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The Dispute Board as an Alternative Dispute Resolution Mechanism In Public -Private Partnership (PPP) Projects in Indonesia

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Abstract: Public–Private Partnership (PPP) constitutes a strategic mechanism in Indonesia’s infrastructure development to address public funding constraints while enhancing private sector participation. However, PPP arrangements are characterized by long-term, risk-based contractual relationships, which often rising disputes from technical, financial, regulatory, and operational factors. Pursuant to Presidential Regulation No. 38 of 2015, dispute resolution in PPP projects is conducted through a tiered mechanism namely amicable settlement, mediation, and arbitration or litigation. In practice, these mechanisms frequently face limitations due to prolonged procedures, high costs and their potential to disrupt project continuity. This research employs a normative legal method with statutory, conceptual, comparative, and case-based approaches to examine potential disputes in PPP projects and to analyse the dispute board as an alternative dispute resolution mechanism by comparing practices in United States and Australia. The findings indicate that dispute board function not only as forums for dispute resolution but also as preventive instruments through continuous monitoring during project implementation. Despite recognition of dispute boards within Indonesia’s construction services sector, their absence in PPP’s regulatory framework underscores the need for normative strengthening to ensure legal certainty, maintain long-term contractual stability, and foster a conducive investment climate in support of national infrastructure development objectives.

Keywords: PPP, Dispute board, Dispute Resolution

INTRODUCTION

Infrastructure constitutes a fundamental component in fostering economic advancement. The availability of diverse and adequate infrastructure facilitates economic efficiency within a state (Prita Amalia, 2021). According to the IMD World Competitiveness Centre, Indonesia’s competitiveness ranking declined to 40th out of 69 countries worldwide. This represents a regression compared to its rankings over the preceding three years, namely 44th in 2022, 34th in 2023, and 27th in 2024 (Tolok, 2025). In response, the Government of Indonesia has undertaken extensive efforts to formulate strategic infrastructure and economic development plans aimed at enhancing national competitiveness. However, due to fiscal

constraints within the State Budget (*Anggaran Pendapatan dan Belanja Negara/APBN*) and Regional Budgets (*Anggaran Pendapatan dan Belanja Daerah/APBD*), the Government is compelled to seek alternative sources of financing, including private sector participation (Kurdi et al., 2025).

In this regard, the Public-Private Partnership (PPP) scheme referred to in Indonesia as *Kerjasama Pemerintah dengan Badan Usaha* (KPBU) has been introduced as a mechanism to increase private sector involvement in infrastructure financing. Pursuant to Presidential Regulation of the Republic of Indonesia Number 38 of 2015 concerning Government Cooperation with Business Entities in Infrastructure Provision ("*Perpres 38/2015*"), KPBU is defined as cooperation between the Government and business entities in the provision of infrastructure for public interest, based on specifications predetermined by the relevant authority, and financed wholly or partially through the resources of the business entity, with due regard to the allocation of risks between the parties. Through the KPBU framework, the Government facilitates innovative financing mechanisms to bridge funding gaps in infrastructure development (Bambang Susanto & Abdur Rohim Boy Berawi, 2015).

KPBU arrangements are inherently long-term, risk-based contractual relationships (Alviana Ramadhani, 2025). Risk, in this context, refers to conditions of uncertainty that may give rise to losses due to ongoing or anticipated processes (Muhammad Arifin, 2022). Accordingly, KPBU projects necessitate comprehensive risk prevention strategies through appropriate risk allocation and management, ensuring that risks are proportionally distributed in accordance with each party's capacity (Daliman, Herman, 2021). Nevertheless, in practice, such risks frequently give rise to disputes, particularly due to imbalances in risk allocation and challenges in implementation (Rossy Novianty, 2025).

Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution (hereinafter "*Law 30/1999*") provides for dispute resolution mechanisms both within and outside the court system (Permatasari, 2022). More specifically, *Perpres 38/2015* stipulates that disputes in KPBU projects may be resolved through deliberation and consensus, mediation, and arbitration or litigation. Arbitration, in particular, offers certain advantages, including confidentiality, binding decisions, and the independence of arbitrator selection (Huala Adolf, 2018). However, empirical studies indicate that arbitration, which is intended to serve as a swift and effective mechanism, often becomes burdensome due to high costs and protracted proceedings. Conversely, business entities involved in KPBU agreements (*Perjanjian Kerjasama/PKS*) tend to avoid litigation due to concerns regarding the lack of institutional independence, given that disputes would be adjudicated within a state apparatus that is also a contractual party. This raises apprehensions of potential bias in favor of the Government. Moreover, litigation is widely perceived as inefficient due to its lengthy procedural timeline.

These considerations demonstrate that both arbitration and litigation exhibit significant shortcomings, particularly in terms of duration and their potential to disrupt project continuity. Given that KPBU constitutes long-term contractual arrangements with substantial risk exposure, the establishment of effective and efficient dispute resolution mechanisms is essential to support the realization of sustainable development objectives (Yeni Yorisca, 2020). A reliable dispute resolution system within KPBU frameworks can enhance private sector participation in public service provision and accelerate infrastructure development, thereby contributing to Indonesia's long-term economic growth.

