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Effectiveness of Mediation and Arbitration in Indonesian Construction Contract Disputes

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ABSTRACT

In Indonesia's building industry, default issues happen all the time. Going to court to settle them can take a long time, cost a lot of money, and hurt business ties. The point of this study is to look into how well Mediation and Arbitration work as an alternative way to settle building contract failures. A legal-normative, qualitative study method was used to look at legal provisions (Construction Services Law, Arbitration Law) and conflict settlement practices at national arbitration institutions (BANI) as well as mediation practices in Indonesia. The study's results show that these two processes are very helpful. Mediation is an open and mutually agreeable way to settle a dispute, with the goal of keeping the parties' relationship. Arbitration, on the other hand, gives a clear and final decision more quickly, and is made by a judge with experience in the building field. The main result is that arbitration and mediation work better and faster than going to court. The research adds to the body of knowledge in the field of construction law about Alternative Dispute Resolution (APS). It also helps contracting parties choose the best dispute resolution clause and promotes the use of APS to keep construction projects on track and ensure they don't stop.

Keywords: *Alternative Dispute Resolution; Arbitration Law; Construction Contract Default; Dispute Resolution Clause; Mediation*

INTRODUCTION

Indonesia's economy grows quickly, and one important area that helps it do that is the building business.¹ As the country's infrastructure grows quickly, building projects are getting more complicated.² These projects involve more people with different interests, such as project owners, builders, subcontractors, advisers, and material providers. A construction contract delineates the contractual relationship between the parties, specifying their rights and obligations. Nonetheless, real-world issues often result in the execution of construction contracts deviating from the original concept.³ These problems can cause work to be delayed, not meet specs, cost more than expected, or even be canceled by either party.⁴ Because of this situation, both sides lose a lot of money, and it also slows down the national growth effort as a whole.

Failure to follow through on a building contract default is different from other types of contract defaults. Not doing what he says he will do, doing what he says he will do but not as promised, doing what he says he will do but is late, or doing something that the deal says he can't do are all examples of defaulting on a promise.⁵ Defaults in building projects are usually caused by technical issues like mistakes in the design, changes in the field, or "force majeure." They can also be caused by non-technical issues like problems with paperwork, late payments, or disagreements between the parties.

Disputes over commercial contracts, like building contracts, need to be settled quickly, easily, and in a way that protects privacy and the parties' business relationships.⁶ The way disagreements are settled is very important and needs to be studied in depth because the building industry needs quick solutions and professional know-how. Legal or non-legal ways can be used to settle a dispute over a breach of a building contract. People often think that going to court in district courts is not the best way to settle building problems because it takes a long time,

¹ Al Muizzuddin Fazaalloh, "FDI and Economic Growth in Indonesia: A Provincial and Sectoral Analysis," *Journal of Economic Structures* 13, no. 1 (January 4, 2024): 3, <https://doi.org/10.1186/s40008-023-00323-w>.

² Cosimo Thawley, Masyita Crystallin, and Kiki Verico, "Towards a Higher Growth Path for Indonesia," *Bulletin of Indonesian Economic Studies* 60, no. 3 (September 17, 2024): 247–82, <https://doi.org/10.1080/00074918.2024.2432035>.

³ Norazlina Abdul Aziz et al., "Comparative Judiciaries: Unveiling Judicial Review Practices in Malaysia & Indonesia," *International Journal of Research and Innovation in Social Science IX*, no. III (2025): 4925–41, <https://doi.org/10.47772/IJRISS.2025.90300393>.

⁴ Fajar Rachmad Dwi Miarsa et al., "Theory Analysis of Justice Against Good-Faith Buyers in Freedom of Contract," *Journal of Law Theory and Law Enforcement* 1, no. 4 (November 28, 2022): 45–58, <https://doi.org/10.56943/jlte.v1i4.197>.

⁵ Elsi Safitri and Taupiqqurrahman Taupiqqurrahman, "Analysis of Claims for Damages Due to Default in the Procurement Contract for NICU and Neurosurgery Support Facilities," *Jurnal USM Law Review* 7, no. 1 (2024): 144–62.

