from the nature of the contract as regulated in Indonesian laws and regulations.

2 Research Methods

This research is normative legal research, with a literature approach that is adapted to the themes discussed in this study.[5] the data used in this study uses secondary data which is analyzed in proportion to produce more up-to-date research.

3 Results and Discussion

3.1 Chartering Contract Amendment or Addendum Procedure

To find out the procedures or stages of the Chartering Contract Amendment and Addendum, it will first be explained about the chartering contract. The chartering contract is categorized into the type of Lumpsum contract. In Presidential Decree 54 of 2010, Article 51 paragraph (1), a Lumpsum Contract is a contract for the procurement of goods/services to complete all work within a specific time limit as stipulated in the contract.

The procedures or stages in the Contract Contracting as contained in the Minister of Public Works Regulation No. 43/PRT/M/2007 Concerning Construction Services Procurement

Standards and Guidelines, namely containing a hierarchical sequence of parts of the contract document which aims in the event of a conflict of provisions between part one and the other part. Otherwise, the provisions that apply are based on a higher order than the order that has been set. The hierarchical order of contract documents is as follows: a. Letter of agreement and amendment/addendum to the contract; b. Specific terms of the contract; c. General terms of the contract; d. Work order letter; e. Minutes of Clarification/Negotiations; f. Auction Document Addendum; g. Technical specifications; h. General Specifications; i. Picture; j. Minutes of Auction Explanation Meeting (Aanwijzing); k. Bill of Quantity / Budget Details.

The contract amendment procedure is carried out as follows: a. The service user gives a written order to the service provider to implement a contract change, or the service provider proposes a contract change; b. The service provider must respond to change order from the service user and propose a price change (if any) within 7 (seven) days at the latest; c. Negotiations are made on the proposed price change, and a report on the negotiation results is made; d. Based on the minutes of negotiations, amendments are made to the contract.

3.2 The pattern of Dispute Settlement Amendment or Addendum to Contract Contracts

Contracts made are not always enforceable as they should be. The cause is usually on the second party (the chartering service provider), namely: a. The contracting work is not carried out as agreed; b. Within a certain period, the chartering work has not been continued; c. Directly or indirectly intentionally delaying the completion of the contracting work; d. Provide false information that is detrimental or can harm the first party in connection with chartering work.

Therefore, in the chartering contract, it is necessary to include a clause regarding dispute resolution if one of the parties does not fulfill the agreement or is in default. The term dispute resolution comes from the English translation, namely dispute resolution. According to Richard L. Abel, a dispute is a public statement about claims that are not aligned. The pattern of conflict resolution is a method or framework for resolving a disagreement between two parties. The pattern of dispute settlement can be split into two categories: court-based and non-court-based alternative dispute resolution.

Dispute resolution Litigation (conflict resolution through the courts) is a pattern of dispute settlement that happens between disputing parties through the courts. Occasionally, a disagreement arises in the contract for contract settlement is carried out through a civil court mechanism to obtain final and binding results. If the parties want the contractual dispute to be resolved in a relatively short time so that it will save costs, the out-of-court settlement pattern is the best solution. This Dispute Resolution Pattern is known as Alternative Dispute Resolution.

Alternative Dispute Resolution, according to Article 1 point 10 of A dispute resolution institution or difference of opinion through procedures agreed upon by the parties, namely out-of-court settlement using consultation, negotiation, mediation, conciliation, or expert judgment, is defined by Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. By setting aside litigation in the District Court, the parties can address their disagreements or civil issues through alternative dispute resolution based on good faith. Alternative dispute resolution settles disagreements or differences of opinion through a direct meeting between the parties within 14 (fourteen) days. In a formal agreement, the findings are disclosed.

Besides, it is also known that there are two patterns of dispute resolution, namely: a. The binding adjudicative procedure is a procedure in dispute resolution where the judge's decision in a case binds the parties. This form of dispute resolution can be divided into four types: litigation, arbitration, mediation-arbitration, and private judges; b. The non-binding adjudicative procedure is a process in dispute resolution where the judge's decision or the person appointed

in deciding the case is not binding on the parties. With the decision, the parties can agree or reject the contents of the decision. Dispute resolution is divided into six types: conciliation, mediation, mini-trial, summary Jury Trial, Neutral Expert Fact-Finding, and Early Neutral Evaluation. Out-of-court settlement patterns appropriate to contract disputes are mediation, arbitration, and conciliation.

