ROLE OF QUANTITY SURVEYOR

a FX Siahaan, b Mella Ismelina Farma Rahayu, c Ariawan Gunadi

ABSTRACT

Objective: The purpose of this research is to define role of quantity surveyor from law perspective and define the ideal regulations towards role of Quantity Surveyor in Indonesia.

Method: The research method used is literature research with a legal approach and case studies regarding legal gaps regarding the limitations of what Quantity Surveyors can do in carrying out their duties as construction agreement makers and providing legal certainty for construction agreements.

Results: The research results the function of QS is as a party that can guarantee legal certainty in construction agreements, for this reason ideal rules are needed to describe the role of QS in law and the absolute requirements for becoming a QS profession that have been fulfilled. This standard is like other jobs such as a lawyer or notary. A quantity surveyor who has legal knowledge can handle and avoid problems that occur later from a legal perspective and immediately draw up an agreement.

Keywords: quantity surveyor, legal certainty, construction agreement, Indonesia.

PAPEL DO PESQUISADOR DE QUANTIDADE

RESUMO

Objetivo: O objetivo desta pesquisa é definir o papel do inspetor de quantidade do ponto de vista jurídico e definir os regulamentos ideais para o papel do inspetor de quantidade na Indonésia.

Método: O método de pesquisa utilizado é a pesquisa bibliográfica com abordagem jurídica e estudos de caso sobre lacunas legais no que diz respeito às limitações do que os Agrimensores podem fazer no desempenho de suas funções como contratantes de construção e proporcionando segurança jurídica aos contratos de construção.

Resultados: A pesquisa resulta que a função do QS é como uma parte que pode garantir a segurança jurídica nos contratos de construção, por esta razão são necessárias regras ideais para descrever o papel do QS na lei e os requisitos absolutos para se tornar uma profissão de

Received: 28/09/2023
Accepted: 29/12/2023
DOI: https://doi.org/10.55908/sdgs.v12i1.2485

a PhD in Law, Faculty of Law, Tarumanagara University, Jakarta, Indonesia, E-mail: kampus208@gmail.com
b PhD in Law, Faculty of Law, Tarumanagara University, Jakarta, Indonesia, E-mail: mellaismelina@fh.untar.ac.id
c PhD in Law, Faculty of Law, Tarumanagara University, Jakarta, Indonesia, E-mail: ariawang@fh.untar.ac.id
Orcid: https://orcid.org/0000-0002-1141-4394
QS que foram cumpridos. Este padrão é como outros trabalhos, como advogado ou notário. Um topógrafo com conhecimento jurídico pode lidar e evitar problemas que ocorrem posteriormente do ponto de vista jurídico e elaborar um contrato imediatamente.

Palavras-chave: pesquisador de quantidades, segurança jurídica, contrato de construção, Indonésia.

1 INTRODUCTION

Quantity surveyor (QS) are a branch of experts in the field of construction consultants who have the ability to calculate and quality goods, volumes, costs, legal documents and construction contract systems, until now QS profession in Indonesia has not been standardized and measurable because there are no competency standards and there is still a lack of educational facilities to produce experts in this field. In the applicable laws and regulations, the role of QS is not specifically regulated, which raises questions regarding the function of QS in regulating construction contracts. Even though contracts are regulated in the Civil Code, in practice there are many legal problems in implementing legal certainty for the parties to the construction contract.

In general of implementation construction project, there are three gray areas that do not have clear regulations, including gray incharge, gray article/legal, and gray systems. Gray incharge related to the problems occured from the scope of works and the person incharge is not suitable, not performing based on the agreement or even not working. Gray article/legal related to the condition where the articles of the agreement is not executeable or some point of scope of works is not include in the agreement. Gray systems related to the instructions or the construction agreement articles is not working or illegal by some rules where the project started.

The author, as a QS practitioner, also found that apart from a clear legal basis, things that must be considered in the course of a project are the concepts of Cost, Quality and Time control (TCQ). The relationship between Cost and Time is the amount of investment related to economic issues, the relationship between Quality and Time is the size of the quality of construction work related to legal issues governing the technical specifications of construction materials and performance limits (time-limited work targets), the relationship Between Cost and Quality is the amount of construction work costs which are limited by time parameters according to the agreement between the parties in a construction agreement so that this relates to legal issues, namely how with certain costs the construction work can be completed according to the agreed time limits. In other
words, control of a construction project cannot be separated from these three things and
unable to stand alone because they are the main components in construction management.