In comparative jurisdictions such as the United States and Australia, dispute resolution mechanisms in PPP projects have evolved to include alternative methods, notably the dispute board. In the United States, PPP projects are widely implemented across various sectors, including airports, toll roads, tunnels, bridges, and railways, with varying scopes and complexities. Notable projects, such as the I-595 Express Corridor Improvements Project and the Port of Miami Tunnel Project, have utilized dispute boards as a primary dispute resolution

mechanism. In such cases, dispute boards are typically established at the inception of the project and operate continuously throughout its lifecycle, including conducting periodic site visits (Foundation, 2015).

The success of dispute boards in the United States has influenced their adoption in Australia, where the first dispute board was introduced in the Sydney Ocean Outfall Tunnel project in 1987. Since then, more than 30 disputes have been resolved or are currently under consideration through dispute boards. While only five dispute boards existed prior to 2003 with a total project value of approximately USD 580 million, the number has increased significantly since then, encompassing projects valued at approximately USD 11 billion (Donald Charett, 2012). In Australia, dispute boards are recognized under the National PPP Policy and Guidelines (Owen Hayford & Dominic Mueller, 2024), which permit alternative dispute resolution processes beyond negotiation, expert determination, and arbitration, provided that such mechanisms ensure expeditious, non-litigious, fair, and independent dispute resolution.

Dispute boards are typically constituted at the project planning stage, enabling them to develop a comprehensive understanding of the project. In the event of a dispute, the dispute board functions as an expert adjudicatory panel, issuing determinations based on contractual provisions and applicable legal frameworks. Such determinations are generally final and binding, unless a party submits a Notice of Dissatisfaction within a specified period (typically 30–40 working days) (Hardjomuljadi, 2016). In such circumstances, the dispute may proceed to subsequent stages, including arbitration or litigation (Hardjomuljadi, 2016).

In Indonesia, the dispute board mechanism has been introduced in the construction sector through Law Number 2 of 2017 concerning Construction Services (“Law 2/2017”), which allows parties, in addition to mediation, conciliation, and arbitration, to establish a dispute board. The formation of such boards is governed by principles of professionalism and independence, and is formalized through a tripartite agreement involving the service user, service provider, and dispute board members.

Notwithstanding the foregoing, dispute boards have not yet been formally recognized within the KPBU regulatory framework, as *Perpres* 38/2015 limits dispute resolution methods to deliberation, mediation, and arbitration or litigation. The incorporation of dispute boards could serve as an early, expert-based, and independent dispute resolution mechanism, thereby reducing the likelihood of escalation to arbitration or litigation, which may adversely affect construction timelines and performance-based payment mechanisms. Empirical evidence from the United States demonstrates that a significant proportion of disputes submitted to dispute boards are resolved without further escalation, thereby reducing transaction costs and preserving long-term contractual relationships (Jaganathan, 2022). Similarly, in Australia, dispute boards have been shown to mitigate legal and delay risks while enhancing investment certainty from the perspective of investors (Owen Hayford, 2024). Accordingly, dispute boards function not only as dispute resolution mechanisms but also as instruments of contract governance that strengthen investment stability and promote sustainable private sector participation.

Indonesia has articulated its national development objectives under the Vision of Golden Indonesia 2045 (Kementerian Perencanaan Pembangunan Nasional/Badan Perencanaan Pembangunan Nasional, 2023). As part of this agenda, the Government has set a target of achieving 5.4% economic growth in 2026, with infrastructure financing through KPBU projected at IDR 651.46 trillion (Nurtiandriyani Sinamora, 2025). To realize these objectives, it is imperative to establish a conducive investment climate. The adoption of a clear and efficient dispute resolution mechanism, such as the dispute board, would enhance legal certainty and provide greater security for stakeholders involved in KPBU projects. A well-regulated dispute resolution framework must accommodate the interests of all parties, ensuring transparency, efficiency, and compliance with applicable laws. Investors, in particular, require

legal certainty regarding their rights, obligations, and investment protections in order to effectively plan, allocate capital, and commit to long-term infrastructure projects (Isdian Anggraeny, 2025).

Based on the foregoing considerations, this research is entitled: “The Dispute Board as an Alternative Dispute Resolution Mechanism in Public-Private Partnership (PPP) Projects in Indonesia.” The study addresses the following research questions: (1) How is the implementation of dispute boards correlated with the effectiveness of PPP projects in the United States and Australia when examined in relation to *Perpres* 38/2015? (2) How can dispute boards be utilized as an alternative dispute resolution mechanism in PPP projects in Indonesia, based on comparative studies of Australia and the United States?

The urgency of this research is grounded in the demonstrated success of dispute boards in PPP projects within the United States and Australia. Their application has been shown to enhance legal certainty for investors and ensure the sustainability of PPP projects, consistent with the fundamental objectives of *KPBU*, the provision of infrastructure that is effective, efficient, timely, and of high quality. This study advocates for the Government, private sector, and relevant stakeholders to consider the development and adoption of alternative dispute resolution mechanisms beyond arbitration and litigation, particularly the dispute board.

