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Analysis of Construction Dispute Resolution Reform Perspective of Law Number 2 of 2017

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Abstract: Indonesia is pursuing development to enhance welfare through projects like office buildings, housing, and infrastructure. The involvement of societal levels is crucial for success. However, development can trigger disputes from differing interpretations or contractual provisions. This study focuses on analyzing reforms in construction dispute resolution under Law No. 2 of 2017, utilizing a quantitative survey approach. The Construction Services Acts of 1999 and 2017 marked significant shifts in philosophical outlook and dispute resolution mechanisms. Findings indicate that the 2017 Act emphasizes non-litigious settlements with a "win-win" approach, though challenges remain regarding the term "court." Despite these challenges, the study acknowledges that Indonesia is progressing towards effective construction dispute resolution. It recommends stricter sanctions for violations of construction agreements to enhance future regulatory frameworks. These insights are vital for legal practitioners and policymakers, aiming to refine mechanisms and raise public awareness on regulatory gaps that hinder sustainable development in Indonesia. The study also categorizes dispute resolution solutions and scrutinizes provisions in Law No. 2 of 2017 concerning defects, nonconformities, weaknesses, and perceived biases. The Act defines a team formed by mutual agreement to oversee Construction Services, tasked with preventing and mediating disputes arising from Construction Work Contracts.

Keyword: Dispute, Services, Construction, Reform.

INTRODUCTION

Indonesia is included in the classification of developing countries. Indonesia is currently implementing development in various fields, both physical and non-physical (Maylitha et al., 2023). The purpose of this development is to improve the welfare of all Indonesian people, both outwardly and mentally and fairly and equitably (Legiani & Lestari, n.d.). This is done for the realization of welfare and prosperity for all Indonesian people (Colina, 2021). Development in Indonesia depends on the participation of all people, which means that development must be carried out equally by all levels of society (Latif et al., 2020). One of these development areas is development in the economic sector, which is manifested in the form of physical development such as office buildings, housing, ports, industries, roads, bridges, and others (Hutahaean & Hardjomuljadi, 2021). In this context,

everything requires firm arrangements both in juridical and technical terms that need to be developed and improved in implementation (Simamora et al., 2023). In a situation where no one wants disputes and disputes to occur with others, but in a business relationship or an agreement, each party must anticipate the possibility of conflict (Handoko et al., 2023).

Infrastructure development that is being intensively implemented by the Government can cause potential construction disputes in its implementation (Tanaka et al., 2018). This is related to the large amount of value of work packages and also the lack of knowledge of various aspects of construction contracts (Poerdyatmono, 2007). Disputes can occur due to different interpretations of the clauses of the agreement or provisions in the agreement, or other matters (Andriyani, 2019). Dispute resolution through the courts tends to cause new problems, slow settlement, requires expensive costs, and can cause hostility between the parties to the dispute (Priyambodo, 2021). Therefore, some people prefer out-of-court dispute resolution. The purpose of this writing is to find out and analyze the mechanism for resolving construction disputes according to law number 2 of 2017 concerning construction services.

Law No. 2 of 2017 concerning Construction Services has regulated various aspects in the implementation of construction services in Indonesia. One of the problems regulated in this law is the resolution of disputes in construction (Wati et al., 2024). The dispute resolution process through the courts tends to cause new problems, slow resolution, requires expensive costs, and can cause hostility between the parties to the dispute (Alcika, 2023). Therefore, this law places emphasis on resolving disputes through deliberation for consensus, conciliation, and arbitration, with priority to out-of-court settlements. This aims to provide legal certainty in the implementation of construction services and reduce the potential for conflict between parties involved in construction projects (Mardalena, 2024).

There are different arrangements for political party selection activities to participate in the 2019 election. This mechanism was not known in previous elections. In Law No. 7 of 2017 concerning Elections, Bawaslu is authorized to act on and decide disputes over the election process at every level, both nationally to the lowest level of the Regency / City which is carried out through two stages (Aminuddin & Mustaffa, 2023): first, receiving and reviewing requests for dispute resolution; second, bringing together the disputing parties to reach an agreement through mediation, and dispute resolution through adjudication hearings if mediation does not reach consensus by making further legal efforts to the State Administrative Court (PTUN) and the High Administrative Court (PTTUN), then the last legal remedy is to appeal (cassation) to the Supreme Court (MA) (Zain, 2018).

