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Legal Certainty in Dispute Resolution within the Construction Services Industry for Small and Medium Enterprises

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ABSTRACT

The construction services industry is central to infrastructure development in Indonesia, yet contractual disputes over payments, project delays, and variations can impose substantial legal and financial burdens on small and medium-sized enterprises (SMEs). This study examines the legal certainty of dispute-resolution mechanisms available to construction SMEs and identifies reforms that could strengthen accessible and effective remedies. It employs normative legal research using statutory, case-based, comparative, theoretical, and philosophical approaches. The analysis considers Law Number 2 of 2017 on Construction Services, the 1999 Arbitration and Alternative Dispute Resolution Law, and relevant implementing regulations, together with comparative lessons from Singapore and the United Kingdom. The findings identify overlapping jurisdiction between litigation and non-litigation forums, insufficient institutional support for dispute boards, inconsistent contractual dispute-resolution clauses, and limited access to affordable remedies for smaller contractors. Comparative analysis suggests that statutory adjudication, specialized dispute-resolution institutions, clear procedural deadlines, and enforceable decisions could improve predictability and protect project cash flow. The study develops a three-level reform framework involving regulatory harmonization, institutional strengthening of construction-sector alternative dispute-resolution mechanisms, and standardization of contractual dispute clauses. Its contribution is an integrated assessment of normative, institutional, and enforcement-related dimensions of legal certainty, with particular attention to the vulnerabilities of SMEs in Indonesian construction contracts.

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Introduction

The construction services industry plays a vital role in supporting national infrastructure development in Indonesia. The construction sector contributes approximately 10.6% to the national Gross Domestic Product (GDP), making it the third-largest contributing sector after manufacturing and trade (Ministry of Public Works and Public Housing [Kementerian PUPR], 2023). The significant role of this sector in stimulating economic growth is accompanied by increasingly complex legal relationships that occur among parties in construction work contracts. Disputes within the construction services industry are not merely technical issues or economic failures; rather, they touch upon highly fundamental legal aspects. Construction disputes are generally multidimensional, arising from differing interpretations of contract clauses, delays in project completion, additional cost claims (variation orders/change orders), disputes over

material quality, and delayed payments. The Indonesian National Board of Arbitration (BANI) notes that arbitration cases in the construction and infrastructure sectors reach an average of 35% of the total cases received (BANI, 2023). This figure represents the high potential for legal conflict within the national construction services ecosystem, which, if not properly managed, can ruin the businesses of industry players, particularly those at the small and medium enterprise (SME) level.

From a normative perspective (das sollen), the Government of Indonesia has actually attempted to formulate responsive regulatory instruments to protect construction service providers. Law Number 2 of 2017 concerning Construction Services (hereinafter referred to as UUJK 2017) along with Government Regulation Number 22 of 2020 concerning the Implementation Regulations of UUJK 2017 explicitly regulate dispute resolution mechanisms. This regulation offers an ideal tiered approach to preserve the physical continuity of a project, ranging from mutual consultation (musyawarah mufakat), mediation, conciliation, adjudication, dispute boards, to arbitration. Furthermore, Article 88 of UUJK 2017 mandates the explicit inclusion of dispute resolution clauses in every construction work contract. This normative provision reflects the strong commitment of the legislators to uphold the principle of legal certainty and provide guaranteed protection for business actors. Legal certainty in this context means that from the outset, the parties possess a clear roadmap regarding which forum holds the authority to adjudicate cases swiftly and confidentially should a breach of contract (wanprestasi) occur in the future (Hadjon & Djatmiati, 2005).