METHOD

This research employs a normative juridical legal research method, positioning law as a system of norms to be systematically analyzed in order to assess the adequacy of dispute resolution regulations in Public-Private Partnership (PPP/*KPBU*) projects in relation to the need for contractual stability and long-term investment protection (Soekanto & Mamudji, 2006). The study is focused on a doctrinal analysis of the dispute board mechanism as an instrument for both dispute resolution and dispute avoidance within PPP contractual frameworks.

The research adopts several analytical approaches (Syafrida Hafni Sahir, 2021). First, the statute approach is undertaken through an examination of the legal framework governing PPP in Indonesia, particularly Law Number 30 of 1999 and Presidential Regulation Number 38 of 2015, as well as other relevant sectoral regulations. This approach is intended to evaluate the extent to which the existing regulatory framework accommodates dispute resolution mechanisms that ensure legal certainty and investment sustainability.

Second, the conceptual approach is utilized to analyze the notion of dispute boards from the perspectives of contract law, risk management, and PPP project governance. This approach aims to construct a normative framework for dispute boards as an integral component of long-term contractual relationship management between the government and business entities, particularly in safeguarding project bankability, ensuring certainty of investment returns, and mitigating risks for investors and lenders.

Third, the comparative approach is conducted by examining regulatory frameworks and practical implementations of dispute boards in PPP projects in the United States and Australia. This comparative analysis focuses on the role of dispute boards as dispute avoidance mechanisms that maintain project continuity and enhance investor confidence in PPP arrangements. The findings are subsequently assessed for their relevance within the Indonesian PPP legal context.

Finally, a case-based approach is applied through the analysis of selected PPP projects in the United States and Australia that have implemented dispute boards, with the objective of understanding their operational practices, legal standing, and implications for dispute resolution and investment stability. These case studies serve as a normative foundation for formulating a model of dispute board implementation that is compatible with the Indonesian legal system.

The legal materials utilized in this research consist of primary legal materials, including statutory regulations, standard contractual documents, and relevant court or arbitral decisions. Secondary legal materials comprise scholarly journals, academic literature, and policy reports addressing PPP and dispute boards, while tertiary legal materials are employed as supporting references. All legal materials are analyzed qualitatively using descriptive-analytical and prescriptive methods in order to generate normative recommendations concerning the urgency and strengthening of dispute board regulation within the PPP framework in Indonesia.

RESULTS AND DISCUSSION

Cooperation between the Government of Business Entities and the Government in Indonesia

Public-Private Partnerships (PPP), known in Indonesia as *Kerjasama Pemerintah dan Badan Usaha (KPBU)*, are principally governed by Presidential Regulation Number 38 of 2015 and the Regulation of the Minister of National Development Planning/Head of the National Development Planning Agency Number 9 of 2025 concerning the Implementation of Government Cooperation with Business Entities in Infrastructure Provision (“*Permen PPN 9/2025*”). The primary objective of KPBU is to facilitate the provision of infrastructure that is of high quality, effective, and efficient, through adequate financing supported by the mobilization of private sector funds.

Within the *KPBU* framework, the Minister/Head of Institution/Regional Head acts as the Contracting Authority, commonly referred to as the *Penanggung Jawab Proyek Kerjasama (PJPK)* (Jibril et al., 2021), while private entities assume the role of the Implementing Business Entity (*Badan Usaha Pelaksana* or BUP). The BUP is the contracting party responsible for delivering infrastructure and services in accordance with the output specifications stipulated in the PPP agreement (Mada Devi Kartikasari & Sonyendah Retnaningsih, 2024). Under *Permen PPN 9/2025*, KPBU arrangements may also involve a consortium of two or more PJPKs for a single type of infrastructure or for multiple types of infrastructure, whether under the authority of the central or regional government. Such arrangements are formalized through a Memorandum of Understanding, with the designation of a single coordinating PJPK and the agreement on the allocation of decision-making authority, including budgeting responsibilities.

In the implementation of KPBU projects, the PJPK is supported by institutional structures, namely:

- (i) the PPP Node (*Simpul KPBU*), which is responsible for policy formulation, synchronization, coordination, and the supervision and evaluation of KPBU implementation, including the PPP agreement (*Perjanjian Kerjasama* or PKS);
- (ii) the PPP Team (*Tim KPBU*), which assists the PJPK in managing KPBU projects during the preparation and transaction phases until the achievement of financial close; and
- (iii) the Contract Management Team (*Tim Pengendali Pelaksanaan PKS*), which oversees policy formulation, coordination, and the supervision and evaluation of project implementation. In addition to the PJPK and BUP, other supporting parties may be involved, including design consultants, contractors, and operators.

A defining characteristic of KPBU projects lies in their financing structure, whereby the Government may achieve fiscal efficiency, as infrastructure development is financed wholly or partially by private sector resources. Consequently, existing public funds may be reallocated to other infrastructure priorities. The BUP, in turn, engages with supporting parties through contractual arrangements to deliver infrastructure and services in accordance with the KPBU agreement. Project financing is typically secured through a combination of project sponsors (investors) and lenders.