The urgency for disputing parties to have good faith in accordance with Article 1338 of the Civil Code (Boboy et al., 2020). The process of starting a construction project requires a series of stages that must be carried out by both parties, namely service users and service providers, which can be divided into three stages: the pre-construction stage before construction work begins, the construction stage when construction work takes place, and the post-construction stage after construction work is completed (Hendrik & Mufidah, 2019). Often, at each of these stages, construction-related disputes arise that can be resolved through peace through mediation, conciliation, and arbitration (Cahyono, 2022).

First, in the context of waqf land disputes in Indonesia, several issues that arise include: (a) Issues related to legal rights holders of waqf land; (b) Issues relating to the reasons or evidence used for the claim of rights; (c) Errors in granting rights that may be caused by improper or improper application of regulations; (d) Conflicts or other issues that have a social aspect. In addition, challenges in waqf practice also include the large number of waqf lands that are not followed by the preparation of the Waqf Pledge Deed, the implementation of trust-based waqf without official documents, the re-request of waqf land by the waqf heir, and the hereditary use of waqf land by nazir with use that is not in accordance with the waqf agreement. According to Article 62 of Law Number 41 of 2004 concerning waqf, dispute resolution in the context of waqf is carried out through deliberation to reach consensus. If

attempts at resolution through deliberation are unsuccessful, the dispute can be resolved through mediation, arbitration, or court (Djafri et al., 2021).

METHOD

The research method conducted in this study uses a quantitative survey approach. One form of the central role of the researcher is the full authority of the researcher since starting the initial stages of the data collection process, determining the focus of research, choosing data sources that are considered relevant and urgent, determining sources, validating questionnaires and in assessing the quality of the data collected. As for analyzing the overall data collected, it is divided into two stages as follows:

1. Analytical descriptive method, intended to provide as thorough data as possible about the state or other symptoms. The intention is to reinforce hypotheses, in order to help old theories, or within the framework of constructing new theories. This descriptive analysis is carried out to illustrate the analysis of the causes of problematic construction disputes in the field. This descriptive analysis uses statistics such as mean, median, standard deviation to describe the results of respondents' answers.
2. The method of interpretive analysis is used to trace the principles contained in positive law and relate them to the function of judges in applying the law, especially in interpreting laws and regulations. This interpretation analysis uses smartpls software to determine the characteristics of respondents' answer results. Analysis results are presented in the form of tables, charts, diagrams and other statistical visualizations to help segment and draw conclusionsThe research method contains the type of research, sample and population or research subjects, time and place of research, instruments, procedures, and research techniques, as well as other matters relating to the method of research. This section can be divided into several sub-chapters, but no numbering is necessary.

RESULTS AND DISCUSSION

In general, the construction service agreement process is described at the following stages:

