



Claim Audit by BPKP (Financial and Development Supervisory Agency) on Construction Contracts in BUMN

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ABSTRACT

Construction service work is the most complex work compared to other industries. It is not surprising that in the implementation of construction service work, things arise that deviate from the initial planning, resulting in claims by the Provider of Goods/Services to the User of Goods/Services. In construction service work owned by BUMN (State-Owned Enterprises), several construction claims that have occurred that have been previously reviewed by the Provider of Goods/Services, are continued for the claim audit process by BPKP (Financial and Development Supervisory Agency), especially for claims related to additional costs that are quite large in value. Of course, this requires a mutual agreement between the User of Goods/Services and the Provider of Goods/Services to jointly submit a claim audit application to BPKP. This claim audit application to BPKP is carried out to ensure the amount of the claim submitted by the Provider of Goods/Services, where BPKP is seen as a competent and experienced body for claim audits. Problems will arise if: The Provider of Goods/Services does not agree to the claim audit process to BPKP because it is not stated in the construction contract or the Provider of Goods/Services does not agree with the results of the claim audit conducted by BPKP. In the event that the claim is not fulfilled or resolved, it means that a dispute has occurred between the contracting parties. This dispute must be resolved through the legal channels chosen by the parties in the contract, either through Alternative Dispute Resolution (Consultation, Negotiation, Mediation, Conciliation, Expert Assessment), Arbitration, or through the Court. The dispute resolution process will take longer, so it is necessary to rethink whether this claim audit to BPKP can be a faster way to resolve construction contract claims.

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INTRODUCTION

Construction service work is the most complex work compared to other industries. It is not surprising that in the implementation of construction service work, things arise that deviate from the initial planning, resulting in claims by the Provider of Goods/Services to the User of Goods/Services. According to Law No. 2 of 2017 concerning Construction Services in Article 1, it explains that Construction Services are construction consultancy services and/or construction work, Construction Consultancy is a service for all or part of activities that include assessment, planning, design, supervision, and management of the implementation of construction of a building, Construction Work

is all or part of activities that include construction, operation, maintenance, demolition, and reconstruction of a building. So literally construction services include an activity from the beginning to the end of a construction project.

The construction services industry has risk factors with a higher level of uncertainty compared to other industries. (Roger Flanagan, 1993). Construction projects are generally considered a sector that is full of risks, due to the large construction value and the many parties involved. These risks include risks to time (work delays), costs (changes in work so that the construction value increases), and work performance (methods and use of materials that do not comply with specifications due to several factors). The involvement of many parties is also one of the risks of this sector. Good coordination and cooperation are needed between various parties so that the planning and implementation of construction projects can run as they should. These things are quite different from the characteristics of the construction industry from other manufacturing industries. These characteristics of the construction industry are what make it unique and challenging for the parties involved in it. Understanding the characteristics of construction projects is the first step in making construction projects a success. (Seng Hansen, 2017).

This is a trigger for disputes. The greater the value and duration of a project, the higher the probability of a dispute occurring. (Yan, 2011). One of the main problems in the implementation of construction in Indonesia is the existence of construction contract disputes that occur between the User of Goods/Services and the Provider of Goods/Services. Along with the increasing implementation of construction, the number of existing construction contract disputes is also increasing.

Claims are often interpreted as demands or lawsuits, so that most construction activity implementers in Indonesia often consider it "taboo". On the one hand, Service Users are very "allergic" to the word claim. On the other hand, Service Providers generally feel reluctant to file claims because they are afraid of being considered as a fussy Service Provider or demanding all sorts of things. The word "claim" or "claim" in English comes from the Latin word "clamare" or "clamo" which means to shout (Yasin, 2004).

Construction claims are a common part of the construction project environment, and handling them requires a thorough understanding of contract provisions, project documentation, and dispute resolution procedures. Claim prevention through good risk management can be the key to minimizing the potential consequences. (Dr. Sami'an, 2024).

