

## Construction Dispute Resolution through Alternative Dispute Resolution: A Review of Business Law in Indonesia and Thailand

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### Abstract

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The construction sector, which is full of complex interactions between business actors in Indonesia and Thailand, often gives rise to technical disputes that require effective resolution through ADR mechanisms. Although regulated and implemented in both countries, they show significant differences in terms of effectiveness, institutions, technology utilization, and legal culture that influence actors' preferences and trust in non-litigation dispute resolution. The purpose of this study is to analyze the regulation and implementation of construction dispute resolution through ADR in the business legal systems of Indonesia and Thailand, and to identify similarities, differences, and factors that influence the effectiveness of ADR mechanisms in both countries. This study uses normative legal methods with legislative, conceptual, and comparative approaches to analyze the regulation and implementation of construction dispute resolution through ADR in Indonesia and Thailand, with data collection through literature studies and descriptive-comparative data analysis. The results of the study indicate that although Indonesia and Thailand both recognize and regulate construction dispute resolution mechanisms through ADR in their business legal systems, the effectiveness of their implementation differs significantly. Indonesia faces challenges in the form of institutional fragmentation, low practitioner understanding, and limited digitalization, while Thailand demonstrates a more structured, integrated, and progressive ADR system with the support of specialized institutions such as THAC, ADR obligations in government contracts, and the widespread implementation of the Dispute Adjudication Board mechanism. Factors such as government policy, legal culture, and the use of technology are the main differences in the effectiveness of ADR in the two countries, making Thailand superior in the implementation and acceptance of ADR, particularly in the resolution of construction disputes.

## 1. Introduction

The construction sector is one of the main pillars of economic development in many countries, including Indonesia and Thailand. The development of infrastructure such as toll roads, office buildings, ports, airports, and public housing, is not only a symbol of the progress of civilization but also a representation of the complexity of legal relations between the various parties involved.<sup>1</sup> In every construction project, there are various parties who interact with each other, such as the project owner, contractor, subcontractor, planning and supervisory consultants, and building material suppliers. This complex relationship often leads to friction that results in disputes. Construction disputes can involve various issues such as delays in

<sup>1</sup> Jie Chen and Zhumin Xu, *Changing Governance of Urban Redevelopment in Shanghai, Steering the Metropolis: Metropolitan Governance for Sustainable Urban Developmen*, 2017, <https://doi.org/10.18235/0000875>.

project completion, contract breaches, substandard work quality, and claims for additional costs that were not agreed upon from the beginning.

Construction disputes are generally technical and complex. Therefore, their resolution often takes a long time and costs a considerable amount if settled through litigation or court proceedings. In the context of business law, the efficient and effective resolution of disputes is an integral part of the basic principles of contract law and legal certainty. Therefore, there is a need to use alternative dispute resolution approaches, also known as Alternative Dispute Resolution (ADR). ADR is a more flexible, cost-effective, and faster option compared to court proceedings. On the other hand, ADR also maintains good relations between the disputing parties, which is very important in the construction sector due to the nature of ongoing business relationships.<sup>2</sup>

ADR encompasses several forms, including negotiation, mediation, conciliation, and arbitration. In Indonesia, the use of ADR in resolving construction disputes has been regulated in various regulations such as Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution and its implementing regulations in the construction services sector, such as Law Number 2 of 2017 concerning Construction Services. In practice, institutions such as the National Arbitration Board of Indonesia (BANI) and the Indonesian Construction Dispute Resolution Alternative Institution (LAPS-K) play a vital role in resolving various disputes that arise in this sector. Meanwhile, Thailand has also adopted an ADR approach by relying on institutions such as the Thai Arbitration Institute (TAI) and the Thailand Arbitration Center (THAC), as well as various supporting regulations that guarantee the sustainability of the ADR process in resolving business and construction disputes.<sup>3</sup>

However, despite both countries recognizing the importance of ADR, the implementation and effectiveness of construction dispute resolution mechanisms in Indonesia and Thailand show significant differences, both in terms of legal aspects, institutions, legal culture, and the level of trust of business actors in ADR mechanisms. In Indonesia, although ADR is widely known, its implementation still faces several challenges, such as limited understanding of ADR mechanisms by the parties involved, a lack of competent human resources as mediators or arbitrators, and the strong culture of litigation among the public and business actors. ADR has gained recognition and is widely recognized as an out-of-court dispute resolution instrument. However, its implementation still faces various obstacles. These challenges include limited understanding of ADR procedures among the parties, limited availability of competent human resources to act as mediators or arbitrators, and the dominant litigation culture that remains deeply ingrained among both the public and business actors. These conditions prevent ADR in Indonesia from fully becoming the primary option for resolving construction disputes. In contrast, Thailand has shown significant progress in developing ADR, including the integration of information technology in the arbitration process and the improvement of the quality of services provided by existing ADR institutions.

<sup>2</sup> Putu Milla Permatasari and Cokorde Istri Dian Laksmi Dewi, "Praktek Penyelesaian Sengketa Konstruksi Diuar Pengadilan Di Indonesia," *RIO LAW JURNAL* 6, no. 1 (2025), <https://doi.org/https://doi.org/10.36355/rlj.v6i1.1575>.

<sup>3</sup> Masdari Tasmin, "Urgensi Alternative Dispute Resolution (ADR) Di Negara Indonesia," *Jurnal Wasaka Hukum* 7, no. 2 (2019).

in the country. This progress is reflected in systematic efforts to improve the quality of ADR institutions and the use of information technology to support the arbitration process. This technological integration not only accelerates the dispute resolution process but also strengthens the efficiency and transparency of the procedures. The improvement in the quality of ADR services in Thailand has contributed to the growing confidence of business actors in using ADR as an effective alternative in resolving construction disputes.<sup>4</sup> In contrast, Thailand has shown more progressive development in the implementation of ADR. This progress is reflected in systematic efforts to improve the quality of ADR institutions and the use of information technology to support the arbitration process. This technological integration not only accelerates the dispute resolution process but also strengthens the efficiency and transparency of the procedures. The improvement in the quality of ADR services in Thailand has contributed to the growing confidence of business actors in using ADR as an effective alternative in resolving construction disputes.