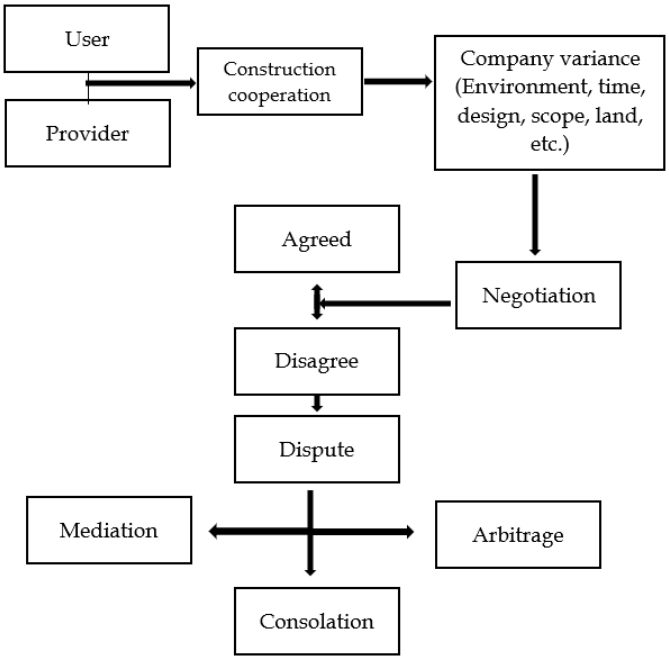

Figure 1. Construction services agreement process

As in the picture above, construction problems generally arise from mismatches between service providers and service users. Disputes in construction projects can stem from several factors, such as unfulfilled claims such as late payment or completion of work, differences in interpretation of contract documents, and technical or managerial limitations of the parties involved (Fitriyanti & Adly, 2022). In addition, conflicts can arise if the party using the service or providing the service does not carry out management duties properly or lacks adequate financial support (Kisi et al., 2023). Briefly, construction disputes occur when one party does not fulfill its obligations (default or default) (Arifin et al., 2023). In general, disputes can arise because they are motivated by several things, including differences in interpretation both about how to implement the clauses of the agreement and about what the contents of the provisions in the agreement are, or caused by other things. The provisions in the agreement include scope, design, timing and variation (Zhang, 2024). As for this research, I tried to conduct a comprehensive study in the field to find out in detail the root of the dispute problem (Sidik et al., 2020). In a comprehensive study in the field, researchers prepared a survey and took samples of respondents from supervise consultants, implementing contractors, and from the PUPR ministry. The results of the analysis are expected to illustrate sharply the root cause of construction services (Firdaus & Siska, 2023).

In general, the dispute resolution process is divided into litigation and non-ligitation as follows (Agustina & Purnomo, 2023):

1. Litigation

   Suyud Margono revealed that litigation is a formal process in court that replaces the original conflict between opposing parties by giving two options to decision makers. Litigation is a way of resolving disputes in which disputing parties face the courts to defend their rights, with the end result being a decision that determines the winning and losing parties. The litigation process tends to be formal and highly technical. Reitzel said that litigation often takes a long time before it can reach trial, and even to get a legally valid final decision, this process requires long queues in court. Litigation is an attempt to resolve a conflict through a court decision, which in most cases results in a decision that governs the matter, for example in cases of inheritance or tort. While non-litigation refers to out-of-court settlements, where the process does not go through formal court channels. Litigation has the main task of making decisions on disputes (constitutive), but there is also a small part of its duty to assert disputes through court decisions (deklaratoir), such as the appointment of guardians or adopted children.

2. Nonlitigation

   Nonlitigation is a dispute resolution method that differs from litigation (through argumentative analogy), which aims to resolve disputes outside the realm of court using peace and careful contract drafting. Non-litigation dispute resolution covers various areas and aspects of life that can be resolved legally. The non-litigation approach to resolving disputes is based on law, and is often considered a high-quality way of resolution because it can resolve disputes without leaving hatred or resentment (Wang et al., 2023). The non-litigation settlement process combines legal and moral aspects, allowing victory in law and peace agreements without the losing party. Out-of-court dispute resolution results in win-win solutions, maintains the confidentiality of disputes, avoids delays caused by administrative procedures, and resolves problems comprehensively by maintaining good relations between disputing parties.

Non-litigation dispute resolution is also known as Alternative Dispute Resolution (ADR) (Chan et al., 2021). The ADR approach or out-of-court dispute resolution has various ways that can be taken as follows:

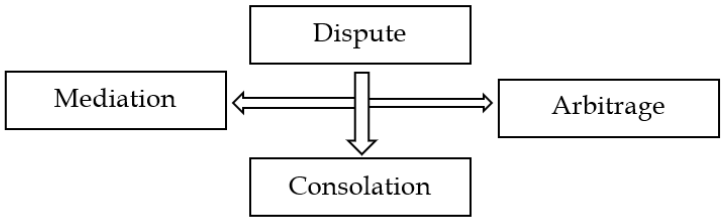

Figure 2. How disputes are resolved

Mediation is a dispute resolution process involving a mediator, a neutral party who acts as a facilitator to help disputing parties reach an agreement. These mediators do not have the power to take decisions or impose certain solutions on the disputing parties. Instead, they help to facilitate discussion, promote effective communication, and help parties to understand each other's perspectives. The mediator helps in finding a solution that is acceptable to both parties (Muhammad & Nasir, 2022).