Some of the reasons for claims include the following: (Abdurrasyid, 2011):

- a. Inaccurate design information (delayed design information)
- b. Inadequate design information
- c. Inadequate site investigation
- d. Slow client response
- e. Poor Communication
- f. Unrealistic time targets
- g. Inadequate contract administration
- h. Uncontrollable external events
- i. Incomplete tender information
- j. Unclear risk allocation
- k. Lateness – non payment

To prepare a claim, of course, the User of Goods/Services and the Provider of Goods/Services must prepare everything properly and correctly, especially regarding the data and circumstances underlying a claim, so that the claim can be handled properly and correctly and does not cause any loss to the parties, both for those who submit and those who receive the claim. However, the claim cannot always be resolved or fulfilled. If the claim is not fulfilled or resolved, it means that a dispute has occurred between the contracting parties. This is what is meant by a construction dispute, namely a dispute that occurs in the construction industry. This dispute must be resolved through the legal route chosen by the parties in the contract, either through Alternative Dispute Resolution (Consultation, Negotiation, Mediation, Conciliation, Expert Assessment), Arbitration, or through the Court. (Construction Contract Dispute Resolution Analysis, 2017).

Each non-litigation and litigation dispute resolution has different characteristics. Each method also has advantages and disadvantages. This can be adjusted by the parties by choosing the most effective dispute resolution institution in resolving disputes and is beneficial to the parties.

In construction service work owned by BUMN (State-Owned Enterprises), several construction claims of the Goods/Service Provider that have been previously reviewed by the Goods/Service User, are continued for the claim audit process by BPKP (Financial and Development Supervisory Agency) to obtain the final results of the settlement of construction claims that occur, especially for claims related to additional costs that are quite large in value. Of course, this requires a mutual agreement between the Goods/Service User and the Goods/Service Provider regarding the claim audit process to BPKP. This claim audit application to BPKP is made to ensure the amount of the claim submitted by the Goods/Service Provider, where BPKP is seen as a competent and experienced body for claim audits. Problems will arise if: The Goods/Service Provider does not agree to the claim audit process to BPKP because it is not stated in the construction contract or the Goods/Service Provider does not agree with the results of the claim audit conducted by BPKP.

Based on the explanation above, the objective to be achieved in this study is to find out whether the application for a claim audit to BPKP can and needs to be carried out on construction contracts owned by BUMN. Or whether the application for a claim audit to BPKP is a faster way to resolve construction contract claims, compared to other dispute resolutions such as: Alternative Dispute Resolution (Consultation, Negotiation, Mediation, Conciliation, Expert Assessment), Arbitration, or through the Court.

LITERATURE REVIEW

BPKP (Financial and Development Supervisory Agency)

Legal Basis of BPKP: Presidential Regulation (Perpres) Number 192 of 2014 concerning the Financial and Development Supervisory Agency and Presidential Regulation (Perpres) Number 20 of 2023 concerning Amendments to Presidential Regulation Number 192 of 2014 concerning the Financial and Development Supervisory Agency.

At the end of 2014, at the beginning of Jokowi's administration, the role of BPKP was reaffirmed through Presidential Regulation Number 192 of 2014 concerning the Financial and Development Supervisory Agency. BPKP is under and directly responsible to the President with the task of organizing government affairs in the field of state/regional financial supervision and national development.

In accordance with Articles 2 and 3 of Presidential Regulation Number 192 of 2014 concerning the Financial and Development Supervisory Agency (BPKP) as amended by Presidential Regulation of the Republic of Indonesia Number 20 of 2023, BPKP has the task of carrying out government affairs in the field of state/regional financial supervision and national development.

