

**ROLE OF ALTERNATIVE DISPUTE RESOLUTION (ADR)  
NON-LITIGATION ABOUT CONSTRUCTION SERVICES  
IN THE REPUBLIC OF INDONESIA**

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**Abstract**

Construction projects essentially occur between the meeting of two interests, namely from the Service User and the Service Provider. In construction project activities, a contract agreement is usually made between both parties. In construction projects, there are multiple complex disciplines involved and many people with their own interests, which can lead to unavoidable disputes during contract execution. This research aims to find the ROLE of alternative dispute resolution (ADR) in construction services in Indonesia.

**Keywords:** *Dispute Resolution, Non-Litigation Construction Dispute*

**INTRODUCTION**

In developing countries like Indonesia, we often hear the term equitable development in both physical and non-physical sectors. This aims to improve the welfare and prosperity of all Indonesian people, both physically and spiritually, in a fair and equitable manner. One of the developments in the physical sector can include office buildings, housing, industrial areas, shopping centers, public facilities such as bridges, ports, roads, stations, and others. Construction Services are consultancy services for construction project planning, construction project execution services, and consultancy services for construction project supervision. In this process phase, cooperation, interaction, and discussion among project parties such as service users (owners), consultants (planners, construction management), and service providers (contractors) are necessary to achieve the desired goals and to be outlined in the construction work contract.

In the increasingly massive construction activities nowadays, many construction work contracts are signed and implemented, making it almost certain that construction disputes will arise due to differences in interpretation or other physical or non-physical factors. Although these disputes are not planned, each party will strive to ensure that they do not incur losses. The Service Provider, as one of the parties, has the duty to

complete the work according to the contract, of course with the aim of obtaining the profit that has been calculated beforehand, while the Service User will strive to ensure that the costs agreed upon in the contract, as the contract price, are not exceeded as much as possible.

In Indonesia, dispute resolution is divided into two types, namely: (1) litigation and (2) non-litigation. Litigation is a form of dispute resolution in court proceedings in the general judiciary. Meanwhile, non-litigation is a form of dispute resolution outside the general judiciary. Dispute resolution that occurs in construction work contracts has been regulated in Law Number 2 of 2017, which includes: (1) Mediation, (2) Conciliation, (3) Arbitration. The resolution of these disputes is based on the principle of deliberation to reach consensus. If a consensus cannot be reached, the parties proceed to the stages of dispute resolution as outlined in the Construction Work Contract. If the dispute resolution efforts are not specified in the Construction Work Contract, the disputing parties make a written agreement regarding the dispute resolution procedure to be chosen.

The resolution of construction service disputes outside the court in Law Number 48 of 2009 explains that civil dispute resolution efforts can be conducted outside the state court through arbitration or alternative dispute resolution. Alternative dispute resolution is an institution for resolving disputes or differences of opinion through procedures agreed upon by the parties, namely out-of-court resolution through consultation, negotiation, mediation, conciliation, or expert assessment. The resolution of disputes through alternative dispute resolution is documented in a written agreement, which is final and binding on the parties to be executed in good faith. In the event that dispute resolution efforts are carried out by forming a dispute board, the selection of dispute board members is conducted based on the principle of professionalism and not being part of either party. Further provisions regarding dispute resolution are regulated in government regulations, namely, Government Regulation Number 14 of 2021 concerning Amendments to Government Regulation Number 22 of 2020 concerning the Implementation Regulation of Law Number 2 of 2017 concerning Construction Services.

## RESEARCH METHOD

The methodology of this research uses a qualitative approach and the library study method. The library study method is a research approach conducted by collecting and analyzing written or library sources. The purpose of this method is to understand, evaluate, and present relevant information regarding the research topic. These sources may include journal articles, theses, research reports, academic books published in the last five years to ensure the information remains relevant to current developments, and other documents related to the field of research. The literature study method is often used in the early stages of research to build a theoretical or conceptual foundation, develop a framework of thought, or understand the historical development of a topic.

This analysis is interpreted to answer the research question regarding effective, flexible, time-efficient, cost-effective, confidential, and impact-related alternative dispute resolution methods for construction disputes outside of court, as well as their effects on the relationships between the parties. Additionally, this research also compares the fundamental principles of litigation and non-litigation dispute resolution alternatives based on the criteria of effectiveness and sustainability of dispute resolution.

## RESULTS AND DISCUSSION

The implementation of the construction project begins with a construction contract that outlines the conditions in case of a construction dispute and the procedures for handling it. Construction disputes tend to arise when one party believes that the other party has violated its obligations and responsibilities. (Seng Hansen,2018).

