

**ALTERNATIVES DISPUTE RESOLUTION FOR CONSTRUCTION OUTSIDE  
THE COURT THROUGH “PERKUMPULAN AHLI DEWAN SENGKETA  
KONSTRUKSI” (PADSK): ADVANTAGES AND WEAKNESSES**

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The Construction Dispute Council Experts Association (PADSK) offers such an alternative solution to resolving construction disputes outside the courts. As an alternative dispute resolution institution PADSK offers to facilitate mediation, conciliation, and arbitration processes, PADSK seeks to overcome the challenges often faced in conventional legal processes, such as high costs, lengthy processes, and the need for technical experts. This paper explores the advantages and disadvantages of the PADSK dispute resolution method, as well as its impact on the efficiency of time, costs, and relationships between parties in the construction industry..

**Keywords:** *Alternative Dispute Resolution, PADSK, Technical Experts*

## **INTRODUCTION**

The construction sector has consistently made significant contributions to the growth of the economy in Indonesia, but it often faces problems within the work that lead to disputes in the implementation of a project. The causes of these disputes can be attributed to various factors such as differing interpretations of the contract, delays not in accordance with the specified schedule, and issues related to work quality and payment. In the resolution of disputes, a quick and effective process is crucial to minimize negative impacts on the project and the business relationship between the provider and the user of services. The process of dispute resolution through the courts, also known as litigation, results in win-lose decisions that fail to accommodate mutual interests, and this tends to create new problems, slow resolutions, high costs, and can foster hostility between the disputing parties (Agus P, 2021). Because if a dispute occurs and litigation is pursued in court, it will lead to consequences such as prolonged litigation processes and high costs. Therefore, service providers and users will avoid

going through the courts and seek alternative dispute resolution at credible institutions such as BANI, BADAPSKI, BPKP, JAMDATUN, PADSK, PMN, and many other institutions. If we look at the dispute resolution at BANI in detail, the cases related to the construction sector handled by BANI reached 27% of the total cases handled by the institution from 2014 to 2018. Additionally, other frequently handled cases include leasing at 24.6%, followed by the information and communication technology sector at 13.1%.

One of the alternative ad hoc institutions consisting of construction and construction law experts that has emerged is the Construction Dispute Resolution Expert Council Association (PADSK), which is highly needed and increasingly relevant in addressing construction disputes today. Through PADSK, the dispute resolution process is faster and more cost-effective, making it a truly needed alternative for service providers and users.

Construction disputes are issues that often occur during the execution of a construction activity itself, and when such disputes arise, a quick and effective resolution is needed to prevent further losses and uncertainty in the settlement of the dispute. Currently in Indonesia, the resolution of construction disputes is generally pursued through the court system or litigation at the Indonesian National Arbitration Board. (BANI). However, the process of resolving these disputes often takes a considerable amount of time and incurs significant costs. With the development of the industry, the need for faster, cost-effective, and technically focused dispute resolution has grown and increased, making alternatives outside of court, such as those offered by PADSK, increasingly sought after.

The existence of construction disputes often arises due to differences in understanding among the parties involved in a construction activity regarding the fulfilment of contractual obligations, changes in the scope of work on the project, or quality standards. Traditional resolution of construction disputes is carried out through the courts, which require a lengthy process, high costs, and often do not meet the specific needs of the construction sector. One of the alternative out-of-court dispute

resolutions that is currently emerging through the PADSK institution is expected to be a more practical, faster, cost-effective, and efficient solution.

Construction disputes often involve complex technical issues and require quick and precise resolution to avoid significant losses for the parties involved. PADSK offers an out-of-court dispute resolution solution that is considered more efficient and effective.

This proceeding aims to examine the benefits and challenges faced in the alternative dispute resolution, namely the Association of Construction Dispute Experts (PADSK) as a mechanism for construction dispute resolution.

## **LITERATURE REVIEW**

Law Number 2 of 2017 concerning Construction Services (UUJK, 2017) regulates the implementation of construction services, one of the objectives of which is to realize orderly implementation of construction services that guarantee equality of position between client and contractor in carrying out their rights and obligations. This also automatically increases compliance with the Regulation of the Minister of Public Works and Public Housing Number 7 of 2017 concerning Standards and Guidelines for Procurement of Construction Services Through Providers (Permen PUPR No. 7, 2017). Thus, through the issuance of these regulations, it is hoped that the selection process for selecting contractor will produce contractor who have good capacity and performance which will have an impact on work that is of the right quality, on time and appropriate.