⁶ Munawirsazali Suparlan, "Dinamika Hukum Dalam Penyelesaian Sengketa Bisnis: Perspektif Konseling," *Asas Wa Tandhim Jurnal Hukum, Pendidikan & Sosial Keagamaan* 4 (2025): 81–92.

⁷ Francisca Soewono, "Dispute Resolution Between Property Developers and Purchasers in Housing Credit Default Cases Involving Buyback Guarantee Mechanisms," *IUS POSITUM: Journal of Law Theory and Law Enforcement* 4, no. 3 (2025): 54–65, <https://doi.org/10.1111/jofi.12439.2>.

costs a lot, is open to the public, and judges don't have a lot of experience with construction related issues.⁸ Different types of Alternative Dispute Resolution (ADR), like mediation and arbitration, are more adaptable and work better in the building business.

Mediation is a way to negotiate with the help of a neutral third party, and it can help both sides come to an understanding that works for everyone without hurting their long-term business relationship.⁹ On the other hand, arbitration gives legal security through final and binding decisions made by judges, who can be chosen based on their technical knowledge of building issues. This system can be used in Indonesia legally thanks to Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution and Supreme Court Regulation No. 1 of 2016 on Mediation Procedures in Court.¹⁰

The main goal of this study is to look closely at the laws that allow building contract mistakes to be settled through mediation and arbitration, as well as how well these laws are followed in real life. The study also wants to find out what factors affect how well mediation and arbitration work to settle building issues. It also wants to come up with ways to make things better from a legal, institutional, and procedural point of view.

Law No. 2 of 2017 about building Services says that disagreements are settled by discussing them until everyone agrees. Article 88 of that law says that disagreements that happen during the enforcement of building contracts are settled by discussing them until everyone agrees. Based on the rules of the contract, if the parties to a disagreement can't come to an agreement, they must go through the conflict settlement stage. There are three steps to resolving a dispute: mediation, settlement, and judgment. There is another way to settle disagreements besides mediation and conciliation: a dispute council can be created. Specific and general terms of the contract are very important for keeping the contract fair and balanced, which helps keep disputes from happening and helps settle them when they do.

This suggests that a full research is required to determine what makes mediation and arbitration better or worse at resolving construction contract disputes.¹¹ The aforementioned remark indicates that this research primarily addresses many key topics. (1). how are violations of construction contracts in Indonesia resolved via mediation and arbitration? (2). What is the efficacy of mediation and arbitration in resolving construction contract disputes, considering

⁸ Dewi Ratrika and Rinupa Sejati, "Penyelesaian Sengketa Wanprestasi Secara Alternatif Melewati Badan Arbitrase Nasional Indonesia (BANI)," *Journal of Contemporary Law Studies* 2, no. 1 (2024): 19–29.

⁹ Soewono, "Dispute Resolution Between Property Developers and Purchasers in Housing Credit Default Cases Involving Buyback Guarantee Mechanisms."

¹⁰ Choralisa Eliagita et al., "Optimalisasi Mediasi Dan Arbitrasi Dalam Penyelesaian Konflik Medis Dan Farmasi," *Jurnal Kesehatan Tambusai* 6 (2025): 17374–82.

¹¹ Sinarianda Kurnia Hartantin, "Banking Dispute Settlement through Alternative Dispute Resolution : Claims of Danamon Bank Customers," *YURIS: Journal of Court and Justice* 1, no. 30 (2022): 49–59.

both legal and practical perspectives? (3). What factors regarding the use of mediation and arbitration for resolving construction contract default concerns facilitate or hinder their effectiveness? (4). How can mediation and arbitration resolve construction contract errors with legal clarity, justice, and benefits?

In theory, this study should help the field of law grow, especially contract law and how to settle disagreements in the building industry. Practically, the research results should help people in the construction industry, lawyers, mediation and arbitration centers, and policymakers improve the efficiency of construction dispute resolution in Indonesia. This will help the investment climate and speed up the development of the country's infrastructure.

