

# Obligations Of The Parties In The Settlement Of Construction Services Contract Disputes Through Arbitration In A Legal Protection Approach

**Dody Safnul\***

Fakultas Hukum , Universitas Dharmawangsa , Medan, Indonesia

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## **Abstract**

Business activities rife in Indonesia, one of which is the construction services business. The implementation of the construction services business is made by the parties with a construction services contract. In the implementation of construction service contracts, sometimes there are construction service disputes between the parties, both providers and users of construction services, which are decided through arbitration, but there are still many arbitration awards that are not in accordance with the principles of Justice, propriety and certainty so that the arbitration award is applied for cancellation of the decision to the court. Therefore, it needs to be studied in this study.

**Keywords:** Legal System; Construction Service, Arbitration

## **1. INTRODUCTION**

The cause of the dispute between the parties through the court because the last option for the parties, is not in accordance with the contract and what is not in accordance with the agreement / agreed and there is a breach of promise (default) in the contract and the implementation between the two parties in the contract of construction services.<sup>1</sup>

Cases of construction services contracts that occur in each year, namely:

1. Mediation/conciliation/BANI assistance between 7 to 10 problems per year;
2. Civil lawsuit between 1 to 5 cases per year.

Related to the provisions of Article 47 paragraph (1) letter H of the law. Number 2 of 2017 and its explanation, are reviewed based on Law Number 15 of 2019 concerning the establishment of legislation (UU. No. 15 of 2019), the word 'Court' in the explanation should not have an impact on the rules for resolving construction service disputes that have been determined in the body of the law. Number 2 Of 2017.

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\*Email/Corresponding Author: [dodysafnuldosen@gmail.com](mailto:dodysafnuldosen@gmail.com)

<sup>1</sup> Hasil Wawancara dengan Ibu Dr. Urlina Marbun, S.H., M.H, selaku Hakim Niaga, Hakim Negeri Perdata dan Pidana, Hakim TIPIKOR, Mediator Pengadilan Negeri Medan.

Thus, the explanation cannot be used as a legal basis for making further regulations/derivations/derivatives, and should not include formulations containing norms. For this reason, it was emphasized that the provisions regarding the settlement of construction services disputes in the act. Number 2 of 2017 is still on the right track (resolved out of court).

The percentage of settlement through the court and out of court, namely: <sup>2</sup>

1. Bani application has 7 to 10 problems about 70%; while
2. Civil suits between 3 to 5 cases about 30%.

Settlement of construction services disputes is directed out of court with the aim of achieving a "win-win solution". Through the U. Number 2 of 2017, the government has encouraged the use of alternative dispute resolution to resolve disputes over construction services that occur. Ideally, construction services business activities in Indonesia should be avoided from the concept of dispute resolution that is "litigious minded" typical of Western society.

Thus, "deliberation to reach consensus " is used as the first step in the dispute resolution mechanism of construction services. If the deliberation does not reach a consensus, then the parties turn to efforts to resolve disputes over construction services that have been agreed upon and specified in the construction work contract (mediation, conciliation, or arbitration).<sup>3</sup>

From the 3 (three) stages of alternative efforts to resolve construction services disputes that have been determined in Article 88 paragraph (4) of the law. No. 2 of 2017 (mediation, conciliation, or arbitration), arbitration is the best dispute resolution alternative in resolving construction service disputes when compared to mediation and conciliation.<sup>4</sup>

The assertion is based on several reasons, among others:

1. The arbitral award is final and binding;
2. Confidentiality of the parties is more secure/confidential;
3. Cheaper/lighter cost;

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<sup>2</sup> Hasil Wawancara dengan Bapak Tjatur Waskito Putro, S.H, selaku General Manager Departemen Legal PT. Adhi Karya (Persero) Tbk. Jakarta

<sup>3</sup> Sabela Gayo, Ariman Sitompul , The Use of Mediation as an Alternative Health Dispute Resolution. Hong Kong Journal of Social Sciences.Vo. 59 Spring/Summer 2022, pp.367

<sup>4</sup> Pasal 1 angka (1) UU. Nomor 30 Tahun 1999, menentukan bahwa: "Arbitrase adalah cara penyelesaian suatu sengketa perdata di luar peradilan umum yang didasarkan pada perjanjian arbitrase yang dibuat secara tertulis oleh para pihak yang bersengketa".

