

DISPUTE IN INDONESIA CONSTRUCTION SECTOR

SENKGETA DALAM SEKTOR KONSTRUKSI DI INDONESIA

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ABSTRACT

This study analyzes dispute resolution in the Indonesian construction sector, focusing on the preference for Arbitration and Alternative Dispute Resolution (ADR) mechanisms over traditional litigation. Indonesia's construction industry, intertwined with its political history and legal transformation, frequently faces disputes arising from payment delays, non-compliance with technical specifications, ambiguous contractual responsibilities, and land use conflicts. While litigation is available, Arbitration and ADR is favored due to its quicker, more cost-effective, and confidential processes. A normative legal research method is applied to examine legal phenomena through analytical evaluation of secondary data. Findings indicate that mediation and arbitration, in particular, are relevant for their flexibility, ability to preserve business relationships, and binding decisions. Arbitration stands out for its capacity to select expert arbitrators and apply the ex aequo et bono principle. The adoption of Arbitration and ADR aligns with Indonesian socio-cultural values like musyawarah-mufakat, which emphasize communal harmony and "win-win" solutions. This analysis confirms that Arbitration and ADR, particularly arbitration, is a more effective choice for construction dispute resolution, supporting sustainable and equitable growth in the sector.

Keywords: Alternative Dispute Resolution, Arbitration, Construction Law, Indonesia, Mediation.

ABSTRAK

Penelitian ini bertujuan untuk menganalisis mekanisme penyelesaian sengketa dalam sektor konstruksi di Indonesia, dengan fokus pada Arbitrase dan Alternatif Penyelesaian Sengketa (APS) dibanding dengan litigasi pada umumnya. Industri konstruksi Indonesia, yang terjalin dengan sejarah politik dan transformasi hukumnya, seringkali menghadapi sengketa akibat keterlambatan pembayaran, ketidakpatuhan spesifikasi teknis, ambiguitas tanggung jawab kontrak, dan konflik penggunaan lahan. Meskipun mekanisme litigasi itu melalui Pengadilan tersedia,

APS lebih disukai karena prosesnya yang lebih cepat, hemat biaya, dan menjaga kerahasiaan. Metode penelitian hukum normatif digunakan untuk mengkaji fenomena hukum melalui evaluasi analitis data sekunder. Temuan menunjukkan bahwa mediasi dan arbitrase, khususnya, relevan karena fleksibilitasnya, kemampuan untuk mempertahankan hubungan bisnis, dan putusan yang mengikat. Arbitrase menonjol karena kemampuannya memilih arbiter ahli dan menerapkan prinsip *ex aequo et bono*. Penggunaan Arbitrase dan APS sejalan dengan nilai-nilai sosiokultural Indonesia seperti musyawarah-mufakat, yang menekankan harmoni komunal dan solusi "win-win". Analisis ini mengkonfirmasi bahwa Arbitrase dan APS, terutama arbitrase, adalah pilihan yang lebih efektif untuk penyelesaian sengketa konstruksi, mendukung pertumbuhan berkelanjutan dan adil di sektor ini. **Kata Kunci: Alternatif Penyelesaian Sengketa, Arbitrase, Hukum Konstruksi, Indonesia, Mediasi.**

A. INTRODUCTION

The development of Indonesia's construction industry is deeply intertwined with its political history and legal transformation. During the Dutch colonial period, construction efforts were centrally managed to support colonial interests, focusing on railways, administrative buildings, and ports.¹ Legal authority for infrastructure development stemmed from the Indische Staatsregeling and the *Burgerlijk Wetboek* (Soon adapted as the Indonesian Civil Code Book), the latter of which remains partially in force today. These legal remnants significantly influence current contract, tort, and dispute resolution principles in construction agreements.²

Following Indonesia's declaration of independence in 1945, the nation's first Constitution (*Undang-Undang Dasar 1945*) codified the principle that land and natural resources are to be controlled by the state for the benefit of the people. Article 33(3) of the Constitution underscores this policy, laying the foundation for state control over public works and land acquisition processes. This policy also established the basis for strong government involvement in infrastructure development a dynamic that persists in public-private partnerships and state-funded projects.

¹ Freek Colombijn, *Under Construction: The Politics of Urban Space and Housing during the Decolonization of Indonesia, 1930-1960*, KITLV Press, Leiden, 2010.

² Simon Butt, *The Constitution of Indonesia: A Contextual Analysis*, Bloomsbury, Oxford, 2012.

Disputes are a natural part of human life.³ Including in the field of construction. The regulatory structure for the construction industry formally began to consolidate in the New Order era (1966–1998), particularly during President Suharto’s national development plans (REPELITA). Infrastructure became a state-led effort, but legal uncertainty and lack of contractor standards often led to mismanagement and disputes. In response, the Indonesian government enacted Law No. 18 of 1999 on Construction Services (Law No. 18/1999), which introduced legal instruments for contractor certification, supervision, and dispute resolution.

In 2017, Law No. 2 on Construction Services renewed the 1999 version. This legislation reaffirmed state responsibility in regulating the sector while enhancing the role of the private sector. Notably, the law expanded mechanisms for dispute resolution by mandating that all construction contracts must contain clear provisions for settlement, whether through negotiation, mediation, conciliation, or arbitration (Article 88 Law 2/2017).

According to Setyawati Fitrianggraeni, dispute settlement in Indonesia can be carried out through judicial mechanisms (in court) or through alternative methods outside the court system, both of which are recognized and accepted by the state and society as legitimate means of resolving conflicts.⁴

Simultaneously, decentralization reforms under Law No. 23 of 2014 allowed local governments to play a larger role in infrastructure planning and budgeting. While this enabled region-specific development, it also contributed to overlapping jurisdictions and inconsistencies in licensing practices, fertile ground for construction disputes.

National Construction Services Development Board (*Lembaga Pengembangan Jasa Konstruksi*) serves as a key regulatory and quasi-judicial institution empowered to resolve administrative & professional misconduct disputes. For commercial non-litigation conflicts, the Badan Arbitrase Nasional Indonesia

³ Astrid Athina Indradewi and Fajar Sugianto, *Peran dan Manfaat Arbitrase Sebagai Alternatif Penyelesaian Sengketa Ditinjau dari Perspektif Pelaku Usaha*, Jurnal Hukum dan Sosial Politik, Vol.2. No.2 (2024).

⁴ Setyawati Fitrianggraeni, Eva Fatimah Fauziah, and Sri Purnama, *Would Ratification of the Singapore Convention on Mediation Enrich Indonesian Mediation Culture?*, Alphen Aan Den Rijn, The Netherlands: Kluwer Law International) Arbitration: The International Journal of Arbitration, Mediation and Dispute Management, Vol.90, No.1 (February 2024).

(BANI Arbitration Center) remains the primary institution, particularly in high-value or international contracts. However, dispute resolution remains fragmented and underdeveloped, particularly for small-scale contractors and informal sector actors.

In practice, construction disputes in Indonesia arise due to four common factors: (1) delays in payment, (3) non-compliance with technical specifications, ambiguity in contractual responsibilities, and (4) conflicts over land use or overlapping claims. (3) Large-scale national projects, such as toll roads and the relocation of the capital city to Nusantara, further exacerbate these risks due to the complexity of multilateral stakeholder engagement and land acquisition.

While litigation remains available, Indonesia's legal culture increasingly favors non-litigation approach such as arbitration and Alternative Dispute Resolution (ADR). Law No. 30 of 1999 on arbitration and ADR provides the statutory basis for binding arbitration, yet challenges persist due to limited judicial understanding of non-litigation awards and jurisdictional resistance in local courts.⁵

As the industry continues to grow with Indonesia targeting a USD 400 billion infrastructure pipeline by 2030 the evolution of dispute mechanisms and legal harmonization will be crucial to ensure sustainable and equitable growth in the construction sector.⁶ Moreover, in this context, business actors often believe that every business decision must be made quickly and accurately, guided by the principle that "time is money".⁷ Therefore, when a dispute arises, they tend to choose a dispute resolution method that fits their specific needs.

According to Sogar Simamora, Cases that is brought trough Arbitration and ADR, is basically a contractual dispute. Where the case that is brought to dispute is what is within the contract.⁸ And In the perspective of J Beatson,⁹ contracts has 4 main functions of:

1. Contracts generally establish the value of the exchange between the parties

⁵ Setyawati Fitriangraeni, Eva Fatimah Fauziah, and Sri Purnama, *Would Ratification of the Singapore Convention on Mediation Enrich Indonesian Mediation Culture?*.

⁶ Sri Mulyani Indrawati, *Infrastructure for Inclusive Economic Development Volume 1: Lessons Learnt from Indonesia*, Ministry of Finance, Jakarta, 2023.