LITERATURE REVIEW

The Civil Code, especially Book III of Engagement, sets the rules for engagement law in general. Construction contracts are special deals that must follow these rules. The Civil Code says in Article 1313 that a deal is when two or more people promise to do something for another person.¹² Fundamental rules must be followed in the theory of contract law. These include the principle of legal clarity, the principle of good faith, the principle of freedom of contract, and the principle of *pacta sunt servanda*.

Subjective conditions include agreement and skill, and objective conditions include certain things and causes that are acceptable. In the building industry, contracts are unique because they aim to complete actual work that must meet certain technical requirements, last a long time, and require plenty of teamwork between different parties. When one of the sides doesn't do what they agreed to do in the contract, this is called default or breach of promise.

Four types of default exist: not doing what it says it will do, doing what it says it will do but not on time, doing what it says it will do but is late, and doing something that the deal says it can't do. If you don't follow the rules, you might have to pay fines, cancel contracts, shift risk, or pay the court costs if the case goes to court. Not meeting the terms of a building contract can be tricky because it affects technical, financial, and legal issues all at the same time. To solve these issues, you need a broad view and specific knowledge in the construction industry. In reaction to the problems with the current justice system, the idea of alternative dispute resolution (ADR) grew as a way to settle disagreements without going to court.¹³

The benefits of ADR include saving time and money, being able to change the way things are done, keeping the processes and results secret, and keeping good

¹² Universitas Udayana, Dauh Puri Klod, and Kota Denpasar, "Analisis Legalitas Pemutusan Kontrak Dalam Proyek Konstruksi Berdasarkan Standar Operasional Prosedur Di Kementerian Pekerjaan Umum," *Jurnal Media Akademik (JMA)* 3, no. 9 (2025).

¹³ Talitha Kamilah and Sidi Ahyar Wiraguna, "Perkembangan Alternatif Penyelesaian Sengketa (ADR) Dalam Perspektif Hukum Acara Perdata Modern," *Terang : Jurnal Kajian Ilmu Sosial, Politik Dan Hukum* 2, no. November (2025): 174–86.

relationships between the parties. Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution (ADR) in Indonesia accepts diverse ADR methods, such as mediation, conciliation, consultation, and arbitration. Rachmadi Usman divides ADR into two main groups: adjudicative ADR, which uses binding decisions, like arbitration, and non-adjudicative ADR, which doesn't. Non-adjudicative ADR includes mediation and settlement, but it's not required.¹⁴

Arbitration is better for when you need a clear legal guarantee, while interest-based dispute resolution, like mediation, is better for keeping long-term relationships.¹⁵ Construction disputes need to be handled in a way that takes into account the nature of the dispute, how quickly it needs to be resolved, the need for professional knowledge, and the parties' desire to keep working together in the future. Instead of fighting, people can work out their differences through mediation, which involves neutral third parties helping the two sides come to an understanding. Furthermore, mediation is an organized but adaptable process in which a third party helps the people involved in a disagreement talk to each other and come to an understanding while remaining neutral. Mediation is characterised by being optional, keeping things private, the mediator's job as a guide rather than a judge, and a deal that works for everyone.¹⁶

Opening and explaining the mediation process, each side presenting their problem, exploring interests and issues, looking for possible solutions, negotiating and bargaining, and finally coming to an agreement are the main steps in the mediation process. Mediating building disagreements that happen during the course of a project is a great way to keep working relationships between parties and find a quick answer without stopping work.

Facilitating technical conversations, helping both sides see things from the other's point of view, and pushing for practical solutions that take into account operational and economic factors are all things that construction mediation does well. Effective mediation relies on the mediator being knowledgeable about not only contract law but also building methods, having good communication skills, and being trusted by both sides. Mediation in Indonesia is governed by Supreme Court Regulation Number 1 of 2016. It can also happen outside of court through the Indonesian National Arbitration Board (BANI) or other professional mediation organizations.¹⁷ Instead of going to court, legal conflicts can be settled through arbitration, which is based on a written deal between the people involved.