Once sufficient commitments have been obtained from sponsors and lenders, the project is deemed to have reached financial close, which constitutes a critical condition precedent for the effectiveness of the PPP contract. Financial close is a key determinant of the viability and sustainability of the project. In this regard, the PJKK may provide various forms of government support, including Viability Gap Funding (VGF) (Mohamad Fadhilah Dekha, 2023), project development facilities, and infrastructure guarantees.

At the project preparation stage, the PJKK determines the applicable investment return mechanism, which encompasses the recovery of capital expenditures, operational costs, and a reasonable profit margin for the BUP (Lampiran II Bab II(D) Peraturan Menteri Perencanaan Pembangunan Nasional/Badan Perencanaan Pembangunan Nasional Nomor 9 Tahun 2025 Tentang Perubahan Atas Peraturan Menteri Perencanaan Pembangunan Nasional Kepala Badan Perencanaan Pembangunan Nasional Nomo, n.d.). Such returns may be derived from the following sources (Lampiran I Bab I(B) Peraturan Menteri Perencanaan Pembangunan Nasional/Badan Perencanaan Pembangunan Nasional Nomor 9 Tahun 2025 Tentang Perubahan Atas Peraturan Menteri Perencanaan Pembangunan Nasional Kepala Badan Perencanaan Pembangunan Nasional Nomor , n.d.):

1. **User-Pay Mechanism (Usage-Based PPP):**

Under this structure, the BUP directly provides infrastructure services to end-users, while the Government primarily functions as a regulator. Contractually, the PJKK grants the BUP concession rights to provide infrastructure services for a specified period.

2. **Availability Payment Scheme (Availability-Based PPP):**

Under this model, periodic payments are made by the Minister/Head of Institution/Regional Head to the BUP for the provision of infrastructure services that meet the quality and performance standards stipulated in the PPP agreement.

3. **Other Forms of Payment:**

Any alternative form of investment return may be adopted, provided that it does not contravene applicable laws and regulations.

Disputes over PPP Projects in Indonesia

Prior to the execution of a PPP (KPBU) agreement, the Contracting Authority (*Penanggung Jawab Proyek Kerjasama* or PJKK) and the Implementing Business Entity (*Badan Usaha Pelaksana* or BUP) are required to undertake a comprehensive risk allocation process. This process is intended to enhance efficiency, ensure legal certainty, and promote project sustainability by assigning risks to the party best capable of managing them, while simultaneously minimizing the potential for disputes during contract implementation. Risk allocation is initiated at the planning stage, elaborated in detail during the preparation phase, and ultimately finalized and rendered legally binding upon the execution of the PPP agreement (*Perjanjian Kerjasama* or PKS).

Notwithstanding such arrangements, several PPP projects in Indonesia have encountered disputes, often arising from divergent interpretations of contractual provisions. Risks typically materialize during the implementation phase, leading to disagreements regarding which party bears the corresponding legal and financial consequences. Such issues have been observed in various PPP projects, including the Palapa Ring Barat project. This project forms part of the national Palapa Ring fiber optic network (comprising Western, Central, and Eastern packages) under the Ministry of Communication and Informatics (*Kominfo*). The Western package covers border areas and outer islands in western Sumatra and is implemented by PT Palapa Ring Barat (PT PRB) as the BUP, with Kominfo acting as the PJKK.

During the course of the project, a dispute arose concerning commercial transactions, specifically regarding the payment of Availability Payments (AP). PT PRB filed a claim against Kominfo, alleging that AP payments were inconsistent with the procurement documents and the PPP agreement. PT PRB calculated the Availability Payment Service Level Agreement (AP SLA) exclusive of Value Added Tax (VAT), whereas Kominfo maintained that AP payments made between March 2018 and December 2021 were inclusive of VAT.

Clause 12.4 of the PPP agreement stipulates that all taxes arising in connection with invoices, including but not limited to income tax and VAT, shall be borne by each party in accordance with applicable laws and must be stated separately in the invoice. Furthermore, Article 10 of Government Regulation Number 1 of 2012, as amended by Law Number 42 of 2009, provides that where a contract does not explicitly state that its value includes VAT, such value shall be deemed the tax base.

On this basis, the Indonesian National Arbitration Board (*Badan Arbitrase Nasional Indonesia* or BANI) determined that Kominfo had committed a breach of contract (*wanprestasi*), as PT PRB had fulfilled its contractual obligations but had not received payment in accordance with the agreed terms. BANI ordered Kominfo to compensate PT PRB for VAT payment deficiencies amounting to IDR 105,831,458,839 for the period from March 2018 to December 2021 .

A similar dispute arose in the Palapa Ring Tengah project, involving PT LEN Komunikasi, where differing interpretations regarding the inclusion of VAT in AP payments also led to arbitration. In this case, BANI partially upheld the claimant's position, determining that the AP value did not include VAT and ordering Kominfo to pay the outstanding amount, along with interest and penalties for delay.