A comparison between Indonesia and Thailand in the context of resolving construction disputes through ADR is important and relevant for further study. First, both countries are part of ASEAN, which has a shared vision for regional economic integration, including cooperation in the field of law and business dispute resolution. Second, both countries face relatively similar challenges in terms of construction sector growth and the need for an efficient and effective legal system to resolve disputes. Third, learning from Thailand's ADR practices and systems can inspire Indonesia to reform its laws and strengthen institutions that handle construction dispute resolution.<sup>5</sup>

Studies on the resolution of construction disputes through ADR within a business law perspective are also important to emphasize that disputes are not merely legal issues but also strategic issues in business relationships that must be handled professionally and wisely. In business law, efficient dispute resolution is part of an important risk management strategy, particularly in the capital-intensive construction sector that is full of technical and legal risks.<sup>6</sup> Therefore, the presence of a reliable ADR mechanism will strengthen investor confidence, accelerate project completion, and encourage a healthy business climate in the construction services sector. Furthermore, from a legal perspective, it is necessary to explore how regulations in Indonesia and Thailand govern ADR mechanisms, how effective their implementation is, and how the judicial system and non-litigation dispute resolution institutions collaborate to support the resolution of construction disputes. In this context, a business law review is important because it will link the ADR process with the interests of business actors, construction contracts, and market legal dynamics. This research can also highlight the normative and implementational challenges of ADR regulations in each country,

<sup>4</sup> Meria Utama, *Hukum Ekonomi Internasional* (PT. Fikahati Aneska, 2012).

<sup>5</sup> Ilham Putra Dewanta, *Implementasi Prinsip Non-Intervensi Sebagai Asean Way Dan Implikasinya Terhadap Penyelesaian Sengketa Secara Damai Atas Pelanggaran HAM Di Negara-Negara Anggota* (Yogyakarta: Universitas Islam Indonesia, 2018).

<sup>6</sup> Frenciska Ardhiyaningrum and Diana Setiawati, "Hambatan Dan Peluang Efektivitas Alternative Dispute Resolution (ADR) Dalam Penyelesaian Sengketa Bisnis Di Indonesia Berdasarkan Undang-Undang Nomor 30 Tahun 1999," *Jembatan Hukum : Kajian Ilmu Hukum, Sosial Dan Administrasi Negara* 1, no. 4 (December 24, 2024): 138-53, <https://doi.org/10.62383/jembatan.v1i4.1132>.

and identify best practices that can be recommended for implementation in the Indonesian context.<sup>7</sup>

For example, Thailand has leveraged online dispute resolution (ODR) systems in mediation and arbitration processes, which not only accelerates dispute resolution but also expands access to justice for parties in remote areas. This demonstrates that technological innovation can be a crucial instrument in reforming ADR systems.<sup>8</sup> In Indonesia, the use of technology in ADR is still limited and not yet fully integrated into the judicial system or ADR institutions. However, with the growth of digitalization in the construction sector, dispute resolution systems must also transform to meet the needs of the times.<sup>9</sup>

Moreover, the legal culture of a society influences the preference for choosing dispute resolution methods. Thai society is relatively more open to mediation and arbitration, aligning with principles of peaceful resolution that are consistent with local cultural values and Buddhist principles. In Indonesia, however, while local wisdom values also emphasize deliberation and consensus, practice shows that litigation remains the primary choice, mainly because it's perceived as offering greater legal certainty, despite being more time-consuming and expensive.<sup>10</sup> In this context, continuous legal education and awareness campaigns about the benefits of ADR are necessary. Therefore, the author is interested in conducting research entitled "Construction Dispute Resolution through Alternative Dispute Resolution: A Business Law Review in Indonesia and Thailand." The research problems are, how are construction dispute resolutions through ADR regulated and implemented within the business legal systems of Indonesia and Thailand?; and what are the similarities and differences in the effectiveness of ADR mechanisms in resolving construction disputes between Indonesia and Thailand, and what factors influence them?

This research is expected to contribute theoretically and practically to the development of business law, particularly in the context of construction dispute resolution. Theoretically, this research will enrich legal scholarship by examining how ADR plays a role in creating efficiency and effectiveness in dispute resolution within different legal systems. Practically, this research will provide recommendations to the government, businesses, and legal practitioners on strategies for strengthening ADR in construction dispute resolution in Indonesia, based on experiences and lessons learned from Thailand.

<sup>7</sup> CSA Teddy Lesmana, "Mediasi Penal Sebagai Alternatif Penyelesaian Perkara Pidana Dalam Perspektif Pembaharuan Sistem Peradilan Pidana Indonesia," *Jurnal Rechten : Riset Hukum Dan Hak Asasi Manusia* 1, no. 1 (June 25, 2019): 1-23, <https://doi.org/10.52005/rechten.v1i1.1>.

<sup>8</sup> Marulak Pardede, "Initiating The ASEAN Arbitration Board as a Forum for Settlement of Investment Legal Disputes in The Framework of Integration of The ASEAN Economic Community (AEC) Region," *Jurnal Penelitian Hukum De Jure* 22, no. 3 (September 30, 2022): 337, <https://doi.org/10.30641/dejure.2022.V22.337-360>.

<sup>9</sup> Susi Susanti Rini Fathonah, Andre Arya Pratama, "Penanggulangan Kejahatan Mayantara Di Era Society 5.0 Melalui Sifat Melawan Hukum Materil," *Jurnal Relasi Publik* 1, no. 2 (2022): 61, <https://doi.org/10.59581/jrp-widyakarya.v1i2.286>.

<sup>10</sup> Dhaniswara K. Harjono, "Hukum Penanaman Modal: Tinjauan Terhadap Pemberlakuan Undang Undang No. 25 Tahun 2007 Tentang Penanaman Modal," no. 25 (2012): 1-383, <http://repository.uki.ac.id/1026/1/Hukum Penanaman Modal.pdf>.

This research also has a strategic dimension in the context of ASEAN cooperation. In the era of globalization and regional economic integration, the presence of harmonized and mutually recognized ADR systems among member states will facilitate cross-border dispute resolution for investors and businesses. Therefore, the comparison of ADR systems between Indonesia and Thailand can also be an initial step in building a regional framework for cooperation in the field of construction dispute resolution, which will ultimately strengthen ASEAN's position as an investment-friendly and highly competitive region.

Construction dispute resolution through alternative mechanisms has been the focus of various studies in Indonesia. One study by Muskibah and Lili Naili Hidayah (2021) discusses the binding power of arbitration agreements in construction work contracts and the legal certainty of the implementation of arbitration awards in Indonesia. They found that although arbitration agreements are binding, the implementation of arbitration awards in construction disputes has not provided sufficient legal certainty. This research highlights the need for changes in the regulations governing the implementation of arbitration awards to increase legal certainty for the parties involved in the dispute.<sup>11</sup> Another study by I Made Wisnu Suyoga and Yohanes Usfunan (2020) analyzed the settlement of construction work contract disputes through adjudication and compared it with arbitration in Indonesia. They concluded that adjudication is a simpler dispute resolution mechanism compared to arbitration but has similar characteristics. This study provides insights into more efficient alternative dispute resolution methods in the construction context.<sup>12</sup> Anis's 2024 research highlights the effectiveness of ADR in improving efficiency and balance between disputing parties in Indonesia. Using a qualitative approach, the study found that ADR offers a faster process and lower costs compared to traditional litigation. Furthermore, ADR facilitates fairer and more satisfactory resolutions for all parties, thereby increasing public trust in the legal system. The research recommends increased awareness campaigns about ADR to encourage more parties to utilize this mechanism as an alternative dispute resolution method.<sup>13</sup>