Legal practitioners provide views on mediation in the realm of the effectiveness of the process in creating a satisfactory agreement for both parties (Gamage & Kumar, 2024). Mediation is known to result in faster, cost-effective settlements, and can also maintain good relationships between disputing parties (Jamil, 2020). The advantage of mediation also lies in the control that the parties have in finding a solution that is considered fair and satisfactory for all. The conciliation involves a neutral party called a conciliator to help resolve disputes (Suyoga & Usfunan, 2020). However, the difference lies in the more active role of the conciliator in providing advice and recommendations to the disputing parties (Alrasheed et al., 2023). This conciliator can provide views and solutions to both parties to help them reach an agreement (Apriliana & Darmawan, 2020).

The conciliation method often highlights the active role of the conciliator in providing suggestions and recommendations that can help disputing parties find the right solution (Agapiou, 2022). However, opinions on conciliation are often divided because some believe that too much intervention from the conciliator can reduce the control of the disputing parties over the final outcome of the settlement (Sayuti, 2024). As for arbitration, Subekti explains that arbitration as a means of dispute resolution in which a judge or panel of judges renders a decision on a dispute based on the agreement of the parties to submit to a given decision. H. Priyatna Abdurrasyid also described arbitration as a dispute resolution process of a judicial nature, in which the disputing parties are involved in an examination and the decision is based on the evidence submitted by them. According to Law No. 30 of 1999, arbitration is a method of resolving disputes outside the general court, based on a written agreement between the disputing parties. If there is an arbitration agreement, the district court does not have authority over the dispute stipulated in the agreement (Niagara & Hidayat, 2020).

In the same context, alternative dispute resolution refers to institutions or procedures agreed upon by the parties to the dispute outside the court. This includes methods such as consultation, negotiation, mediation, conciliation, or assessment by experts, as described in Article 1 number 10 of Law Number 30 of 1999. This definition is almost similar to the definition of alternative dispute resolution described in Article 60 of the same Law. In the aspect of resolving construction disputes, Law Number 2 of 2017 concerning Construction Services regulates the settlement of disputes related to work contracts in the construction industry. The impact analysis of dispute resolution here seeks to compare respondents' experiences taken through surveys in the field. The respondents consisted of three main components in involvement in the construction world consisting of consultants, contractors, and stakeholders of the PUPR ministry. Analysis seeks to classify the impact of dispute resolution using mediation, conciliation, and arbitration (Lee et al., 2021).

In general, the analysis of dispute resolution of construction services from the perspective of Law number 02 of 2017 seeks to study the correlation between draft regulations and real conditions in the construction world. This study seeks to develop a significant level of policy formulation in resolving dispute problems. As the results of observations and discourse of practitioners' thoughts, the formulation of policies in Law Number 02 of 2017 has several shortcomings in the form of:

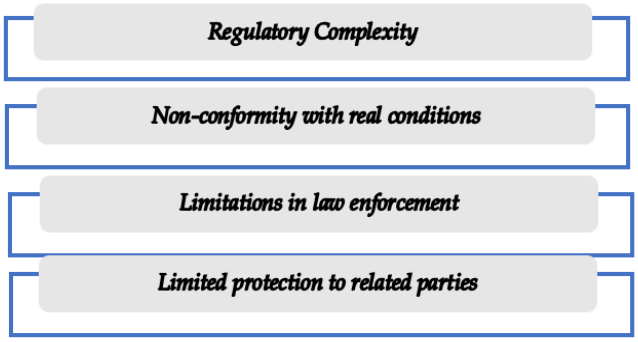

Figure 3. Disadvantages of Law No. 02 of 2017

The most basic thing in the problem and flaw of regulation is the absence of criminal sanctions on each party to the dispute. This makes the construction world that tends to have cooperation violations become more potential for fraud. As referred to chapter XII regarding administrative sanctions, the harshest penalty for construction service providers is the revocation of operational licenses where service providers can renew new licenses by leaving old licenses that have been frozen. The results of this research in the form of real conditions in the field are expected to be able to provide a scientific focus on the formulation of new policies regarding construction services regulations in the future. So as to reduce the risk of loss of related parties in development efforts in Indonesia (Fibriyani & Marpaung, 2022).