Another dispute occurred in relation to land acquisition in the Batang–Semarang toll road project. The Toll Road Regulatory Agency (*Badan Pengatur Jalan Tol* or BPJT) unilaterally terminated the concession agreement with PT Marga Setiapuritama (PT MSP) through a Notice of Default, on the grounds that PT MSP had failed to fulfill its obligation to extend the Performance Bond. However, PT MSP argued that it had postponed such extension due to BPJT's failure to fulfill its obligation to provide land for construction, having only acquired approximately 3.33% of the required land area. Consequently, PT MSP was unable to proceed with construction due to delays in land acquisition, which it alleged constituted a prior breach of contract by BPJT under the Toll Road Concession Agreement (*Perjanjian Pengusahaan Jalan Tol* or PPJT).

Pursuant to Articles 21.1 and 21.2 of the PPJT, disputes were to be resolved initially through amicable settlement within 60 days, failing which they would be referred to arbitration before BANI in accordance with Law Number 30 of 1999. Ultimately, the arbitral tribunal found that BPJT had committed a prior breach of contract and ordered it to proceed with the completion of the toll road concession with PT MSP.

An examination of both potential and actual disputes in Indonesian PPP projects indicates that parties generally agree to resolve disputes through arbitration, as stipulated in their contractual arrangements. The choice of dispute resolution forum and governing law is determined by the mutual agreement of the parties. Law Number 30 of 1999 provides for non-litigation dispute resolution mechanisms, including arbitration, mediation, conciliation, negotiation, and consultation. Similarly, Article 32(k) of Presidential Regulation Number 38 of 2015 mandates a tiered dispute resolution process in PPP projects, consisting of deliberation (*musyawarah mufakat*), mediation, and arbitration or litigation.

Deliberation represents an initial amicable effort through direct discussions between disputing parties (R.A. Risku Purwaningtyas dan Hariyo Sulistiyantoro, 2014). Mediation constitutes the second stage, involving a neutral third party who facilitates communication and proposes settlement options (Adolf, 2020). Arbitration, by contrast, involves the issuance of a

binding decision by an arbitrator, which carries the same legal force as a court judgment (Huala Adolf, 2016).

Parties to a contract retain the autonomy to determine the form of dispute resolution to be adopted, whether in accordance with Law Number 30 of 1999 and Presidential Regulation Number 38 of 2015 or through a specialized mechanism deemed most efficient and mutually beneficial. This principle is grounded in Article 1338 paragraph (1) of the Indonesian Civil Code, which provides that all legally executed agreements shall bind the parties as law. Accordingly, the principle of freedom of contract grants parties the discretion to formulate and determine the terms of their agreement, including the selection of dispute resolution mechanisms, based on mutual consent (Bayu Seto Hardjowahono dan Denny Lesmana, 2019).

Dispute Board Practice in Other Countries

United States

Along with the increasing use of dispute boards in construction projects, this dispute resolution mechanism was then expanded to include Public-Private Partnership (PPP) projects. The application of dispute boards in PPP projects generally comes from contractual agreements between the government and the private sector, considering that normatively the dispute board is not stipulated as a mandatory mechanism in the law that regulates dispute resolution, as is the case with arbitration or the judiciary. However, as a federal state, the United States gives broad authority to states to regulate the governance of development and dispute resolution in their respective territories, so in a number of states, the dispute board has been institutionalized as one of the formal mechanisms in PPP dispute resolution.

In the State of Florida, dispute boards have long been practiced, particularly in large-scale infrastructure projects in the transportation sector. This is inseparable from the role of the Florida Department of Transportation (FDOT) as a public authority in the implementation of PPP/PPP cooperation, which sets technical standards through the FDOT Standard Specifications as a guideline for the implementation of transportation projects. Although the standard was initially widely applied to construction projects, the provisions of the Florida Statutes require all transportation development projects involving the private sector to comply with state standards, so the FDOT Standard Specifications also apply to PPP projects. This arrangement provides a basis for FDOT to carry out PPP procurement through competitive mechanisms, sign long-term concession agreements, authorize private financing covering the design, construction, operation, and maintenance stages, and collect rates or service availability payments.

Regarding the use of dispute boards, the provisions of Article 5-12.13 of the FDOT Standard Specifications are set out:

"The content of any discussion or meetings held between the Department and the Contractor to settle or resolve any claims submitted by the Contractor against the Department shall be inadmissible in any legal, equitable, arbitration or such claim. Dispute Resolution Board, State Arbitration Board and Claim Review Committee proceedings are not settlement discussions, for purposes of this provision."

It confirms that dispute resolution forums such as the Dispute Resolution Board, State Arbitration Board, and Claim Review Committee do not qualify as settlement negotiations, so the process and its outcome can be used in arbitration or judicial forums. From these provisions, it can be understood that the parties are bound to use the dispute resolution board if it is agreed in the contract. However, the dispute board's decision in FDOT is in principle non-binding, unless expressly specified otherwise in the contract. However, the recommendation or decision of the *dispute board* can still be used as a document, technical argument, or evidence in the

arbitration or subsequent litigation process, in contrast to the results of informal negotiations or deliberations which generally do not have evidentiary power.