The resolution of contractual disputes can be achieved through the following channels:

- 1) Consultation Channel. Consultation is an action that is "personal" between a specific party, referred to as the "client," and another party, namely the consultant. The consultant provides opinions to the client to meet the client's needs. In construction services, consultants play an important role in resolving field technical issues, especially if the consultant is a planning consultant and/or a project supervising consultant. Their opinions are very dominant in determining the smoothness of the project.

- 2) Negotiation Path, Negotiation is one of the alternative dispute resolution institutions conducted outside the court, whereas reconciliation can be carried out before the court trial process or after the trial has commenced, both outside and inside the court session. From legal literature, it can be understood that, besides being a dispute resolution institution, it is also informal, although it can sometimes be formal.
- 3) Mediation Pathway From several existing definitions, the definition of mediation is a third party (either an individual or an independent institution), impartial and neutral, tasked with mediating interests and appointed and agreed upon by the disputing parties. As an external party, the mediator does not have the authority to compel, but meets and brings together the disputing parties to seek input on the main issues. Based on this input, the mediator can identify the strengths or weaknesses of a case, which are then compiled into a proposal that is discussed directly with the parties involved. The role of mediation is quite important because it must create a conducive situation and condition so that the disputing parties can compromise and produce a mutually beneficial resolution among the disputing parties. Mediation is also one of the alternative dispute resolution methods.
- 4) Peace Pathway, the Peace Pathway is a preliminary step before a court trial is conducted, and the provisions for peace regulated in the Civil Code also represent an alternative dispute resolution outside the court, excluding matters or disputes that have already received a court decision with permanent legal force.
- 5) Legal Opinion Path by Arbitration Institutions Arbitration is an institutional form, not only tasked with resolving differences or disputes or conflicts that occur between the parties in the main agreement, but it can also provide consultation in the form of opinions or legal advice at the request of the parties in the agreement.

Benefits of ADR in Indonesia:

- 1) Faster Resolution:

ADR mechanisms, particularly mediation and arbitration, offer faster resolution of disputes compared to traditional court proceedings, which can be lengthy and congested.

2) Cost-Effective:

ADR procedures generally involve lower legal fees and costs than litigation, making them an attractive option for parties seeking to minimize expenses.

3) Confidentiality:

ADR processes, especially mediation and arbitration, offer a level of confidentiality not usually available in court trials. This is important for businesses and individuals who wish to protect sensitive information.

4) Preserving Relationships:

Unlike litigation, which can be adversarial and damaging to relationships, ADR processes like mediation help preserve relationships between the parties, which is important in family disputes or business partnerships.

5) Flexibility:

ADR offers flexible procedures, allowing the parties to choose the format, timing, and scope of the dispute resolution process. This is more adaptable compared to rigid court procedures.

"Disputes are often resolved through litigation handled by non-experts in the construction field, resulting in unfair decisions." Therefore, it is necessary to establish a dispute board for every construction project, especially at the Ministry of Public Works and Public Housing (PUPR), so that the construction business climate in Indonesia becomes more conducive. (Yusid Toyib, 2017).

The Rector of Mercubuana University, Arisetyanto Nugroho, stated that not many parts of the world have established Dispute Boards in the legislation issued by the State. "We also appreciate the performance of the Ministry of PUPR for the enactment of Law No. 2 of 2017, which provides legal certainty in the construction services sector for service providers, service users, and the construction services community." (Arisetyanto Nugroho, 2017).

The Construction Services Law supports the establishment of the Dispute Board (DB) as one of the ways to reduce the growth of construction disputes. The main task of the

DB is to rectify any claims submitted by either service providers or service users in construction work, from planning to the operational and maintenance phases, before they escalate into disputes.

## CONCLUSION

In Law No. 2 of 2017 concerning Construction Services, the resolution of construction disputes has been regulated, including the following stages of resolution:

1. The disputing parties first conduct a deliberation to reach a consensus;
2. If the deliberation does not reach an agreement, the dispute resolution is adjusted based on the construction work contract;
3. If the dispute resolution is stated in the contract, the resolution is pursued through the following stages:
  - a. Mediation;
  - b. Conciliation; and
  - c. Arbitration
4. If the dispute resolution efforts are not stated in the Construction Work Contract, the disputing parties make a written agreement regarding the dispute resolution procedure to be chosen.

ADR is a growing and valuable tool in Indonesia's legal system. By providing alternative methods to resolve disputes outside of the formal court system, ADR helps reduce the burden on the courts and facilitates quicker, more cost-effective, and amicable resolutions. However, challenges remain in raising awareness and ensuring the availability of skilled practitioners to meet the growing demand for ADR services. Nonetheless, with continued legal reforms and public education, ADR is poised to play an increasingly central role in dispute resolution in Indonesia.

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