Pada angka (2), ditentukan bahwa: "Para pihak adalah subyek hukum, baik menurut hukum perdata maupun hukum publik".

Pada angka (3), ditentukan bahwa: "Perjanjian arbitrase adalah suatu kesepakatan berupa klausula arbitrase yang tercantum dalam suatu perjanjian tertulis yang dibuat para pihak sebelum timbul sengketa, atau suatu perjanjian arbitrase tersendiri yang dibuat para pihak setelah timbul sengketa".

4. The process is simpler and faster; and 5. Completed by its members.

Deliberation as an effort to accommodate the interests of the parties is the core of the concept of Alternative Dispute Resolution Process (out of court). This means that the parties cannot directly choose an arbitration institution if the deliberations are unsuccessful. New arbitration can be done if the dispute of construction services is not successfully resolved by deliberation, mediation, and conciliation. The judiciary is not authorized to re-examine the case that has been handed down an arbitration decision, except if there is an unlawful act related to the decision of the arbitration decision in bad faith, and if the arbitration decision violates public order.

The judiciary must respect the arbitral institution, not interfere, and in the implementation of an arbitral award is still required the role of the court, for foreign arbitration in the case of execution application to the District Court. In practice, although the arbitration arrangements are clear and the implementation can run without obstacles, the execution often experiences obstacles from the District Court.

Based on the description of the above background, the author is interested in studying more deeply about: "Obligations Of The Parties In The Settlement Of Construction Services Contract Disputes Through Arbitration In A Legal Protection Approach".

## **2. RESEARCH METHOD**

The research method in this paper is carried out with a normative juridical approach, namely by analyzing problems through the approach of legal principles and knowing the legal norms contained in the law. The primary legal materials studied are mainly the Construction Services Related to the provisions of Article 47 paragraph (1) letter H of the law. Number 2 of 2017 and its explanation, are reviewed based on Law Number 15 of 2019 concerning the establishment of legislation (UU. No. 15 of 2019), the word 'Court' in the explanation should not have an impact on the rules for resolving construction service disputes that have been determined in the body of the law. Number 2 Of 2017.. Secondary legal materials used include books and scientific articles in the field of law, both printed and digital. The Data is carefully studied, critically analyzed and finally presented in the form of scientific papers to answer the legal issues in this study.

## **3. RESULT AND ANALYSIS**

Along with the development of many emerging era of business transactions new business transactions. But more and more new business transactions are emerging is certainly the potential to give birth to conflicts/disputes between the parties. Any dispute that occurs certainly requires quick resolution and resolution. Because allowing business disputes to be resolved too late will result in the development of inefficient

economic development, decreased productivity, the business world is in decline, and production costs are increasing. This will certainly harm consumers and hinder the improvement of welfare and social progress of workers.<sup>5</sup>

Badan arbitral Nasional Indonesia (BANI Arbitration Center) is an independent institution that provides diverse services related to arbitration, mediation and other forms of out-of-court dispute resolution. BANI was established in 1977 by the Indonesian Chamber of Commerce and Industry (KADIN) through Decree Number SKEP/152/DPH/1977 dated November 30, 1977 and is managed and supervised by the Board of Directors and Advisory Board consisting of community leaders and the business sector. BANI is based in Jakarta and has representatives in several major cities in Indonesia, namely Surabaya, Bandung, Medan, Denpasar, Palembang, Pontianak and Jambi.<sup>6</sup>

In providing the necessary institutional support to act autonomously and independently in the enforcement of law and Justice, BANI has developed its own rules and procedures, including time limits within which arbitral tribunals must render verdicts. These rules apply to domestic and international arbitrations conducted in Indonesia. Currently, BANI has more than 100 arbitrators from various professions, both Indonesian and foreign nationals.

