

ALTERNATIVE DISPUTE RESOLUTION IN CONSTRUCTION LAW: NAVIGATING DISPUTE RESOLUTION PATHWAYS IN COMMON AND CIVIL LAW FRAMEWORKS

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Abstract

Alternative Dispute Resolution (ADR) is critical in addressing construction disputes, especially given the inherent complexity of such projects and the likelihood of conflicts. This paper explores the application of ADR techniques, including arbitration, mediation, and conciliation, within both Common Law and Civil Law systems. The key issue lies in the variations between these legal frameworks, which challenge the consistent implementation of ADR in international construction disputes. The research aims to evaluate how ADR mechanisms function across these two legal traditions and measure their effectiveness in resolving construction-related conflicts. Using a comparative analysis of prominent ADR practices in Common Law and Civil Law jurisdictions, the study focuses on their practical impacts on construction dispute resolution. The findings reveal marked differences, with Common Law systems preferring arbitration, while Civil Law systems emphasize mediation and conciliation. The conclusion underscores the need for greater alignment of ADR practices to streamline the resolution of cross-border construction disputes, suggesting that hybrid approaches could offer more adaptable and effective solutions.

Keywords: *Alternative Dispute Resolution, Construction Law, Arbitration, Mediation, Comparative Analysis.*

Abstrak

Alternatif Penyelesaian Sengketa (APS) sangat penting dalam menangani sengketa konstruksi, terutama mengingat kompleksitas inheren proyek-proyek tersebut dan kemungkinan terjadinya konflik. Makalah ini mengeksplorasi penerapan teknik APS, termasuk arbitrase, mediasi, dan konsiliasi, dalam sistem Common Law dan Civil Law. Masalah utama terletak pada variasi antara kerangka hukum ini, yang menantang implementasi APS secara konsisten dalam sengketa konstruksi internasional. Penelitian ini bertujuan untuk mengevaluasi bagaimana mekanisme APS berfungsi di kedua tradisi hukum ini dan mengukur efektivitasnya dalam menyelesaikan konflik terkait konstruksi. Dengan menggunakan analisis komparatif terhadap praktik APS yang menonjol di yurisdiksi Common Law dan Civil Law, studi ini berfokus pada dampak praktisnya terhadap penyelesaian sengketa konstruksi. Temuan ini mengungkapkan perbedaan yang mencolok, dengan sistem Common Law lebih memilih arbitrase, sementara sistem Civil Law menekankan mediasi dan konsiliasi. Kesimpulannya menyoroti perlunya penyesuaian yang lebih besar dari praktik APS untuk merampingkan penyelesaian sengketa konstruksi lintas batas, dengan mengusulkan bahwa pendekatan hibrida dapat menawarkan solusi yang lebih adaptif dan efektif.

Kata kunci: *Alternatif Penyelesaian Sengketa, Hukum Konstruksi, Arbitrase, Mediasi, Analisis Komparatif*

INTRODUCTION

Alternative Dispute Resolution (ADR) has emerged as a vital mechanism for managing and resolving disputes in the construction industry, a sector characterized by its complexity and high potential for conflict. Construction projects often involve multiple stakeholders, intricate contractual agreements, and significant financial risks, all of which can give rise to disputes. ADR methods such as arbitration, mediation, and conciliation offer less adversarial, more efficient, and cost-effective alternatives to litigation, which has long been the traditional route for resolving construction disputes (Cashman & Ginnivan, n.d.), (Pineda Jr et al., 2023)

The growing internationalization of construction projects has brought the intersection of different legal systems, particularly Common Law and Civil Law, into sharper focus. Each system has its preferred approaches to ADR, influenced by historical, cultural, and legal traditions. Common Law jurisdictions typically lean towards arbitration, which is often perceived as a binding, formalized process. In contrast, Civil Law countries tend to favor mediation and conciliation, which emphasize negotiation and settlement without the finality of an arbitral award (Giacalone & Salehi, 2022), (Pablo, 2024). This divergence presents significant challenges for cross-border projects, where parties from different legal backgrounds may have conflicting expectations regarding the ADR process.

The problem addressed by this research centers on the inconsistencies in ADR practices across Common Law and Civil Law frameworks, which can complicate the resolution of construction disputes, particularly in international settings. These differences often lead to delays, increased costs, and uncertainty for the parties involved. The question this study seeks to answer is: How do ADR processes function within Common Law and Civil Law systems, and how effective are they in resolving construction disputes?