Practitioners, both the legal world and contrators, have a lot of discussions on equalizing the perception of thought in the real conditions of the field with established regulations. Based on my observations with several fellow practitioners, they are given many public complaints about dispute resolution regulations that lead to the interests of certain groups. With the new findings in this study, it can be used as a discourse material for practitioners. Broadly, the results of this study will provide guidance to legal practitioners in dealing with and handling cases related to construction. By understanding the defects in the law, they can provide better legal advice to their clients (Aksar et al., 2023).

In the legal realm, this research can be the basis for recommending changes or revisions to existing laws. Recommendations based on research can help governments in a more accurate and relevant process of improving laws. As for the latter, by identifying flaws in the law, the study will also raise public awareness of the problems that exist in construction services regulation. This can drive demands for change that is better and more in line with people's needs (Fibriyani & Marpaung, 2022). From the perspective of construction service providers, the results of research on regulatory defects will improve public trust in service providers. Here are some development perspectives of service providers:

1. Understanding of obligations and rights

   Research will help construction service providers better understand the obligations and rights provided by law. This includes legal aspects related to construction work procedures, payments, permits, and other regulations that affect their business operations.
2. Increase Competitiveness

   Better knowledge of the law will give a competitive advantage to construction service providers. They can better manage risk, maintain their reputation, and strengthen their position in the market by complying with applicable laws.

3. Support policy improvements

   Research can provide important input to the government in revisions or policy changes related to construction services. A better understanding of the shortcomings of the law will enable construction service providers to provide more valuable input in the process of improving regulations.

4. Legal Protection

   A better understanding of deficiencies in the law will help construction service providers protect themselves from possible legal disputes, unfair claims, or violations of the law from other parties.

Susan D. Franck classifies four (4) strategies proposed by experts in reforming dispute resolution mechanisms (Handoko et al., 2023):

1. Legislative approach

   This approach suggests that the formulation of investment agreements be made carefully, namely by detailing the substantive rights of investors or removing vague terminology. The arbitration mechanism is considered an appropriate forum in interpreting the rules of investment treaties between parties, but arbitrators must be facilitated with agreements whose scope and meaning are clear. This approach believes that the vagueness of the content of investment treaties is the main cause of the crisis of legitimacy of arbitral awards.

2. The Barrier Building Approach

   Although arbitration is considered an adequate forum, this approach aims to anticipate the large number of ISA lawsuits by creating stricter conditions. For example, by requiring alternative dispute resolution first within a certain period of time, or local courts. As for those who suggest that ISDS be taken through the SSDS mechanism again. The main concern of this approach concerns the loss of state sovereignty in strengthening its national public policy, which is often interrupted by frivolous claims.

3. The Rejection of Arbitration and a Return to a Public Forum

   This approach essentially considers arbitration not an appropriate forum in resolving ISDS. This approach includes those who accept investor lawsuits insofar as they apply the principle of exhaustion of local remedies, to those who seek to replace ISAs with permanent judicial forums. This approach departs from two (2) criticisms: (1) rejecting arbitrators as decision makers because they are considered biased, thus causing a crisis of the legitimacy of the award; (2) private commercial arbitration mechanisms are inadequate, among other things because they do not involve public participation (transparency and legitimacy).

4. Building Arbitration Safeguards

   This approach seeks to improve the arbitration system, among other things by revising arbitration rules to anticipate inconsistencies in awards and crises of legitimacy. This can be achieved by adopting transparency values in arbitration proceedings (public participation and publication of awards), to creating an appellate body that can review arbitral awards. In this regard, the ICSID Convention on arbitration rules was revised again in 2006, after being amended in 2003. Since 2016, ICSID and UNCITRAL are still reviewing possible amendments to the regulations. Some of the issues highlighted include the time and cost of arbitration, the principle of transparency, and the requirements for disclosure of funds from third parties (third party funding) by the parties to the dispute.