In carrying out its duties, BPKP carries out the following functions:

- Formulation of national policies for internal supervision of state/regional financial accountability and national development includes cross-sectoral activities, state general treasury activities based on determination by the Minister of Finance as State General Treasurer, and other activities based on assignments from the President;
- Implementation of audits, reviews, evaluations, monitoring and other supervisory activities regarding planning, implementation and accountability for state/regional revenues and accountability for state/regional financial expenditures as well as national development and/or other activities whose finances are wholly or partly financed by the state/regional budget and/or subsidies including business entities and other bodies in which there are financial interests or other interests of the Central Government and/or Regional Governments as well as accountability for state/regional financial financing;
- Internal supervision of planning and implementation of utilization of state/regional assets;
- Providing consultancy related to risk management, internal control and governance for agencies/business entities/other bodies and strategic government programs/policies;
- Supervision of the planning and implementation of programs and/or activities that may hinder the smooth running of development, audits of price adjustments, claims audits, investigative audits of

cases of irregularities that indicate losses to state/regional finances, audits of calculations of state/regional financial losses, provision of expert testimony, and efforts to prevent corruption;

- Coordination and synergy of the implementation of internal supervision of state/regional financial accountability and national development together with other government internal supervisory apparatus;
- Implementation of reviews of financial reports and performance reports of the central government;
- Implementation of socialization, guidance, and consultation on the implementation of internal control systems for central government agencies, regional governments, and bodies in which there are financial or other interests of the Central Government and/or Regional Government;
- Implementation of supervisory activities based on Government assignments in accordance with laws and regulations;
- Development of government internal oversight capabilities;
- Implementation of substantive support to all organizational elements within the BPKP environment;
- Supervision of the implementation of tasks within the BPKP environment;
- Implementation of internal supervision of the implementation of duties and functions at BPKP; and
- Coordination of task implementation, coaching, and provision of administrative support to all organizational elements within the BPKP environment.

The scope of internal supervision of accountability for national financial management and development carried out by BPKP includes:

- cross-sectoral activities;
- state general treasury activities based on the determination by the Minister of Finance as State General Treasurer; and
- activities based on assignments by the president.

In addition, BPKP also received special assignments for activities related to SPIP maturity and APIP capabilities.

Presidential Instruction of the Republic of Indonesia Number 9 of 2014 concerning Improving the Quality of Internal Control Systems and the Reliability of the Implementation of Internal Supervisory Functions in the Framework of Realizing People's Welfare by assigning the Head of the Financial and Development Supervisory Agency (BPKP) to carry out supervision in order to increase state/regional revenues and the efficiency and effectiveness of state/regional expenditure budgets, including:

- a. audit and evaluation of the management of tax, customs and excise revenues;
- b. audit and evaluation of the management of Non-Tax State Revenue in Government Agencies, other Legal Entities, and Taxpayers;
- c. audit and evaluation of the management of Regional Original Income;
- d. audit and evaluation of the use of state/regional assets;
- e. audit and evaluation of strategic programs/activities in the fields of maritime affairs, energy security, food security, infrastructure, education and health;
- f. audit and evaluation of national/regional development financing;
- g. evaluation of the implementation of internal control systems and fraud control systems that can prevent, detect and deter corruption;
- h. investigative audits of irregularities that indicate losses to state/regional finances to provide an effective preventive impact;
- i. audits in order to calculate state/regional financial losses and provide expert testimony in accordance with laws and regulations.

assisting the Head in the field of implementing internal supervision of financial accountability and cross-sectoral programs of regional development.

The Deputy for State Accountants is an element implementing the duties and functions of BPKP in the field of state accounting which is under and responsible to the Head. The Deputy for State Accountants is led by the Deputy Head of BPKP. The Deputy for State Accountants has the task of assisting the Head in the field of implementing internal government supervision over the accountability of governance in business entities and other bodies in which there are financial and development interests or other interests of the Central Government and/or Regional Government.