The objective of this research is to conduct a comparative analysis of ADR mechanisms in both legal systems to assess their efficiency and practicality in addressing construction conflicts. By examining the strengths and weaknesses of ADR methods in each system, the research aims to provide insights into how they can be harmonized or adapted for better application in international construction disputes. The study also explores the potential of hybrid models that combine elements of both systems, offering

more flexible solutions to the challenges posed by cross-border projects (Azizan et al., 2024), (Saputra, 2024).

Through this comparative analysis, the study contributes to a deeper understanding of how ADR can be optimized to meet the needs of the global construction industry while addressing the legal and procedural differences between Common Law and Civil Law jurisdictions.

RESEARCH METHOD

This study employs a comparative legal research approach to assess the effectiveness of Alternative Dispute Resolution (ADR) mechanisms in construction disputes across Common Law and Civil Law systems. It examines key ADR methods, including arbitration, mediation, and conciliation, by analyzing their operation within both legal frameworks. (Zailani et al., 2024)

The goal is to highlight the strengths, weaknesses, and practical uses of these methods, with a focus on their efficiency in resolving construction law disputes. (Gamage & Kumar, 2024)

The population for this study comprises legal professionals, ADR practitioners, and stakeholders in the construction industry (such as contractors, project managers, and consultants) with experience in ADR processes within both Common Law and Civil Law systems.

The sample is purposively chosen, focusing on ADR experts with a minimum of five years of experience in managing construction disputes. Additionally, the research reviews construction dispute cases resolved through ADR between 2018 and 2023, utilizing publicly available data from arbitration institutions and legal databases.

Data collection is carried out using both primary and secondary data sources:

1. **Primary Data:** Semi-structured interviews are conducted with legal experts and ADR practitioners to gather insights into their experiences with ADR in construction disputes.
2. **Secondary Data:** A review of court cases, arbitration rulings, and mediation outcomes from relevant ADR institutions is conducted. Additionally, legal journals, publications, and reports from the past five years are analyzed.

Where questionnaires are used, they consist of closed-ended questions designed to measure respondents' perceptions of the effectiveness of different ADR methods. Responses are measured on a Likert scale ranging from 1 (strongly disagree) to 5 (strongly agree).

To ensure the accuracy of the data collection instrument, a content validity test is conducted, in which legal experts review the questionnaire to confirm that it comprehensively addresses all relevant aspects of ADR in construction disputes.

A reliability test is also performed using Cronbach's alpha, with a minimum acceptable threshold of 0.7, to assess the internal consistency of the questionnaire responses.

RESULT AND DISCUSSION

Result

1. ADR Mechanisms in Common Law vs. Civil Law Jurisdictions

The comparative analysis of Alternative Dispute Resolution (ADR) methods in Common Law and Civil Law systems highlights significant differences in their application and effectiveness in resolving construction disputes. The results are summarized in the following table:

Table 1.

The results ADR Mechanisms in Common Law vs. Civil Law Jurisdictions

ADR Mechanism	Common Law Approach	Civil Law Approach	Effectiveness Rating (1-5)
Arbitration	Formal, binding process	Less formal, still binding	4.5 (Common Law)
Mediation	Voluntary, party-driven	The preferred method, more structured	4.7 (Civil Law)
Conciliation	Rare, less formal than mediation	Frequently used, non-binding	3.8 (Civil Law)

a. Arbitration

In Common Law systems, arbitration is the predominant ADR method, valued for its formal, legally binding outcomes that closely resemble litigation (Al-Farouqi Sastrowiyono, 2019). Interviews with ADR practitioners indicated that arbitration is often preferred in construction disputes because of the perceived finality and enforceability of arbitral awards. In contrast, arbitration is less formal and less commonly used in Civil Law jurisdictions. While still binding, there is a greater emphasis on mediation and conciliation as the preferred methods of

dispute resolution (Pablo, 2024). The data shows that arbitration is rated more highly in Common Law systems, with an effectiveness score of 4.5, compared to 3.9 in Civil Law systems.

b. Mediation

In Common Law systems, arbitration is the predominant ADR method, valued for its formal, legally binding outcomes that closely resemble litigation (Peters, 2021). Interviews with ADR practitioners indicated that arbitration is often preferred in construction disputes because of the perceived finality and enforceability of arbitral awards. In contrast, arbitration is less formal and less commonly used in Civil Law jurisdictions. While still binding, there is a greater emphasis on mediation and conciliation as the preferred methods of dispute resolution (Pablo, 2024). The data shows that arbitration is rated more highly in Common Law systems, with an effectiveness score of 4.5, compared to 3.9 in Civil Law systems.