Prof. Sarwono explained the internationally applicable provisions in this business area, which must also be followed by Indonesia. The international consulting organization, the Federation Internationale des Ingenieurs Conseils (FIDIC) has also made construction service standard contracts that are commonly used in various countries, including Indonesia. Prof. Sarwono is also involved in updating and revising the development of these standards, especially when adjusted to the needs of making construction service contracts in Indonesia

(Irianto & Elfani, 2020). Added the Main Expert of Construction Services Supervisor of the Ministry of Public Works and Public Housing (PUPR), Putut Marhayudi that construction law is used as an instrument to ensure that construction and construction are carried out safely, efficiently, and according to established standards and rules. He emphasized that construction law develops an important role in infrastructure which in fact is the main task and function of the Ministry of Public Works and Housing. Where, infrastructure development involving various parties, be it the government, contractors, consultants, project owners and other parties requires a legal framework that regulates the relationship of all related parties and helps ensure that these projects run smoothly and existing regulations (Fassa et al., 2021).

Disputes in the construction industry are inevitable. The construction industry requires a diverse and complex process guided by contracts where projects are usually carried out in stages, sometimes by different players with diverse interests and involving large sums of money. The variety of interests and differences in perception among the participants raises the possibility of disputes. Common disputes in the construction industry involve contractors and employers or subcontractors and prime contractors. Disputes can also occur involving consultants, clients, manufacturers, suppliers. Disputes are most likely caused by breach of contract, delay in work progress, extension of time, financial failure of the contractor, technical incompetence of the contractor, tendering and quality of work, and other reasons. Construction disputes are undesirable and have the potential to hinder the successful completion of the project. Construction disputes are universal but are a major phenomenon in Africa due to soaring foreign construction investment.

Construction Dispute Resolution: Prospects and Challenges

Construction dispute parties often prefer dispute management mechanisms that will maintain their business relationships to ensure timely and efficient project completion. Adjudication has emerged as the preferred mechanism in the resolution of construction disputes. It involves the handling of construction disputes by an independent expert appointed or agreed upon by the parties, who acts as an expert in the resolution of the dispute referred to him. It is an informal process that operates on a strict timescale. Adjudication has the ability to encourage simple, fast and cost-effective handling of construction disputes.

Dispute Boards are also often formed at the beginning of a construction project to help the parties manage disputes that may arise. The International Federation of Consulting Engineers (FIDIC) envisages the use of Dispute Boards in Construction projects. Successful resolution of construction disputes is often hampered by enforcement challenges. A jury decision may result in further proceedings including arbitration and litigation resulting in delays and costs. The settlement of construction disputes in Africa has not yet fully developed because most countries have not instituted mechanisms such as adjudication. Africa is underrepresented in the settlement of construction disputes. The institutional framework for resolving construction disputes is not yet fully developed. Construction disputes in Africa involving foreign investors are often submitted to the FIDIC dispute resolution mechanism. FIDIC contracts and terms are in certain cases incompatible with local conditions in Africa.

There is a need to deal with construction disputes from an African perspective. This should start by implementing informal processes including negotiation and mediation that have been practiced in Africa for centuries to encourage effective management of construction disputes. This entailed the development of construction law in Africa. It also requires the institutionalization of construction justice to improve its feasibility. In addition, there is a need to align FIDIC contracts with the most important requirements in national legislation and local circumstances. Next, we must address the challenges of law enforcement in construction rulings. Finally, capacity building through construction dispute resolution

education and training. This requires the development of a teaching framework to encourage the resolution of construction disputes on the continent.

Construction is an activity that is not simple, multidisciplinary and influenced by many interests. No wonder construction disputes are prone to occur. In the records of the Indonesian National Arbitration Board (BANI), construction disputes dominated 420 cases handled by BANI in the period 1999 to 2016, which is 30.8% of the total cases (Ashad, 2022). Under the regime of Law No.18 of 1999 concerning Construction Services, the construction dispute resolution mechanism is available through 2 (two) channels, namely the court route and outside the court route. Dispute resolution through out-of-court channels can be pursued for problems arising in binding activities and carrying out construction work, and in the event of building failure. And does not apply to criminal acts in the implementation of construction work. The types of settlements through out-of-court channels referred to in the 1999 Construction Services Law include arbitration, either in the form of national or international institutions or ad-hoc, mediation, conciliation or expert assessors (Handoko et al., 2023).