Deliberation to reach a consensus is the key to a good relationship between contractor and client of construction services. And an understanding of the completion of this construction contract also needs to be known by all parties, not only the contractor (service provider) but also the service user. However, in the implementation of construction, several sources of problems are often encountered that lead to disputes. Article 88 paragraph 4 of Law Number 2 of 2017 explains the first choice for resolving construction work contract disputes, is deliberation to reach a consensus, then continued to the dispute resolution stage consisting of mediation, conciliation, and arbitration.

Frequently in the implementation of construction, disputes arise that are very difficult to avoid and cannot be resolved through mediation and conciliation where the parties really need a firm and fair decision immediately but do not incur large costs and a long time. Because the disputes that arise are usually caused by several things, including differences in interpretation, both regarding how to implement the articles in the agreement itself and about the contents of the provisions in the agreement, or due to other things (Gatot S, 2006). This is what causes construction practitioners to need a trustworthy and fair institution to be a solution in resolving disputes. The two stages of dispute resolution efforts, namely mediation and conciliation, can be replaced by a Dispute Council which aims to simplify the process in order to achieve faster, cheaper results and prioritize mutually beneficial agreements. Settlement of construction work contract issues through the Dispute Council can provide many benefits, such as saving time, costs, and can maintain good relations between service users and service providers. Alternative Dispute Resolution (ADR) is a method of resolving conflicts outside the courts which includes mediation, arbitration, and conciliation. PADSK is an institution that provides construction dispute resolution services with technical excellence and expertise in the field. Previous studies have shown that ADR can reduce the time and cost of dispute resolution and maintain good relations between the disputing parties.

## **RESEARCH METHOD**

This research was conducted using a qualitative descriptive approach through literature review, regulatory studies, and case analysis of construction dispute resolution. Data were obtained from regulations related to ADR (Adjudication Dispute Resolution), PADSK case studies, expert opinions in construction dispute resolution, and literature studies.

## **DISCUSSION**

The Association of Construction Dispute Resolution Experts (PADSK) was established as an alternative effort to improve the effectiveness and efficiency of

construction dispute resolution in Indonesia. Where the main objective of PADSK is to encourage the application of the "avoidance" function in the occurrence of construction disputes, and it is expected to reduce the risk of prolonged disputes in their resolution, thereby improving the quality of construction provision and accelerating infrastructure development.

In addition, PADSK also plays a role in proposing improvements to Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, which is expected to provide a stronger and more detailed legal basis regarding the use of Alternative Dispute Resolution. (APS). Thus, PADSK strives to create a more conducive and fair business climate for all parties involved in construction and does not hinder the progress of construction in terms of time and cost.

The establishment of PADSK (Association of Construction Dispute Council Experts) as an alternative dispute resolution in Indonesia is driven by several important factors related to the needs of construction practitioners in choosing a more efficient, practical, and peace-oriented solution for construction disputes. Here is the background for the necessity of a new alternative in construction dispute resolution, highlighting the need for the establishment of PADSK currently:

1. High Court Load

The judicial system in Indonesia faces a very high load, both from the increasing number of cases and the time required to resolve disputes in court. Therefore, alternative dispute resolution systems such as mediation (PADSK) or arbitration have emerged as solutions to reduce the backlog of cases in court.

2. The Need for Consumer Dispute Resolution

With the rapid development of the trade and service sectors, disputes between contractors and owners are becoming more frequent. Resolving disputes through formal legal channels often takes a long time and incurs high costs. PADSK is expected to provide an alternative resolution that is more accessible to the public, especially in cases of disputes related to the rights of contractors and owners.

3. Protection of Construction Service Providers (Owners and Contractors)

The protection of parties in Indonesia is very important to ensure they are not

disadvantaged in trade or service transactions. As public legal awareness increases, construction service providers need an institution that can provide dispute resolution in a quick and fair manner. PADSK serves as a venue for construction service providers to resolve disputes without going through lengthy legal processes.

4. Cost and Time Efficiency

One of the advantages of alternative dispute resolution through PADSK is the faster process and significantly more affordable costs compared to litigation in court or arbitration itself. This will be beneficial for construction service providers who want to avoid the lengthy and expensive processes that often occur in court.

5. Increased Public Trust

With the existence of PADSK, it is expected that the public will have more trust in using the services or products offered by entrepreneurs, because they know that there is a clear mechanism to resolve any disputes that may arise. This is expected to create a healthier and fairer environment for construction service providers.