⁷ Astrid Athina Indradewi and Fajar Sugianto, *Peran dan Manfaat Arbitrase Sebagai Alternatif Penyelesaian Sengketa Ditinjau dari Perspektif Pelaku Usaha*, p.3.

⁸ Sogar Simamora, *Bunga Rampai Hukum Perdata Indonesia*, Setara Press, Jakarta, 2024.

⁹ Jack Beatson, *Anson's Law of Contract*, Oxford University Press, Oxford, 2020.

involved.

2. They define reciprocal obligations and specify performance standards expected from each party.
3. Contracts also serve to allocate economic risks, clarifying who bears responsibility under various circumstances.
4. Additionally, contracts outline how failures or breaches will be handled, including the legal consequences that may follow.

Indonesia's preference for amicable or "win-win" dispute resolution is rooted in its long-standing socio-cultural and philosophical traditions. One of the most prominent values embedded in the Indonesian legal and political system is *musyawarah-mufakat*, or deliberation to reach consensus. This indigenous approach to resolving conflict emphasizes communal harmony over individual legal victories. Originating from pre-colonial village governance structures, the spirit of *musyawarah* has continued to influence contemporary policy-making and legal design, including in construction law and administrative dispute frameworks.¹⁰

The ideological foundation of this practice lies in Pancasila, Indonesia's state philosophy. Its fourth principle democracy guided by wisdom in deliberation/representation mandates consensus as a democratic and cultural ideal. The synergy between Pancasila and *musyawarah* underscores the country's preference for non-confrontational processes, especially in sectors involving public interest and long-term collaboration, such as infrastructure development.¹¹ This alignment makes the pursuit of win-win solutions not just a legal preference, but a socio-political mandate.

Over time, these values have been incorporated into formal legal mechanisms. In contemporary dispute resolution frameworks such as those applied by BANI Arbitration Center and the Construction Services Law (Law No. 2 of 2017) parties are encouraged to resolve disputes outside the courts, either through mediation, conciliation, or arbitration. Fajrin and Triwijaya (2020) highlight that this legal

¹⁰ Muhammad Hajir Susanto, Fattah Nur Muizz, and Muhammad Habibi Miftakhul Marwa, *Penerapan Alternatif Penyelesaian Sengketa Wanprestasi Atas Premi Pemegang Polis Di PT. Asuransi Jasindo Yogyakarta*, *Borobudur Law Review*, Vol.3, No.2 (August 2021).

¹¹ Karmawan Karmawan, *Mediation in the Religious Courts of Indonesia*, *AHKAM : Jurnal Ilmu Syariah*, Vol.20, No.1 (June 2020).

culture reinforces dispute settlement models that balance justice with reconciliation, often tailored to the unique dynamics of local and regional development projects.¹²

This leads to a critical question guiding this study, **Why is non-litigation approach, specifically arbitration and ADR is more preferable as a dispute resolution method in Indonesia's construction sector, despite its structured, adversarial origins?** This question is particularly relevant given the hybrid role arbitration and ADR plays in Indonesia, while legally binding and procedural, arbitration and ADR is frequently localized and infused with conciliatory norms. Recent studies show that arbitration, when compared to litigation, is perceived as more culturally adaptable and practically efficient. Arbitration and ADR's flexibility and confidentiality make it a middle ground providing enforceable decisions without undermining the relational values cherished in Indonesian communities.

Research constitutes a scientific process grounded in particular methodologies, systematic procedures, and logical thought, with the objective of examining legal phenomena through analytical evaluation. In this study, a normative legal research method is applied, focusing on the collection and interpretation of secondary data. This data is divided into three categories: (1) primary legal sources, which include the 1945 Constitution of the Republic of Indonesia, the Indonesian Civil Code, Law No. 1 of 1974 concerning Marriage (as amended by Law No. 16 of 2019), Law No. 23 of 2006 on Population Administration (as amended by Law No. 24 of 2013), and Presidential Regulation No. 96 of 2018 regarding the procedures and requirements for population and civil registration; (2) secondary legal sources, such as scholarly books and journals; and (3) tertiary legal sources, which consist of websites and various other supporting references.¹³

¹² Yaris Adhial Fajrin and Ach. Faisol Triwijaya, *The Concept of Penal Mediation for Defamation Delict in The Indonesia Ite Law As A Manifestation of Restorative Justice*, Yustisia Jurnal Hukum, Vol.9, No.3 (December 2020).

¹³ Soekanto S., and Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*, Rajawali Pers, Jakarta, 2015.

B. DISCUSSION

The Indonesian construction industry is inherently complex, involving multiple parties and significant technical and legal challenges. Disputes commonly arise from delays, cost overruns, breaches of contract (or in Indonesia is defined as *wanprestasi*), and deviations from technical specifications. These conflicts are governed by legal instruments such as Law 2/2017 Law 30/1999 on Arbitration and ADR, and the Indonesian Civil Code (BW), especially Articles 1238 and 1243, which regulate default and compensation mechanisms.

1. Technical Complexity and Time Sensitivity in Construction

Construction projects often involve overlapping tasks and long execution periods, making them susceptible to disruptions and scheduling failures. In Indonesia, the involvement of multiple entities from national agencies and state-owned enterprises to local subcontractors and consultants adds to this complexity. Delays in administrative permits, contractor mobilization, and land clearance frequently result in time overruns. These operational difficulties are further exacerbated in publicly funded projects due to budget cycle constraints and rigid procurement systems.¹⁴

Indonesian infrastructure projects commonly experience cost and time escalation due to changing project scopes, delayed decision-making, and insufficient design detailing. In projects with public-private partnerships (PPPs), disputes are more likely due to misalignment of expectations and lack of adaptive contract frameworks.¹⁵

2. Multi-Stakeholder Dynamics and Risk Allocation

Construction projects typically involve a web of stakeholders, including project owners, general contractors, subcontractors, consultants, and regulators.¹⁶ This layered structure creates challenges in communication and contract

¹⁴ Muhammad Simba Sembiring, *et al.*, *Efficiency Analysis Of Building Procurement and Management Plan Using The Life Cycle Costing Method under a Creative Commons Attribution-NonCommercial 4.0 International License (CC BY-NC 4.0)*, Jurnal Ekonomi, Vol.11, No.02 (September 2022).

¹⁵ Mustafa Nahdi, *et al.*, *Examining Solicited Projects of Public-Private Partnerships (PPP) in the Initiative of Indonesian Government*, Buildings, Vol.14, No.6 (June 2024).

¹⁶ Kartika Wulandary, Kriengsak Panuwatwanich, and Michael Henry, *Readiness and Potential Application of Smart Contracts in the Indonesian Construction Industry*, Presented at the Lecture Notes in Civil Engineering, Vol.302 (April 2023).

administration, often leading to disputes over responsibilities and risk allocation. Without clearly defined obligations, parties may engage in blame-shifting, resulting in delays, increased costs, and legal action.

Whereas, ineffective communication and undefined contractual responsibilities are primary causes of construction disputes in Southeast Asia, particularly where subcontractor performance is not properly supervised.¹⁷

In Indonesian law, breach of contract refers to a failure to fulfill contractual obligations. Article 1238 of BW states that a party is deemed in default if they fail to perform an obligation after being officially warned (*somasi*).¹⁸ Article 1243 provides that compensation can be claimed when non-performance is due to negligence or intentional wrongdoing. These provisions are frequently invoked in construction disputes involving delays, inferior work, or non-payment. In which, Legal scholars have emphasized the importance of clearly drafted contracts and warning mechanisms (*somasi*) to reduce the risk of breach of contract. In a systematic study, in which, breach-related disputes particularly concerning payment and performance are among the most recurring legal issues in Indonesian construction sectors.

In a construction project, there are several layers of involvement, and one crucial party is the subcontractor. A subcontractor, simply put, is a third party who undertakes to perform a specific part of the work that the main contractor (known as *Penyedia barang/jasa* in government procurement) has originally committed to. This arrangement is common, especially when complex tasks require specialized skills or resources that the main contractor may not possess directly. While the main contractor is ultimately responsible to the project owner, they can delegate non-primary aspects of the work to a subcontractor, often with the project owner's consent.¹⁹

However, the legal relationships here are quite distinct, largely governed by the principle of privity of contract. This fundamental legal idea, rooted in Article

¹⁷ Kartika Wulandary, Kriengsak Panuwatwanich, and Michael Henry, *Readiness and Potential Application of Smart Contracts in the Indonesian Construction Industry*.

¹⁸ Indonesia, *Indonesian Civil Code (Burgerlijk Wetboek)*, Translated by R. Subekti, Pradnya Paramita, Jakarta, 1987.

