Civil Liability of Construction Service Providers Against Building Failures in the Taxiway Construction Agreement of Kuala Namu International Airport

D Safnul¹ T Kamello² H Purba² and E Ikhsan²

¹ Faculty of Law, Doctoral of Law Program, Universitas Sumatera Utara, Jl. Almamater Kampus USU, Medan 20155, Indonesia
² Faculty of Law, Universitas Sumatera Utara, Jl. Almamater Kampus USU, Medan 20155, Indonesia

Email: notarisdodysafnul@gmail.com

Abstract. Medan, as a metropolitan city, has several advantages, such as the strategic location for various economic activities. As the capital of North Sumatra Province, Medan continues to develop by building many infrastructures to support business activities such as airport, seaport, apartments, toll roads, hotels, hospitals, housing properties, and others. Constructing infrastructure in Medan requires a building contract made by a notary public as a general official authorized to make authentic deeds. Construction is the activity of building facilities and infrastructure which includes building construction, civil infrastructure construction, mechanical and electrical installations. An example of the construction work is the establishment of taxiways through the operational cooperation between PT Adi Karya (Persero) Tbk and PT Duta Graha Indah Tbk. This study applies an analytical descriptive approach utilizing a normative legal method. The results show that the implementation of taxiway construction complies with the Joint Operation Agreement between PT Adi Karya (Persero) Tbk and PT Duta Graha Indah Tbk under Law Number 2 of 2017 concerning Construction Services applicable for all projects throughout Indonesia, which states that the construction service providers must repair construction failures during the maintenance period.

1. Introduction

Medan is the capital of North Sumatra Province and is the largest city on the island of Sumatra. With the population of 2,247,425 people (data for 2017), Medan falls into the category of a metropolitan city. The area of Medan is 265.10 km² with the population density of 8,478 people/km² and the population growth rate of 0.89% per year. Referring to the data from the Medan Municipal Bureau of Statistics in 2018, the economic growth in Medan in 2017 was 7.26%, higher than the economic growth of 6.26% in 2016.

Since located in a strategic geographical condition, Medan needs some infrastructures such as airport, seaport, and the road to support economic transaction activities. One of the modes of transportation to reach or connect Medan with the outside world is air transportation. Air transportation requires an airport for airplanes’ landing and taking-off from and to the destination areas. Therefore, the government should build and develop airports, especially in the strategic regions of Indonesia, including Medan.

Medan urgently needs an airport facility for the airplane’s landing and take-off. Medan
previously has Polonia Airport which was previously for the Air Force’s airport, so it serves both commercial and military flights. Some airports in the world have many facilities integrated with several mass transportation. Due to its facilities, such airport is called the aero city or air city. Initially, an airport only consisted of an indoor building intended for passenger terminal and outdoor space to accommodate aircraft movements. However, due to the increasing number of passengers and the size of the aircraft, it is impossible for Polonia Airport to handle such an increase. Consequently, the government has built a new airport named Kualanamu International Airport in Deli Serdang District.

The government has planned the construction of Kualanamu airport since 1991, but the construction preparation began in 1997. However, due to the monetary crisis in the same year, the airport construction had to be postponed. Since then, the news about the Kualanamu airport establishment has rarely been heard until an aircraft accident of Mandala Airlines took place in September 2005 which crashed shortly after taking off from Polonia airport. The accident also took the lives of people who lived around the airport area because the location was too close to the residential area. The accident led to the re-emergence of calls for the airport in Medan to be immediately moved to a more proper place [1].

The construction of Kualanamu airport requires several state-owned enterprises and private enterprises to work collaboratively. There are approximately 35 (thirty-five) construction service companies in Medan which are nationally standardized and registered in the Association of Construction Service Companies. At present, Kualanamu International Airport has been built in Deli Serdang by the Central Government and the Provincial Government of North Sumatra. Kualanamu Airport has attracted both foreign investors (e.g. from Malaysia, China, Europe) and local investors [2]. The State Budget (APBN) funded the construction of Kualanamu International Airport and PT Duta Graha Indah, Tbk and PT. Adhi Karya (Persero) Tbk, State-Owned Enterprises (SOEs), and several private companies managed the construction [3].

The construction of the airport needs the services of a notary public in designing a construction service agreement. In such agreement, the role of a notary public is crucial to make contracts or agreements with authentic deeds. The legal aspects of construction contracts in Indonesia should comply with the contract law that prevails in Indonesia. The matters regarding this agreement have been regulated in Book III of the Civil Code concerning Engagement [4].

Also, the Construction Service Law of Law Number 2 of 2017 has regulated the construction contract law, which applies to all construction projects in Indonesia. This Law provides direction for the growth and development of construction services, guidance in realizing a reliable and highly competitive business structure, and quality assurance of the works. The law should be able to protect the people, especially those in the construction service businesses [5].

Consequently, the project owners or service users must first consider the form of the construction contract to be applied. Also, the parties also need to understand the various construction contracts. In business practices, they often overlap, which is known as ambiguity in a contract construction. An ambiguity arises when provisions are in quite a vulnerable controversy to different interpretations or may have two or more different meanings.

2. Method
This research was conducted using a normative legal approach. This method emphasized the research on library data collection, which was the secondary data. All data were then analyzed qualitatively and organized systematically to answer the formulated problem(s).

3. Results and Discussion
The economy of Medan increases positively in the 1st Quarter of 2018 at 4.73%. This increasing growth is contributed, among others, by the positive growth in the business sector of the
construction sector as much as 0.84%. According to the Central Bureau of Statistics (CBS) of North Sumatra, the growth of construction sector in the 1st Quarter of 2018 (0.84%) is more than that of the same period last year at only 0.63%. Such positive growth of the construction sector in Medan should be appreciated [6].