2 METHOD

This research is normative research, The Idea Triad by Gustav Radbruch. According to Gustav Radbruch, the goals of law are justice, certainty and expediency. Justice must have a first and foremost position rather than legal certainty and expediency. The goal of legal certainty is ranked at the top among other goals, but after seeing the fact that with this theory in Germany under Nazi rule, inhumane practices were legalized during World War II by making laws that legalized war atrocity practices at that time. Gustav Radbruch finally corrected his theory above by placing the goal of justice above other legal goals. In reality, there is often a conflict between legal certainty and expediency, or between justice and legal certainty, or between justice and expediency. In realizing legal objectives, Gustav Radbruch stated that it is necessary to use the priority principle of the three basic values which are the objectives of law. This is because in reality, legal justice often clashes with the usefulness and certainty of the law and vice versa. Among the three basic values of legal objectives, when a conflict occurs, someone must be sacrificed. For this reason, the priority principle used by Gustav Radbruch must be implemented in the order of (1) Legal Justice; (2) Legal Benefits; and (3) Legal Certainty. With the order of priority as stated above, the legal system can avoid internal conflicts.

The legal certainty theory as one of the goals of law can be said to be part of efforts to realize justice. The real form of legal certainty is the implementation or legal enforcement of an action regardless of who carries it out. With legal certainty, everyone can predict what they will experience if they take certain legal actions. Certainty is needed to realize the principle of equality before the law without discrimination.

Certainty is an inseparable characteristic of law, especially written legal norms. Laws without the value of certainty will lose meaning because they can no longer be used as guidelines for behavior for everyone. Certainty itself is said to be one of the goals of

---

5 Ibid
6 Sidharta Arief, Meuwissen Tentang Pengembangan Hukum, Ilmu Hukum, Teori Hukum dan Filsafat Hukum, (Bandung: PT Refika Aditama, 2007), 20
law. The word "certainty" is closely related to the principle of truth, namely something that can be strictly stated in a legal-formal way. Through deductive logic, positive legal rules are placed as major premises, while concrete events become minor premises. Through a closed logic system, conclusions can be immediately obtained. The conclusion must be something that can be predicted, so that everyone is obliged to stick to it. With this handle, society becomes orderly. Therefore, certainty will direct society towards order.

Legal benefits theory etymologically, the word "benefit" comes from the basic word "benefits", which according to the Big Indonesian Dictionary means benefit or use. Law is the lifeblood of a nation to achieve the ideals of a just and prosperous society. According to Hans Kelsen, law itself is a category of necessity (sollenscategorie), rather than a factual category (seintemane). What this means is that law is constructed as a necessity that regulates human behavior as rational creatures. In this case, what is being questioned by law is not "what the law ought to be" but "what is the law."

According to Sudikno Mertokusumo, the public expects benefits in implementing or enforcing the law. The law is for humans, so the implementation of the law or law enforcement must provide benefits or usefulness to society. Don't let it happen that just because the law is implemented or enforced, unrest will arise in society itself.

The data collection technique used in this research is library research or what is known as document study. Literature studies were carried out on primary legal materials, secondary legal materials and tertiary legal materials. Searching for legal materials can be done by reading, seeing, listening to the legal materials.

3 RESULT AND DISCUSSION

Referring to Republic of Indonesia Law Number 2 of 2017 concerning Construction Services, a Construction Work Contract is the entire contract document that regulates the legal relationship between service users and service providers in providing construction services. The existence of a construction contract is very important considering that in general the service provider almost always has a weaker position than the service user or the service user is more dominant than the service user, where the

---

10 ibid
11 Undang-undang republik Indonesia Nomor 2 Tahun 2017 tentang Jasa Konstruksi
service provider almost always has to fulfill the draft contract made by the service user because the service user always positions himself as superior, higher than service providers.

The construction implementation procedure based on AV-41 explains the stages starting from the assignment provider to the process of making an agreement between the assignment provider and the contractor. This agreement is made jointly between the contractor and the director or supervisor. The concept of supervisor in AV-41 does not explain in detail who the supervisor is, but it can be concluded that QS as part of the construction experts appointed by the board of directors can have the authority to regulate construction agreements.

The absence of laws that regulate the functions and performance as well as limitations of the QS profession in Indonesia has caused problems in the QS profession in ensuring legal certainty of construction agreements despite the existence of Indonesian national work competency standards for QS positions which are regulated in Minister of Manpower Decree Number KEP.06/MEN/I/2011 concerning Determination of Indonesian National Work Competency Standards in the Construction Sector for Quantity Surveyor Job Positions. A simple example that can be used as a comparison is the lawyer profession, which based on Article 2 of Law number 18 of 2003 concerning Advocates explains the appointment of advocates and Article 3 explains the requirements for being an advocate. Meanwhile, the restrictions on foreign advocates are regulated in article 23 paragraph 1 which states that foreign advocates are prohibited from appearing in court, practicing and/or opening legal services offices or representatives in Indonesia. This is different from the QS profession, where the requirements for becoming a QS, rights, obligations and boundaries in the profession are not regulated in statutory regulations, which means that foreign QS can enter and work on a project in Indonesia. Competency issues are also something that cannot be avoided because the function of QS is to create contractor work agreements for job providers and job recipients. Conceptually, in making an agreement, QS must have a background or ability in legal science that applies in the country where the work is carried out in order to be able to make and interpret agreements that can fulfill the principle of legal certainty in their application. If QS does not have
legal skills, it will cause confusion in making the agreement, giving rise to problems that the author calls the Gray Area.