¹⁹ Dian Laras Wati, Firman Sarifudin, and Dan Mega Waty, 2024, *Ketidaklengkapan Kontrak dan Sengketa Konstruksi di Indonesia*, Jurnal Mitra Teknik Sipil, Vol.7, No.2 (May 2024).

1340 of Indonesia's Civil Code (BW), means that an agreement creates binding obligations only between the parties who actually made it. In a construction setting involving a subcontractor, this translates into two separate contractual relationships: one between the project owner and the main contractor, and another, entirely distinct, between the main contractor and the subcontractor. This strict separation means that the subcontractor has no direct legal relationship with the project owner; their rights and duties, including payment, flow solely through the main contractor.

This disconnected legal relationship can create significant vulnerabilities for subcontractors when disputes arise. If the main contract between the project owner and the main contractor faces issues for instance, if the project owner delays payment to the main contractor or even terminates the main contract the subcontractor can be severely affected. Despite performing their work, they cannot directly demand payment from the project owner. Their legal recourse for recompensation remains with the main contractor. Similarly, if a subcontractor's performance falls short, causing breach of contract in the main project, the primary liability to the project owner still rests with the main contractor, who then must seek remedies from the subcontractor. This intricate web of relationships means disputes at any level can ripple through the entire project chain, often leaving subcontractors in a precarious position despite their pivotal role in project execution.²⁰

3. Litigation in Indonesia

In Indonesia's justice system, engaging in litigation, whether in criminal or civil matters, often means embarking on a notably lengthy journey. The path through the courts is structured in multiple tiers: cases begin at the District Court (*Pengadilan Negeri*), can then be appealed to the High Court (*Pengadilan Tinggi*), and may ultimately reach the Supreme Court (*Mahkamah Agung*) for a cassation appeal. This multi-stage process has increasingly drawn criticism in modern legal discourse due to the prolonged duration of court proceedings.²¹

Civil cases, in particular, move through a series of distinct phases: the filing of a lawsuit, the summoning of parties, the exchange of legal arguments and

²⁰ ian Laras Wati, Firman Sarifudin, and Dan Mega Waty, 2024, *Ketidaklengkapan Kontrak dan Sengketa Konstruksi di Indonesia*.

²¹ Yahya Harahap, *Hukum Acara Perdata : Tentang Gugatan, Persidangan, Penyitaan, Pembuktian, dan Putusan Pengadilan*, Sinar Grafika, Jakarta, 2017.

responses, the presentation of evidence, the submission of final conclusions, and finally, the issuance of a judgment. Crucially, the current procedural laws (HIR/RBg) do not impose strict time limits on each of these individual stages. As such, the pace of a civil case is largely dependent on the efficiency of the judicial panel, how promptly the involved parties respond, and the availability of court hearing schedules. While the Supreme Court, through Circular Letter (SEMA) No. 2 Year 2014 (SCL 2/2014), has issued an internal directive encouraging District Courts to resolve civil cases within a maximum of five months, this instruction remains an administrative guideline and does not hold the force of a substantive legal norm.²²

Furthermore, while the HIR sets a deadline for filing an appeal, typically 14 days from the date the judgment is pronounced or formally notified, this is one of the few explicit procedural timelines. Echoing the principle enshrined in Article 21 paragraph (3) of Law No. 48 Year 2009 (Law 48/2009) concerning judicial power, all courts are mandated to adjudicate cases in a manner that is simple, swift, and cost-effective. Administratively, Supreme Court Regulation (Peraturan Mahkamah Agung or Perma) No. 7 Year 2001 suggests that appeal cases should ideally be concluded within three months. However, similar to the SCL instruction for first-instance cases, this regulation is also administrative, serving as a guideline rather than a binding legal norm.

Beyond the frustrating delays, litigation in Indonesia, by its very nature, struggles to deliver what is often termed a "win-win solution." The court system is designed as an adversarial contest: one party presents their case, the other defends, and a judge ultimately decides who is right and who is wrong. This creates a definitive winner and loser, rather than fostering an environment where parties can explore mutually beneficial outcomes or compromise to preserve business relationships. The remedies sought in court are typically about assigning fault and

²² Barbara Cloudya, *Efektivitas Proses Hukum Acara Perdata dalam Penyelesaian Kasus Utang Piutang di Pengadilan Negeri*, Journal of Multidisciplinary Inquiry in Science Technology and Educational Research, Vol.2, No.1b (November 2025).

awarding recompensation (such as damages), which can feel punitive and often leaves both sides with a sense of dissatisfaction, regardless of the verdict.²³

Consequently, while the Indonesian legal system does offer legal remedies and pathways for recompensation for those who have been wronged, the practical chances of achieving a truly satisfactory outcome are significantly hampered by the procedural realities. Pursuing these remedies means entering a lengthy, unpredictable, and often costly process. The absence of normative timeframes in the foundational procedural laws means parties can be caught in an extended legal battle, draining resources and energy, even if their claim is ultimately successful. This prolonged engagement, far from offering a "win-win" scenario, often results in a protracted and emotionally draining experience for all involved, underscoring the challenges of achieving timely justice in Indonesian courts.

4. Unmeasurable Cost in Litigation

Taking a civil dispute to court in Indonesia often leads to expenses that are hard to predict and can grow surprisingly large. This financial uncertainty comes mainly from how the court system is set up. A case might go through several levels from the local District Court all the way up to the Supreme Court, with each step adding more time and money. What makes these costs so hard to pin down is that Indonesia's main court rules (HIR and RBg) don't actually set firm, required deadlines for how long each part of a civil case should take.²⁴

Since there are no strict time limits, legal fees and other related costs can keep piling up as a case moves forward without a clear end date. While the Supreme Court has issued internal guides, like suggesting local courts finish civil cases in five months, these are just recommendations, not strict laws that everyone must follow. In reality, many cases, especially those reaching the Supreme Court's review stage, go on much longer than these suggested times, often due to the heavy number of cases (caseload). This longer waiting period directly means higher costs that people simply cannot plan for.²⁵

²³ Yahya Harahap, *Hukum Acara Perdata : Tentang Gugatan, Persidangan, Penyitaan, Pembuktian, dan Putusan Pengadilan*, p.21.

²⁴ Muhamad Ulul and Albab Musaffa, *Optimalisasi Penyelesaian Sengketa Dalam Perspektif Hukum Islam dan Sistem Hukum Indonesia: Studi Komparatif Antara Litigasi dan Alternative Dispute Resolution (ADR)*, Jurnal Hukum Bisnis Islam, Vol.8, No.2 (March 2025).

²⁵ *Ibid.*,

Beyond the time factor, the very nature of court battles contributes to these high and uncertain costs. Court cases are designed as adversarial contests, meaning one side wins and the other loses. This competitive approach often pushes people to spend a lot on digging up evidence (discovery), hiring expert witnesses, and lengthy legal arguments. Such a "winner-takes-all" mindset rarely leads to a "win-win solution" where both sides find common ground or maintain their relationships, making the financial investment feel even steeper.²⁶

Moreover, the adversarial nature of litigation focuses on establishing a winner and a loser, which rarely fosters compromise or preserves the crucial business relationships essential in construction. This contrasts sharply with the industry's need for certainty in outcomes and relationships.

Therefore, for the construction sector, choosing dispute resolution methods that prioritize predictability, efficiency, and expert understanding is essential to meet the fundamental demands for certainty and time sensitivity, offering a clear advantage over the uncertainties inherent in traditional court litigation.

5. Comparative of Competencies: Judge and Arbitrators

The Judicial Commission holds significant authority concerning the judiciary, encompassing both the appointment and dismissal of judges. (i) This body is also vested with the responsibility of overseeing all conduct of judges, ensuring the upholding of their honor and the dignity of their office. The criteria for judicial appointment are meticulously outlined in Article 14 of Law 49 /2009. (i) To be eligible for consideration as a judge, an individual must first be an Indonesian citizen. (ii) Furthermore, they are required to demonstrate piety towards Almighty God. (iii) Unwavering loyalty to the Pancasila and the 1945 Constitution of the Republic of Indonesia is also a fundamental prerequisite. (iv) Academically, a candidate must possess a law degree and (v) successfully complete specialized judicial education. (vi) Crucially, mental and physical fitness to diligently execute judicial duties and responsibilities is mandatory. (vii) Finally, the individual must exhibit qualities of authority, honesty, fairness, and impeccable character.²⁷

²⁶ Ni Made Trisna Dewi, *Penyelesaian Sengketa Non Litigasi Dalam Penyelesaian Sengketa Perdata*, Jurnal Analisis Hukum Universitas Pendidikan Nasional, Vol.5, No.1 (April 2022).

²⁷ Idul Rishan, *Redesain Sistem Pengangkatan dan Pemberhentian Hakim Di Indonesia*, Jurnal Hukum IUS QUIA IUSTUM, Vol.23, No.2 (April 2016).