In Indonesia, interest in resolving disputes through arbitration began to increase since the promulgation of Law No. 30 of 1999 on arbitration and Alternative Dispute Resolution (Arbitration Law). This development is in line with the direction of globalization, where out-of-court dispute resolution has become the choice of business people to resolve their business disputes. In addition to the characteristics of fast, efficient and complete, arbitration adheres to the principle of win-win solution, and is not long-winded because there is no institution of Appeal and Cassation.<sup>7</sup>

Arbitration costs are also more measurable, as the process is faster. Another advantage of arbitration is that its decisions are necessarily (final) and binding (binding), in addition to its confidential nature (confidential), where the proceedings and arbitration awards are not published. Based on the principle of reciprocity, foreign arbitral awards involving foreign companies can be carried out in Indonesia, as well as Indonesian arbitration awards involving foreign companies will be able to be carried out abroad.

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<sup>5</sup> Suyud Margono, *ADR dan Arbitrase: Proses Pelembagaan dan Aspek Hukum*, Jakarta : Ghalia Indonesia, 2004, pp. 12

<sup>6</sup> BANI, “*BANI Arbitration Center*”, dimuat dalam halaman <https://baniarbitration.org>, diakses pada tanggal 20 April 2022, pukul 18.00 WIB.

<sup>7</sup> Suyud Margono, *Op.cit.*, pp. 13.

BANI was established for the purpose of:

1. In order to participate in law enforcement efforts in Indonesia, it organizes dispute resolution or differences of opinion that occur in various sectors of Trade, Industry and finance, through arbitration and other alternative forms of dispute resolution, among others, in the fields of corporations, insurance, financial institutions, fabrication, intellectual property rights, licenses, franchises, construction, shipping/maritime, environment, Remote Sensing, and others within the scope of international legislation and Customs.
2. Provide services for the implementation of dispute resolution through arbitration or other alternative forms of dispute resolution, such as negotiation, mediation, conciliation and the provision of binding opinions in accordance with the BANI rules of Procedure or other rules of procedure agreed upon by the interested parties.
3. Act autonomously and independently in the enforcement of law and Justice.
4. Conducting studies and research as well as training/education programs on arbitration and Alternative Dispute Resolution.

BANI is one of the founders and members of the Asia Pacific Regional Arbitration Group (APRAG). BANI is also one of the founders of the Regional Arbitrators Institutes Forum (RAIF). BANI is a member of the International Council for Commercial Arbitration (ICCA). In order to develop international arbitration and various forms of Alternative Dispute Resolution (ADR) in the commercial field between entrepreneurs in the countries concerned, BANI has entered into cooperation agreements with various institutions in several countries. These institutions include:<sup>8</sup>

1. *The Japan Commercial Arbitration Association (JCAA);*
2. *The Netherlands Arbitration Institute (NAI);*
3. *The Korean Commercial Arbitration Board (KCAB);*
4. *Australian Centre for International Commercial Arbitration (ACICA);*
5. *The Philippines Dispute Resolution Centre (PDRCI);*
6. *Hong Kong International Arbitration Centre (HKIAC);*
7. *The Foundation for International Commercial Arbitration dan Alternative Dispute Resolution (SICA-FICA);*
8. *The Singapore Institute of Arbitrators (SIArb);*
9. *Arbitration of Association of Brunei Darussalam (AABD);*
10. *Kuala Lumpur Regional Centre for Arbitration (KLRCA);*
11. *The Belgian Centre for Arbitration and Mediation (CEPANI).*

The most convenient and simple way of dispute resolution is Settlement by the parties themselves. This can be pursued through deliberation or negotiation efforts between the two disputing parties. Another way that can be taken is to resolve the dispute with the help of a neutral third party, or through a mediation process. If it is not completed through this process, it can be done through the institution whose task is to resolve disputes.<sup>9</sup>

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<sup>8</sup> *Ibid.*

<sup>9</sup> Suyud Margono, *Op.cit.*, pp. 15.