¹⁴ Yoepi Afdaruqutni, "Penyelesaian Sengketa Non-Litigasi Dalam Penyelesaian Perkara Dalam Hukum Perdata," *Jurnal Mahasiswa Hukum* 01 (2024): 86–92.

¹⁵ Muhammad Nur Rakhmad and Prof Prasetijo Rijadi, "Juridical Issues in Enforcing Final and Binding Arbitral Awards in Indonesia," *IUS POSITUM: Journal of Law Theory and Law Enforcement* 4, no. 4 (2025): 51–65.

¹⁶ Aldi Ferdiansyah et al., "Efektivitas Mediasi Sebagai Alternatif Penyelesaian Sengketa Perdata Dalam Meningkatkan Akses Keadilan Di Indonesia," *Jurnal Kajian Hukum Dan Pendidikan Kewarganegaraan* 1, no. 4 (2025): 471–80.

¹⁷ Ahmad Septian Yahya, "Pengaturan Hukum Terhadap Praktik Mediasi Dalam Penyelesaian Sengketa," *Jurnal Hukum Caraka Justitia* 5, no. 1 (2025): 107–19.

Participants in arbitration agree to follow the decision of a judge they choose to settle their disagreement for good. Most of the time, arbitration is private, the decision is final and binding, and the parties are free to choose the processes, judges, and laws that apply.

Two types of arbitration are regulated by Law Number 30 of 1999: ad hoc arbitration, which is made just for certain cases, and institutional arbitration, which is done by a fixed arbitration organization.¹⁸ The Singapore International Arbitration Centre (SIAC) and the International Chamber of Commerce (ICC) are two of the most important international arbitration groups that deal with building issues. As Huala Adolf described, construction arbitration has benefits such as being able to choose judges based on their professional knowledge in the field of building, being faster than going to court, and the ruling being able to be carried out across borders thanks to the 1958 New York Convention.¹⁹

In general, the arbitration process includes writing arbitration terms into the contract, sending in an arbitration request, putting together an arbitration court, looking at cases (which may include trials and the exchange of papers), and making a decision. When it comes to construction, arbitration works really well for handling tricky disagreements that need choices based on scientific data, math calculations, and how to understand building standards. Though arbitration has some problems, including the fact that hiring trained judges can be expensive, the ruling is final, and it might be hard to carry out the decision, especially if it involves state assets.

There are many laws and rules in Indonesia that make up a complete legal system. These rules govern how building contract issues are settled. Articles 1243 to 1252 of the Civil Code set the rules for involvement and pay due to default. Law Number 30 of 1999 about Arbitration and Alternative Dispute Resolution, in particular, makes it possible for disputes to be settled in ways other than going to court.²⁰ While this law covers a lot of ground, it also covers arbitration agreements, processes for both national and international arbitration, overturning arbitral decisions, and accepting and following foreign arbitral decisions. If both sides agree, mediation can still happen outside of court, as long as it's governed by Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in the Court. Law Number 2 of 2017 concerning Construction Services is one example of a law that applies to the construction industry. It spells out the rights and duties

¹⁸ Bakti Nanda Siregard Fatimah Syahrúa, Ruben Edison Simanjanrangb, Sigit Darmawan Hafidzc, "The Role Of Arbitration Institutions In The Settlement Of Business And Commercial Contract Disputes," *JArBI: Jurnal Arbitrase Indonesia* 1 (2025): 51–68.

¹⁹ David Tonriady, "Penyelesaian Sengketa Bisnis Melalui Arbitrase Sebagai Mekanisme Alternative Dispute Resolution," *Jurnal Hukum JBLR* 1, no. 2 (2025): 1–26.