The process for appointing judges to the district courts is a collaborative effort between the Supreme Court and the Judicial Commission. (i) This selection procedure is designed to be transparent, ensuring openness and clarity throughout. (ii) It is also held to be accountable, meaning that decisions and actions are justifiable and traceable. (iii) Moreover, the process is participative, allowing for broader engagement and input to ensure the most qualified candidates are selected for these crucial roles within the legal system.

In construction disputes, issues often arise from breach of contract, or a breach of contract. This can manifest as technical errors, discrepancies in quality, or delays in completion, all of which can lead to significant losses. When such problems are rooted in the construction agreement, the dispute falls under the domain of civil law and can be brought before a court.²⁸

In a construction dispute, the process of presenting evidence involves various types of proof. These include contract documents, project drawings and records, and electronic evidence such as emails or digital photographs. Expert technical witness testimony also plays a significant role. The legal validity of electronic evidence is recognized in Indonesian law, specifically under Article 1866 of BW. Article 184 of the HIR, and the ITE Law (Electronic Information and Transactions Law). However, the practical application of digital forensics still varies across different courts.²⁹

In a construction dispute, the process of presenting evidence (pembuktian) involves various types of proof. These include contract documents, project drawings and records, and electronic evidence such as emails or digital photographs. Expert technical witness testimony also plays a significant role. The legal validity of electronic evidence is recognized in Indonesian law, specifically under Article 1866 of BW. Article 184 of the HIR, and the ITE Law (Electronic Information and Transactions Law). However, the practical application of digital forensics still varies across different courts.³⁰

²⁸ Lailatul Arofah, *Kontruksi Pembuktian dalam Sengketa yang Berakhir dengan Perdamaian*, Direktorat Jenderal Badan Peradilan Agama Mahkamah Agung RI, Jakarta, 2021.

²⁹ Monica Maharani Dewi, Tarisa Dinar Alifia, and Sebastian Sitohang, *Penggunaan Alat Bukti Elektronik dalam Menyelesaikan Sengketa Hukum Perdata di Indonesia*, Mandub : Jurnal Politik, Sosial, Hukum dan Humaniora, Vol.2, No.3 (July 2024).

³⁰ *Ibid.*,

Judges hold broad authority to assess the strength of such electronic evidence through a process called *rechtsvinding*. This means a judge establishes legal truth based on their conviction and the specific circumstances of the case. The aspect of burden of proof is incredibly important. According to the theory of evidence developed by Munir Fuady, where the burden of proof is placed, whether on the plaintiff or the defendant directly determines victory or defeat in a case.

An incorrect distribution of the burden of proof can lead to a loss of justice, even if the evidence presented by both sides is seemingly equal. Judges must be fair and impartial when deciding if a fact has been sufficiently supported by formal evidence, such as documents, witness testimonies, or confessions. This careful assessment is essential for ensuring that substantive justice (*keadilan substantif*) is ultimately achieved.

Beyond traditional litigation, arbitration and ADR methods offer viable paths for resolving construction disputes. Options like mediation and arbitration are increasingly popular due to their efficiency and flexibility. Mediation allows involved parties to directly discuss and negotiate, fostering a collaborative environment to find mutually agreeable solutions. Arbitration, on the other hand, provides a swift and confidential process, culminating in a final and binding decision. In today's modern era, arbitrators are also adapting through Online Dispute Resolution (ODR) systems, which leverage information technology to expedite the dispute settlement process and ensure data security for all parties involved.³¹

To become an Arbitrator, one must meet and adhere to several mandatory requirements, as outlined in Article 12 of Law 30/1999. These conditions include: (1) being legally competent to perform legal actions ; being at least 35 years old ; (2) having no family relations by blood or affinity up to the second degree with any of the disputing parties ; (3) possessing no financial or other interest in the arbitral award ;(4) and having at least 15 years of active experience and expertise in their field. Furthermore, a prospective Arbitrator who has previously been appointed as

³¹ Ariful Hakim Waruwu, *et al.*, *Kewenangan Arbiter dalam Memutus Sengketa Bisnis Arbitrase Secara Ex Aequo Et Bono*, Journal of Academic Literature Review, Vol.2, No.12 (December 2023).

a mediator in a dispute must submit a written statement to BANI indicating their willingness or refusal to act as an Arbitrator, with a deadline of no more than 7 days for this submission.

In Law 30/1999, there is no explicit requirement that an arbitrator must have a legal educational background. This contrasts with the clear stipulations for judges, who must have a legal education and specific judicial training. Instead, the arbitration profession emphasizes that an arbitrator should possess strong capabilities and expertise in their respective fields, relevant to the specific case they are handling and as agreed upon by the parties involved. These fields can range from law, economics, and accounting to engineering, among many others.

Subekti, in his book "*Hukum Pembuktian*" (Law of Evidence), explains that arbitration is a private legal institution, and there is no requirement for an arbitrator to be a judge or a legal expert. Many arbitrators possess diverse backgrounds, some even combining legal education with expertise in engineering, or demonstrating a comprehensive understanding of both law and construction matters.³²

An example of such a figure is Arbitrator Omar Ishananto. He is a prominent individual recognized as a director of PT Pakuwon Jati, a major property and real estate developer known for establishing large shopping centers in Surabaya. Omar Ishananto himself graduated from the Faculty of Law at Universitas Airlangga in Surabaya around 1970/1971 and even practiced as a lawyer after graduation. Following his legal career, he transitioned into the construction sector, notably developing Tunjungan Plaza, Surabaya's first major mall, which remains highly prominent today.³³

One of the arbitrators listed on the panel of the Indonesian National Board of Arbitration (BANI) is Edmund Kronenburg, a distinguished Asian legal practitioner with over 24 years of experience in litigation, arbitration, and dispute resolution. He frequently appears as lead counsel before the Singapore High Court and Court of Appeal, as well as in various international arbitration forums.

³² Subekti, *Hukum Pembuktian*, Pradnya Paramita, Jakarta, 2007.

³³ Omar Ishananto, *Hukum dan Masyarakat*. Alumnipedia Universitas Airlangga, Surabaya, 2025.

His legal practice encompasses a broad range of matters, including commercial and corporate disputes, energy and natural resources, media and telecommunications, breach of contract, defamation, employment, and healthcare-related cases. He is also experienced in handling applications for pre-emptive remedies, such as worldwide freezing injunctions. Beyond Singapore, Kronenburg has been actively involved in the ASEAN region, particularly Indonesia. He has represented numerous prominent Indonesian private clients and major corporations in cross-border disputes. Among his notable achievements are securing a USD 35 million arbitral award under the ICC Rules in a Jakarta-seated arbitration against PT Pertamina (Persero) and PT Pertamina EP, as well as successfully resisting the enforcement of 99.7% of a USD 130 million SIAC award obtained by the Astro Group against PT First Media, a member of the Lippo Group.³⁴

6. Non-Litigation Approach in Indonesia

Based on Article 1/10 of Law 30/1999, ADR refers to a mechanism for resolving disputes or disagreements through procedures mutually agreed upon by the parties, specifically by means other than litigation. These methods may include consultation, negotiation, mediation, conciliation, or expert determination.

The types of ADR as regulated in Article 1/10 of Law 30 of 1999 may be utilized by business actors as well as the general public to resolve civil disputes. The following sections will focus on mediation and negotiation as two key forms of ADR.³⁵

a. Mediation

Mediation in Indonesia is governed by several legal instruments, primarily Law 30/1999 and Supreme Court Regulation No. 1 of 2016 (SCR 1/2016). According to Black's Law Dictionary, mediation is defined as a voluntary and non-binding procedure whereby a neutral third party assists disputing parties in communicating effectively, with the goal of reaching a mutually agreeable settlement.³⁶

³⁴ Business Law Journal Asia, *Singapore Top Lawyer 2024*, diakses dari <https://law.asia/asia/lawyers/top-lawyers-singapore/edmund-kronenburg-braddell-brothers/>.

³⁵ Frans Hendra Winata, *Hukum Penyelesaian Sengketa*, Sinar Grafika, Jakarta, 2022.

³⁶ Henry Campbell Black, *Black's Law Dictionary*, Minn. West Publishing Co., St. Paul, 1968.