The official institution for resolving disputes provided by the state or litigation is the court, while those provided by private or non-litigation institutions are Arbitration. Dispute resolution outside the judiciary is also called Alternative Dispute Resolution (ADR) or in Indonesian terms translated as Alternative Dispute Resolution (APS). Settlement of economic/business disputes through alternative dispute resolution mechanisms is considered more appropriate than settlement through the court. This is because APS has several advantages that are very suitable for the business world.<sup>10</sup>

In addition, dispute resolution can also be done conventionally through litigation of the judicial system (Ordinary Court). Litigation settlement is well known not only in Indonesia, even in America known as ADR (Alternative Dispute Resolution) which includes negotiation, mediation, and arbitration. There are a number of ways in which a dispute can be resolved by the parties to the dispute, namely: a. Through informal agreements; b. By conciliation; c. Through arbitration; d. Through the courts.<sup>11</sup>

But among the various alternatives to dispute resolution that exist, arbitration can be applied to business problems. For entrepreneurs, arbitration is the most attractive option in order to resolve disputes in accordance with their wishes and needs. Arbitrage is the simultaneous buying and selling of the same goods in two or more markets in the hope of making a profit on the difference in price.

Arbitration has several advantages that can be concluded through a general explanation of Law No. 30 of 1999 on arbitration and Alternative Dispute Resolution can be read several advantages of dispute resolution through arbitration compared to judicial institutions. The advantages are as follows: 1. Confidentiality of the parties; 2. Delays caused by procedural and administrative matters can be avoided; 3. the parties may select arbitrators who are experienced, have sufficient background regarding the disputed matter. fair and just; 4. the parties may determine the legal options for the resolution of the problem; 5. the parties may choose the place of holding the arbitration.<sup>12</sup>

Experts also expressed their opinion on the advantages of Arbitration. According To Prof. Subject to the world of Commerce or business, dispute resolution through arbitration or refereeing, has several advantages, namely that it can be done quickly, by experts, and in secret. While HM N

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<sup>10</sup> Irham Rahman, *Analisis Pasal 59 Angka (1) Undang-Undang Nomor 48 Tahun 2009 Tentang Kekuasaan Kehakiman Di Bidang Arbitrase Syariah*, Jurnal, Vol. 3, No. 1, 2014, pp. 2.

<sup>11</sup> Jimmy Joses Sembiring, *Cara Menyelesaikan Sengketa di Luar Pengadilan*, Edisi Pertama Cetakan Pertama, Jakarta : Transmedia Pustaka, 2011, pp. 56.

<sup>12</sup> *Ibid*, pp. 57.

Purwosutjipto expressed the importance of judicial referee (arbitration) are:  
1. Dispute resolution can be done quickly. 2. The referees are made up of those experts in the disputed field, who are expected to be able to make a decision that satisfies the parties.

The decision will be more in accordance with the feeling of Justice of the parties with all the differences of understanding, disagreements, conflicts and business disputes that often occur, this cannot be allowed in a row and must be resolved satisfactorily like all parties, although each society has its own search to resolve it both juridically and non-juridically, however, the development of the, beneficial and provide a sense of security and justice for the parties, one of the popular ways today is the way of dispute resolution through arbitration.

The development of economic and business activities, it is impossible to avoid the occurrence of disputes (dispute) between the parties involved in it. The existence of this dispute can have an impact on inefficient economic development, decreased productivity, sterility of the business world, and increased production costs. Investment opportunities by business people will be greater if the Indonesian state can provide guarantees that business dispute resolution in Indonesia can be taken effectively and efficiently.

With the development of the business world in all fields, it definitely requires the name of the law to bridge to regulate and protect the interests of business people. Obstacles that often arise in relation to the business world is the problem of legal protection and legal certainty in developing countries such as Indonesia, which developed countries are considered inadequate for them.

These constraints become increasingly complex and complicated, if we consider the diversity of laws that exist and apply in this world, where each country has its own uniqueness, which may be on one side of the law contrary to other countries. The problem, which was initially Civil, can sometimes lead to quite serious disputes between countries.