However, on a practical level (das sein), empirical reality on the ground reveals a deeply concerning condition for the construction SMEs that serve as the partners for this community service initiative. Most local-scale construction work contracts, especially those involving small and medium-qualified contractors, do not include adequate dispute resolution clauses or frequently ignore them entirely due to their weak bargaining position before project owners. A survey by the National Construction Services Development Board (LPJKN) revealed that only about 40% of construction contracts valued below IDR 50 billion contain detailed and standardized dispute resolution clauses (LPJKN, 2021). Based on initial observations within local contractor associations, the community service team discovered a severe information asymmetry where many construction SMEs sign Work Orders (Surat Perintah Kerja / SPK) without understanding the inherent legal risks. They view contracts merely as administrative formalities rather than instruments of legal protection.

This situation is exacerbated by contractors' concerns regarding high litigation and arbitration costs. When payment delays or unilateral claims from large project owners occur, small contractors tend to forgo formal remedies because the cost of resolving disputes through commercial arbitration institutions is prohibitively expensive and beyond the reach of their cash flow (Hadjon & Djatmiati, 2005). Due to the absence of clear dispute clauses, conflict resolution is often forced to culminate in litigation pathways through the District Court, which takes years to reach a legally binding decision (Supreme Court of the Republic of Indonesia, 2018, 2021). For small contractors, payment delays lasting just a few months are enough to drive them into bankruptcy due to the ongoing burden of material debts and workers' wages. This wide gap between the robustness of the UUJK 2017 regulation and limited legal awareness and bargaining power among business actors at the grassroots level forms the underlying urgency for implementing this community service program. This problem of legal uncertainty can no longer be resolved solely through theoretical debates in lecture halls; instead, it must be intervened in through the direct transfer of scientific knowledge to the partner community.

As a concrete step, the community service team formulated a structured service program to enhance the legal capacity of the partners through a comprehensive series of activities. First, interactive legal counseling is conducted to provide an understanding of the rights and obligations of contractors under UUJK 2017, while introducing the characteristics of non-litigation forums like mediation as a swift and efficient alternative solution. Second, the community service team organizes training in contract drafting for the management and members of the partner contractor associations so that they are capable of drafting, negotiating, and inserting safe, standardized dispute resolution clauses. Lastly, this program provides a regular legal consultation clinic for small contractors who are currently experiencing legal hurdles or ongoing disputes with project owners, aimed at finding the best solutions through non-litigation mechanisms. Through this systematic community service program intervention, it is hoped that the ideal of legal certainty enshrined in UUJK 2017 will no longer remain a normative ivory tower, but can be

substantively felt by small and medium business actors to foster a regional construction services industry ecosystem that is healthy, fair, safe, and sustainable.
This study addresses two interrelated questions: how does the current legal framework provide certainty in construction dispute resolution, and which legal and institutional reforms could make available remedies more predictable and accessible to small and medium-sized contractors? Its analytical contribution lies in considering normative clarity, institutional competence, and the enforceability of decisions together, rather than treating individual dispute-resolution mechanisms in isolation.

Method

This study employs normative legal research that focuses on the analysis of norms, doctrines, and legal principles related to dispute resolution in the construction services industry. This approach was selected because the issues examined center on the gap between positive legal norms and the reality of their implementation, thereby requiring an examination of legal rules as the primary object. Five approaches are utilized simultaneously and complementarily in this study. First, the Statute Approach is conducted through an analysis of all statutory regulations related to construction services and dispute resolution, including the 2017 Construction Services Law (UUJK 2017), the 1999 Arbitration Law, Government Regulation Number 22 of 2020, and relevant Regulations of the Minister of Public Works and Public Housing (PUPR). Second, the Case Approach is applied by examining court judgments and arbitral awards related to construction disputes, aiming to identify recurring problematic patterns in law enforcement practices.

Third, the Comparative Approach compares Indonesia's construction dispute resolution system with countries that possess more advanced systems, such as Singapore with its Security of Payment Act and the United Kingdom with its Housing Grants, Construction and Regeneration Act 1996. Fourth, the Theoretical Approach draws on the theory of legal certainty from Hans Kelsen, the theory of the legal system from Lawrence M. Friedman, as well as the theory of contractual justice to analyze weaknesses and loopholes within the existing system. Fifth, the Philosophical Approach examines the underlying values of construction dispute resolution regulations, particularly in relation to the principles of justice, utility, and legal certainty as mandated by Pancasila and the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945).