Mediation is an informal process designed to allow disputing parties to discuss their differences privately with the assistance of a neutral third party. A mediator in such a process should remain impartial, maintain good relations, communicate in the parties' own language, listen actively, focus on potential benefits, minimize differences, and emphasize common ground. The goal is to help the parties negotiate more effectively toward a resolution. Mediation institutions serve to provide a means for disputing parties to seek a win-win solution based on mutual agreement.³⁷

At the first hearing, the judge is obligated to attempt to broker a settlement, as mandated by Article 130 of the HIR And as regulated Article 1/1 through SCR 1/ 2016, mediation facilitates a win-win solution because, fundamentally, civil disputes aim for peaceful resolution. Second, mediation offers a time-efficient process, avoiding lengthy proceedings.³⁸ Third, it is generally more cost-effective than traditional litigation. Furthermore, mediation helps to preserve the relationship between the disputing parties, which is often crucial. Finally, it ensures that the details of the dispute are kept confidential, preventing excessive public exposure.³⁹

No.	Stage of Proceedings	Action or Determination by the Parties	Outcome 1: Successful Resolution	Outcome 2: Unsuccessful Resolution / Subsequent Action
1	Commencement of Dispute	A dispute arises between Party I and Party II.	Not Applicable	The parties shall proceed to initial resolution attempts.
2	Initial Negotiation	The parties shall first endeavor to resolve the dispute through direct negotiation without the intervention of a third-party neutral.	An amicable settlement is reached by the parties.	In the event that no settlement is reached, the parties may mutually agree to appoint an ad hoc mediator.
3	Ad Hoc Mediation	The parties shall engage in mediation proceedings facilitated by the	A settlement agreement is	Should mediation with the ad hoc mediator fail to produce a

³⁷ Meirina Nurlani, *Alternatif Penyelesaian Sengketa dalam Sengketa Bisnis di Indonesia*, Jurnal Kepastian Hukum dan Keadilan, Vol.3, No.1 (May 2022).

³⁸ Dian Maris Rahmah, *Optimalisasi Penyelesaian Sengketa Melalui Mediasi di Pengadilan*, Jurnal Bina Mulia Hukum, Vol.4, No.1 (September 2019).

³⁹ *Ibid.*,

		appointed ad hoc mediator.	successfully mediated.	settlement, the parties shall proceed to appoint a certified mediator from a recognized mediation institution.
4	Institutional Mediation	The parties shall submit the dispute to formal mediation administered by a recognized mediation institution.	A settlement agreement is successfully mediated.	The mediation is concluded without a settlement agreement.
5	Finalization of Agreement or Recourse to Adjudication	Upon the successful conclusion of a settlement at any preceding stage:	The terms of the settlement shall be memorialized in a formal Settlement Agreement, duly executed by all parties.	In the absence of a mediated settlement, the parties may pursue further legal remedies, including the initiation of arbitration proceedings or litigation before the competent District Court.
6	Legal Enforcement of Settlement	The executed Settlement Agreement shall be submitted to the District Court for registration, whereupon it shall be officially recorded and accorded the legal status of a Deed of Settlement (<i>Akte van Dading</i>).	The registered Deed of Settlement shall constitute a final and legally binding instrument upon the parties, enforceable by law.	Not Applicable

Table 1.1 Mediation Procedure In Indonesia (as regulated in SCR 1/2016)⁴⁰

b. Negotiation

The term "negotiation" refers to the act of deliberating or discussing to reach an agreement, while a negotiator is the person who conducts these discussions. Negotiation is the most common method of dispute resolution, negotiation is commonly used in daily human interaction.⁴¹

Black's Law Dictionary defines negotiation as "a consensual bargaining process in which the parties attempt to reach agreement on a disputed or potentially disputed matter." This definition highlights that negotiation involves complete autonomy for the parties, meaning no third-party intervention.⁴²

⁴⁰ Frans Hendra Winata, *Hukum Penyelesaian Sengketa*, p.35.

⁴¹ *Ibid.*,

⁴² Henry Campbell Black, *Black's Law Dictionary*, p.36.

Simply, negotiation is a bargaining process or an attempt to achieve an agreement with another party. This is done through dynamic interaction and communication, with the ultimate goal of reaching a mutually acceptable settlement.

The outlined ADR procedures highlight a significant divergence between litigation and non-litigation approaches to dispute resolution in this domain. This distinction is especially critical within the construction sector, where efficient and precise dispute resolution is paramount. Construction projects are inherently complex, often involving multi-stakeholder dynamics with intricate risk allocation, making rapid and accurate resolution essential to project continuity.

Characteristic	Litigation	Mediation	Negotiation
Nature of Participation	Non-voluntary	Voluntary	Voluntary
Decision Maker	Judge	Parties themselves	Parties themselves
Binding Force of Decision	Binding, can be appealed, and has executory force after final and binding judgment	Binding (contract/pacta sunt servanda), but does not have executory force	Binding (contract/pacta sunt servanda), but does not have executory force
Confidentiality	Open	Confidential	Confidential
Duration	6 months - 5 years	Based on parties' agreement	Based on parties' agreement
Procedure	Formal (Civil Procedure Code, HIR, and RV)	Informal	Informal
Cost	Expensive	Relatively cheaper	Relatively cheaper
Involved Parties	Judge (Always)	Mediator	Parties and/or Negotiator

Table 1.2 Comparative Of Litigation V. ADR⁴³

The comparative analysis demonstrates a fundamental distinction between traditional litigation and ADR mechanisms such as mediation and negotiation. While litigation is characterized by its formal, non-voluntary nature, reliance on a judicial decision-maker, public proceedings, extended timelines, and significant costs, resulting in a legally binding judgment with executory force, both mediation and negotiation offer a stark contrast. ADR methods are inherently voluntary,

⁴³ Frans Hendra Winata, *Hukum Penyelesaian Sengketa*, p.35.

party-centric, informal, confidential, generally more cost-effective and time-efficient, fostering agreements that, while binding by consent (*pacta sunt servanda*), typically lack the direct executory power of a court judgment, thereby emphasizing party autonomy and flexible resolution over adversarial compulsion.⁴⁴

Furthermore, the technical complexity of construction-related disputes, often requiring specialized knowledge, combined with the time-sensitive nature of these projects, underscores the need for swift and effective conflict resolution. Delays can result in substantial financial penalties and project setbacks, emphasizing why promptly and accurately resolving disputes in construction is not just beneficial, but truly crucial.⁴⁵

7. Exception of *Force Majeure*

Although construction dispute forums offer parties a choice between litigation and non-litigation or ADR methods, there remains a persistent "bola liar" (unforeseen element) in construction contractual aspects that has long been a significant trigger of disputes: the concept of *Force Majeure*. This critical clause addresses situations where external, uncontrollable events prevent one or both parties from fulfilling their contractual obligations without incurring penalties for breach of contract. Such events, often beyond reasonable human control, can encompass natural disasters, epidemics, or substantial shifts in government policy directly impacting project viability.⁴⁶

A *Force Majeure* clause, often translated as an "act of God" or "unforeseeable circumstances," is a crucial component in construction contracts. It addresses situations where external, uncontrolled events prevent one or both parties from fulfilling their contractual obligations. These events, typically beyond reasonable control, can lead to delays or even the cancellation of a construction project without incurring penalties for breach of contract. Common examples include natural disasters, epidemics, wars, or significant government policy changes that directly impact the project's feasibility.⁴⁷

⁴⁴ Frans Hendra Winata, *Hukum Penyelesaian Sengketa*, p.35.

⁴⁵ Y. Sogar Simamora, *Hukum Kontrak: Prinsip-Prinsip Hukum Kontrak Pengadaan Barang dan Jasa Pemerintah di Indonesia*, LaksBang Pressindo, Surabaya, 2017.

⁴⁶ Ajik Sujoko, *Potensi Sengketa Terkait Keadaan Kahar (Force Majeure) dalam Kontrak Pengadaan Pemerintah*, Jurnal Pengadaan Indonesia, Vol.2, No.2 (October 2023).

⁴⁷ Badan Arbitrase Nasional Indonesia, *Indonesia Arbitration - Newsletter*, Bani Quarterly News, Vo.15, No.1 (March 2023).

Under Indonesian Law, specifically Law 2/2017 on Construction Services, force majeure is recognized as a legitimate reason for non-performance. Article 47 (1) (j) of this law outlines that a construction contract must include provisions for *keadaan memaksa* (state of compulsion/force majeure). This clause acknowledges events that occur outside the will and ability of the parties, causing detriment to one of them. The law differentiates between absolute force majeure, where performance becomes impossible, and relative *force majeure*, where performance is still possible but extremely difficult or burdensome.

However, the application of *force majeure* is not without its limitations. The law specifies that events resulting from the actions or negligence of the parties themselves are explicitly excluded from being considered force majeure. This ensures that a party cannot invoke the clause if their own failure or oversight caused the issue. Additionally, parties can agree in their construction work contract on how the risks associated with force majeure will be managed, often through insurance or other indemnity arrangements. This contractual freedom allows parties to define the scope and consequences of such events within the bounds of the law.⁴⁸

In essence, while *force majeure* offers a vital safeguard against unforeseen disruptions in construction projects, its invocation requires careful consideration of the specific circumstances and adherence to the legal framework. It serves as a necessary exception in contractual obligations, preventing undue hardship when truly uncontrollable events make performance impossible or exceptionally challenging, while also ensuring that parties cannot escape responsibility for their own failings.