Steven Rosenberg defines mediation as a method of problem-solving that is carried out voluntarily, confidentially, and usually cooperatively, without coercion. Jay Folberg defines mediation as a neutrally assisted negotiation process to reach consensus and dispute resolution. Mediation is a method of settlement that is carried out voluntarily, without coercion, with the help of a mediator appointed by the parties, but the mediator does not have any power to decide; the mediator only functions to find a middle ground, so the final decision and execution remain with the parties.

The purpose of mediation is not to judge right or wrong but rather to provide opportunities for the parties to a. Find a way out and renew feelings; b. Eliminate misunderstandings; c. Find the interests that tree; d. Find areas where approval may be possible, e—uniting these areas into solutions that the parties draw up. There are several benefits of mediation, according to Jay Folberg, namely: a. Control over the parties; b. Confidentiality; c. Inexpensive; d. Fast; e. Flexible.

The definition of arbitration, according to Article 1 point 1 of Law Number 30 of 1999 about Arbitration and Alternative Dispute Resolution, is "a method of settling a civil dispute outside of the general Court based on an arbitration agreement entered in writing by the disputants." The disputing parties choose an arbitration institution to decide on a specific issue; the organization can also provide a binding decision on a specific legal relationship if no conflict has occurred (Article 1 point 8).

In the Big Indonesian Dictionary, it is stated that the definition of conciliation is an attempt to bring together the hopes for the conflicting parties to come to an agreement and settle their differences. According to Oppenheim, conciliation is the process of resolving a dispute by submitting it to a commission of individuals charged with elaborating/explaining the facts and (usually after hearing the parties and attempting to reach an agreement) making settlement proposals, but the decision is not binding. The essence of the statement is that issues are referred to a commission for resolution, and the commission's conclusions are not binding on the parties. This means that the parties can agree to or reject the contents of the decision.

In the chartering contract, as required by the procedure, there is a particular clause governing dispute resolution, which is regulated in the contents of the chartering contract. As an example, the contents of the clause on the dispute settlement of a contract for chartering can be described as follows: a. If there is a dispute between the two parties, it will be resolved amicably; b. If the dispute cannot be resolved amicably, it will be resolved by an Arbitration Committee formed and appointed by both parties; c. This decision of the Arbitration Committee is binding on both parties in the first and last instance and cannot be appealed; d. The settlement costs for the Arbitration Committee shall be borne jointly by both parties.

4 Conclusion

The procedure for making amendments/appendices to the contracting charter may refer to the Minister of Public Works Regulation No. 43/PRT/M/2007 Concerning Construction Services Procurement Standards and Guidelines following those stipulated in the general terms of the contract, namely a written order to the service provider to carry out changes to the contract, or the service provider proposes a change to the contract, then responds to the change

order from the service user and proposes a price change (if any) no later than seven days. Negotiations are carried out, and a report on the negotiation results is made, then a contract amendment is made.

The pattern of dispute resolution amendments/addendums to chartering contracts is not explicitly regulated in Law Number 18 of 1999 concerning Construction Services, nor in the Minister of Public Works Regulation No. 43/PRT/M/2007 Concerning Construction Services Procurement Standards and Guidelines, settlement of disputes that may occur generally carried out under the provisions in the initial contract before an amendment/addendum is made, namely through deliberation, mediation, arbitration, conciliation or through the courts.

There are no rules governing contract amendments to be carried out; therefore, it is best to immediately make a legal umbrella from the government that regulates contract amendments or addendums to ensure legal certainty in the community. In settlement of disputes over contract amendments/addendums, it should be resolved through deliberation. Still, if this step cannot provide a solution or satisfaction for the parties, other methods are taken, such as Mediation, Arbitration, and mediation, or through the Court.

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