Results and Discussion

The Legal Framework for Construction Dispute Resolution in Indonesia

Construction development is a comprehensive or partial service of activities encompassing the assessment, planning, design, supervision, and management of a building's construction execution. The construction industry possesses unique characteristics rarely found in other sectors; namely, every single project is distinct, subject to environmental and technological uncertainties, and characterized by a relatively long operational lifecycle. Furthermore, it involves a vast network of participants in which higher project values often involve more stakeholders, more complex work packages, and greater environmental and social impacts. As projects require sustained interaction among stakeholders, coupled with highly intricate contractual negotiations, conflicts or disputes among the parties become an inevitable reality of human interaction.

Dispute resolution within the construction services industry in Indonesia is underpinned by a network of interrelated legal instruments. Law Number 2 of 2017 concerning Construction Services (hereafter UUJK 2017) serves as the lex specialis that specifically governs legal relationships within the construction sector, including the dispute resolution mechanisms outlined in Articles 88 through 95. Article 88, paragraph (1) of UUJK 2017 explicitly states that disputes arising from the execution of construction services must first be resolved through mutual consultation to reach a consensus (UUJK, 2017). If mutual consultation fails to achieve an agreement, the parties may pursue alternative dispute resolution (ADR) or arbitration in accordance with statutory regulations. The general framework regarding arbitration and ADR is governed by Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, which functions as the lex generalis within the hierarchy of norms. Furthermore, Government Regulation Number 22 of 2020 concerning the Implementation Regulations of UUJK 2017—particularly Articles 23 through 39 on construction work contracts—regulates the minimum standard substance of a contract, including dispute resolution clauses (Government Regulation No. 22, 2020). Minister of Public Works and Public Housing (PUPR) Regulation Number 7 of 2021 concerning Standards and Guidelines for the Procurement

of Construction Services through Providers also contains technical provisions regarding standard contracts that integrate dispute resolution mechanisms.

Theoretically, this layered regulatory structure reflects Hans Kelsen's hierarchy of norms (Stufenbaulehre), which requires absolute coherence and consistency between higher-order and lower-order norms (Kelsen, 1967). In practice, however, this complex web of overlapping national laws, government regulations, and ministerial decrees often triggers a conflict of norms (normenkonflikt). This lack of vertical harmony compromises legal certainty, leaving market participants confused about which procedural rule takes precedence during an active dispute. The friction between the broad procedural mandates of the lex generalis (Law No. 30/1999) and the specific operational dictates of the lex specialis (UUJK 2017) remains a fundamental doctrinal flaw in Indonesia's statutory architecture.

Dispute Resolution Mechanisms of Litigation versus Non-Litigation

Within the Indonesian legal system, construction service disputes can be resolved through two primary pathways: litigation (through the courts) and non-litigation (via ADR). Litigation is conducted in the District Court possessing relative competence based on the domicile of the defendant or the location of the construction project. Conversely, non-litigation channels encompass mediation, conciliation, adjudication, and arbitration (Widjaja, 2002). Arbitration stands as the most common non-litigation mechanism used in large-scale construction disputes, particularly through the Indonesian National Board of Arbitration (BANI). BANI offers distinct advantages, including flexible procedures, process confidentiality, and the potential for a swifter resolution compared to public courts. Arbitral awards are final and binding, theoretically offering higher legal certainty than court judgments, which remain subject to lengthy appeals and cassation processes.