8. Arbitration as a Preferred Method

Article 1 of Law 30/1999 defines Arbitration as a method of settling civil disputes outside the public courts, where the parties agree in writing to resolve their conflict through this process. For intricate construction disagreements, arbitration is often the favored choice over traditional court litigation. These disputes are typically complex, involving detailed technical aspects and requiring solutions that maintain ongoing business relationships. Law 2/2017 on Construction Services actively promotes non-litigation methods like arbitration for the dispute resolution.

⁴⁸ Badan Arbitrase Nasional Indonesia, [2023] *Indonesia Arbitration - Newsletter*.

A key benefit is the credibility of arbitrators; parties can select experts with specialized industry knowledge, ensuring that decisions are practical and technically sound.

Arbitration stands out due to its flexible approach to justice, notably through the *ex aequo et bono* principle. This means arbitrators can decide cases based on fairness and equity, rather than being strictly bound by formal legal rules. This flexibility is particularly useful in construction, where unique circumstances might lead to unjust outcomes if only rigid laws were applied. This method aims for a "win-win solution," moving beyond a simple winner-loser outcome.⁴⁹

Beyond resolving existing issues, arbitration offers a proactive tool for dispute prevention, such as the "Binding Opinion" from the BANI Arbitration Center. This allows parties to get a definitive interpretation of a contract clause before a minor disagreement escalates into a major dispute. This mechanism provides clarity and legal certainty, helping projects avoid costly delays and preserving business ties, ultimately saving time and money.⁵⁰

Another crucial advantage of arbitration, particularly in the business world, is its inherent confidentiality. Unlike public court proceedings where details of a dispute become part of the public record, arbitration hearings and their outcomes are generally kept private. This discretion is highly valued by companies, as it protects sensitive commercial information, trade secrets, and their reputation from public scrutiny. This private nature fosters a more open and candid exchange between parties, facilitating a more amicable and business-oriented resolution without the added pressure of public perception.

Finally, a major advantage of arbitration choice is its final and binding awards.⁵¹ Unlike court judgments, arbitral awards are not subject to extensive appeals processes, which provides the quick and of course decisive resolutions.

⁴⁹ Ariful Hakim Waruwu, et al., *Kewenangan Arbiter dalam Memutus Sengketa Bisnis Arbitrase Secara Ex Aequo Et Bono*, p.31.

⁵⁰ Ni Made Intan Maharani, *Penyelesaian Sengketa Para Pihak yang Telah Terikat dalam Perjanjian Arbitrase (Studi Kasus di Pengadilan Negeri Denpasar)*, Jurnal Analogi Hukum, Vol.2, No.1 (March 2020).

⁵¹ Muhammad Ghafa Azwa Al-Ghifari, *Kekuatan Hukum Putusan Arbitrase Internasional Tantangan Implementasi di Pengadilan Indonesia*, Iuris Studia: Jurnal Kajian Hukum, Vol.6, No.1 (May 2025).

While annulment of an award is possible under very specific conditions, the core benefit is the assurance of a swift and conclusive outcome. This combination of expert decision-making, flexible justice, proactive tools, confidentiality, and swift finality makes arbitration a highly effective choice for the demanding field of construction. For example, a research done by Mariana Mugiono and Astrid Athina Indradewi in 2024 that resulted in a finding of, disputes handled by BANI Surabaya predominantly concern technical issues within the construction sector. These conflicts are shaped by a combination of internal and external variables. Significantly, both the service users and the service providers involved in these disputes are noted to possess equivalent technical specialists or expertise in building construction.⁵²

This shared possession of technical expertise among parties, as highlighted by the research, introduces a unique and critical dynamic into construction dispute resolution. It suggests that while technical disagreements are the primary source of conflict, the parties often approach these issues with a mutual, foundational understanding of the underlying engineering and construction principles. Consequently, effective resolution hinges not just on legal acumen, but critically on a deep, shared technical vocabulary, which allows for precise identification of the actual points of contention. This dynamic underscores the imperative for dispute resolution bodies like BANI to not only maintain, but actively cultivate a panel of arbitrators and mediators whose expertise extends robustly into the specific engineering and construction disciplines at the heart of such highly technical disputes.

9. Existence of BADAPSKI in Indonesia

The Indonesian Construction Arbitration and Alternative Dispute Resolution Board (BADAPSKI) facilitates the resolution of construction contract disputes. Its arbitrators possess specialized expertise within the construction industry, regardless of whether the project is funded by domestic capital or international grants/loans.

⁵² Mariana Mugiono and Astrid Athina Indradewi, *Eksistensi dan Peran Badan Arbitrase Nasional Indonesia Surabaya Sebagai Wadah Penyelesaian Sengketa Bisnis*, Asosiasi Seni Desain dan Komunikasi Visual Indonesia Amandemen: Jurnal Ilmu pertahanan, Politik dan Hukum Indonesia, Vol.1, No.3 (June 2024).

BADAPSKI's mandate extends beyond arbitration to offer a comprehensive suite of arbitration and ADR services. These include providing expert consultation, facilitating direct negotiation between parties, conducting mediation processes, and offering conciliation services. Notably, BADAPSKI also furnishes expert opinions, a service that aligns with the specific criteria for expert appraisers as stipulated in Article 37 of Government Regulation No. 29 Year 2000 concerning the Implementation of Construction Services (*Peraturan Pemerintah Nomor 29 Tahun 2000 tentang Penyelenggaraan Jasa Konstruksi*). This regulation mandates that such experts must satisfy particular qualifications, hold certified expertise, and be officially registered to ensure the integrity and authority of their assessments.

Furthermore, BADAPSKI maintains a commitment to transparency and structured governance. As publicly accessible on its official website, the institution operates under a clearly defined set of institutional rules and proceedings. This comprehensive document outlines the operational framework and procedural guidelines that govern the conduct of all dispute resolution services offered by BADAPSKI, providing clarity and predictability for all parties involved in the resolution process.⁵³

The "*Peraturan & Prosedur Arbitrase BADAPSKI*" (BADAPSKI Rules) outlines the operational framework for the Indonesian Construction Arbitration and Alternative Dispute Resolution Board. This regulation establishes BADAPSKI's core purpose: to facilitate dispute resolution within the construction sector, encompassing both domestic and international legal frameworks and customs. It provides services including arbitration, negotiation, mediation, conciliation, and expert opinions. A key principle of these procedures is confidentiality, with all proceedings, documents, and decisions generally kept private among the parties, arbitrators, and BADAPSKI, unless otherwise required by law or agreed upon by all parties. Furthermore, the rules emphasize an impartial process, ensuring equal treatment and opportunity for all parties throughout the dispute examination.⁵⁴

⁵³ Bayu Handoko and RR. Lyia Aina Prihadiati, *Kepastian Hukum Badan Arbitrase dan Alternatif Penyelesaian Sengketa Konstruksi Indonesia dalam Perjanjian Penanaman Modal Asing di Sektor Konstruksi*, HUMANIORUM, Vol.1, No.02 (April 2023).

⁵⁴ Badan Arbitrase Dan Alternatif Penyelesaian Sengketa Konstruksi Indonesia (Badapski), *Peraturan & Prosedur Arbitrase*, Badapski, Jakarta, 2025.

The regulation also details the procedural aspects of arbitration, from the initiation of a case, outlining the required contents of an arbitration application (such as parties' details, arbitration clause, factual and legal basis, and claims) , to the appointment and replacement of arbitrators. It specifies that arbitrators, selected from BADAPSKI's expert list, must possess relevant qualifications, including legal or construction industry expertise, and adhere to strict impartiality criteria. The rules also set forth the fee structure for arbitration, calculated based on the disputed amount , and stipulate a maximum resolution period of 180 days from the formation of the arbitral tribunal, unless a written extension is mutually agreed upon by the parties.⁵⁵

The Indonesian Construction Arbitration and Alternative Dispute Resolution Board (BADAPSKI) operates under the "BADAPSKI Rules," establishing a specialized framework for resolving construction contract disputes within both domestic and international legal contexts. BADAPSKI offers a comprehensive suite of services including arbitration, negotiation, mediation, conciliation, and the provision of expert opinions, with the latter specifically aligning with the criteria for expert appraisers as defined in Article 37 of Government Regulation No. 29 Year 2000 concerning the Implementation of Construction Services. A hallmark of BADAPSKI's operations is its commitment to confidentiality in all proceedings, documents, and decisions, alongside an unwavering dedication to impartiality and equal treatment for all parties.