Therefore, international cooperation is needed, which is generally set forth in the form of conventions, treaties, and others, which aim to harmonize the rules, and legal norms of various kinds. The purpose of this study is to analyze the position of the National Arbitration Board in the Indonesian judicial system, therefore based on this research it can be concluded that the position of BANI is as one of the Quasi/Quasijudicial judicial institutions.

In Article 1 Number 1 of Law Number 30 of 1999, as well as seeing the development of Arbitration in Indonesia, arbitration gained momentum with the formation of BANI. The decision of the BANI institution only has executorial power after obtaining an order to run from the District Court of the respondent's domicile.

Arbitration is derived from Latin, namely from the word *arbitrare* which means the power to resolve a case according to discretion. There are several definitions of Arbitration that are defined by scholars, including the following: Abdulkadir Muhammad, said that arbitration is a private judicial body outside the general judicial environment, which is known specifically in the corporate world. Arbitration is a voluntarily selected and self-determined judiciary by the parties of the entrepreneur to the dispute.<sup>13</sup>

Settlement of disputes outside the state court is a free will can be set forth in a written agreement they made before and after the dispute in accordance with the principle of freedom of contract in civil law. The subsection states that arbitration is a settlement or termination of a dispute by a referee or referees based on the agreement that they will submit to or obey the decision to be given by the referee or referees they choose or appoint.

In Indonesia, according to the parties' dispute resolution process, there are several ways that can usually be chosen such as: through litigation (court) or through non-litigation (mediation, conciliation, negotiation, consultation, expert valuation, and arbitration). With regard to arbitration or arbitration institutions, in fact it already exists and has been practiced for centuries. In this country, arbitration has also been already known as one of the alternatives of public dispute resolution through non litigation.

Arbitrations are created from clauses that they have drawn up in contracts that they have already agreed to. Thus, the parties involved in the points of the contract can be resolved using the dispute method. Therefore, this article will discuss the appropriate options regarding dispute resolution through arbitration in the law/legal system in Indonesia. From the above notions, it can be concluded that arbitration is a way of resolving disputes between the parties carried out by referees outside the judiciary based on agreements, either before or after the dispute.<sup>14</sup>

In an agreement between the parties or a business relationship, there is always the possibility of a dispute arising. Disputes that occur are often related to how to implement the clauses of the agreement, what is the content of the agreement or due to other things beyond those stipulated in the agreement. In Indonesia, in the dispute resolution process of the parties, there are several ways that can usually be chosen, among others, through litigation (court) or non-litigation (mediation, negotiation, conciliation,

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<sup>13</sup> Rusli Tami. *Keterbatasan Badan Penyelesaian Sengketa Konsumen dalam Penyelesaian Sengketa Konsumen*, Masalah-Masalah Hukum, Nomor 2, 2014, pp. 233-239

<sup>14</sup> Ngatino A Rahmat Rosyadi, *Arbitrase dalam Perspektif Islam dan Hukum Positif*, Bandung : Citra Aditya Bakti, 2002, pp. 67-68.

consultation, expert assessment, and arbitration). Talk about arbitration or arbitration institutions, in fact, has existed and been practiced for centuries (even first introduced by the Greeks before Christ).

In Indonesia itself, arbitration has also been recognized by the public as an alternative to dispute resolution through non-litigation channels. The exact definition of what arbitration is, there are still so many differences of opinion. However, these differences of opinion do not eliminate the meaning of arbitration as an alternative to dispute resolution, but rather provide a different concept of Arbitration. This gives an idea that resolving disputes through arbitration is the most preferred way by business actors because it is considered the most compatible way with the needs in the business world.

Institutional arbitration is an institution or arbitration body that is permanent, so it is also called a permanent arbitral body. The point is that in addition to being managed and organized on a permanent basis, its existence is also continuous for an indefinite period.

Procedures for the submission of national and international corporate dispute resolution between companies that are legal entities and non-legal entities through BANI with the registration of a letter of request for dispute resolution at the BANI Secretariat which includes an arbitration clause made in writing stating the subject matter of the dispute, the name and residence of the parties and the residence of the referees and if the parties do not include an arbitration clause in the agreement then the dispute arising between them cannot be resolved through arbitration.