In Indonesia, construction dispute resolution is commonly conducted through arbitration and general courts. Non-litigation under Law Number 30 of 1999 is divided into two categories, namely arbitration and alternative dispute resolution (ADR). Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution consists of 82 articles; however, only 3 (three) provisions govern alternative dispute resolution, namely Article 1 point 10, Article 6, and Article 52. Article 1 merely mentions its definition and methods, while Article 52 does not specifically regulate alternative dispute resolution but rather focuses on another function of arbitration that goes beyond a mere adjudicative body. For construction contract disputes that fall under a large-scale category, parties generally resort to arbitration, whereas general courts are typically chosen for small-scale contracts. The definition of Alternative Dispute Resolution under Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution is highly informal, as reflected in ADR frameworks which possess the following characteristics: a. private, voluntary, and consensual; b. cooperative and non-adversarial; c. flexible and informal; d. creative; e. involving active participation from the parties; and f. aimed at maintaining good relationships.

Nevertheless, contractually agreed-upon arbitration clauses are not always respected by District Courts in practice. Multiple judgments from the Supreme Court of the Republic of Indonesia reveal that courts frequently accept cases despite explicit contractual submissions to arbitration, often on the grounds that the dispute involves a tort (perbuatan melawan hukum / PMH) or that the underlying arbitration clause is somehow invalid (Rajagukguk, 2000). This interventionist judicial trend creates opportunities for forum shopping that severely erodes legal certainty. One internationally recognized dispute resolution mechanism that has yet to find adequate footing in Indonesian positive law is the Dispute Board (DB). The concept of the Dispute Board was systematically developed by FIDIC through its standard contract forms, including the FIDIC Red, Yellow, and Silver Books, where the DB acts as an independent panel that issues recommendations or binding decisions on disputes arising during project execution (FIDIC, 2017). Globally, three Dispute Board models are recognized: the Dispute Review Board (DRB), which issues non-binding recommendations; the Dispute Adjudication Board (DAB), which issues binding decisions reviewable via arbitration; and the Combined Dispute Board (CDB), which blends both approaches.

The primary advantage of this mechanism is its capacity to resolve disputes in real-time as they arise on site, preventing the accumulation of unresolved claims at the end of a project. In Indonesia, UUJK 2017 only mentions "dispute boards" implicitly without providing any meaningful technical or operational regulations. While Minister of PUPR Regulation Number 14 of 2020 acknowledges Dispute Boards for large-scale procurement contracts, it fails to outline their precise legal standing, enforcement framework, or procedural rules (Minister of PUPR Regulation No. 14, 2020). This regulatory vacuum forces Indonesian

Dispute Boards to operate in a legal gray area, creating systemic uncertainty regarding the ultimate enforceability of their decisions.

Comparative Analysis: Lessons from Singapore and the United Kingdom

A comparative approach provides valuable perspectives on how other jurisdictions have established legally certain frameworks for construction dispute resolution (Marzuki, 2017). Singapore, a leading legal and construction hub in Asia, enacted the Building and Construction Industry Security of Payment Act (SOPA) in 2004, later revising it in 2018. SOPA establishes a rapid adjudication mechanism that allows contractors to secure interim payments within tight statutory timelines, rendering the adjudicator's decision immediately enforceable without waiting for the outcome of broader arbitration or litigation (Chow, 2018). The Singaporean SOPA model has proven highly effective at mitigating payment disputes—the single largest category of conflict in the construction sector. This success rests upon three pillars: procedural certainty through strict statutory timelines; institutional certainty via a centralized Adjudication Registry; and execution certainty through direct enforcement mechanisms that bypass the need for separate court validation.

The United Kingdom pursued a similar path through the Housing Grants, Construction and Regeneration Act 1996 (HGCRA), later updated by the Local Democracy, Economic Development and Construction Act 2009. The HGCRA guarantees the right to periodic installment payments and mandates rapid adjudication for all qualifying construction contracts (Bailey, 2016). The key lesson from the British system is that integrating adjudication mechanisms directly into statutory construction legislation—rather than relying solely on optional contractual clauses—creates a powerful tier of legal protection accessible to industry players of all operational scales. Indonesia could successfully adopt a hybrid model drawing from both systems, tailoring it to fit its civil law traditions and domestic construction dynamics. Developing standalone legislation specifically dedicated to statutory construction adjudication is an urgent necessity that can no longer be delayed.