Frensiska Ardhiyaningrum and Diana Setiawati's 2024 research analyzes the obstacles and opportunities for effective ADR in resolving business disputes in Indonesia, based on Law Number 30 of 1999. They identified several challenges in implementing ADR, including a lack of awareness among business actors about the benefits of ADR, the perception that ADR lacks legal authority compared to litigation, and limitations in the quality of mediators and arbitrators. The research emphasizes the importance of improving the capacity of ADR practitioners through continuous training and educating business actors to build trust in this method.<sup>14</sup>

<sup>11</sup> Muskibah and Lili Naili Hidayah, "Penyelesaian Sengketa Konstruksi Melalui Arbitrase Berdasarkan Peraturan Perundang-Undangan," *Pandecta: Research Law Journal* 16, no. 1 (2021), <https://doi.org/https://doi.org/10.15294/pandecta.v16i1.25671>.

<sup>12</sup> I Made Wisnu Suyoga and Yohanes Usfunan, "Penyelesaian Sengketa Kontrak Kerja Konstruksi Melalui Ajudikasi Dan Perbandingan Dengan Arbitrase," *Acta Comitas* 5, no. 2 (August 7, 2020): 240, <https://doi.org/10.24843/AC.2020.v05.i02.p03>.

<sup>13</sup> Anis, "Penerapan Alternatif Penyelesaian Sengketa (ADR) Dalam Penyelesaian Sengketa Di Indonesia: Fokus Pada Efisiensi Dan Keseimbangan," *Jurnal Kajian Ilmiah Interdisiplinier* 8, no. 9 (2024).

<sup>14</sup> Frensiska Ardhiyaningrum and Diana Setiawati, "Hambatan Dan Peluang Efektivitas Alternative Dispute Resolution (ADR) Dalam Penyelesaian Sengketa Bisnis Di Indonesia Berdasarkan Undang-Undang Nomor 30 Tahun 1999."

Putu Milla Permatasari and Cokorde Istri Dian Laksmi Dewi's 2025 study analyzes the regulations for resolving civil disputes outside the courts (non-litigation) in Indonesia and the practice of resolving construction disputes outside the courts. They found that construction dispute resolution in Indonesia more frequently utilizes ADR methods such as mediation, conciliation, and arbitration compared to litigation. Of these three methods, arbitration is most often used to resolve construction service disputes.<sup>15</sup> Hendrik Eddy Purnomo's 2022 research highlights the role of mediation as a model for resolving construction work contract disputes in Indonesia. He concludes that mediation in Indonesia remains an alternative and is often used only as a step before ultimately choosing resolution through arbitration or litigation. The research recommends reforms related to mediation, in terms of regulations, institutions, and the legal culture of construction service businesses.<sup>16</sup>

The existing research predominantly focuses on the implementation and effectiveness of ADR in resolving construction disputes within Indonesia. However, comparative studies examining ADR mechanisms in construction disputes between Indonesia and other countries, such as Thailand, are limited. Thailand is known for its more advanced and integrated ADR system, with institutions like the Thai Arbitration Institute (TAI) and the Thailand Arbitration Center (THAC) playing significant roles in resolving business and construction disputes. A comparison between Indonesia and Thailand in this context could provide new insights into best practices and areas needing improvement in Indonesia's ADR system.

This research offers novelty by presenting an international comparative approach between the ADR systems in Indonesia and Thailand – a study rarely found in previous literature. The research also situates ADR within the context of business law, highlighting how dispute resolution mechanisms affect business relationships and the investment climate in the construction sector. Furthermore, through this comparison, the research aims to identify best practices that can serve as a reference for improving the effectiveness of ADR in Indonesia. The results of this study are expected to be not only theoretical but also applicable, as it will be accompanied by relevant policy recommendations based on a comparative analysis of the two countries.

## 2. Methods

This research employs a normative legal research method. This method was chosen because the research focuses on examining applicable legal norms.<sup>17</sup> related to the settlement of construction disputes through ADR in the legal systems of Indonesia and Thailand. Normative legal research is basically a research that aims to analyze the systematics of law, legal principles, legal synchronization, and comparative law by examining legal materials as the main basis for answering the formulation of the problem.

The research approaches used in this study are the statute approach, conceptual approach, and comparative legal approach.<sup>18</sup> The statute approach involves examining various regulations and provisions of positive law in both Indonesia and Thailand that govern

<sup>15</sup> Permatasari and Dewi, "Praktek Penyelesaian Sengketa Konstruksi Diuar Pengadilan Di Indonesia."

<sup>16</sup> Hendrik Eddy Purnomo, *Mediasi Sebagai Model Penyelesaian Sengketa Kontrak Kerja Konstruksi Di Indonesia* (Universitas Pelita Harapan, 2022).

<sup>17</sup> Peter Mahmud Marzuki, *Penelitian Hukum: Edisi Revisi* (Jakarta: Kencana, 2021).

<sup>18</sup> Zainuddin Ali, *Metode Penelitian Hukum* (Jakarta: Sinar Grafika, 2010).

the mechanism for resolving construction disputes through ADR. Meanwhile, the conceptual approach is used to analyze various theories and legal doctrines relevant to the principles of non-litigative dispute resolution and its position within the framework of business law. The comparative approach is used to critically examine the differences and similarities in the construction dispute resolution systems between the two countries, as well as the effectiveness of their implementation in practice.

The sources of legal materials in this research consist of three types: primary legal materials, secondary legal materials, and tertiary legal materials.<sup>19</sup> Primary legal materials include legislation governing construction dispute resolution and business law in Indonesia and Thailand, such as Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution in Indonesia, and regulations from the Thai Arbitration Institute Act and the Thailand Arbitration Center Act in Thailand. Secondary legal materials comprise legal literature such as books, scientific journals, articles, previous research findings, and other academic documents that discuss ADR and construction law theoretically and practically. Tertiary legal materials include legal dictionaries, legal encyclopedias, and other supporting sources used to clarify and enrich understanding of the primary and secondary legal materials.