²⁰ Cantika Tresna Rahayu et al., "Perlindungan Hukum Terhadap Pihak Yang Dirugikan Dalam Wanprestasi," *Media Hukum Indonesia (MHI)* 2, no. 4 (2024): 138–49.

of all parties involved in the provision of construction services, including agreements for construction work and how to settle disagreements.²¹

Construction contract issues can be settled in court, through agreement discussion, mediation, negotiation, or government regulation number 22 of 2020, which is about the implementation rules for the construction services law. A different way to settle disagreements about buying government goods and services is spelled out in Presidential Regulation Number 16 of 2018. For government projects, disagreements can be settled through negotiation, mediation, or court, but arbitration isn't always an option because it involves state funds.²² Indonesia already has a good legal framework for resolving construction disputes through different channels, but it is still hard to put it into practice because some rules overlap, procedures aren't always clear, and the government's ability to handle construction disputes isn't as good as it could be.

RESEARCH METHODOLOGY

This type of study is called normative legal law research.²³ Normative legal research is done to look at the relevant positive legal provisions, such as Law Number 2 of 2017 on Construction Services and Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution. It also looks at the rules for enforcing defaults and contracts. Experts in building law, judges from the Indonesian National Arbitration Board (BANI), trained mediators, and contractor/service user practitioners who have been involved in default cases are part of the study. Construction contract papers, arbitration decisions, and reports on the outcomes of mediations for failures are the subjects of the study.

It is during the Literature Study stage that secondary data (primary, secondary, and tertiary legal materials) are gathered from laws, papers, and books. Once the data is gathered, it is analyzed in a qualitative and detailed way. Normative data is interpreted logically and methodically to see how well the rules fit with the goal of resolving the disagreement. Empirical data, on the other hand, is interpreted by reducing the amount of data, showing the data, and coming to a decision. The point of this study is to look at how well Mediation and Arbitration work and what their pros and cons are when it comes to solving building contract default issues in a fair, quick, and legally binding way.

²¹ Moh. Lubi Tuqo Ramadhan Maela Khoirul Ummah, Afriansyah Tanjung, "Penyelesaian Sengketa Jasa Konstruksi Melalui Jalur Non-Litigasi," *Jurnal Hukum Legalita* 7, no. 2 (2025).

²² Mohamad Ismedc Izmi Latifah Azhrya, Felicitas Sri Marniatib, "Tanggung Jawab Penyedia Jasa Terkait Kegagalan Pekerjaan Kontruksi Berdasarkan Perjanjian Yang Dibuat Dihadapan Notaris," *Cendekia: Jurnal Penelitian Dan Pengkajian Ilmiah* 2, no. 3 (2025): 414–29.

²³ Peter Mahmud Marzuki, *Penelitian Hukum*, Revision Edition (KENCANA, 2021).

RESULT AND DISCUSSION

Regulatory Framework for Mediation and Arbitration in Construction Contracts

In Indonesia, there are many laws and rules that govern how building contract mistakes can be settled through alternative conflict resolution methods. These laws and rules are all connected and affect each other. Law Number 30 of 1999 about Arbitration and Alternative conflict settlement is the main law in Indonesia that governs how arbitration and other forms of alternative conflict settlement, such as mediation, are used. The law strongly upholds the parties' agreement to settle disagreements outside of court, even when those disagreements are caused by errors in a building contract. When it comes to civil law, the Civil Code sets the rules for default. Articles 1243 to 1252 explain what happens when someone doesn't follow through on a deal.²⁴

In prior research by Ediyanto Arief et al., the legal certainty surrounding the resolution of construction contract disputes via arbitration was examined. The study indicated that the dispute arose from the contractor's delay in project completion, and it concluded that the arbitration award lacked legal certainty despite being final and binding.²⁵ Hambali et al. noted the dispute settlement between the Government's contract requirements and the FIDIC contract standards, as well as the stipulations of Law Number 2 of 2017 on Construction Services.²⁶

This study reveals a distinction from prior studies about expertise in construction law pertaining to Alternative Dispute Resolution (ADR). The study assists contractual parties in selecting the optimal dispute resolution provision and promotes the use of APS to maintain the progress of building projects and prevent delays. There are more detailed rules about how to settle disagreements in building contracts in Law Number 2 of 2017 covering building Services. Article 87 of the Construction Services Law says that construction service disputes can be settled in court or out of court, depending on what the parties individually choose. A settlement outside of court can be reached through negotiation, expert judgment, consultation, or mediation. It says that disagreements can be settled through negotiation, arbitration, or court proceedings, as long as they are legal and follow the rules set out in Presidential Regulation Number 16 of 2018 regarding the Procurement of Government Goods and Services. This regulation also covers how disagreements can be settled for government construction contracts.