Legal Certainty and Theoretical Implications

This study utilizes the theory of legal certainty as its primary analytical tool. From Hans Kelsen's perspective, legal certainty (Rechtssicherheit) is a fundamental prerequisite for the effective functioning of any legal system; it demands that legal norms be clear, unambiguous, consistently applied, and predictable in their outcomes (Kelsen, 1967). In construction dispute resolution, this certainty is measured across three dimensions: normative certainty (clarity of the text), institutional certainty (clarity of the forum and procedure), and executorial certainty (guaranteed enforcement of the final decision). Furthermore, Lawrence M. Friedman's legal system theory isolates three components that dictate the social effectiveness of law: legal structure, legal substance, and legal culture (Friedman, 1975). Viewed through Friedman's lens, the vulnerabilities plaguing Indonesian construction dispute resolution are profoundly systemic. They cut across all three domains: a weak institutional infrastructure unable to prevent court interference (structure), contradictory and unharmonized regulations (substance), and a paradoxical legal culture that praises non-adversarial harmony but remains highly litigious and deeply distrustful of private ADR forums.

From a philosophical perspective, legal certainty in this sector must be understood not merely in its formal iteration as a rigid rule of law, but in its substantive dimension as an instrument of justice. Equitable legal certainty requires that dispute resolution pathways be accessible to all echelons of the construction industry, particularly small and medium-sized contractors who have historically been marginalized. In this context, the theory of contractual justice reinforces that rebalancing the unequal bargaining power inherent in construction contracts is an absolute prerequisite to achieving substantive, systemic justice.

Construction Contract Dispute Clauses: Standardization as an Instrument of Legal Certainty

The construction work contract is the legal foundation of any project. Article 47 of UUJK 2017 mandates that construction contracts must contain detailed descriptions of the parties, scope of work, warranty periods, expert personnel, rights and obligations, contract values, breach of contract provisions, dispute resolution paths, termination conditions, force majeure, building failures, worker protections, and insurance (UUJK, 2017). This statutory provision implicitly requires a dedicated dispute resolution clause

in every contract. The core problem, however, is the absence of a mandatory, standardized dispute-resolution clause. The resulting heterogeneity across Indonesian construction contracts leads to massive variances in forum selection, procedural rules, and enforcement efficiency. To rectify this, the government, through the Ministry of PUPR, must consider issuing a ministerial regulation mandating standard dispute clauses based on international best practices, supplemented by comprehensive technical guidelines.
At a minimum, this standardization must encompass:
(a) explicit pre-dispute mechanisms, such as mandatory early warning notifications and tiered management escalation before a formal dispute can be declared;
(b) the mandatory appointment of a Dispute Board for projects exceeding specified financial thresholds;
(c) rapid statutory adjudication pathways for payment and cash-flow disputes;
(d) standardized arbitration clauses referencing BANI or SIAC rules depending on project scale; and
(e) proportional and predictable dispute cost-allocation rules (Hardjomuljadi, 2014).
Based on an evaluation of these structural weaknesses, this study identifies three tiers of intervention required to secure legal certainty in Indonesia's construction services sector. At the legislative level, amendments to UUJK 2017 are required to insert a dedicated chapter on Dispute Boards featuring exhaustive procedural rules, enforce a stricter mandate for contract clause standardization, establish construction adjudication as a compulsory prerequisite for payment claims, and harmonize provisions with the 1999 Arbitration Law to eliminate jurisdictional ambiguities between litigation and non-litigation forums (Juwana, 2011).