Data collection in this research is conducted through library research, involving searching and examining various print and digital sources directly related to the research object.<sup>20</sup> The research involved examining legal documents, legislation, scientific articles, and various academic publications discussing ADR mechanisms, both generally and specifically within the construction sector and the context of business law. Data was also gathered through access to international legal databases and journals to gain a broader understanding of the Thai ADR system, which has limited coverage in Indonesian-language sources. After data collection, qualitative data analysis was employed, using a descriptive-comparative technique.<sup>21</sup> Descriptive analysis was used to systematically present and describe how legal provisions governing the resolution of construction disputes through ADR are structured in each country. Comparative analysis was then used to identify the differences and similarities between the Indonesian and Thai systems in resolving construction disputes through ADR, and to assess the relative strengths and weaknesses of each system. The results of this analysis were then used to draw conclusions and provide constructive recommendations for the development of the ADR system in Indonesia, particularly within the context of business and construction law. Analysis of this type of construction dispute is important because its characteristics differ from those of typical civil disputes. Construction disputes are technical, complex, and involve large contract values and the interests of multiple parties. Therefore, their resolution requires a mechanism that is not only fast and efficient but also capable of maintaining long-term business relationships between the parties. In this context, ADR mechanisms are considered relevant, as they offer a more flexible and confidential process and enable the parties to find mutually beneficial solutions compared to formal litigation. By employing the normative legal research method and a comparative study approach, this research is expected to make a significant contribution to the development of a national legal

<sup>19</sup> Muhammin, *Metode Penelitian Hukum* (Mataram: Mataram University Press, 2020).

<sup>20</sup> Sugiyono, "Metode Penelitian Kuantitatif, Kualitatif, Dan R&D," Bandung: CV. Alfabeta, 2019.

<sup>21</sup> Lexy J. Moleong, *Metodologi Penelitian Kualitatif* (Bandung: PT Remaja Rosdakarya, 2017).

framework for effective, efficient, and adaptive construction dispute resolution that meets the needs of the modern business sector.

### 3. Results and Discussion

#### 3.1. Alternative Dispute Resolution in Construction Conflicts: Comparative Legal Perspectives from Indonesia and Thailand

Disputes in construction projects are inevitable. The complexity of construction projects, in terms of technical, administrative, and legal aspects, significantly increases the potential for conflict among parties involved. Stakeholders such as employers, main contractors, subcontractors, design consultants, and supervisors have differing interests, often leading to conflicts and disputes. In the business legal system, dispute resolution is crucial for maintaining continuity and stability in relationships between business actors.

With the growing need for faster, more efficient, and effective dispute resolution, ADR methods are gaining prominence in various jurisdictions, including Indonesia and Thailand. ADR provides out-of-court dispute resolution solutions encompassing mechanisms such as negotiation, mediation, conciliation, adjudication, and arbitration. In the context of construction disputes, ADR is often preferred over litigation due to its flexible, confidential nature and adaptability to the needs of the parties involved.

This discussion delves into the regulation and implementation of ADR in resolving construction disputes in Indonesia and Thailand. This comparison is significant because both countries are in ASEAN, sharing similar legal characteristics, yet exhibiting interesting differences in ADR implementation that warrant examination from a business law perspective. The following table compares the regulations governing the resolution of construction disputes through ADR in Indonesia and Thailand:

**Table 1.** Comparison of ADR Regulations in Indonesia-Thailand

Aspect	Indonesia	Thailand
Legal basis	<ul style="list-style-type: none"> <li>- Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution</li> <li>- Law No. 2 of 2017 concerning Construction Services</li> <li>- Government Regulation No. 22 of 2020 concerning the Provision of Construction Services</li> <li>- LPJK regulations on the ADR system in construction</li> <li>- BANI (Indonesian National Arbitration Board)</li> </ul>	<ul style="list-style-type: none"> <li>- Arbitration Act B.E. 2545 (2002)</li> <li>- Civil Procedure Code Thailand</li> <li>- The Office of the Judiciary Regulation on Mediation (2017)</li> <li>- Public Procurement and Supplies Administration Act</li> <li>- Thailand Arbitration Center (THAC)</li> </ul>
Dispute Resolution Institution		

Commonly Used ADR Methods	<ul style="list-style-type: none"> <li>- BAKN (National Construction Arbitration Board)</li> <li>- PMN (National Mediation Center)</li> <li>- Negotiation</li> <li>- Mediasi</li> <li>- Konsiliasi</li> <li>- Adjudication (especially in large construction contracts)</li> <li>- Arbitration (BANI, BAKN)</li> <li>- Limited to large and international projects</li> </ul>	<ul style="list-style-type: none"> <li>- Board of Trade Arbitration Institute (BTAI)</li> <li>- Mediation Centers in Court</li> <li>- Mediation</li> <li>- Adjudication</li> <li>- Arbitration</li> <li>- Dispute Avoidance and Adjudication Board (DAAB)</li> <li>- Arbitration (THAC, BTAI)</li> <li>- Commonly used in government and international projects</li> <li>- Require mediation before trial in many cases</li> <li>- Thailand recognizes international arbitration awards (New York Convention 1958)</li> <li>- The court has no jurisdiction if there is an arbitration clause</li> </ul>
Adjudication Settings		
Mediation Arrangement	<ul style="list-style-type: none"> <li>- Regulated in Perma No. 1 of 2016 concerning Mediation</li> </ul>	
Arbitrase Internasional	<ul style="list-style-type: none"> <li>- Indonesia recognizes international arbitration decisions (New York Convention 1958)</li> </ul>	
Dispute Resolution in Court	<ul style="list-style-type: none"> <li>- The court has no jurisdiction if there is an arbitration clause</li> </ul>	<ul style="list-style-type: none"> <li>- The court has no jurisdiction if there is an arbitration clause</li> </ul>
Implementation of ADR in Construction Projects	<ul style="list-style-type: none"> <li>- Still in the strengthening stage, not yet universal</li> </ul>	<ul style="list-style-type: none"> <li>- Widely applied in large projects and government procurement</li> </ul>
Implementation of DAAB (Dispute Avoidance and Adjudication Board) Effectiveness and Law Enforcement	<ul style="list-style-type: none"> <li>- Rarely applied in domestic projects, more popular in international contracts</li> <li>- There are still challenges in the implementation and awareness of ADR</li> </ul>	<ul style="list-style-type: none"> <li>- Widely used in large construction projects and public procurement</li> <li>- High effectiveness, especially with mandatory mediation and use of DAAB</li> </ul>

This table highlights the fundamental differences in ADR regulations between the two countries, encompassing legal foundations, institutions, methods employed, and the implementation of adjudication and mediation in construction disputes. ADR encompasses conflict resolution methods conducted outside of court proceedings. ADR offers advantages in terms of speed, lower costs, and preserving positive relationships between parties. In the

world of construction, where time is a critical factor and long-term business relationships are essential, ADR becomes a highly relevant method.<sup>22</sup> Some of the main forms of ADR include:<sup>23</sup>

1. Negotiation: A dispute resolution process conducted directly between the involved parties without the intervention of a third party.
2. Mediation: A process involving a neutral third party (mediator) who assists the parties in reaching a mutual agreement without possessing the authority to make a binding decision.
3. Conciliation: Similar to mediation, but the conciliator may offer settlement proposals.
4. Adjudication: Employed in large construction projects, a third-party adjudicator provides a temporary, binding decision, unless challenged through arbitration.
5. Arbitration: A dispute resolution process conducted by one or more arbitrators whose decision is final and binding.