Furthermore, its distinct advantage lies in its panel of arbitrators, comprised of professionals who possess not only legal expertise but also specialized qualifications in construction and civil engineering, such as Ir. Agus Rahardjo, Prof. Hikmahanto Juwana, and Prof. DR. Ir. Sarwono Hardjomuljadi, among others. The institutional rules also detail procedural aspects, from case initiation, arbitrator appointment, and fee structures to a stipulated maximum resolution period of 180 days, ensuring a structured and efficient dispute resolution process.⁵⁶

⁵⁵ Badan Arbitrase Dan Alternatif Penyelesaian Sengketa Konstruksi Indonesia (Badapski), *Peraturan & Prosedur Arbitrase*.

⁵⁶ *Ibid.*

10. Arbitration & ADR for Construction Dispute

Arbitration and other ADR mechanisms offer a suitable and effective means of resolving disputes in the construction sector. This suitability arises not only from their procedural flexibility and efficiency but also from the unique qualifications of arbitrators themselves. Construction disputes often involve both legal questions and complex technical issues, such as variations in scope of work, site conditions, engineering specifications, and delays due to unforeseen events. In such cases, arbitrators are not limited to assessing the dispute solely through the lens of legal interpretation. Instead, they are often appointed for their dual expertise: knowledge of the law, and practical experience in construction or engineering.⁵⁷

A key advantage of arbitration in construction matters lies in the quality of fact-finding. Arbitrators are not confined to formal procedures in the same way that courts are, and they have more flexibility in examining complex technical evidence. This makes arbitration particularly effective in discovering the underlying causes of delay, cost overruns, or non-performance. Rather than relying solely on written submissions, arbitrators can engage with expert witnesses, conduct site inspections, or evaluate engineering reports directly. Flexibility strengthens the credibility of the arbitral process and allows for a deeper, more accurate assessment of the facts in which it is an essential feature when resolving disputes in construction projects.⁵⁸

Arbitrators who are familiar with the construction industry are better equipped to understand the practical realities faced by contractors and employers alike. This sector-specific knowledge is crucial, as construction disputes often involve complex timelines, interdependent tasks, and changing physical conditions. Arbitrators with a background in construction, engineering, or project management are not only able to interpret the contract terms accurately but also to apply them in a way that makes sense within the operational context of a construction site. This practical insight allows them to evaluate claims more fairly and to distinguish between legitimate difficulties and poor performance. In this regard, arbitration panels provide a level of industry comprehension that courts often lack.

⁵⁷ Amir Zand Pazandi, *et al.*, *Arbitration of Disputes in the Construction Industry*, Journal of Legal Affairs and Dispute Resolution in Engineering and Construction, Vol.16, No.4 (2024).

⁵⁸ Allan A. Abwunza, Titus K. Peter, and Kariuki Muigua, *Explaining Delays in Construction Arbitration: A Process-Control Model Approach*, Journal of Legal Affairs and Dispute Resolution in Engineering and Construction, Vol.12, No.2 (May 2020).

A further strength of arbitration in construction disputes is the confidentiality it provides. Unlike litigation, which takes place in public courts and may expose sensitive commercial information, arbitration is conducted in private. This aspect is especially valuable in the construction sector, where ongoing business relationships, proprietary methods, or reputational concerns are often at stake. Confidentiality protects not only the details of the dispute but also the integrity of project partners and investors. In large infrastructure projects, for example, the public disclosure of contractual disagreements can harm investor confidence and negatively impact future financing. Arbitration, by contrast, ensures that disputes can be resolved discreetly, allowing parties to maintain their commercial standing while continuing to operate without disruption. This private nature of the proceedings is therefore not only a legal benefit but a strategic advantage for businesses seeking to manage risk and attract long-term investment.⁵⁹

11. Enforcement of Arbitral Awards in Indonesia

The enforcement of arbitral awards in Indonesia is a structured process, primarily distinguished by the nature of the award, whether it is domestic or international. For domestic awards, the enforcement framework is primarily governed by Law No. 30/1999 and further clarified by SCR 3/2023.⁶⁰ These instruments delineate the procedures for registration and execution, aiming for a more predictable and efficient enforcement process. Notably, SCR 3/2023 introduces specific timelines, such as a 30-day period for the issuance of a writ of execution for domestic awards, and also allows for partial enforcement, offering greater flexibility in the execution of arbitral decisions.⁶¹

In contrast, the enforcement of international arbitral awards in Indonesia operates under a distinct legal framework. While the Arbitration Law also addresses international awards, their recognition and enforcement are fundamentally influenced by the 1958 Convention on the Recognition and Enforcement of Foreign

⁵⁹ Astrid Athina Indradewi and Fajar Sugianto, *Peran dan Manfaat Arbitrase Sebagai Alternatif Penyelesaian Sengketa Ditinjau dari Perspektif Pelaku Usaha*, p.3.

⁶⁰ Muhammad Labib Wajdi, Huala Adolf, and Prita Amalia, *International Interim Awards Enforcement under the Indonesian Arbitration Law and UNCITRAL Model Law*, *Journal of Law, Politic and Humanities (JLPH)*, Vol.4, No.5 (July-August 2024).

⁶¹ Setyawati Fitrianggraeni, Eva Fatimah Fauziah, and Sri Purnama, *Would Ratification of the Singapore Convention on Mediation Enrich Indonesian Mediation Culture?*, p.4.

Arbitral Awards (the "New York Convention"), which Indonesia ratified via Presidential Decree No. 34 of 1981. The Central Jakarta District Court holds exclusive jurisdiction over matters concerning the recognition and enforcement of international arbitral awards, as stipulated by Article 65 of the Arbitration Law. This centralization aims to ensure consistency and specialized handling of such complex international legal matters.⁶²

A critical aspect of enforcement, for both domestic and international awards, is the inherent limitation of arbitral institutions or alternative dispute resolution bodies. These entities, while instrumental in facilitating dispute resolution and issuing awards, lack the authority to enforce them directly. The actual enforcement power resides solely with the District Courts (*Pengadilan Negeri*). This division of power underscores the judicial oversight necessary to ensure that arbitral awards, once rendered, are executed within the bounds of national law and public policy, thereby maintaining the integrity of the legal system.⁶³

No.	Domestic/National Awards	International Awards
1.	A fundamental prerequisite is the demonstrable existence of a valid arbitration agreement that legally binds the parties involved, as stipulated by Article 4 of Law 30/1999. Without such an agreement, the award lacks a proper jurisdictional basis for enforcement within the domestic legal system.	The award must have been rendered in a country that is a signatory to an international treaty concerning the recognition and enforcement of international arbitral awards, such as the New York Convention. This criterion ensures reciprocity and adherence to international legal commitments facilitating cross-border enforcement.
2.	The subject matter of the dispute must pertain to the commercial sector and involve rights that, in accordance with prevailing laws and regulations, are entirely at the discretion and control of the disputing parties. This ensures that	Similar to domestic awards, the matter adjudicated must be related to the commercial sector. This ensures that only disputes arising from commercial transactions and relationships fall within the scope of international arbitral enforcement mechanisms.

⁶² Setyawati Fitrianggraeni, Eva Fatimah Fauziah, and Sri Purnama, *Would Ratification of the Singapore Convention on Mediation Enrich Indonesian Mediation Culture?*, p.4.

⁶³ Abdul Jamil, et al., *Recognition And Enforcement Of Indonesian Sharia Arbitration Awards In Foreign Countries: Challenges And Opportunities*, Iium Law Journal, Vol.31, No.1 (May 2023).

	the arbitration addresses issues suitable for private resolution rather than matters reserved for public adjudication or non-negotiable rights.	
3.	The award must not contravene public order or public decency (<i>kesusilaan umum</i>). This broad principle serves as a safeguard against the enforcement of awards that might undermine fundamental societal norms, legal principles, or moral standards of the jurisdiction.	The award must not be contrary to the public order of the enforcing jurisdiction. While generally narrower in application than "public order and public decency," this principle allows national courts to refuse enforcement if the award's content or effect would violate fundamental legal or moral principles of the enforcing state.

