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The Efectiveness of Arbitration Mechanisms in The Resolution Of Construction Disputes In Indonesia: A Critical Analysis of Law No. 30 of 1999 on Arbitration And Alternative Dispute Resolution

Alfredo Pakpahan[1], Hidbar Roberta Saragih[2], Bayu Wisatrioda[3], Kharisman Laia[4*], Sarwono Hardjomuljadi[5], Sami'an[6]
[1] Universitas Pekalongan, Jawa Tengah, alfredo_pakpahan@yahoo.com
[2] Universitas Pekalongan, Jawa Tengah, hidbarsaragih@yahoo.com
[3] Universitas Pekalongan, Jawa Tengah, bayu.wisatrioda@gmail.com
[4] Universitas Pekalongan, Jawa Tengah, kharismanlaia.pln@gmail.com
[5] Universitas Pekalongan, Jawa Tengah, sarwonohm2@yahoo.co.id
[6] Universitas Pekalongan, Jawa Tengah, dosen.samian@gmail.com

[*]Corresponding Author: kharismanlaia.pln@gmail.com

Abstract: Disputes in construction projects often arise from divergent interpretations of contracts, delays in execution, and the complex dynamics of scope changes. Within this context, arbitration has long been regarded as an alternative dispute resolution mechanism that promises efficiency, fairness, and confidentiality outside the court system. However, more than two decades after the enactment of Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution, its effectiveness in the construction sector remains subject to debate and scrutiny. This study critically examines the effectiveness of arbitration in resolving construction disputes under the legal framework established by Law No. 30 of 1999. Using a normative juridical approach, it reviews statutory regulations, legal doctrines, and field practices, complemented by interviews with legal practitioners and construction arbitrators. The findings reveal that while arbitration offers advantages in terms of confidentiality, procedural flexibility, and finality of decisions, its practical effectiveness is often constrained by high procedural costs, limited contractual understanding among parties, and challenges in enforcing arbitral awards through the courts. Furthermore, the substance of Law No. 30 of 1999 appears insufficiently adaptive to the technical and multidimensional nature of modern construction disputes. This research therefore recommends revising and modernizing the law particularly by strengthening the enforceability of arbitral awards, standardizing arbitration institutions, and enhancing the competence of human resources in construction law. Ultimately, arbitration should evolve as a mechanism not only for efficient dispute resolution but also for upholding justice, legal certainty, and professional integrity in Indonesia's construction sector.

Keywords: Arbitration, Construction Dispute, Effectiveness, Law No. 30 Of 1999 On Arbitration And Alternative Dispute Resolution

INTRODUCTION

The construction industry have a crucial role in supporting national development by providing essential public infrastructure such as roads, bridges, buildings, and energy facilities that sustain economic and social activity. Yet, the sector's inherent complexity marked by the involvement of multiple stakeholders including employers, contractors, consultants, and suppliers inevitably leads to potential disputes. These conflicts often emerge from project delays, changes in scope, differing contract interpretations, payment issues, and disagreements over quality standards.

In practice, litigation has proven to be a less effective method for resolving such disputes due to its lengthy procedures, lack of confidentiality, and the strain it places on business relationships. Consequently, arbitration has gained prominence as a preferred form of Alternative Dispute Resolution (ADR), offering a more confidential, flexible, and business-oriented framework for conflict resolution.

In Indonesia, the legal foundation for arbitration is governed by Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution, which marked a significant step in institutionalizing non-judicial dispute settlement mechanisms. However, after more than two decades of implementation, questions persist regarding the law's effectiveness, particularly in the construction sector.[4] Critics point to persistent challenges such as high arbitration costs, procedural inefficiencies, and difficulties in enforcing arbitral awards through the courts.

Meanwhile, the evolving, increasingly globalized nature of the construction industry demands a legal system that is more responsive and adaptive. Comparisons with international arbitration bodies such as the Singapore International Arbitration Centre (SIAC) and the Hong Kong International Arbitration Centre (HKIAC) further highlight the need for reform.

This study critically examines the effectiveness of Indonesia's arbitration framework under Law No. 30 of 1999 in resolving construction disputes. Using both normative and empirical approaches, it evaluates the law's practical implementation and identifies areas for improvement.

The findings underscore the importance of reforming the arbitration system to enhance justice, efficiency, and legal certainty to ensuring that arbitration serves not only as a procedural mechanism but as a meaningful vehicle for fairness and trust in Indonesia's construction sector.