In international construction contracts, such as those based on FIDIC (International Federation of Consulting Engineers) standards, ADR mechanisms form a vital part of the dispute resolution structure.<sup>24</sup> Indonesia's legal system explicitly recognizes and regulates ADR through several key regulations, reflecting a growing adoption of ADR in its contract systems. These include:

1. Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution: This is the primary legal framework for ADR in Indonesia. It establishes the legal basis for various ADR methods and sets out general principles for their application.
2. Law Number 2 of 2017 concerning Construction Services: This law specifically mentions that disputes in construction services can be resolved through ADR mechanisms, highlighting the government's intention to encourage the use of ADR in this sector.
3. Government Regulation Number 22 of 2020 concerning the Organization of Construction Services: This regulation further emphasizes the role of ADR in resolving construction sector disputes, providing more detailed guidance and potentially clarifying ambiguities in the previous legislation.
4. Regulations of the Construction Service Development Institution (LPJK): These regulations provide technical guidelines for the conduct of mediation, conciliation, and arbitration, offering practical instructions for implementing these ADR methods.

Law Number 30 of 1999 and Arbitration Agreements: This law explicitly states that parties to an agreement can choose to resolve disputes through arbitration or other alternative out-of-court methods. Crucially, Article 6 emphasizes that if the parties have an existing

<sup>22</sup> Puspitasari Gustami and Devi Siti Hamzah Marpaung, "Perbandingan Proses Penyelesaian Sengketa Mealui Mediasi Di Pengadilan Dan Di Luar Pengadilan Di Indonesia," *Jurnal Hukum Lex Generalis* 5, no. 4 (2024).

<sup>23</sup> Yunimar, "Mediasi Sebagai Salah Satu Cara Dalam Penyelesaian Sengketa Perdata Di Luar Pengadilan," *Normative Jurnal Ilmiah Hukum* 10, no. 1 (2022), <https://doi.org/https://doi.org/10.31317/normative%20jurnal%20ilmah%20hukum.v10i1%20April.773>.

<sup>24</sup> Helda Shantyabudi, Busyra Azheri, and Nani Mulyati, "Mitigasi Risiko Hukum Dalam Penyelesaian Sengketa Kontrak Konstruksi Melalui Dewan Sengketa," *Nagari Law Review* 7, no. 1 (September 26, 2023): 79, <https://doi.org/10.25077/nalrev.v.7.i.1.p.79-92.2023>.

arbitration agreement, the district court lacks jurisdiction to handle the dispute. This provision underscores the enforceability of arbitration agreements in Indonesia.<sup>25</sup> Indonesia has several ADR institutions that are actively involved in resolving construction disputes:<sup>26</sup>

1. BANI (Indonesian National Arbitration Board): An independent institution that resolves business disputes, including construction.
2. BAKN (National Construction Arbitration Board): A special institution for construction disputes established by LPJK.
3. PMN (National Mediation Center): A mediation organizing institution that develops the capacity of professional mediators.
4. Court Mediation Center: Based on Supreme Court Regulation (Perma) No. 1 of 2016, every civil case must go through a mediation process before being examined further.

ADR procedures in the construction sector in Indonesia generally go through the following stages:<sup>27</sup>

1. Negotiations between parties;
2. If unsuccessful, proceed to mediation or conciliation with the assistance of a third party;
3. If this still fails, the parties usually choose adjudication or go directly to arbitration;
4. The arbitration award is final and binding and can be executed through the courts.

While Indonesia possesses a comprehensive legal framework for ADR, challenges remain in implementation, public awareness, and human resource capacity. The limited adoption of adjudication in domestic projects is a notable example of this implementation gap. Further efforts are needed to promote the use of ADR mechanisms and to train professionals skilled in their effective application.<sup>28</sup> Thailand, like Indonesia, adheres to a civil law legal system, but has shown more progressive development in the implementation of ADR. Some of the main regulations governing ADR in Thailand are:<sup>29</sup>

Here are the key regulations governing ADR in Thailand, translated into English:

1. Arbitration Act B.E. 2545 (2002): This act serves as the legal foundation for resolving disputes through arbitration in Thailand.
2. Thai Civil Procedure Code: This code outlines the processes for mediation and conciliation within the court system.

<sup>25</sup> Aslihatin Zuliana and Imam Haryanto, "Analisa Perbandingan Antara Perundangan Dan FIDIC Terkait Alternatif Penyelesaian Sengketa Konstruksi Di Luar Pengadilan," *National Conference on Law Studies (NCOLS)* 6, no. 1 (2024).

<sup>26</sup> Mariana Mugiono and Astrid Athina Indradewi, "Eksistensi Dan Peran Badan Arbitrase Nasional Indonesia Surabaya Sebagai Wadah Penyelesaian Sengketa Bisnis," *Amandemen: Jurnal Ilmu Pertahanan, Politik Dan Hukum Indonesia* 1, no. 3 (June 5, 2024): 283-94, <https://doi.org/10.62383/amandemen.v1i3.314>.

<sup>27</sup> Endang Hadrian, *Penyelesaian Sengketa Melalui Perdamaian Pada Sistem Peradilan Perdata Sebagai Penyelesaian Rasa Keadilan Di Indonesia* (Depok: Rajawali Pers, 2022).

<sup>28</sup> Abdul-Salam Ibrahim et al., "Resolving Land Conflicts through Alternative Dispute Resolution: Exploring the Motivations and Challenges in Ghana," *Land Use Policy* 120 (September 2022): 106272, <https://doi.org/10.1016/j.landusepol.2022.106272>.

<sup>29</sup> Muhammad Mpu Samudra and Ning Adiasih, "Studi Perbandingan Hukum Terkait Ketentuan Penolakan Pelaksanaan Dan Pembatalan Putusan Arbitrase Di Indonesia Dengan Di Thailand," *ADHAPER: Jurnal Hukum Acara Perdata* 8, no. 1 (February 19, 2022): 107, <https://doi.org/10.36913/jhaper.v8i1.173>.

3. The Office of the Judiciary Regulation on Mediation (2017): This regulation expands upon mediation procedures both within and outside of court proceedings.
4. Public Procurement and Supplies Administration Act: This act mandates the use of ADR in government contracts.

Thailand is a signatory to the 1958 New York Convention, ensuring that international arbitration awards are recognized and enforced within its jurisdiction.

Thailand boasts a number of active and modern ADR institutions, including:<sup>30</sup>

1. Thailand Arbitration Center (THAC): This is the primary institution for both national and international arbitration in Thailand.
2. Board of Trade Arbitration Institute (BTAI): Developed by the Thai Chamber of Commerce, this institution specializes in resolving commercial disputes through arbitration.
3. Court-Affiliated Mediation Centers: These centers offer mandatory mediation services in civil cases, making mediation a standard step in the legal process.