The QS profession is basically a product of a country that adheres to the Common Law system, so it is difficult to factually define the ideal regulatory concept for the QS profession in Indonesia because the use of the phrase "Quantity Surveyor" alone, when applied in good and correct Indonesian, does not cover the whole function of QS itself. According to the author, the ideal function of QS is a QS that can calculate risks regarding the running of a project or work from the time the project has not been implemented (still in the agreement stage) until the completion of the project. Apart from being fluent in calculating risks, QS must also have an adequate understanding of the law where the project location is located because it refers to Law Number 2 of 2017 concerning Construction Services article 46 which explains that "The working relationship arrangements between service users and construction service providers must be stated in construction work contracts" where the soul of the project work is actually in the construction work contract.

In order to achieve justice for the employer and work implementer, construction work contracts must be drawn up in such a way as to guarantee legal certainty and justice for the parties binding themselves to the agreement. That is where QS's function as supervisor is based on AV-41 which is an extension of the Civil Code article 1601b regarding contracting agreements. An ideal arrangement regarding Quantity Surveyor law should include a number of important elements to protect the public interest, ensure high professional standards, and promote integrity in Quantity Surveyor practice. Some of the important points that the author considers necessary to achieve an ideal arrangement include:

1. Professional License

The ideal regulations may require Quantity Surveyors to obtain a professional license before they are allowed to run their practice. This license can be granted after passing the relevant exam and fulfilling certain requirements, such as education, experience and integrity of character, just like the Peradi exam in the world of Advocates.

2. Ethic Code

The law should include a clear code of ethics governing the behavior and integrity of Quantity Surveyors. This may include a commitment to maintaining the confidentiality
of client information, avoiding conflicts of interest, and adhering to high ethical standards in professional practice.

3. Quantity Surveyor Standard Professional

The law should set out the professional standards that Quantity Surveyors must adhere to in their work. This includes measurement standards, cost estimation, contract management, and project cost control.

4. Education, Training and Special Requirements to become a QS profession

Regulations must regulate strict educational and training requirements to become a Quantity Surveyor where educational requirements from Engineering and Law majors will be the right choice to become a QS profession

Based on implementation of construction agreement, basically it only revolves around 3 things, namely Gray Incharge, Gray Articles / Legal, and Gray System. These three things are the core problems in implementing a construction agreement, where Gray Incharge is a problem that arises from an error in placing the party carrying out the work, Gray Article/Legal is an error that arises because the relationship between the rights and obligations stipulated in the agreement is not appropriate so that it cannot be implemented, and there are problems in the contents of the agreement, and finally the Gray System, where problems occur because one of the organs or all of the project control organs does not have the competence required in carrying out the project. These three things are closely related to the concepts of cost, quality and time because if a problem occurs in the Gray area it will have an impact both in terms of cost, quality and time in project work.

The concept of cost, quality and time control should be implemented on construction agreement made by quantity surveyor, this concept focus on the fairness for all parties included in the agreement, cost consumptions and time of project works. These three things are the function of QS as a party that can guarantee legal certainty in construction agreements, for this reason ideal rules are needed to describe the role of QS in the law as well as the absolute requirements for becoming a QS profession that has met these standards like other jobs such as Lawyer or Notary. Quantity surveyor with the knowledge of law can handle and avoid the problems occurred in the future event from the perspective of law and directly draft the agreement.
4 CONCLUSION

QS has a big role in ensuring legal certainty of construction agreements for construction service providers and construction service users in Indonesia. These functions include:

1. As the party making the agreement, QS must have a strong legal basis and understand the rules relating to the project to be implemented as well as include aspects that support legal certainty in the agreement that can be implemented by the parties to the agreement;

2. As the party that carries out supervision based on reports from both the job provider and the work implementer. The supervisory function in this case is different from that of the Supervising Consultant because QS is the party who will receive the report from the Supervising Consultant's side in the field structure.

3. As a mediator if problems arise in the course of work and seek fair and appropriate solutions for the parties;

These three things are not mentioned directly in the law or other regulations because there are no regulations that specifically regulate the QS profession, however, based on AV-41, it is explained about the function of the supervisor, where the supervisor is implicitly the responsibility of the QS profession.
REFERENCES

Arief Sidharta, Meuwissen About Legal Development, Legal Science, Legal Theory and Legal Philosophy, 2007,


Mochtar Kumaatmadja and B. Arief Sidharta, Introduction to Legal Science: A First Introduction to the Scope of Application of Legal Science, 2000

Shidarta, Legal Reasoning and Legal Reasoning, 2013.


Law of the Republic of Indonesia Number 2 of 2017 concerning Construction Services

Law no. 32 of 2009 concerning Environmental Management

Minister of Manpower Decree Number KEP.06/MEN/I/2011 concerning Determination of Indonesian National Work Competency Standards in the Construction Sector for Quantity Surveyor Job Positions