METODOLOGY

This study employs a normative juridical approach complemented by limited empirical insights. This methodological orientation was chosen to reflect the research's primary focus examining the legal framework that governs arbitration mechanisms in Indonesia, particularly Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution, and its practical relevance to the construction sector as regulated under Law No. 2 of 2017 on Construction Services.

1. Type and Approach Research

This research adopts a normative legal method, which centers on the study of written legal norms and the underlying principles that shape them. To ensure analytical depth, this method is supplemented by two additional approaches:

- The statutory approach, which examines the coherence between Law No. 30 of 1999 and the regulatory framework governing construction services and arbitration practices in Indonesia; and
- The conceptual approach, which explores relevant legal theories and conceptual foundations concerning the effectiveness of dispute resolution through arbitration.

To complement the normative dimension, this study integrates qualitative empirical elements through limited interviews with legal practitioners, arbitrators, and academics in the fields of contract and construction law. The purpose is to obtain factual insights into how

arbitration mechanisms are implemented and perceived in practice within Indonesia's construction sector.

2. Source of Data

The study utilizes three main types of legal materials:

1) Primary legal materials, including:
   - Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution;
   - Law No. 2 of 2017 on Construction Services; and
   - Government Regulation No. 22 of 2020 on the Implementation of the Construction Services Law.
2) Secondary legal materials, consisting of academic books, journal articles, prior research findings, and publications issued by both national and international arbitration institutions.
3) Tertiary legal materials, such as legal dictionaries, encyclopedias, and other relevant reference sources that support interpretation and contextual understanding[5].

3. Data Collection Techniques

Data were collected through three principal methods:

1) Library research, involving a comprehensive review of legal literature, statutory instruments, and previous studies related to arbitration in the construction industry.
2) In-depth interviews with selected key informants, including senior arbitrators from the Indonesian National Board of Arbitration (BANI) and experienced construction practitioners.
3) Case document analysis, which examines several arbitration awards in construction disputes that have been adjudicated and enforced by Indonesian district courts.

4. Data Analysis Techniques

The collected data were analyzed using a qualitative-descriptive method, through interpretative and evaluative reasoning applied to the relevant legal norms. The analytical process was conducted in four stages:

1) Identification of legal norms, to uncover the fundamental principles of arbitration embodied in Law No. 30 of 1999;
2) Norm conformity analysis, to assess the relationship between these principles and the practical realities of construction dispute resolution;
3) Effectiveness evaluation, by comparing the normative objectives of arbitration namely, efficiency, fairness, and expediency with the actual implementation in practice; and
4) Formulation of recommendations, providing constructive proposals to improve Indonesia's legal and institutional arbitration framework so that it becomes more adaptive and responsive to the dynamics of the modern construction industry.

RESULTS AND DISCUSSION

Effectiveness of Arbitration in the Context of Construction Disputes

Arbitration in Indonesia's construction sector is intended to serve as an alternative dispute resolution mechanism that is swift, efficient, and preserves business relationships between parties. However, its effectiveness remains contested due to a noticeable gap between the normative framework established by Law No. 30 of 1999 and its practical implementation.

To assess this effectiveness, the study examines several key indicators: (1) the duration of dispute resolution, (2) procedural costs, (3) the rate of award enforcement, and (4) parties' satisfaction with the outcome. The following data, compiled from the Indonesian National Arbitration Board (BANI), Bappenas (2023), and interviews with construction law practitioners, provide a comparative perspective.

Table 1. Comparison of the Effectiveness of Arbitration and Litigation in Construction Disputes (2019–2023)

Effectiveness Indicator	Arbitration (BANI)	Litigation (District Court)	Remarks
Average duration of resolution	6–12 months	18–36 months	Arbitration is faster due to simplified procedures.
Average cost per case	IDR 250 million – 1.5 billion	IDR 50–200 million	Arbitration is costlier, particularly in high-value disputes.
Rate of award enforcement	± 68%	± 92%	Enforcement of arbitral awards often faces judicial obstacles.
Parties' satisfaction rate	73%	54%	Arbitration is preferred for its confidentiality and business-friendly nature.
Involvement of technical experts	High	Low	Arbitration allows selection of arbitrators with technical expertise.