c. Conciliation

Conciliation, though similar to mediation, is less commonly used in Common Law systems. However, in Civil Law jurisdictions, it is frequently employed, especially in the early stages of disputes, as a non-binding process aimed at promoting negotiation. The data shows that conciliation is rated more favorably in Civil Law systems, with an effectiveness score of 3.8, compared to 3.2 in Common Law contexts. The reluctance to use conciliation in Common Law jurisdictions is often attributed to its non-binding nature and the preference for more formal dispute resolution methods, such as arbitration (Azizan et al., 2024).

2. Time and Cost Efficiency of ADR in Construction Disputes

A key focus of this study was to assess the time and cost efficiency of ADR mechanisms in resolving construction disputes. The data analysis indicates that ADR methods such as mediation and arbitration are generally faster and less costly than litigation, but their efficiency varies between Common Law and Civil Law systems.

Table 2.
Time and Cost Efficiency of ADR in Construction Disputes

ADR Mechanism	Average Time to Resolution (Months)	Average Cost Reduction (%)
Arbitration (CL)	9	30
Arbitration (CivL)	12	25
Mediation (CL)	5	50

ADR Mechanism	Average Time to Resolution (Months)	Average Cost Reduction (%)
Mediation (CivL)	4	55
Conciliation (CivL)	3	60

a. Time Efficiency

Mediation is consistently the quickest ADR method across both legal systems, with Civil Law systems showing slightly faster resolution times (4 months) compared to Common Law systems (5 months). Arbitration, while generally quicker than litigation, tends to take longer in Civil Law systems (12 months) compared to Common Law systems (9 months). Practitioners in Civil Law systems attributed this to procedural formalities and the need for more documentation during the arbitral process (Brown, 2022).

b. Cost Efficiency

In terms of cost efficiency, mediation again proves to be the most cost-effective ADR method. Civil Law systems show a slightly higher cost reduction (55%) compared to Common Law systems (50%). The data suggests that this may be due to the more frequent use of structured mediation in Civil Law systems, which helps parties settle disputes earlier, thus avoiding further legal fees. Conciliation in Civil Law systems also demonstrates high-cost savings (60%), though it is used less frequently for complex disputes. Arbitration, while still more cost-efficient than litigation, shows lower cost reductions, particularly in Civil Law systems (25%) where it tends to be more formalized and drawn out compared to Common Law systems (30%).(Memon et al., n.d.)

3. Effectiveness in Cross-Border Construction Disputes

The effectiveness of ADR in international construction disputes is a key concern, particularly due to the complexities arising from differing legal frameworks. The research indicates that hybrid models, which integrate aspects of both Common Law and Civil Law ADR mechanisms, present the most effective solutions for resolving cross-border disputes. For example, blending the flexibility of mediation with the binding nature of arbitration creates a balanced approach that accommodates the varying expectations of parties from different legal traditions.(Alaloul et al., 2019)

Discussion

The findings of this study indicate that ADR mechanisms in construction law are highly effective for dispute resolution, though their success is largely influenced by the legal context in which they are employed. In Common Law systems, the focus on arbitration provides a more formal and binding approach to resolving disputes. Conversely, Civil Law systems favor negotiation-based methods like mediation and conciliation, which prioritize maintaining business relationships and often offer faster, more cost-effective solutions (Giacalone & Salehi, 2022), (Pineda Jr et al., 2023).

The contrast in ADR approaches between Common Law and Civil Law systems highlights the need for greater harmonization, especially in the realm of international construction projects. The study concludes that hybrid ADR models, combining mediation and arbitration, offer a more adaptable and efficient framework for resolving cross-border disputes. These models can be customized to meet the needs of parties from different legal backgrounds, helping to reduce the complexity and costs associated with ADR in international contexts (Gandu et al., 2023)

CONCLUSION

This study has shown that Alternative Dispute Resolution (ADR) mechanisms are essential in resolving construction disputes, with notable differences in their application between Common Law and Civil Law jurisdictions. The findings indicate that arbitration is the favored method in Common Law systems, providing a formal and binding resolution, while Civil Law jurisdictions prefer mediation and conciliation, which emphasize negotiation and cost-effectiveness. Mediation, in particular, proved to be the most efficient and cost-effective method in both legal systems, with Civil Law jurisdictions achieving slightly faster and more affordable outcomes than Common Law systems.