THAC's Role: THAC actively promotes the digitalization of ADR and maintains international partnerships in arbitration and mediation. This demonstrates Thailand's commitment to modern and efficient dispute resolution.

Government Support: Thailand encourages early dispute resolution through ADR and mandates its use in public procurement projects. This proactive approach fosters a culture of ADR and contributes to its widespread adoption.<sup>31</sup> Compared to Indonesia, Thailand has demonstrated more systematic progress in implementing ADR in the construction sector. Several key differences in ADR implementation between the two countries include:

1. Institutional Framework: Thailand possesses the Thai Arbitration Center (THAC) as a strong, government-backed national ADR center, whereas Indonesia's ADR system remains fragmented among BANI, BAKN, and LPJK, lacking full integration.
2. Dispute Adjudication Board (DAB) Usage: Thailand extensively utilizes DABs in FIDIC and government projects, while Indonesia's adoption remains limited.
3. Government Role: The Thai government actively mandates ADR in procurement projects, unlike Indonesia, where it's merely encouraged.
4. Mediation: Mediation is highly developed in Thailand, particularly within the court system. While legally provided for in Indonesia, its effectiveness remains suboptimal.
5. International Arbitration: Thailand is more receptive to international arbitration and encourages membership in organizations like the ICC, SIAC, and HKIAC, whereas Indonesia tends to favor domestic arbitration.

Challenges in Indonesia:

1. Low awareness among construction stakeholders regarding the benefits of ADR.
2. Shortage of certified professional arbitrators and adjudicators.

<sup>30</sup> Parada Kaewparadai, "International Commercial Arbitration Law and Practice in Thailand," *SJD Dissertations* 15 (2019).

<sup>31</sup> Wesam S. Alaloul, Mohammed W. Hasaniyah, and Bassam A. Tayeh, "A Comprehensive Review of Disputes Prevention and Resolution in Construction Projects," ed. R.D. Wirahadikusumah, B. Hasiholan, and P. Kusumaningrum, *MATEC Web of Conferences* 270 (February 22, 2019): 05012, <https://doi.org/10.1051/matecconf/201927005012>.

3. Inconsistent ADR clauses in project contracts.
4. The cost of arbitration is still considered high.

## Challenges in Thailand:

1. Limited understanding of ADR among SMEs.
2. Enforcement of foreign arbitral awards still faces resistance in some courts.
3. A need for harmonization between national regulations and international practices.

## Recommendations for Strengthening ADR:

1. Increase ADR education and training for construction professionals.
2. Promote the digitalization of ADR processes (e-mediation, e-arbitration).
3. Develop a national construction contract model mandating ADR.
4. Encourage the establishment of a unified national ADR body in Indonesia.
5. Enhance ASEAN regional cooperation in developing cross-border ADR.

ADR has become a crucial pillar in resolving construction disputes in both Indonesia and Thailand. Both countries have demonstrated a commitment to integrating ADR into their modern business legal systems. Although Indonesia possesses adequate legal frameworks, Thailand shows faster progress in institutional and procedural ADR implementation. Looking ahead, both Indonesia and Thailand should continue strengthening institutional capacity, human resources, and contractual arrangements to ensure ADR becomes an effective, efficient, and equitable instrument for resolving construction disputes.<sup>32</sup>

### 3.2. ADR in Construction Disputes: Similarities, Differences, and Influencing Factors in Indonesia and Thailand

The highly complex nature of the construction industry, involving numerous parties with diverse interests, makes the potential for disputes almost inevitable. Both small-scale and large-scale projects are susceptible to conflicts, particularly those related to work delays, cost overruns, quality of work, and contractual administrative issues.<sup>33</sup> Therefore, an effective dispute resolution mechanism is crucial for maintaining project continuity and cooperative relationships among stakeholders.

Internationally, ADR has emerged as a viable alternative to lengthy, formal, and expensive litigation processes. ADR encompasses various non-litigative mechanisms such as negotiation, mediation, conciliation, adjudication, and arbitration, all used to resolve conflicts efficiently and confidentially.<sup>34</sup>

Indonesia and Thailand, as two developing nations experiencing significant growth in their construction sectors, have both adopted ADR into their legal systems and construction dispute resolution practices. However, the effectiveness of ADR mechanisms in both countries

<sup>32</sup> Arifin Rada, *Mediasi Penal Dalam Penyelesaian Tindak Pidana Pada Konflik Horizontal Di Kepulauan Kei Melalui Mekanisme Sdov (Perundingan)* (Malang: Universitas Brawijaya, 2011).

<sup>33</sup> Alaloul, Hasaniyah, and Tayeh, "A Comprehensive Review of Disputes Prevention and Resolution in Construction Projects."

<sup>34</sup> Rusli Subrata, "Mechanisms Of Alternative Dispute Resolution In Conflict And Dispute Resolution In Indonesia," *LITIGASI* 24, no. 1 (April 30, 2023): 151–64, <https://doi.org/10.23969/litigasi.v24i1.7198>.

is influenced by various factors, including legal frameworks, supporting institutions, human resources, and socio-legal and cultural factors.<sup>35</sup>

This discussion aims to comprehensively describe the similarities and differences in the effectiveness of ADR in Indonesia and Thailand in the context of construction disputes, and identify the main factors that influence it. This discussion is important to provide an overview of the extent to which ADR has functioned optimally and what can be improved in the future. The following is a table that summarizes the similarities and differences in the effectiveness of ADR mechanisms in resolving construction disputes between Indonesia and Thailand:

**Table 2.** Similarities and Differences in ADR Effectiveness: Indonesia vs Thailand

Aspect	Equality	Difference
Legal basis	- ADR is recognized in each respective legal system.	- Indonesia regulates ADR in Law No. 30 of 1999, while Thailand uses the Arbitration Act B.E. 2545 (2002).
Types of ADR Used	- Both use the same types of ADR: negotiation, mediation, conciliation, arbitration, and adjudication.	- Thailand uses the Dispute Adjudication Board (DAB) more often in large contracts, while in Indonesia, the use of DAB is still rare.
ADR Institution	- There are ADR institutions recognized in both countries: BANI (Indonesia), THAC (Thailand), and other institutions.	- ADR institutions in Thailand are more organized with modern management and centralized at THAC, while in Indonesia several separate institutions are less integrated.
ADR Socialization and Education	- Both of them provide training for mediators and arbitrators.	- Thailand is more intensive in socializing ADR among professionals and through educational curricula, while in Indonesia socialization is still limited.
Application in Construction Contracts	- ADR clauses are included in many construction contracts in both countries.	- In Thailand, ADR is more often required in government and large-scale projects, while in Indonesia the use of ADR is more voluntary or depends on contractual agreements.
Compliance with ADR Decisions	- ADR decisions in both countries are legally recognized and binding.	- In Thailand, compliance with ADR decisions is higher and easier to execute, while in Indonesia, execution of ADR decisions often requires additional court procedures.