A condition that must exist if such disputes can be resolved through arbitration is the existence of an arbitration clause that states that all disputes arising from this agreement will be resolved in the first and last instance according to the BANI rules of procedure by an arbitrator appointed according to these rules. And also the agreement or agreement of the parties to resolve the dispute through arbitration.

There is a dispute or not, the institution still stands and will not dissolve, even after the dispute has been resolved. The purpose of this arbitration was established in order to provide an alternative means of dispute resolution outside the courts. Institutional arbitration is generally chosen by the parties before the dispute occurs, which is set forth in the arbitration agreement that is final and binding, and meets the sense of Justice. BAPMI offers three types of dispute resolution that can be chosen by the parties, namely: binding opinion, mediation, and Arbitration.

1. Indonesian National Arbitration Board on December 3, 1977, on the initiative of Prof. R. Subekti, SH (former Chief Justice), Harjono Tjitrosubono, SH (Chairman of the Indonesian Advocates Association), and A.J. Abubakar, SH established the Indonesian National Arbitration Board (BANI) as an autonomous and independent commercial dispute resolution institution. BANI is a peradilan

institution that has a free, autonomous, and independent status. The purpose of the establishment of this institution is to provide a fair and speedy settlement in civil disputes arising on matters of Trade, Industry, and finance. BANI is based in Jakarta and has representative offices in several major cities in Indonesia, among others: Surabaya, Denpasar, Bandung, Medan, Pontianak, Palembang, and Batam.

2. The Indonesian capital market Arbitration Board based on the support of Bapepam-LK and several companies such as PT Bursa Efek Jakarta (IDX), PT Bursa Efek Surabaya (BES), PT Kliring Penjaminan Efek Indonesia (KPEI), and PT Kustodian Sentral Efek Indonesia (KSEI) and 17 associations in the Indonesian capital market environment made a joint agreement to establish an arbitration institution which was later named the Indonesian capital market Arbitration Board (BAPMI). The purpose of the establishment of this institution is inseparable from the desire of Indonesian capital market players to have an out-of-court dispute resolution institution especially in the field of capital markets handled by people who understand the capital market, with a fast and cheap process, final and binding decisions, and fulfill a sense of Justice. BAPMI offers three types of dispute resolution that can be chosen by the parties, namely: binding opinion, mediation, and Arbitration.
3. On November 7, 2008, PT Bursa Berjangka Jakarta (BBI), PT Kliring Berjangka Indonesia/ persero (KBI), Asosiasi Brokang Berjangka Indonesia (APBI) and Ikatan Perusahaan Perdagangan Berjangka Indonesia (IP2BI), facilitated and fully supported by the Commodity Futures Trading Supervisory Agency (BAPPEBTI), signed the deed of establishment of the Commodity Futures Trading Arbitration Board (BAKTI) at the main Auditorium of the Ministry of trade, witnessed by the Minister of trade. The purpose of the establishment of this institution is as a form of legal protection to the public and Commodity Futures Trading market participants through the provision of means of fair dispute resolution, simpler and faster than the court. BAKTI is an independent and independent body that facilitates the settlement of civil disputes in the field of Commodity Futures Trading.
4. National Sharia Arbitration Board (Basyarnas). This institution was inaugurated on October 21, 1993 under the name Badan arbitral Muamalat Indonesia (BAMUI). The inauguration was marked by the signing of the notars deed of Yudo Paripurno, SH by the Central Mui Leadership Council represented by KH Hasan Basri and HS Prodjokusumo (Chairman and General Secretary of the Mui Leadership Council). As witnesses, they signed a notarial deed, among others: HM Sedjono (Chairman of MUI) and H. Zainulbahar Noor, SE (President Director of Bank Muamalat Indonesia). On December 24, 2003, upon the decision of the Board of Directors of the Indonesian Ulema Council number Kep-09/MUI/XII/2003 the name of the

Indonesian Muamalat Arbitration Board (BAMUI) was changed to the National Sharia Arbitration Board (BASYARNAS). The purpose of the establishment of this institution is to resolve disputes or civil disputes with principles that prioritize peace efforts, resolve business disputes whose operations use Islamic law as a basis, and provide a fair and fast settlement in disputes arising in the field of Trade, Industry, Services, and others.