Table 1.3 Enforcement Of Arbitral Awards

The "public policy" exception remains a significant consideration in Indonesian enforcement proceedings, particularly for international awards. While Article 70 of the Arbitration Law lists specific grounds for the annulment of domestic awards (e.g., forged documents, concealed evidence, deception), public policy is not explicitly listed as a ground for annulment. However, courts, especially in international award enforcement cases, frequently scrutinize awards for potential violations of Indonesia's public order, defined by SCR 3/2023 as the "fundamental aspects essentially required in the operation of the legal system, economic system and socio-cultural system of the Indonesian people and nation." This discretionary power of the courts highlights the delicate balance between upholding arbitral autonomy and safeguarding national interests.⁶⁴

12. Annulment of Arbitral Awards in Indonesia

Although the nature of Arbitration and Alternative Dispute Resolution (ADR) awards is intended to be final and binding, it is also possible that there is an annulment of awards. In Indonesia, the annulment process for arbitral awards is a meticulously structured procedure, initiated promptly following the award's issuance. Within 30 days of its pronouncement, the award must be officially handed over and registered with the competent District Court, as stipulated by Article 59(1)

⁶⁴ Fajar Sugianto, *et al.*, *Unclear Public Policy: The Real Barrier in Recognizing Foreign Arbitration Awards?*.

of the Arbitration Law and Article 6(1) of SCR 3/2023. This registration acts as a prerequisite for any subsequent annulment proceedings. Upon successful registration, a party seeking to challenge the award may submit a request for annulment to the District Court, aligning with Article 71 of the Arbitration Law and Article 24(1) of SCR 3/2023. This request triggers a series of communicative and administrative steps, including the prompt notification of the annulment request to all involved parties, as per Article 24(2) of SCR 3/2023, and the subsequent appointment of a specialized panel of judges by the Chief of the District Court, specifically tasked with adjudicating the annulment application, a step mandated by Article 25(5) of SCR 3/2023.⁶⁵

The judicial examination of an annulment request proceeds through a defined hearing structure. Initial hearings involve the formal reading of the annulment request and the subsequent submission of responses from the opposing party. Depending on the complexities of the case, interim measures may be considered during this phase. A critical component of the annulment process is the evidentiary hearing, which typically occurs within 30 days of the initial stages, allowing for the presentation and examination of evidence pertinent to the annulment grounds. Following this, the panel of judges renders its decision. Should either party remain dissatisfied with the District Court's ruling, an avenue for appeal to the Supreme Court is available. This appellate process is also governed by strict timelines for the submission of appeal memoranda, counter-memoranda, and the verification of documents, culminating in a final decision by the Supreme Court within a prescribed period. It is important to note that only domestic arbitral awards can be annulled in Indonesia. The legal bases for annulment are primarily limited to specific grounds such as forged documents, concealed decisive documents, or an award based on deception from either party, as outlined in Article 70 of the Arbitration Law and Article 24(4) of SCR 3/2023.⁶⁶

⁶⁵ Anjar Kuswijanarko, Sami'an, and Sarwono Hardjomuljadi, *The Implication of Review on Arbitral Awards in the Legal Certainty of Construction Dispute Settlement*, Journal of Law, Politic and Humanities, Vol.5, No.3 (January 2025).

⁶⁶ Kadir Andi, Sasmoyo Simon, and Satriyani Gitta, *Enforcement of Arbitral Awards: Theory and Practice Part 8: Indonesia*, Singapore, 2025.

13. Limited Authority of Non-Litigation Institutions

In the Indonesian legal system, non-litigation dispute resolution institutions such as arbitral tribunals or mediation centers possess the authority to examine disputes and issue decisions or awards. However, these institutions do not have the legal power to enforce their own decisions. This limitation stems from the doctrine of kekuasaan kehakiman or judicial power, which is strictly regulated by national legislation.⁶⁷ According to Article 1/2 of Law 48/2009 concerning Judicial Power, judicial authority is the independent authority to administer justice, and such power is granted only to the Supreme Court and the Constitutional Court. Furthermore, Article 38/2 letter (c) of the same law stipulates that the execution (enforcement) of court decisions, including arbitral awards, falls under the authority of judicial institutions within the hierarchy of the Supreme Court, such as District Courts and Pengadilan Tinggi High Courts.⁶⁸

This means that although arbitral institutions can conduct hearings, assess evidence, and render awards based on the agreement of the parties, the execution or enforcement of these awards lies outside their jurisdiction. Enforcement must be carried out by the state courts, under the judicial control of the Supreme Court. In practice, a party seeking to enforce an arbitral award must first submit an application to the competent District Court, which has the authority to declare the award enforceable (exequatur), in accordance with Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution.⁶⁹

Therefore, in the Indonesian legal framework, non-litigation institutions while essential in resolving disputes are not empowered to compel compliance. Their role ends with the issuance of the decision. The authority to enforce lies solely with institutions that possess judicial power as defined by statute. Understanding this division is critical to appreciating the interplay between private dispute resolution and the role of the state in ensuring legal certainty and enforceability of arbitral outcomes.

⁶⁷ Fajar Sugianto, *et al.*, *Unclear Public Policy: The Real Barrier in Recognizing Foreign Arbitration Awards?*, p.64

⁶⁸ Barbara Cloudya, *Efektivitas Proses Hukum Acara Perdata dalam Penyelesaian Kasus Utang Piutang di Pengadilan Negeri*, p.22.

⁶⁹ Fajar Sugianto, *et al.*, p.64.

14. Recent Development of Decision No. 100/PUU- XXII/2024

Decision No. 100/PUU-XXII/2024 by the Indonesian Constitutional Court marks a significant, albeit nuanced, shift in the interpretation of "International Arbitral Award" under Indonesian law. Prior to this ruling, Article 1, Number 9 of Law No. 30/1999 on Arbitration and Alternative Dispute Resolution provided two definitions: awards issued outside Indonesia's jurisdiction (territorial principle) and awards "deemed" or considered international under Indonesian legal provisions (nationality principle). This dual interpretation, particularly the "deemed" clause, created a degree of ambiguity and legal uncertainty, leaving certain types of awards, often referred to as "non-domestic awards" or "awards in limbo," without clear regulatory guidance for recognition, enforcement, or setting aside procedures within Law 30/1999. The Constitutional Court, in its decision, acknowledged this ambiguity, noting that while the provision aligned with the New York Convention's intent to cover a wide variety of awards, the broader context of Law 30/1999 predominantly adopted only the territorial principle.⁷⁰

The Constitutional Court partially granted the petition, specifically declaring the word "*dianggap*" (deemed) in Article 1, Number 9 of Law No. 30/1999 as unconstitutional and lacking binding legal force. This continuous process of checks and balances, coupled with the commitment of the government to providing a improving legal framework and the arbitration and dispute resolution community's attention to refining practices, contributes to arbitration and ADR being a preferred method for settling disputes, particularly in sectors like construction, where the need for efficient and adaptable dispute resolution mechanisms.

C. CONCLUSIONS

Indonesia's construction industry, with its complex political and legal history, increasingly favors arbitration and alternative dispute resolution (ADR) mechanisms over traditional litigation for resolving disputes. This preference is deeply rooted in the nation's socio-cultural and the philosophical traditions, particularly the *musyawarah-mufakat* principle and Pancasila, which emphasize

⁷⁰ Togi Pangaribuan, *Putusan Arbitrase Internasional Pasca Putusan MK No. 100/PUU-XXII/2024*, diakses dari <https://www.hukumonline.com/berita/a/putusan-arbitrase-internasional-pasca-putusan-mk-no-100-puu-xxii-2024-lt677eb5a107429/>.

communal harmony and consensus-building. As identified in the discussion, construction disputes frequently arise from payment delays, non-compliance with technical specifications, ambiguous contractual responsibilities, and conflicts over land use, factors exacerbated by the multi-stakeholder dynamics and technical complexities inherent in large-scale projects. This inclination towards non-litigious resolution is further solidified by the legal framework itself, with Law No. 2 of 2017 concerning Construction Services explicitly recognizing its suitability. Specifically, Article 5 paragraph (2) letter c underscores the necessity for "competent human resources" in construction services, implicitly affirming the value of specialized expertise in dispute resolution, while Article 88 paragraph (1) directly endorses "conciliation, mediation, and/or arbitration" as legitimate avenues for resolving construction disputes

Despite the clear advantages of arbitration and ADR in the construction sector, the enforceability of arbitral awards in Indonesia remains a complex challenge. While the legal framework provides for the recognition and execution of awards, the Constitutional Court's Decision No. 100/PUU-XXII/2024 has introduced a more stringent interpretation, emphasizing the territorial principle for international awards and effectively limiting the "non-domestic" award concept until further legislative clarity. This highlights the persistent need for a more unified regulatory framework that guarantees the enforceability of both domestic and international arbitral awards within the national system. A comprehensive new framework, encompassing not only the issuance of exequatur for arbitral awards but also better streamlining the enforcement of court decisions, would significantly enhance legal certainty and predictability for all parties. Such a framework would reinforce Indonesia's commitment to effective dispute resolution, ensuring that the benefits of arbitration and ADR efficiency, expertise, and confidentiality are fully realized through guaranteed enforceability, thereby supporting the sustainable and equitable growth of the construction sector.

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