<sup>35</sup> Richard J. Gebken and G. Edward Gibson, "Quantification of Costs for Dispute Resolution Procedures in the Construction Industry," *Journal of Professional Issues in Engineering Education and Practice* 132, no. 3 (July 2006): 264-71, [https://doi.org/10.1061/\(ASCE\)1052-3928\(2006\)132:3\(264\)](https://doi.org/10.1061/(ASCE)1052-3928(2006)132:3(264)).

Government Support	<ul style="list-style-type: none"> <li>- The government supports the use of ADR in construction disputes.</li> </ul>	<ul style="list-style-type: none"> <li>- Thailand has a stronger policy in encouraging the use of ADR in government procurement, while Indonesia does not yet have a comprehensive ADR policy in the public sector.</li> </ul>
Utilization of Technology	<ul style="list-style-type: none"> <li>- Several ADR institutions in both countries are starting to utilize technology in the ADR process.</li> </ul>	<ul style="list-style-type: none"> <li>- Thailand has been more advanced in digitalizing ADR, such as platforms for online arbitration, while Indonesia is still limited to manual processes and has not fully adopted technology.</li> </ul>
Legal Culture and Compliance	<ul style="list-style-type: none"> <li>- Both have a legal culture that supports out-of-court dispute resolution.</li> </ul>	<ul style="list-style-type: none"> <li>- Thailand has a legal culture that is more supportive and values dispute resolution through ADR. In Indonesia, there is a tendency to take disputes to court even though ADR has been attempted.</li> </ul>
Dispute Resolution in Court	<ul style="list-style-type: none"> <li>- Both Indonesia and Thailand provide avenues for the execution of ADR decisions through the courts.</li> </ul>	<ul style="list-style-type: none"> <li>- The court process in Indonesia is often longer and more complicated to execute ADR decisions compared to Thailand which is faster and more efficient.</li> </ul>

The table above provides an overview of the key similarities and differences in the implementation of ADR for construction disputes in Indonesia and Thailand, encompassing regulations, institutions, technology implementation, and socio-legal and cultural aspects. ADR refers to a set of dispute resolution methods conducted outside the judicial system. In construction projects, which often require swift and technical resolutions, ADR is viewed as a more efficient means compared to litigation. Construction disputes typically involve delays, contract interpretation differences, scope changes, and cost calculations.<sup>36</sup> ADR offers advantages in terms of procedural flexibility, active party participation, time and cost efficiency, and the ability to maintain business relationships. This is highly relevant in long-term construction projects that often involve ongoing collaboration among parties.<sup>37</sup> Common types of ADR used in construction disputes include:<sup>38</sup>

1. Negotiation: Direct settlement between the parties involved.
2. Mediation: A neutral third party assists disputing parties in reaching an agreement.
3. Conciliation: Similar to mediation, but the third party is more active in proposing solutions.

<sup>36</sup> Sai-On Cheung, Henry C. H. Suen, and Tsun-Ip Lam, "Fundamentals of Alternative Dispute Resolution Processes in Construction," *Journal of Construction Engineering and Management* 128, no. 5 (October 2002): 409-17, [https://doi.org/10.1061/\(ASCE\)0733-9364\(2002\)128:5\(409\)](https://doi.org/10.1061/(ASCE)0733-9364(2002)128:5(409)).

<sup>37</sup> Amila N.K.K. Gamage and Suresh Kumar, "Review of Alternative Dispute Resolution Methods in Construction Projects," *Saudi Journal of Engineering and Technology* 9, no. 02 (February 13, 2024): 75-87, <https://doi.org/10.36348/sjet.2024.v09i02.007>.

<sup>38</sup> Permatasari and Dewi, "Praktek Penyelesaian Sengketa Konstruksi Diuar Pengadilan Di Indonesia."

4. Adjudication: Usually temporary; the result is valid until a final decision is reached.
5. Arbitration: A formal, out-of-court process resulting in a final and binding decision.

Both Indonesia and Thailand legally recognize ADR and have adopted these mechanisms into their respective legal systems. Here are some key similarities:

1. Legal Recognition of ADR: In Indonesia, ADR is governed by Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. In Thailand, the primary legal basis is the Arbitration Act B.E. 2545 (2002). Both provide legal standing for the use of ADR in various types of disputes, including construction.
2. Types of ADR Implemented: Both countries utilize similar types of ADR, such as negotiation, mediation, arbitration, and adjudication. In some large projects, especially those referencing international standards like FIDIC, the use of Dispute Boards or Dispute Adjudication Boards (DABs) is becoming more common.
3. Presence of ADR Institutions: Indonesia has several ADR institutions, such as BANI (Badan Arbitrase Nasional Indonesia), BAKN, and the National Mediation Center. Thailand has THAC (Thailand Arbitration Center) and various accredited private arbitration centers.
4. Involvement of Professionals and Technical Practitioners: In resolving construction disputes, both in Indonesia and Thailand, ADR often involves technical professionals (engineers, architects, consultants) as mediators or arbitrators due to the technical nature of construction issues.
5. Application in Government and Private Contracts: Government and private construction contracts in both countries are starting to include ADR clauses as part of the dispute resolution provisions. In some international projects, international arbitration clauses are also commonly used.

Despite many similarities, the effectiveness of ADR in resolving construction disputes between Indonesia and Thailand shows some striking differences. These differences arise in terms of regulation, implementation, and legal culture.

1. Quality and Readiness of ADR Institutions:
  - a. Thailand: THAC operates with a modern management system, provides ongoing training for mediators and arbitrators, and has established international collaborations. Thailand is also developing e-arbitration systems and online platforms to facilitate the process.
  - b. Indonesia: Institutions like BANI have a long history but have recently experienced internal divisions, somewhat undermining user confidence. The quality of mediator training and accreditation is not uniform, and there is no integrated national ADR system.
2. Government Support and Law Enforcement:
  - a. Thailand: Actively promotes the use of ADR, including through government policies mandating ADR in public procurement. Arbitration awards are easier to enforce due to smoother coordination between THAC and the court system.
  - b. Indonesia: Although arbitration awards are final and binding, enforcement often requires a lengthy court process, including disproportionate attempts at

annulment. This reduces the effectiveness of ADR as a quick dispute resolution method.

3. Use of Adjudication and Dispute Boards:

- a. Thailand: Has adopted the use of Dispute Adjudication Boards (DABs) or Dispute Avoidance and Adjudication Boards (DAABs) in large construction projects, particularly those using FIDIC contracts.
- b. Indonesia: The use of DABs is still uncommon and lacks clear legal backing. This method is highly effective in preventing dispute escalation.