The Deputy for Investigation is an element that implements the duties and functions of BPKP in the field of investigation which is under and responsible to the Head. The Deputy for Investigation is led by the Deputy Head of BPKP. The Deputy for Investigation carries out the task of assisting the Head in the field of implementing supervision of the smooth running of development including cross-sectoral programs, preventing corruption, auditing price adjustments, claim audits, investigative audits of cases of irregularities that indicate state financial losses, audits of calculating state financial losses and providing expert testimony.

In the BPKP environment, an Inspectorate was formed as a supervisory element. The Inspectorate is an internal supervisory element of BPKP which is under and responsible to the Head of BPKP, and is administratively coordinated by the Main Secretary. The Inspectorate is led by an Inspector. The Inspectorate has the task of carrying out internal supervision of the implementation of BPKP's duties and functions.

In the BPKP environment, a Center is formed as a supporting element for the duties and functions of BPKP. The Center is led by the Head of the Center who is responsible to the Head. To carry out the duties and functions of BPKP in the regions, a BPKP Representative Office is formed in each Province. The Provincial BPKP Representative is led by the Head of Representative who is responsible to the Head. The duties, functions, organizational structure and work procedures of the Provincial BPKP Representative Office are determined by the Head after obtaining approval from the minister in charge of state apparatus empowerment and bureaucratic reform.(BPKP (Financial and Development Supervisory Agency), nd)

Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution

According to Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, Article 6 states the following:

- (1) Civil disputes or differences of opinion can be resolved by the parties through alternative dispute resolution based on good faith, setting aside litigation resolution in the District Court.
- (2) Settlement of disputes or differences of opinion through alternative dispute resolution as referred to in paragraph (1) is resolved in a direct meeting by the parties within a maximum of 14 (fourteen) days and the results are stated in a written agreement.
- (3) In the event that a dispute or difference of opinion as referred to in paragraph (2) cannot be resolved, then by written agreement of the parties, the dispute or difference of opinion will be resolved with the assistance of one or more expert advisors or through a mediator.
- (4) If the parties are unable to reach an agreement within a maximum of 14 (fourteen) days with the assistance of one or more expert advisors or through a mediator, or the mediator is unable to bring the two parties together, then the parties may contact an arbitration institution or alternative dispute resolution institution to appoint a mediator.

METHOD

The research method used in this journal is by means of a literature study. Literature study means a data collection technique by reviewing books, literature, notes, and various reports related to the problem to be solved.(Nazir, 2003). It is a series of activities related to the procedures for collecting library information. Literature studies are conducted by reviewing existing literature, such as books, journals, articles, theses, dissertations, and other publications, to understand concepts, theories, and previous findings related to the research problem being discussed. Literature studies are generally used in qualitative research. In this case, literature studies are used to obtain data based on conceptual facts and theoretical facts, not based on the researcher's perception.(Dr. Amir Hamzah, 2020). The process

involves collecting data from various sources, such as laws and regulations and literature relevant to construction services and construction contract law. With this approach, the research aims to identify existing problems, find solutions to these problems, and produce conclusions as the final result of the research.

The types of data used as a basis to support research results are:

- a) Primary legal materials, namely primary legal materials consisting of:
 - a. Burgerlijke Wetboek Vor Indonesie (Civil Code);
 - b. Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution;
 - c. Law No. 2 of 2017 concerning Construction Services.
- b) Secondary legal materials used in this research are the results of scientific works and research results that are related to the research object.
- c) Tertiary legal materials, namely materials that provide information about primary legal materials and secondary legal materials, such as existing case studies.

RESULT AND DISCUSSION

In accordance with the previous explanation regarding BPKP, it can be seen that there is a function in the BPKP section that is tasked with auditing claims, namely the Investigation Division. This Investigation Division conducts audits of claims by agencies/business entities/other agencies, including claims audit requests made by BUMN (State-Owned Enterprises). This request can be addressed to the BPKP Head Office or the BPKP Representative Office in each Province in accordance with the location of the construction work where the claim is located.