Meanwhile, in Law No.2 of 2017 concerning Construction Services, as a substitute for the 1999 Construction Services Law, the settlement of disputes arising from the Construction Work Contract is resolved through deliberation for consensus. In the event that the parties to the dispute do not find an agreement, then dispute resolution is taken through the stages of dispute resolution efforts stated in the Construction Work Contract or in the event that it is not stated in the Construction Work Contract, the parties to the dispute make a written agreement regarding the dispute resolution procedure to be chosen. The stages of dispute resolution regulated in the 2017 Construction Services Law are as follows: mediation; conciliation; and arbitration.

As well as the existence of a dispute board which in the Explanation section of the 2017 Construction Services Law is given the understanding as a team formed based on the agreement of the parties since the binding of Construction Services to prevent and mediate disputes that occur in the implementation of the Construction Work Contract. Thus, the spirit carried out in the 2017 Construction Services Law is a deliberative and consensus settlement by prioritizing dispute resolution outside the court channels. However, it is necessary to pay attention to the provisions in Article 47 paragraph (1) of the 2017 Construction Services Law. In Article 47 paragraph (1) of the 2017 Construction Services Law, one of the clauses required to be contained in the Construction Work Contract is a provision regarding: (a) dispute resolution, containing provisions on procedures for resolving disputes due to disagreements; and (b) construction dispute resolution options. In the explanatory part of Article 47 paragraph (1) regarding dispute resolution, it is stated: Dispute resolution contains provisions on procedures for resolving disputes resulting from, among others, disagreements in terms of understanding, interpretation, or implementation of various provisions in the Construction Work Contract as well as provisions on the place and method of settlement. Dispute resolution is taken through, among others, deliberation, mediation, arbitration, or court.

There is no further explanation of the difference between "dispute resolution" and "dispute resolution". When referring to the definition of "dispute" in the Big Dictionary Indonesian, "dispute" also means "dispute". Thus, the 2017 Construction Services Law still lists legal remedies for dispute resolution through the courts, although the body of the 2017 Construction Services Law does not include this. Dispute resolution mechanisms through out-of-court efforts would be appropriate to apply to construction disputes for the following reasons: First, confidentiality regarding disputes. Confidentiality is one of the advantages of dispute resolution mechanisms outside the court, both during the process and against unpublished decisions. Given that construction is related to many processes which cannot all be opened to the public, especially if the building that is the object of dispute is included in

the vital objects of the state. In addition, it is necessary to maintain good relations between the parties, considering that business actors in the field of construction services are limited.

Second, the parties can choose an intermediary party (mediator/conciliator/arbitrator) who has expertise in the field of construction. According to Hellard (1987), construction disputes can be divided into 4 (four) categories, namely: Disputes related to time (delay in progress); Financial disputes (claims and payments); Disputes relating to standards of work (design and deliverables); Relationship conflicts with people within the construction industry. In general, the above disputes will be related, either directly or indirectly to technical matters. Basically, the construction Work Contract is a special contract which contains many technical aspects. For example, disputes related to payment with a percentage system of work progress as a condition of payment, of course, require technical aspects related to determining the work progress that can be claimed. Thus, in resolving construction disputes, not only legal experts are needed, but experts in other disciplines, especially technical aspects, are needed to understand the root of the problem.

Third, the dispute resolution period is clear and relatively short. Although the dispute resolution period is relatively short as an advantage of the dispute resolution mechanism outside the court (arbitration) according to Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution does not always occur because in some countries settlement through litigation can be taken in a relatively short time, but now it must be recognized that the litigation path takes longer than the path in outside litigation (Latif et al., 2020). A short dispute resolution period is certainly more beneficial for the parties to the dispute, because it can immediately obtain certainty regarding the resolution of the dispute that is occurring. For construction business actors, this also applies because construction disputes will be related to many things such as but not limited to the continuity of work, transfer of buildings, use of buildings by service users, certainty of payment. Especially for service providers, protracted disputes can hinder service proiders' involvement in project tenders held by service users who are in dispute (Kabir, 2021). In addition to the three things mentioned above, in line with the Government's efforts to attract foreign investors to invest in Indonesia, including through the construction sector, in binding international contracts, in the author's experience, dispute resolution through channels outside the court is more desirable (Sidik et al., 2020).