²⁴ Surung Aritonang et al., "Tanggungjawab Kontraktor Terhadap Kontrak Kerja Konstruksi Yang Tidak Mencantumkan Rencana Umur Konstruksi (Studi: Kontrak Kerja Konstruksi Oleh Dan Antara Dinas PUPR Kabupaten Labuhanbatu Selatan Dengan CV. Karya Jasa Utama)," *Mahadi : Indonesia Journal of Law* 1, no. 2 (2022): 259–81.

²⁵ Ediyanto Arief and Sarwono Hardjomuljadi, "Kepastian Hukum Penyelesaian Sengketa Kontrak Konstruksi Melalui Arbitrase," *JIHHP: Jurnal Ilmu Hukum, Humaniora Dan Politik* 5, no. 4 (2025): 3031–49.

²⁶ Sarwono Hardjomuljadi Hambali, Sami'an, "Peran Kontrak Dalam Mencegah Dan Menyelesaikan Sengketa Konstruksi," *Jurnal Konstruksia* 16, no. 2 (2025): 1–10.

Technologically, Supreme Court Regulation (PERMA) Number 1 of 2016 about Mediation methods in the Court details judicially integrated mediation methods.²⁷ The rules in this PERMA govern mediation that is part of a lawsuit, but they can also be used as a guide for mediation that takes place outside of court for building contract issues. As Indonesia's main arbitration body, the Indonesian National Arbitration Board (BANI) has its own set of rules for how to settle disputes through arbitration and mediation. These include BANI Rules and Procedures that have been updated to reflect changes in the law and how disputes are settled today. All of these rules make up a strong legal system that makes it possible for mediation and arbitration to be used to settle building contract failures in Indonesia.

The Efficacy of Mediation and Arbitration in Resolving Construction Contract Defaults

The efficacy of mediation in addressing construction contract defaults is evident from several features that highlight the benefits of this approach over traditional litigation methods. Mediation is more efficient regarding settlement time, often resolving disputes within 14 to 30 working days, while litigation may extend for years across many judicial levels. Mediation is more cost-effective since the parties are solely responsible for the mediator and administrative expenses, which are far cheaper than the expenditures associated with litigation, including case fees and attorney charges. Mediation offers the advantage of confidentiality and non-publicity, thereby preserving the reputations of the parties involved, particularly construction firms. Additionally, it facilitates the maintenance of amicable business relationships, as resolutions are achieved through mutual consent rather than imposed judgments.

Additionally, arbitration works very well as an alternative way to settle disagreements when it comes to Indonesian building contract failures. Without an appeal or cassation, the arbitration decision is final and binding. This gives the parties to the case faster legal assurance.²⁸ Selecting arbitrators based on their construction-related skill adds value because choices that are more accurate and fair will come from judges who have a strong technical understanding of building issues. As Indonesia has signed the 1958 New York Convention, arbitral decisions can also be implemented both at home and abroad. This is a strong guarantee of performance, especially for building contracts involving foreign parties. BANI arbitration has successfully settled many building disputes, mostly between big companies with high contract values.

²⁷ Sonia Nahda, Emy Hajar Abra, and Pristika Handayani, "Pelaksanaan Mediasi Berdasarkan Peraturan Mahkamah Agung Nomor 1 Tahun 2016 Tentang Prosedur Mediasi," *Jurnal USM Law Review* 8, no. 3 (2025): 7–9.

²⁸ Rostna Qitabi Anjilna Mudawaroh, "Peranan Arbitrase Dalam Menyelesaikan Sengketa Bisnis Di Luar Peradilan: Ditinjau Dari Undang-Undang No. 30 Tahun 1999 Tentang Arbitrase Dan Alternatif Penyelesaian Sengketa," *Jurnal Ilmiah Rechtszekerheid* 2, no. 2 (2025).