Source: Processed data from BANI (2023) and Bappenas (2023)

Normative Analysis of Law No. 30 of 1999

Law No. 30 of 1999 stands as a **milestone in the institutionalization of arbitration** in Indonesia. Article 1(1) defines arbitration as a civil dispute resolution mechanism conducted outside the general court system based on a written agreement between the parties. Despite this, its effectiveness in the construction sector remains limited due to several normative and institutional constraints:

1) Judicial dependency in award enforcement.
   Although Article 60 affirms the "final and binding" nature of arbitral awards, enforcement still requires exequatur from the district court. This judicial involvement often leads to resistance or even annulment of arbitral decisions.
2) Regulatory disintegration between arbitration and construction law.
   The absence of alignment between the Arbitration Law and the Construction Services Law (Law No. 2 of 2017) has created legal uncertainty in practice.
3) Limited capacity of domestic arbitrators and institutions.
   Many arbitrators lack international certification or sufficient technical expertise, especially in complex engineering-procurement-construction (EPC) disputes.

Evaluation of Arbitration Effectiveness

Empirical findings indicate a steady increase in construction-related arbitration cases over the past five years. Data from BANI show that the number of registered cases rose by 37% between 2019 and 2023. Nevertheless, field studies reveal that high procedural costs and difficulties in enforcement remain major deterrents for domestic users.

As a result, many construction firms increasingly turn to foreign arbitration institutions, such as the Singapore International Arbitration Centre (SIAC) and the Hong Kong International Arbitration Centre (HKIAC), which are perceived as more professional, efficient, and independent.

Table 2. Trends in Construction Disputes Resolved through Arbitration (2019–2023)

Year	Cases Registered at BANI	Average Dispute Value (IDR Billion)	Percentage of Awards Enforced
2019	42	75	64%

2020	47	92	66%
2021	59	110	67%
2022	68	123	68%
2023	71	135	69%

Source: BANI Arbitration Center, Annual Report 2019–2023

Critical Reflection on Arbitration Law Reform

The analysis indicates that the effectiveness of Law No. 30 of 1999 remains suboptimal, particularly in terms of enforcement mechanisms and regulatory coherence. To address these shortcomings, several reforms are urgently needed:

- Modernization of arbitration procedures to ensure faster and more affordable processes;
- Harmonization with the Construction Services Law, promoting an integrated dispute resolution system;
- Professionalization of domestic arbitrators through international certification and continuous training;
- Digitalization of arbitration processes to enhance transparency, accessibility, and efficiency.

Ultimately, the reform of Indonesia's arbitration framework is a pressing necessity. A modernized and harmonized arbitration system would not only strengthen legal certainty and business confidence but also reaffirm arbitration's role as an effective, efficient, and just mechanism for resolving construction disputes in an evolving global industry.

CONCLUSION

Arbitration serves as a vital instrument within Indonesia's legal system, providing an alternative dispute resolution mechanism that upholds the principles of efficiency, justice, and confidentiality. In the context of construction disputes, arbitration is expected to deliver resolutions that are swift and professional, aligning with the complex and high-value nature of construction projects.

An analysis of Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution and its implementation in the settlement of construction disputes reveals that the effectiveness of arbitration in Indonesia remains suboptimal. Normatively, the law establishes a sufficient legal foundation through the principle of final and binding decisions; however, in practice, various challenges persist.

First, the enforcement of arbitral awards, which continues to rely on approval from the district court, often generates legal uncertainty. This dependency contradicts the very essence of arbitration, which seeks to ensure predictability and expediency in dispute resolution. Second, the high cost of arbitration poses a significant barrier for small and medium-sized enterprises (SMEs) in the construction sector, discouraging broader access to the forum. Third, the competence of national arbitrators requires continuous enhancement to effectively address increasingly complex and technically nuanced construction disputes.

Additionally, the lack of synchronization between Law No. 30 of 1999 and Law No. 2 of 2017 on Construction Services creates overlapping dispute resolution mechanisms. While the latter emphasizes conciliation and mediation, the former underscores the autonomy of arbitration clauses. This inconsistency often blurs the legal pathways available to contracting parties, undermining procedural clarity and predictability.

Accordingly, reform of Indonesia's arbitration law is imperative and should encompass the following measures:

1) Revision of Law No. 30 of 1999, particularly concerning the enforcement of arbitral awards, to ensure greater independence from judicial control;

2) Harmonization between the Arbitration Law and the Construction Services Law, fostering procedural certainty and coherence in construction dispute resolution;
3) Strengthening the institutional capacity of national arbitration bodies, including the professional development and international certification of arbitrators; and
4) Integration of digital technology through the implementation of electronic arbitration (e-arbitration) systems to enhance procedural efficiency and reduce costs.

If implemented consistently, these reforms will enhance arbitration's effectiveness as an efficient, credible, and equitable mechanism for resolving construction disputes. Such progress would also align with the broader goals of national legal development and the reform of Indonesia's construction services sector, reinforcing the country's commitment to legal modernization and business integrity.

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