As an example of a case in the Claim Audit by the BPKP Representative of East Java Province for the Compensation of Operational and Overhead Costs of the Grati Block III PLTGU whose project is owned by PT PLN (Persero). And also an example of a case based on the Claim Audit Report by the BPKP Representative of East Java Province Number: PE.04.03 / LHP-652 / PW13 / 5/2022 dated September 30, 2022 along with the attachment of the Minutes of Discussion of the Results of the Claim Audit for the Extension Work of the 150x80 M Container Pier at the Teluk Lamong Terminal on September 12, 2022 which was attended by the Person in Charge of the Activity, namely Regional Head 3 of PT Pelabuhan Indonesia (Persero) and Chairman of the Board of Management of PT Krakatau Engineering-PT Amarta Karya (Persero), KSO at the BPKP Representative of East Java Province, there was a correction to the claim value which was originally IDR. 13,459,000,000.00 becomes Rp. 10,173,283,454.69 and in conclusion the parties agree with the results. (Moch. Faisal Dwi Alfian, 2023). In accordance with Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution Article 6 Paragraph 3 above, one alternative dispute resolution can be resolved through the assistance of one or more expert opinions or through a mediator. BPKP as an institution where one of its fields is the Investigation Sector has the task of conducting claim audits, is very competent and has a lot of experience in conducting claim audits, can be seen as an expert institution that can help resolve disputes by conducting and submitting claim audit results. The results of this BPKP claim audit are used by the parties, both Users of Goods/Services or Providers of Goods/Services to resolve their disputes.

The claim audit process to BPKP requires a mutual agreement between the User of Goods/Services and the Provider of Goods/Services. This agreement needs to be stated in the Contract Amendment, because the Contract does not include the claim audit process to BPKP, so that any results of the claim audit by BPKP can bind both the User of Goods/Services and the Provider of Goods/Services. As the basis for binding a contract based on legal theory:

- a) Will Theory
A contract has binding force because of the will of the parties who want the contract to be binding. The parties themselves are the ones who essentially express their will to bind themselves.
- b) The Bargain Theory
The binding of a contract is based on the agreement of the parties. The agreement made by the parties includes what has been agreed upon by the parties.

- c) Equivalence Theory (Equivalent Theory)
A contract is said to be binding if it gives rise to equal rights and obligations between the parties.
- d) Injurious-reliance Theory
A contract is considered binding on the parties if the parties have agreed to all risks of loss that may arise in the future.

And also the agreement to carry out the claim audit process to BPKP also does not conflict with the Principles of Contract Law:

- 1) The principle of national legal sovereignty
The existence of national law cannot be challenged. Every object, legal subject, legal act or event, including trade transactions stated in a contract, which occurs in the territory of a country, is absolutely subject to the national law.
- 2) The principle of freedom of contract
Giving the parties the freedom to determine with whom they will enter into a contract, determine the form of the contract, determine the contents of the contract and determine the manner and time of terminating the contract. This principle is the essential basis for the parties to be able to make a contract. This principle allows the parties to design the contents of a contract that did not exist before. And this principle allows the parties to develop, innovate or create new forms of contracts that they want or agree to. However, there are limitations in contracting, namely: must not deviate from national law (*pacta privata jure publico derogare non possunt*), must not violate public order and morality, must not violate the public interest.
- 3) The principle of *pacta sunt servanda*
According to Black's Law Dictionary is: "Agreement must be kept, the rule that agreements and stipulations, those contained in treaties, must be observed". And according to Article 1338 of the Civil Code, "All agreements made legally apply as laws for those who make them.
- 4) The principle of good faith
The principle of good faith creates trust between the two parties in a business relationship, so that the creation of contracts, implementation of contracts and resolution of disputes can be realized.
- 5) The principle of reciprocity
That the parties to the contract must exercise their respective rights and obligations reciprocally. If there is a right from one party, there is an obligation from the other party (*visè versa*).