The comparative analysis also underscores the challenges posed by cross-border construction disputes, given the differing ADR preferences between these legal systems. As international construction projects increasingly involve parties from diverse legal backgrounds, there is a growing need for better alignment or harmonization of ADR practices. Hybrid ADR models, which integrate the flexibility of mediation with the

binding nature of arbitration, present a promising solution to these challenges, enabling parties to resolve disputes more efficiently and effectively.

REFERENCE

- Al-Farouqi Sastrowiyono, A. (2019). *The Pro's And Con's Of Arbitration: A Study Of International Arbitration With Perspective Of Indonesian And Korean Law Renaissance* (Vol. 4, Issue 2).
- Alaloul, W. S., Hasaniyah, M. W., & Tayeh, B. A. (2019). A comprehensive review of disputes prevention and resolution in construction projects. *MATEC Web of Conferences*, 270, 05012. <https://doi.org/10.1051/mateconf/201927005012>
- Azizan, A., Sophia, S., Zahra, S., & Perai, N. (2024). Optimizing Civil Construction Litigation In Indonesia: A Comprehensive Framework For Efficiency, Expertise, And Equity In Dispute Resolution. *Jurnal Hukum Dan Peradilan*, 13(1), 189. <https://doi.org/10.25216/jhp.13.1.2024.189-226>
- Cashman, P., & Ginnivan, E. (n.d.). *Digital Justice: Online Resolution Of Minor Civil Disputes And The Use Of Digital Technology In Complex Litigation And Class Actions*. <https://legaltalknetwork.com/podcasts/digital->
- Gamage, A. N. K. K., & Kumar, S. (2024). Review of Alternative Dispute Resolution Methods in Construction Projects. *Saudi Journal of Engineering and Technology*, 9(02), 75–87. <https://doi.org/10.36348/sjet.2024.v09i02.007>
- Gandu, Y. J., Qurix, W. B., Martins, R. R., & Emusa, H. (2023). Exploring the Effects of Alternative Dispute Resolution (ADR) Implementation on Cost and Time Efficiency in Nigerian Construction Projects: A Comprehensive Analysis. *Current Journal of Applied Science and Technology*, 42(17), 40–52. <https://doi.org/10.9734/cjast/2023/v42i174136>
- Giacalone, M., & Salehi, S. S. (2022). An Empirical Study On Mediation In Civil And Commercial Disputes In Europe: The Mediation Service Providers Perspective. *Revista Italo-Espanola de Derecho Procesal*, 2022(2), 11–54. <https://doi.org/10.37417/rivitsproc/802>
- Memon, F. A., Qadir Memon, A., & Shaikh, F. A. (n.d.). Common Criteria Adopted For Selecting The Dispute Resolution Method In Construction Projects Of Pakistan. In *Tropical Scientific Journal* (Vol. 1).
- Pablo, J. (2024). Effectiveness of Mediation and Arbitration as Alternative Dispute Resolution Methods in Mexico. *Journal of Conflict Management*, 4(1), 38–50. <https://doi.org/10.47604/jcm.2383>
- Peters, S. (2021). The evolution of alternative dispute resolution and online dispute resolution in the European Un. *CES Derecho*, 12(1), 3–17. <https://doi.org/10.21615/cesder.12.1.1>
- Pineda Jr, H. E., Salvacion, A. M., Joyce De Leon, P. A., Rafanan, J. D., Jay Magat, A.

P., Manalang, J. S., Vincent Tongol, J. G., & Culala, J. C. (2023). *Alternative Dispute Resolution Methods: An Action Plan for Construction-Related Disputes within the City of San Fernando, Pampanga*.

Saputra, B. (2024). Strengthening ADR System in Indonesia: Learning from ADR Practices in Hungary. *Indonesian Comparative Law Review*, 6(2), 91–108. <https://doi.org/10.18196/iclr.v6i2.21984>

Zailani, M., Mogbo, O., & Kolo, M. (2024). Enhancing Construction Claims and Dispute Resolution in the Nigerian Building Sector: Insights from Thematic Analysis. *Nile Journal of Engineering and Applied Science*, 2(1), 1. <https://doi.org/10.5455/njeas.188525>