One example of the application of dispute boards in PPP projects in Florida is the Interstate Highways 595 (I-595 Corridor Improvements Project), which is a transportation corridor development project worth approximately USD 1 billion that connects Fort Lauderdale with major routes such as I-75 and Florida's Turnpike. The project aims to increase road capacity, reduce congestion, and improve transportation connectivity, and is implemented under a Design–Build–Finance–Operate–Maintain (DBFOM) scheme for a concession period of 35 years. In the Request for Proposal (RFP) document, it is expressly stated that the project implementation must be subject to the FDOT Standard Specifications, thus opening up space for the use of *dispute boards* as a mechanism for the prevention and resolution of disputes.

"The components used by and workmanship completed by the Concessionaire shall be in accordance with industry standards....

- FDOT Standard Specifications for Road and Bridge Constructions dated 2007 including all supplemental specifications
- ..."

The project's RFP requires that any disputes related to the administration and implementation of contract specifications be resolved through the Statewide Dispute Review Board, an independent panel of experts established by state transportation authorities to provide a standard dispute resolution mechanism for various projects.

The Statewide Dispute Review Board is made up of professionals who have been selected and approved by the relevant authorities, such as engineers, contractors, contract experts, and construction legal teams. The use of DRBs is mandatory for contracts of a certain value, with a membership structure that reflects the principle of balance, namely one member appointed by the government, one by the private sector, and one jointly elected as chairman. DRB is formed from the beginning of the project, conducting field visits and periodic meetings, so that it has a thorough understanding of the dynamics of the project and can handle potential disputes quickly and efficiently.

Similar practices are also developing in the State of Colorado, where the policy of using a dispute board is governed by Colorado Department of Transportation (CDOT) (CDOT and HPTe, 2020). All state transportation projects are implemented through the relevant institutions, which then work with CDOT in the development and implementation of PPP projects as stipulated in the HPTe Management Manual. CDOT Standard Specifications for Road and Bridge Construction specifically regulates the existence of Dispute Review Board (DRB) as an independent third party consisting of construction experts, whose function is to help the parties avoid disputes and project delays. This standard distinguishes between Standing DRB formed from the beginning of the project and On-demand DRB formed after a dispute arose (Dong Chen, 2014).

Examples of DRB implementation in Colorado can be seen in the project *Central 70*, which is an I-70 corridor improvement project in the Denver metropolitan area with a value of approximately USD 1 billion that was implemented in the 2018–2023 period (Michael Gavin & Robert J. Smith, 1992). In the RFP document, the dispute resolution mechanism is set out through Dispute Resolution Panels which are differentiated into technical panels and commercial panels, according to the character of the dispute that arises. The panel's decision may be binding if no objection is filed by the parties within the specified time frame.

Australia

Unlike the United States, Australia does not have a national arrangement that explicitly requires the use of dispute boards in PPP projects. However, *the National Public-Private*

Partnership Policy and Guidelines affirm the principle that dispute resolution should be carried out independently, fairly, and efficiently. Although the guidelines generally only mention non-litigation mechanisms such as negotiation, expert determination, and arbitration, there is still room for the use of other methods as long as they are agreed upon by the parties to the PPP contract.

The authority of a dispute board in Australia stems from contractual terms negotiated between the government and business entities. The PPP contract expressly regulates the scope, authority, procedures, and binding power of *the* dispute board. Thus, the applicability and binding force of the dispute board depends on the agreement of the parties, in line with the principles of freedom of contract and the principle of *pacta sunt servanda*, as well as the relevant provisions of arbitration or mediation law.

Application Dispute Board in Australia, among others, seen in the Sydney Metro Northwest Operations, Trains, and Systems (OTS) worth around AUD 7.3 billion which was implemented in the period 2014–2019. The project uses Dispute Adjudication Board (DAB) which is oriented towards dispute prevention. Agreement Dispute board involving governments, business entities, and members *board*, while the contractor and lender are not direct parties, even if they know and agree to the existence of such mechanisms. The contract requires the business entity to ensure the presence of the contractor and related parties at DAB meetings when requested, in order to ensure the smooth functioning of the supervision and dispute prevention function (Owen Hayford, 2024).

The cost of setting up a dispute board in Australia is relatively small compared to the benefits obtained, which ranges from 0.1–0.2 percent of the value of projects with a value of more than AUD 100 million. Reports indicate that most international projects that use dispute boards can be resolved without escalation to arbitration or court, and the majority of projects in Australia that implement this mechanism show an acceleration in dispute resolution time compared to conventional procedures.

The Existence of Dispute Boards in Indonesia

In Indonesia, the concept of a dispute board has been primarily recognized within the construction services sector, where it is referred to as a *Dewan Sengketa* (Dispute Board). Its legal basis is established under Law Number 2 of 2017 concerning Construction Services, which provides that, in addition to mediation, conciliation, and arbitration, parties may agree to establish a dispute board. The procedural framework governing dispute boards is further regulated under Minister of Public Works and Housing Regulation Number 11 of 2021 concerning Technical Guidelines for Construction Dispute Boards. Under this regulation, a construction dispute board is defined as an individual or panel formed by agreement of the parties at the commencement of contract implementation, with the purpose of preventing and resolving disputes.