Based on the discussion above, conducting a claim audit process to BPKP can be done by agreement of the parties as long as it does not conflict with legal theory and legal principles. In the event that the results of the claim audit by BPKP differ from the results of the review by the User of Goods/Services or the Provider of Goods/Services, the parties must still agree to it as the claim audit by BPKP has been agreed upon and stated in the agreement.

Auditing is a systematic process of objectively obtaining and evaluating evidence regarding assertions about economic activities and events, with the aim of determining the degree of correspondence between those assertions and established criteria, and communicating the results to interested users. (Mulyadi, 1998)

Another definition states that audit is the process of collecting and evaluating evidence about measurable information about an economic entity carried out by a competent and independent person to be able to determine and report the conformity of the information in question with the established criteria. Audit should be carried out by an independent and competent person. (Alvin A. Arens, 1996)

So the results of the claim audit by BPKP are very dependent on the available evidence which can be shown and explained by the Goods/Service Provider who makes a claim to the Goods/Service User regarding the conformity of the information on the claim that has been made. In addition, the integrity and competence of public sector auditors have a positive and significant effect on the quality of the audit results produced. This shows that the higher the integrity and competence possessed by public sector auditors when carrying out their professional audit assignments will encourage an increase in the quality of the audit results produced. (Badjuri, 2012)

The influence of auditor independence, professionalism and competence on the performance of BPKP auditors can be detailed as follows:

1. Auditor independence has a positive and significant influence on performance. This shows that the higher the level of independence of an auditor towards his/her organization, the better the audit performance he/she will perform.
2. Auditor professionalism has a positive and significant effect on performance. This shows that the better and more effective the auditor's professionalism, the better the auditor's performance, so that indirectly it will also improve the overall performance of the organization.
3. Auditor competence has a positive and significant effect on performance. This shows that the higher the level of auditor competence, the better the auditor's performance, so that indirectly the performance of the BPKP representative of Central Java province also increases. (Istiariani, 2018)

Regarding the claim audit process time by BPKP, this can be seen from the example of the Claim Audit case by BPKP Representative of East Java Province for Operational and Overhead Cost Compensation for PLTGU Grati Block III, whose project is owned by PT PLN (Persero) as follows:

- Claim audit request was made on September 9, 2019
- Claim audit assignment letter dated October 16, 2019
- Minutes of discussion of claim audit results on April 3, 2020
- Claim Audit Result Report on April 13, 2020

The claim audit process above can be an illustration of the length of time of the claim audit process. Of course this cannot be a reference for the length of time of the claim audit process, because the claim audit process is influenced by several things, namely: the level of complexity of the existing claim, the amount of evidence, the speed of response from the parties, the number of members of the audit team and the number of claim audits being worked on by BPKP. However, the length of time can be a consideration whether this claim audit to BPKP needs to be carried out or not, or the settlement of this dispute is resolved in other ways such as: Alternative Dispute Resolution (Consultation, Negotiation, Mediation, Conciliation, Expert Assessment), Arbitration, or through the Court.

CONCLUSION

The claim audit process by BPKP on construction contracts in BUMN can be carried out as long as it is agreed by the parties, namely the User of Goods/Services and the Provider of Goods/Services. The claim audit process by BPKP on construction contracts in BUMN is carried out to ensure the value of the claim from the Goods/Services Provider to the Goods/Services User, especially for claims related to additional costs that are quite large in value. The claim audit process by BPKP on construction contracts in BUMN can be seen as one way of resolving disputes through Expert Assessment as explained in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution Article 6. The results of the claims audit by BPKP are influenced by the independence, professionalism and competence of the auditor. The length of time for the claim audit process is influenced by several factors, namely: the level of complexity of the existing claim, the amount of evidence, the speed of response from the parties, the number of members of the audit team and the number of claim audits being worked on by BPKP.

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