Nevertheless, there are still some problems in the real world that make it hard for these two processes to work properly. In some cases, construction contract default disputes are not successfully resolved through mediation. This is especially true when the parties have very different bargaining positions or when one of them doesn't want to settle the dispute peacefully. Even if the arbitral award is final and binding, putting it into action in court can be hard and take a long time, especially if the lost party goes to the District Court to get the award thrown out. The relatively high cost of arbitration can also be a problem, especially in cases where the amount at stake is high. This is because arbitration costs more than long-lasting lawsuits, which involves different levels of appeal and cassation.

Mediation and Arbitration: Factors That Support and Hinder Their Use

The reasons why mediation and arbitration are used to settle building contract failures in Indonesia can be seen in the changes that have been made to the law system and the way businesses work.²⁹ First, the Arbitration and Alternative Dispute Resolution Law and the Construction Services Law give strong governmental backing for these methods. This makes it clear and legal for both sides to choose these other ways of resolving disputes. Additionally, there are trustworthy organizations for arbitration and mediation in Indonesia, such as BANI, BMAI, and INBA, which make the dispute resolution process easier to handle professionally. Third, people in the construction industry are becoming more aware of how important it is to settle disagreements quickly and effectively. This is leading to more building contracts that include arbitration or mediation terms as ways to settle disagreements. Fourth, the good results of cases that were settled through mediation and arbitration have made people more confident in their usefulness, setting a good example for future cases.

Nevertheless, there are some things that make it hard to use mediation and arbitration for construction contract default issues.³⁰ One reason is that some people in the construction business, especially those who work in regions or small to medium-sized businesses, don't fully understand how mediation and arbitration work or what the benefits are. As a result, they choose the more familiar court system, even if it takes longer. The second reason is that there aren't many mediators and arbitrators in Indonesia who are fairly spread out and have special knowledge in the field of building. This means that people often rely on mediators and arbitrators who are based in big towns. The third reason has to do with the costs of arbitration, which are still seen as high by some business people, especially for

²⁹ Hapit Sugandi and Adi Saputro, "Efektivitas Penyelesaian Sengketa Kontrak Konstruksi Di Indonesia Dalam Analisis Hukum Implementasi Dan Tantangan Proyek Infrastruktur," *Jurnal Pendidikan Indonesia* 6, no. 3 (2025): 1232–43.

³⁰ Sakban Lubis Rusli Halil Nasution, "Analisis Faktor-Faktor Penghambat Keberhasilan Mediasi Di Pengadilan Agama Di Tebing Tinggi," *Seminar Nasional Universitas Dharmawangsa 2025 "Penguatan Moderasi Beragama Pada Perguruan Tinggi"*, 2025, 247–61.

small building projects. This makes them think about the cost-benefit of the conflict settlement choice.

An additional factor that slows things down is the issue of carrying out an arbitral award, which can run into problems in court, especially when the losing party files an effort to overturn the arbitration award using different grounds that can take longer than expected. Moreover, the judge's inconsistent reading of the Arbitration Law when considering the application to overturn the arbitral award causes legal doubt that may make the parties less confident in the arbitration award's validity. Additionally, in mediation, if there aren't strong consequences for parties who don't follow through with the mediation agreement in good faith, it can make the mediation results useless, even though the mediation agreement is legally equivalent to a general agreement. Also, the strong culture of litigation in Indonesian society—where winning or losing in court is seen as more satisfying than compromising in mediation—is a mental barrier that needs to be overcome by educating and changing the way people in the construction business think.

By looking at the legal framework, how well it is being put into action, and the factors that help and hinder progress, it is possible to come up with the best way to settle construction contract defaults. This model should include both mediation and arbitration in a tiered system that gives everyone legal certainty, justice, and benefits.³¹ The discussion and mediation stage is the first and major step in this model's way of settling default disputes. Both sides must go through mediation first and wait no more than 30 working days before they can move on to the review stage. A certified mediator who knows a lot about the construction industry should be used for mediation. The mediation process should be well-supported, and both sides should be able to share clear technical and financial information to help come to a fair agreement. If the parties can't come to an agreement during mediation, the case can move on to arbitration, which is a final and binding way to settle the disagreement.