The existence of dispute boards serves to support dispute mitigation in construction projects by addressing claims from the planning phase through to the operational and maintenance stages, thereby preventing such claims from escalating into formal disputes. Accordingly, an effective means of minimizing the likelihood and impact of construction disputes is to prevent disagreements from arising at the outset of the contractual relationship. From the perspectives of cost efficiency, time effectiveness, legal certainty, and the preservation of good contractual relations, dispute boards represent a preferred mechanism for both dispute prevention and resolution (Sarwono Hardjomuljadi, 2014).

Prior to the execution of the construction contract, the parties typically enter into a Dispute Resolution Board Agreement through a tripartite arrangement, which governs the legal relationship between the service user, the service provider, and the members of the dispute board. In practice, dispute board arrangements in construction projects are often incorporated

within an umbrella contract framework, whereby non-construction consultancy services are engaged for a specified duration to provide services of an indeterminate timeline without directly binding budget allocations (Muhammad Imam Dani Putra dan Hengki Andora, 2023).

Certain eligibility requirements must be satisfied by individuals appointed as dispute board members. These include Indonesian citizenship; proficiency in the language stipulated in the contract and dispute board agreement; absence of any direct or indirect familial relationship with either the service user or service provider; and fulfillment of the requisite qualifications. Furthermore, candidates must demonstrate professional experience in contract document interpretation, possess an understanding of applicable contractual and regulatory frameworks, and/or have relevant technical expertise in accordance with the contractual scope of work (Hadi Ismanto dan Sarwono Hardjomuljadi, 2018).

In terms of dispute prevention, dispute boards undertake activities such as document review, site visits, issuance of notices, hearings, and the provision of advisory opinions (Theodore Pritadianing Saputri, 2025). In dispute resolution proceedings, their functions include issuing notices, reviewing documents, conducting hearings, performing site inspections, holding internal deliberations, and ultimately issuing formal decisions. The principal output of the dispute board is a formal decision, which becomes final and binding if no objection is raised within a specified period. The binding nature of such decisions depends on the type of dispute board employed.

In legal and academic literature, dispute boards are generally classified into three types (Helda Shahtyabudi, Busyra Azheri, 2023): (i) the Dispute Review Board (DRB), which issues non-binding recommendations intended to assist in the prevention and/or resolution of disputes; (ii) the Dispute Adjudication Board (DAB), which is empowered to render decisions that are immediately binding upon the parties; and (iii) the Combined Dispute Board, which integrates the functions of both DRB and DAB (Hardjomuljadi, 2016).

Parties who object to a dispute board's decision may submit a Notice of Objection within 28 days from the issuance of the decision. The binding effect of dispute board decisions is grounded in the principle of good faith between the disputing parties. Where both parties contest the entirety of the formal decision, they may pursue alternative dispute resolution mechanisms in accordance with the applicable laws and contractual provisions (Muhammad Imam Dani Putra dan Hengki Andora, 2023).

Indonesian law has not yet comprehensively regulated the subsequent procedure following the submission of a Notice of Objection. However, reference may be made to Sub-Clause 21(7) of the FIDIC Red Book 2017, which provides that, where a party expresses dissatisfaction within the prescribed timeframe, the dispute may be referred to arbitration or a competent court, as stipulated in the contract (Muhammad Imam Dani Putra dan Hengki Andora, 2023). In such proceedings, arbitral tribunals are vested with full authority to review and revise any certificates, determinations, opinions, or evaluations issued by the project owner and dispute board decisions, except those that are final and binding. These determinations may also serve as evidentiary material in arbitration proceedings.

According to Syarif Burhanuddin, Director General of Construction Development at the Ministry of Public Works and Housing, the application of dispute board mechanisms has begun to be implemented in Indonesia. Examples include projects such as the development of final waste disposal facilities (TPA) in the cities of Jambi and Malang, and the regencies of Sidoarjo and Jombang; the Cileunyi–Sumedang–Dawuan (Cisumdawu) Phase III toll road project; the Patimban Port access road project; hydromechanical works for the Karian Multipurpose Dam project; as well as emission reduction and solid waste management programs in Malang and Sidoarjo (Rakyat, n.d.).

The Potential Application of Dispute Boards as a Dispute Resolution Mechanism in PPP Projects in Indonesia

At present, the Indonesian regulatory framework does not explicitly recognize dispute boards as a formal mechanism for resolving disputes in Public-Private Partnership (PPP/KPBU) projects. Article 32 letter (k) of Presidential Regulation Number 38 of 2015 stipulates that dispute resolution shall be conducted in a tiered manner, namely through amicable deliberation (*musyawarah mufakat*), mediation, and arbitration or litigation. In contrast, the dispute board model, as implemented in other jurisdictions, offers a more structured and continuous approach that is aligned with the long-term and complex nature of PPP projects.

In jurisdictions such as Australia, dispute boards are typically established at the inception of the contractual period, thereby functioning not only as dispute resolution bodies but also as dispute avoidance mechanisms. This is attributable to their ongoing role in conducting periodic monitoring, holding regular meetings, and issuing non-binding recommendations on issues that may potentially escalate into disputes.