6. Support from Regulations

The establishment of PADSK is also driven by regulations that support alternative dispute resolution, such as Law No. 8 of 1999 on Consumer Protection, which provides a legal basis for resolving disputes between construction service providers through mediation or arbitration. The regulations further encourage the formation of institutions like PADSK that can handle disputes more efficiently. Overall, PADSK as an alternative dispute resolution institution aims to provide faster, more effective, and cheaper solutions for the parties involved in disputes, particularly in the construction services sector. Its establishment reflects an effort to strengthen the protection of construction service providers while simultaneously reducing the burden on the courts.

## **ADVANTAGES AND DISADVANTAGES OF PADSK**

### **Advantages of PADSK as an Alternative Dispute Resolution:**

1. Time and Cost Efficiency.

PADSK allows for the resolution of construction disputes in a shorter time compared to court processes or even arbitration, and the costs incurred are also lower due to its simple process.

2. Flexibility in the Resolution Process.

PADSK provides flexibility in dispute resolution methods tailored to the project's conditions and the parties' needs. This is very important in construction, which often faces high technical complexity. This allows for a more personal approach and more creative solutions.

3. Technical Expertise in Decision-Making.

PADSK members are construction experts with experience and technical understanding in this field, so the decisions made are more aligned with field realities. The PADSK dispute board consists of experts who have extensive experience in construction disputes and possess a deep understanding of technical issues in construction and construction contracts, so that the decisions taken are more appropriate and provide solutions in viewing disputes that occur.

4. Confidentiality

The dispute resolution process through PADSK is kept confidential, which protects the reputation of the disputing parties. The process in PADSK maintains the confidentiality of sensitive information, unlike the open court process. This is important to maintain the business reputation of the parties involved.

**Weaknesses of PADSK as an Alternative Dispute Resolution:**

1. Limitations in Enforceability.

The decisions made by PADSK do not always have the same enforceability as court rulings. This can lead to difficulties in the implementation of the decision, requiring a high level of commitment from the parties involved in executing and adhering to the decision established by PADSK as a final and binding decision.

2. Dissatisfaction of One Party.

In some cases, one party may feel aggrieved or dissatisfied with the outcome, making the decision unacceptable and potentially leading to further disputes.

Therefore, before the dispute resolution process is carried out, the parties must agree to comply with and commit to accepting any decision resulting from the dispute resolution process at PADSK.

3. Lack of Formal Legal Authority.

Although PADSK is a body of experts in the fields of construction and contracts, its decisions are not legally recognized like court rulings. In terms of choosing dispute resolution, some parties prefer decisions that have full legal force.

4. Limitations of Dispute Scope.

Not all types of construction disputes can be resolved through PADSK, especially if they involve certain legal issues that require more complex legal interpretation.

## CONCLUSION

Thus, it can be concluded that the alternative for resolving construction disputes through PADSK offers many advantages, such as time and cost efficiency, flexibility in dispute resolution methods tailored to the project's conditions and the parties' needs, specific expertise and more detailed discussions on the disputed issues, and confidentiality of the process. However, there are also some weaknesses, including the limited enforcement authority and the dissatisfaction of the parties in accepting the PADSK decision as a ruling that must be obeyed and implemented. Therefore, parties considering this method must carefully weigh its advantages and disadvantages.

For practitioners and stakeholders in the construction field, understanding the advantages and disadvantages of PADSK can help in making more strategic decisions regarding dispute resolution. The use of PADSK can be a beneficial option if approached correctly and with the willingness to cooperate from all parties involved. Resolving construction disputes through PADSK offers many benefits, including time and cost efficiency, technical expertise, confidentiality, and process flexibility. However, this method also has some drawbacks such as limited enforcement authority, reliance on the parties' willingness, and high expert fees. By considering these advantages and disadvantages, the parties can make a better decision regarding the most suitable dispute resolution method for their situation.

## RECOMMENDATION

1. Regulation Strengthening: Stronger regulations are needed to provide greater legal authority to PADSK decisions, so they can be more respected by the disputing parties.
2. Training and Socialization: Increasing awareness and understanding of the benefits of PADSK through training and socialization for stakeholders in the construction services industry.
3. Innovation in Procedures: Developing more innovative and efficient procedures in dispute resolution through PADSK to reduce the costs and time required.
4. Multidisciplinary Collaboration: Involving experts from various disciplines in PADSK to provide more comprehensive analysis and more effective solutions for construction disputes.

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