Two arbitrators should be from the field of construction engineering or quantity surveying and one should be a lawyer. This way, the award will take into account both the legal and technical aspects of construction, which are often at the heart of disputes. After the panel of arbitrators is formed, there should be clear time limits for each step of the process, from submitting answers and proof to the final decision. Ideally, the process should take no more than 180 days from the formation of the panel of arbitrators.³² Along with making arbitration fees more accessible, this plan suggests using a moving scale to figure out the fees based on the value of

³¹ Jeremiah Timothy Modok Muhammad Ghafa Azwa Al-Ghifari, Gerald Yhosua Pungus and Astrid Athina Indradewi Christopher Wisely Surio Tjahjono, "Kekuatan Hukum Putusan Arbitrase Internasional Tantangan Implementasi Di Pengadilan Indonesia," *Iuris Studia: Jurnal Kajian Hukum* 6, no. 1 (2025): 50–57.

³² Fery Arifandi Erlen, Meidya Wulandari, Oktariani, Ocky Yogananta, "Kekuatan Mengikat Dari Keputusan Arbitrase Dihubungkan Dengan Sifat Final & Binding," *Consensus : Jurnal Ilmu Hukum*, 3, no. 3 (2025): 111–16.

the conflict. This way, the parties won't have to pay too much, especially for smaller disputes. Party trust in the arbitration institution should also be built by being clear about how arbitration fees and judge fees are calculated.

A strong policing system must also be in place to back up this ideal model and give everyone legal assurance. The mediation agreement must be able to be filed with the court so that it can be recognized as a peace deed with executory power. This way, if one party doesn't follow through with the agreement, the other party can ask for execution right away without having to start a new case. The court should make it easier for arbitral awards to be carried out by limiting the reasons for annulment to very basic and procedural issues and not to the award's content. They should also have a strict deadline of no more than 60 days to handle an application for execution or annulment of an arbitral award. For this model to work, there should also be specialized commercial courts or construction dispute courts that know a lot about construction disputes and can handle requests to carry out or overturn arbitral awards. This way, the process can go more quickly and accurately, and the unique and complex nature of construction disputes can be taken into account more fully.

CONCLUSION

Indonesia has a complete and useful law framework for mediating and arbitrating building contract failures. The Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution and the Law Number 2 of 2017 on Construction Services, along with other laws and rules like PERMA Number 1 of 2016 and the BANI Procedure Regulations, have set up a legal system that recognizes and protects out-of-court dispute resolution. This set of laws lets the people involved in a construction contract pick the dispute resolution method that they think works best for their needs and the type of dispute. It also makes sure that everyone knows how mediation agreements and arbitration awards work and how they can be enforced.

There are some good results from using mediation and arbitration to settle building contract failures, but there are still some problems that need to be fixed. A fairly high success rate has been seen in mediation, which can help business relationships by finding a quick, cheap, and long-lasting answer. This is especially true when both sides are willing to work out their differences through discussion. Arbitration is also very useful because it can lead to final and binding decisions, and it can be done anywhere in the world. This is because judges are trained to deal with building issues. Supporting factors need to be strengthened, like strong regulatory support, the presence of trustworthy arbitration institutions, and more business people becoming aware of the issues. On the other hand, inhibiting factors need to be overcome through education, building the skills of human resources, and making execution mechanisms better.

The best way to settle building contract failures through mediation and arbitration that gives everyone legal clarity, fairness, and benefits is a tiered model that combines the two methods in an organized and helpful way. This ideal model needs a strong way to make sure that arbitral awards are followed through. This can be done by making it easier to carry out arbitral awards, making it so that awards can only be revoked for basic procedural reasons, giving courts strict deadlines for carrying out and rescouling awards, and setting up commercial or construction dispute courts that understand how complicated construction disputes can be.

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