While the concept of dispute boards has been introduced in Indonesia within the construction services sector—an integral phase of PPP project implementation—there are notable distinctions between dispute boards in PPP contexts and dispute boards in conventional construction projects, as evidenced in practices in the United States and Australia. These distinctions include: (i) a significantly longer duration of engagement, extending beyond construction into the concession period, typically ranging from 20 to 30 years; (ii) the involvement of multiple stakeholders, including the government, special purpose vehicles (SPVs), lenders, and contractors; and (iii) broader and more complex responsibilities, encompassing multi-decade contractual issues such as policy changes with commercial implications, failures to meet Key Performance Indicators (KPIs), availability payment calculations, interface coordination among government entities, SPVs, DBFO contractors, and operation and maintenance (O&M) contractors, as well as dispute resolution during the handback phase at the end of the concession period.

The implementation of dispute boards in Indonesia requires certain adjustments to the existing legal and governance framework of PPP. First, a clear distinction must be established between dispute boards for construction projects and those for PPP arrangements, given the latter's greater contractual complexity and long-term nature involving sustained relationships between the government and business entities. Accordingly, dispute boards in PPP projects should be designed not merely as adjudicatory forums, but as integral components of contractual risk management systems operating in a preventive capacity.

Second, as observed in the United States, regulatory adjustments are necessary at both the statutory and subordinate regulatory levels, including potential amendments to Presidential Regulation Number 38 of 2015 and Permen PPN Number 9 of 2025. Such reforms should expressly provide for the establishment of dispute boards from the financial close stage. These dispute boards should be mandated to conduct site visits, monitor service obligations, and issue technical or commercial recommendations in response to potential deviations, thereby functioning as guardians of contractual stability rather than merely as dispute adjudicators.

Third, Indonesia must regulate the appointment mechanism of dispute board members to ensure independence, multidisciplinary expertise (including contract law, technical, financial, and operation and maintenance expertise), and mutual selection by the contracting parties. Indonesia already possesses an institutional foundation in the form of the Indonesian PPP Professional Association (*Perkumpulan Ahli Profesional KPBU Indonesia* or PAP-KPBU), which serves as a forum for PPP experts across various sectors and disciplines. In practice, many PPP disputes in Indonesia have sought expert opinions from PAP-KPBU, indicating its potential role as a reference for the selection of dispute board members.

Nonetheless, regulatory provisions should further address remuneration, tenure, and competency standards to ensure that dispute boards operate professionally and free from conflicts of interest.

Fourth, a degree of flexibility should be incorporated through the adoption of a hybrid approach, combining elements of Dispute Review Boards (DRB) and Dispute Adjudication Boards (DAB), tailored to the specific needs of each project. Such flexibility would allow dispute boards to issue non-binding recommendations at the early stages of disputes, while retaining the capacity to render temporarily binding decisions where necessary to ensure the continuity of public services within PPP projects.

The integration of dispute boards into the Indonesian PPP framework has the potential to establish a more responsive system, thereby reducing the risk of protracted disputes, enhancing project bankability, and strengthening investor confidence. In the United States, dispute boards have demonstrated effectiveness due to their comprehensive understanding of the underlying causes of disputes and their ability to maintain open and collaborative relationships among project stakeholders. Furthermore, dispute boards can anticipate potential disputes and proactively engage with relevant parties to mitigate such risks.

Similarly, in Australia, the use of dispute boards has proven effective in reducing the escalation of disputes to arbitration and litigation by resolving issues internally at an early stage, thereby preserving stable contractual relationships between the government and business entities (Glover, 2025). Empirical evidence from both jurisdictions indicates that dispute boards contribute to enhanced legal certainty for investors, thereby facilitating increased investment in infrastructure sectors. If appropriately adapted to Indonesia's legal and institutional context, the dispute board model could serve as a critical pillar in maintaining contractual stability throughout the extended concession periods characteristic of PPP projects.

CONCLUSION

Dispute resolution in Indonesia against PPP projects is still disputed by the parties to the dispute themselves. This dispute is due to the selection of dispute resolution which takes a long time so that the project cannot run smoothly. Various countries such as the United States and Australia are used as a comparison to consider this PPP problem as a serious matter. Therefore, the implementation of the two countries regulates the entire PPP project agreement from the beginning of the run to the resolution of the dispute. In ensuring the security of legal protection of foreign investors and the government, it is necessary to present a dispute board for PPP dispute resolution as is the case in the United States and Australia. In this case, dispute resolution through a dispute board has proven to be more effective, because dispute resolution can be resolved internally and peacefully, without having to seek further resolution to arbitration or court.

There is also another view that the use of dispute boards in PPP will be beneficial for the effective operation and durability of PPP. This dispute board can recognize and try to respond to potential disputes before they occur. Beyond the potential for disputes generated through the application of contracts, the dispute board can handle issues to adapt to changes in the operating environment.

Although this dispute board can be held on a contractual basis for PPP projects. However, it is also necessary to strengthen Indonesian laws and regulations so that this dispute board has legal force. Especially in Presidential Regulation 38/2015 which regulates dispute resolution at PPP.

Investors need dispute resolution that provides legal certainty in the protection of their investments. By creating a comfortable and secure investment field with effective dispute resolution methods, such as dispute boards, Indonesia can achieve national development targets in achieving a Golden Indonesia 2045.

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