Civil Procedure Law can also be called formal civil law because it regulates the process of resolving cases through courts that are formally recognized as valid according to law.41 Formal civil law aims to protect the interests of every member of society. Such interests are civil rights and obligations stipulated in material civil law. Thus, formal civil law is the entire rule of law that determines and regulates the manner of how to carry out civil rights and obligations as stipulated in material civil law. Broadly speaking, dispute resolution is divided into two mechanisms, namely dispute resolution through Court institutions (Litigation) and through institutions / institutions outside the Court (non-Litigation). Each of the mechanisms is subject to different procedural laws. Therefore, the enforceability of procedural law (formal civil law) is determined by the choice of dispute resolution mechanism (Hutahaean & Hardjomuljadi, 2021).

Litigation Mechanism is subject to the procedure of civil procedural law in the general court. In addition to being guided by Herzien Inlandsch Reglement (HIR), the provisions of general civil procedural law in Indonesia are also sourced from RBg (Het Rechtsreglement Buitengewesten), Rv (Reglement op de Burgerlijke Rechtsvordering) plus other statutory provisions such as BW (Burgerlijke Wetboek or Civil Code), Wvk (Wetboek van koophandel or Commercial Law Code), and Law No. 48 of 2009 concerning Judicial Power (Latif et al., 2020). The non-Litigation mechanism prioritizes procedural law procedures that have been specifically regulated outside the general civil procedural law. For example, Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution (Law on Arbitration &; ADR) contains a civil procedural law that specifically regulates dispute resolution outside the

court institution. Although it is considered a "special civil procedural law", this law can be overridden with other laws that also specifically contain civil procedural law (Muskibah & Hidayah, 2021).

In the realm of consumer disputes, for example, the Law on Arbitration & ADR can be overridden by Law No. 8 of 1999 concerning Consumer Protection juncto Decree of the Minister of Industry and Trade of the Republic of Indonesia No. 350/Mpp/Kep/12/2001 of 2001 concerning the Implementation of Duties and Authorities of Consumer Dispute Settlement Bodies. In the context of this study, the 2017 Construction Services Law does not purely regulate material civil law alone. If we look closely, in the law there are several articles that contain aspects of formal civil law (Aksar et al., 2023). One of them is an article that specifically regulates the settlement of construction disputes. Thus, the 2017 Construction Services Law becomes one of the special rules in the realm of civil procedural law. Consequently, in the event of a construction dispute, the dispute resolution provisions stipulated in the 2017 Construction Services Law will take precedence over the general civil procedural law (Sidik et al., 2020). Even against procedural laws that specifically regulate out-of-court dispute resolution (Arbitration & ADR Law), the Construction Services Law 2017 (including later by implementing rules) must take precedence. This is in line with the principle of lex specialis derogate legi generali which essentially states that specific laws / rules (lex specialis) override general laws / rules (lex generalis).

CONCLUSION

The conclusion of this study is the result of an analysis of real field conditions regarding non-compliance with regulatory defects in law number 02 of 2017. The results of the study will represent the problem of disputes between service providers and users involving the fulfillment of their respective rights in making agreements. Research analysis in the form of real conditions and data on the causes of disputes. Then form a dispute resolution solution with several classifications formed. Then the study discusses the chapter in law regulation number 02 of 2017 which includes defects, nonconformities, weaknesses, and views on partiality with certain actors. The explanation of the 2017 Construction Services Law is given the definition as a team formed based on the agreement of the parties since the binding of Construction Services to prevent and mediate disputes that occur in the implementation of the Construction Work Contract. Thus, the spirit carried out in the 2017 Construction Services Law is a deliberative and consensus settlement by prioritizing dispute resolution outside the court channels. However, it is necessary to pay attention to the provisions in Article 47 paragraph (1) of the 2017 Construction Services Law. In Article 47 paragraph (1) of the 2017 Construction Services Law, one of the clauses required to be contained in the Construction Work Contract is a provision regarding: (a) dispute resolution, containing provisions on procedures for resolving disputes due to disagreements; and (b) construction dispute resolution options.

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