The central government has committed to continue the construction of infrastructure in Medan by completing the construction of Kualanamu airport and the ongoing toll roads, LRT (light rapid transit) trains, apartments, hospitals, hotels and so on. The construction certainly requires the notary public service in making agreement deeds in construction business, which leads to the discovery of new laws and gives a positive impact on notary public in making the treaty deeds.

In a construction contract, there are 3 (three) basic terms related to the essence of the construction contract: (i) terms of contract, (ii) conditions of contract, and (iii) warranties of contract. The terms of contract (which may be either implicit or explicit) are the provisions explaining various aspects of the agreement. In general, the provisions in the contract can be divided into 2 (two) types, i.e. conditions and warranties of contract. The conditions are the provisions that are fundamental. The fundamental condition is different from the less fundamental provisions known as warranties. The difference between the two terms lies in the consequences of violating the terms of the contract [8].

Meanwhile, based on Article 1 paragraph (8) of Law Number 2 of 2017 concerning Construction Services, Construction Contracts are all contract documents regulating a legal relationship between Service Users and Service Providers in construction services. Thus, the construction contract can bind the parties after its signing.

Ridwan Khairandi explains that good faith of the parties in complying with the rules contained in the clauses of the construction contract is very crucial. Good faith is part of society, so it should refer to the values in the society. Good faith will eventually reflect the standards of justice and propriety. Also, good faith is a universal social force regulating people’s inter-social relations that every citizen must act in good faith towards all other citizens [9]. Therefore, legal protection for the parties in the construction contract should be the concern in the Law, so that the construction contract can be implemented by the interests of the parties to accelerate the development in Medan.

The terms Amendments and Addendums often appear, and both are used interchangeably. Amendments are official changes made by the parties to the contents of an agreement which can be addition, reduction, removal, or renewal. Amendments are commonly used when there are administrative errors that must be corrected in writing and agreed upon by both parties.

Meanwhile, Addendums (from the Latin addoladdere which means to add) means additions to an agreement. The additional documents usually contain descriptions of terms, obligations or new information to execute the work. Addendums are for the matters that have not been regulated in the main agreement. Nevertheless, according to the norm, the term amendment is for changes to regulation or legislation, while addendum is more commonly for changes to an agreement or a contract.

Various constraints in the construction contract have resulted in disputes among the parties and default in implementing the agreement. Construction contracts are dynamic, with relatively long duration and possible changes during the contract period, which allow for different interpretations leading to disputes between the parties involved. According to the data in the Indonesian National Arbitration Board (INAB), the settlement of disputes in the field of construction services carried out through the general INAB has accommodated only 473 cases of disputes since the last five years. INAB is an independent institution that provides various services related to arbitration, mediation, and other forms of dispute settlement outside the court. INAB was founded in 1977 by the Indonesian Chamber of Commerce and Industry.

Civil liability relating to a construction contract made by a notary public is the possibility of
filing a dispute by the parties to INAB. In a construction contract, there might be a violation or an execution which is not by the agreement agreed upon and signed by the parties. Such violation suscepibly leads to default committed by one of the parties for which the other parties can file a lawsuit and resolve through an alternative dispute resolution.

The methods of resolving the construction contract dispute according to Law Number 2 of 2017 concerning Construction Services are deliberation to reach consensus, mediation, conciliation, and arbitration. In addition to the dispute resolution efforts mentioned above, a resolution can also be done by establishing a dispute council whose members are selected based on the principle of professionalism and do not belong to one of the parties involved. Alternative dispute resolution is a series of processes and techniques for resolving disputes over the construction contracts by making a binding decision or an agreement between the parties involved in the dispute [7].

Not all legal protections for the parties are applicable in resolving disputes over construction contracts in Medan.

4. Conclusions
Various obstacles to resolving disputes over the construction contract at the Indonesian National Arbitration Board (BANI) did not work optimally. The implementation and application of Law Number 2 of 2017 concerning Construction Services have not been able to satisfy the construction service providers due to the ambiguity of the clauses. Consequently, the legal protection for parties in construction contract disputes has not been achieved.

As a recommendation, the Law on Construction Services needs to be revised. People need legal certainty of construction service contracts. The additional clauses relating to the affirmation of authority, improvement of sanctions, and legal efforts of the parties still need to be improved because conducting Construction Services is not merely the interest of one party, but it has a mandatory function to protect the public interest.

References
[1] Bandar Udara Internasional Kuala Namu, http://id.wikipedia.org/wiki/Bandar_udara_Internasional_Kuala_Namu, accessed on January 10, 2019
[2] Ikhwan K 2006 Bandara Kuala Namu 'dikerubuti’ investor asing dan lokal, Published on February 27, 2006, accessed on November 28, 2010.
[3] Bagus I 2008 Duta graha incar proyek bandara Kualanamu. Published on November 3, 2008, Accessed on January 11, 2019
[4] Kitab Undang-Undang Hukum Perdata (Code of Civil law)
[5] Law Number 2 of 2017 concerning Construction Services Central Bureau of Statistics of North Sumatra
[6] Hansen S 2018 Manajemen Kontrak Konstruksi: Pedoman Praktis dalam Mengelola Proyek Konstruksi (Jakarta: Gramedia Pustaka) p 255
[7] Suraji A 2010 Konstruksi Indonesia untuk Penyamakan Lingkungan Terbaru, Lembaga Pengembangan Jasa Konstruksi Nasional (Nama kota: nama penerbit) p 76
[8] Khairandy R 2015 Kebebasan Berkontrak dan Pacta Sunt Servanda Versus Iktikad Baik (nama kota: nama penerbit) p 52