5. Arbitration and Mediation Board of Intellectual Property Rights on April 19, 2012, established an arbitration and Mediation Board of Intellectual Property Rights (BAM HKI) based in Jakarta. This institution provides dispute resolution services that are adjudicative, namely arbitration and non-adjudicative including mediation, negotiation, and conciliation for disputes arising from commercial transactions or relationships involving IPR. BAM HKI is a form of dispute resolution that helps resolve disputes outside the court. Fields that can be handled by BAM IPR include patents, brands, Geographic indications, copyright, Industrial Design, Integrated circuit layout design, trade secrets, Plant Varieties, and other fields related to IPR. With the existence of several arbitration bodies in Indonesia above, business people can choose as desired by including arbitration dispute resolution options in the clauses in the agreements they make. If the parties choose to resolve the dispute through non-litigation.

According to Eko, related to the legal protection of the rights and obligations of the parties in the settlement of construction service contract disputes, namely in exploring the issue of execution of state protection or guarantees against arbitration decisions, an understanding that although Arbitration for dispute resolution outside the court in the sense that the court must withdraw and must refuse if there is a dispute tied to the arbitrage agreement in it, but the District Court as a representative of the state in this case does not mean that he is passive, he remains a provider of Arbitration support, the trick is mainly for arbitrations that are held adhoc, then the District Court has a supporting function such as appointing arbitrators, if there are parties who do not appoint arbitrators, the District Court appoints arbitrators. So, the state court must still support arbitration in a formal sense. Speaking of protecting rights and obligations, the District Court must guarantee the implementation of the arbitration decision if for example it is not implemented voluntarily, the way they must accept the application for execution of the arbitration award that has been issued and they will help to implement it, so that is the state guarantee related to the implementation of the rights and obligations of the parties in the arbitration award and still the District Court has the function to support the arbitration process including support in the implementation of the arbitration award if it is not implemented voluntarily.<sup>15</sup>

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<sup>15</sup> Hasil Wawancara dengan Bapak Eko Dwi Prasetyo, S.H., M.H, selaku Sekretaris I BANI Jakarta.

Likewise, according to Azwir, legal protection for service providers is still weak, so that service users in resolving disputes are not optimal or not through arbitration mechanisms or binding expert opinions, and finally payment for disputes occurs. If any dispute that can no longer be resolved internally or bipartitionally is immediately registered with BANI, losses or costs can be minimized for settlement before the end of the fiscal year.<sup>16</sup>

Legal protection of the rights and obligations of the parties is in accordance with the rules and procedures of BANI and UU. Arbitration. Rights of the parties such as getting a decision according to law, justice and propriety (Article 56 paragraph (1) of the law. Arbitration) further has the right to determine the choice of applicable law and so forth, while the obligation of the parties is to pay the arbitration fee, maintain the principle of confidentiality and execute the decision and others. Where the rights and obligations of the parties are protected by law. Arbitration and BANI rules and procedures. BANI's arbitrator duties are completed after the verdict is registered in the District Court where the respondent is.

The positive impact of settlement through arbitration projects funded by the central and local governments and the private sector has benefits for the people of Indonesia because each has a time limit or the current fiscal year. These projects have a period of time stipulated in the construction agreement if the project is late then the aggrieved is the central government and the private sector.

#### **4. CONCLUSION**

Legal protection of the rights and obligations of the parties in the settlement of construction service contract disputes through arbitration is in accordance with the provisions and procedures of BANI and UU. Arbitration. The right of the parties to obtain a decision in accordance with the law, justice and propriety are then entitled to determine the choice of applicable law, while the obligation of the parties is to pay the arbitration fee, maintain the principle of confidentiality and implement the decision. Where the rights and obligations of the parties shall be protected by law. Arbitration and BANI rules and procedures.

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<sup>16</sup> Hasil Wawancara dengan Bapak Dr. Azwir Agus, S.H., M.Hum, selaku Sekretaris BANI Medan.

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