4. Technology Utilization:

- a. Thailand: THAC provides an online ADR system with electronic filing, automatic arbitrator appointment, and online hearings.
- b. Indonesia: ADR institutions in Indonesia lack comprehensive online facilities. Most processes are still conducted physically, reducing time and cost efficiency.

Various factors influence the effectiveness of ADR in the context of construction disputes:

1. Regulatory and Policy Factors: A strong and supportive legal framework is crucial. Thailand has consistent regulations supported by policies promoting ADR. In Indonesia, regulatory obstacles persist, particularly regarding the enforcement of arbitration awards and the lack of specific regulations on adjudication.
2. Institutional Factors: Professional, trustworthy ADR institutions with qualified human resources will improve dispute resolution effectiveness. Institutions like THAC have high international credibility, while BANI and other ADR institutions in Indonesia need to improve their institutional management.
3. Socio-Legal and Cultural Factors: A culture of compromise and peaceful settlement is important. Thailand has a legal culture more accepting of mediation and arbitration results as final solutions. In Indonesia, a "win-lose" culture in disputes remains strong, leading losing parties to often take cases to court, even after going through ADR.
4. Economic and Cost Factors: The cost of ADR, especially arbitration, can be significant. Thailand provides various more flexible fee schemes and payment options. Indonesia needs to provide more affordable access to ADR, especially for small contractors or SMEs.
5. Education and Socialization Factors: Knowledge of ADR is crucial for its successful implementation. Thailand actively promotes ADR among law students, construction practitioners, and government officials. In Indonesia, understanding of ADR is still limited to certain circles.

Although international standard contracts such as FIDIC encourage the establishment of DABs/DAABs as expeditious and binding, but not final, adjudication forums, the legal frameworks in Indonesia and Thailand show varying degrees of alignment with international best practices. In Indonesia, Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution still focuses on arbitration and mediation, while adjudication has not yet gained a solid normative foundation. This contrasts with FIDIC provisions, which explicitly position adjudication as the primary mechanism for maintaining the continuity of construction projects. This regulatory gap has implications for the weak enforcement of DAB/DAAB

decisions, often resulting in them not being immediately enforceable without further arbitration or litigation. Thus, the Indonesian system tends to deviate from the efficiency principle affirmed in the UNCITRAL Model Law and the ICC Rules, which prioritize finality and enforceability in the resolution of contractual disputes.

In contrast, Thailand has taken more progressive steps in integrating adjudication and arbitration into its construction dispute resolution system. The country's ADR institutions not only adopt FIDIC principles but also align them with international standards such as the 1958 New York Convention and the UNCITRAL Model Law. The recognition and enforcement of foreign arbitral awards in Thailand is relatively consistent with its international obligations and is supported by more pro-enforcement court practices. The integration of information technology in the administration of arbitration in Thailand also aligns with the global trend promoted by the ICC Rules of Arbitration to expedite processes, reduce costs, and increase transparency. This comparison shows that Indonesia still faces regulatory challenges in achieving harmonization with international best practices, while Thailand is closer to global standards. Therefore, further evaluation needs to be directed at the extent to which Indonesia is willing to reform its arbitration and adjudication regulations to be more compatible with the principles of UNCITRAL, the ICC, and the New York Convention.

Indonesia and Thailand have adopted ADR mechanisms for resolving construction disputes with similar legal structures and methods. However, in terms of effectiveness, Thailand demonstrates a more significant advantage due to strong institutional support, progressive regulations, digitalization of the ADR system, and a more supportive legal culture.<sup>39</sup> Meanwhile, Indonesia still faces challenges in ADR implementation, ranging from institutional weaknesses and insufficient socialization to limitations in technology implementation. For ADR to function more optimally in resolving construction disputes in Indonesia, regulatory reform, institutional strengthening, and increased human resource capacity are necessary.<sup>40</sup>

#### 4. Conclusions

The regulation and implementation of construction dispute resolution through ADR in the business legal systems of Indonesia and Thailand demonstrate a similar approach in principle, but differ in practical and institutional implementation. In Indonesia, ADR is legally regulated through Law No. 30 of 1999 and Law No. 2 of 2017, and is implemented by various institutions such as BANI and BAKN. However, its implementation still faces challenges such as a lack of practitioner understanding of ADR, limited professional resources, and a lack of institutional integration. In contrast, Thailand has a more structured and well-integrated ADR system, with support from institutions such as the Thailand Arbitration Center (THAC) and mandatory mediation within the judicial system, strengthening its effectiveness. Thailand also actively implements the DAAB mechanism in large construction projects, especially those

<sup>39</sup> Sirilaksana Khoman, Luke Nottage, and Sakda Thanitcul, "Foreign Investment, Corruption, Investment Treaties and Arbitration in Thailand," 2024, 393–421, [https://doi.org/10.1007/978-981-99-9303-1\\_15](https://doi.org/10.1007/978-981-99-9303-1_15).

<sup>40</sup> Oriza Sekar Arum and Hernawan Hadi, "Problematika Dalam Perlindungan Hak Cipta Atas Foto Produk Digital Pada Media Sosial Instagram," *Jurnal Privat Law* 9, no. 2 (2021), <https://doi.org/https://doi.org/10.20961/privat.v9i2.60035>.

funded by international institutions, and mandates the use of ADR in government contracts. Thus, although both countries recognize ADR as a construction dispute resolution instrument, Thailand has demonstrated more systematic and progressive progress than Indonesia, particularly in terms of government policy support, process digitization, and acceptance of international arbitration.

The similarities and differences in the effectiveness of ADR mechanisms in resolving construction disputes between Indonesia and Thailand lie in the legal framework, which both recognize ADR, the types of mechanisms used, and the support of formal institutions such as BANI and THAC. However, their effectiveness differs significantly due to institutional factors, policies, legal culture, and the use of technology. Thailand has a more integrated and efficient ADR system with strong government support, widespread implementation of a DAB in large projects, and digitalization of the ADR process through online platforms that facilitate access and expedite resolution. In contrast, in Indonesia, although ADR is regulated by Law No. 30 of 1999 and institutions like BANI are well-known, their implementation is still hampered by institutional fragmentation, lack of public awareness, weak enforcement of arbitration decisions, and minimal use of technology, resulting in the relatively low effectiveness of ADR in resolving construction disputes. Differences in legal culture are also a significant factor, with Thai society more accepting of peaceful resolution through ADR, while in Indonesia, there is still a strong tendency to bring disputes to court. Therefore, despite similarities in legal structure and recognition, the effectiveness of ADR in Thailand has proven to be higher due to the support of a more modern, comprehensive system and a conducive legal culture.

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