In the long term, enacting an independent statutory adjudication law modeled after Singapore's SOPA is highly recommended. Institutionally, a specialized Alternative Dispute Resolution Institution (LAPS) dedicated entirely to construction services should be established. This institution should be staffed by certified arbitrators and adjudicators who possess simultaneous technical construction expertise and formal legal training. This specialized LAPS must be supported by a centralized Adjudication Registry, affordable and progressive tariff structures tailored for small and medium-scale contractors, and an integrated Online Dispute Resolution (ODR) platform to process low-value claims efficiently. At the operational level, the government must publish a comprehensive suite of national standard contract documents analogous to the FIDIC forms but fully adapted to Indonesian law—incorporating these standardized dispute clauses as non-excludable terms. Finally, systematic capacity-building programs for District Court judges regarding the nuances of construction law and the strict enforcement of private arbitration agreements remain absolute prerequisites for the success of this systemic legal reform.

Conclusion

Based on the comprehensive analysis conducted throughout this study, several primary conclusions can be formulated. First, the legal framework for construction services dispute resolution in Indonesia is normatively available through UUJK 2017, the 1999 Arbitration Law, and their various implementing regulations. Substantively, however, this framework still contains severe structural deficiencies, such as overlapping jurisdictional authority between public courts and alternative forums, statutory ambiguity regarding the legal standing of Dispute Boards, and a absence of mandatory, standardized dispute-resolution clauses across public and private contracts. This fragmented regulatory design creates a profound divergence between das sollen (the law as intended) and das sein (the law in practice), serving as the foundational catalyst for systemic legal uncertainty across national projects.

Furthermore, this normative-empirical gap leaves small-and-medium enterprise (SME) contractors disproportionately vulnerable to economic predation, as the current framework lacks a swift, specialized mechanism to handle rapid cash-flow preservation. The lack of alignment between the lex specialis and the lex generalis exposes the entire national infrastructure development pipeline to unexpected delays and costly gridlocks, proving that mere statutory existence does not equate to structural efficacy.
Second, a comparative evaluation of the legal systems in Singapore and the United Kingdom demonstrates that sustainable legal certainty in construction dispute resolution is achievable only under specific parameters:
(a) the institutionalization of rapid adjudication mechanisms integrated directly into primary statutory legislation rather than left to contractual discretion;
(b) the establishment of dedicated, specialized bodies to administer the adjudication process with maximum administrative efficiency; and

(c) a legal framework wherein an adjudicator's decision is immediately enforceable, bypassing prolonged and interventionist judicial reviews.

Indonesia must strategically adopt these structural elements by executing a precise civil-law adaptation. Relying on optional contractual mechanisms is insufficient; statutory intervention is the only viable path to mandate interim cash-flow security, ensuring that construction execution is legally insulated from long-term liability battles.

Third, a comprehensive reform strategy demands a highly synchronized, three-tiered intervention. At the legislative level, it requires explicit amendments to UUJK 2017 alongside the long-term formulation of a dedicated statutory construction adjudication act. At the institutional level, it necessitates the creation of a specialized, sector-integrated Alternative Dispute Resolution Institution (LAPS) for construction services, equipped with certified technical experts and streamlined procedural registries. At the technical-operational level, it requires the enforcement of non-excludable national standard contract templates coupled with rigorous, institutionalized capacity building for judiciary members and industry stakeholders. Only through such a systemic, holistic intervention can the ideal of legal certainty in Indonesian construction dispute resolution be substantively realized. Without this structural overhaul, the legal protections promised by the state will remain a distant normative ivory tower, detached from the operational realities of the domestic construction industry.

The study is limited by its normative legal design and reliance on statutes, doctrinal materials, comparative frameworks, and selected legal decisions rather than a systematic dataset of construction dispute outcomes. Future research could examine dispute-resolution clauses in construction SME contracts, assess the costs and accessibility of alternative forums, and evaluate the practical enforceability of dispute board decisions and statutory adjudication mechanisms.

AI Usage Statement

AI-assisted tools were used to support English-language editing, readability, and formatting of this manuscript. The authors remain responsible for verifying the accuracy, originality, and academic integrity of the final text. [All authors should review and approve this disclosure before submission.]

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