Development of construction dispute resolution process through arbitration (Indonesian National Board of Arbitration (BANI))

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Abstract: The construction industry has various levels of complexity and competitiveness that may lead to conflicts among different principle and perspective. In case these conflicts are not managed properly, soon it will become disputes. One of the institutions in the field of arbitration for settlement of construction disputes in Indonesia is the Indonesian National Board of Arbitration (BANI). This study shows the construction project arbitration process and its risk factors in the Indonesian National Board of Arbitration (BANI). The study was conducted with structured interviews and surveys for data collection, followed by statistical and qualitative risk analysis. Current construction dispute resolution processes applied in the Indonesian National Board of Arbitration (BANI) is then evaluated by reviewing its processes followed by suggestion for a faster procedure of dispute resolution through the arbitration. This research will develop the dispute resolution process using arbitrage method in order to optimize the necessary time for dispute resolution.

Keywords: Arbitration, Construction, Dispute Settlement, Risk Management, Indonesian National Board of Arbitration

1. Introduction
The dispute is one of the main factors that prevent the success rate of construction project completion. Hence, it is important to consider the causes of disputes in order to complete the project at the expected time, budget, and quality [1]. As a form of dispute resolutions, arbitration fulfills few functions in conflict theory perspective. Despite the actual arbitrage work to proceed and resolve the conflict, the importance of arbitrage procedure is seen as a solution, no matter the result, by arranging the conflict to be resolved quietly or forcibly [2]. Indonesian National Board for Arbitration (BANI) is an independent institution that provides various services in the area of arbitrage, mediation, and other forms of dispute resolution outside the judiciary. For Indonesia case, dispute resolution through BANI is one of the best. With its 30 years of experience, BANI has standard procedure, various arbitrageurs from different disciplines and nationality with proven integrity to assure fairness of the verdict [3]. Dispute resolution through arbitrage in BANI shall be based on goodwill of the respective parties in such a cooperative way. Thus, arbitration is recommended as a form of better dispute resolution than other methods.
Nevertheless the intractable party in arbitrage can stop the process hence increase the arbitrage fee, but with proper planning and project management technique (includes avoidance and dispute mitigation), there should be no reason for the party to consider the possibility of resolution through arbitrage will impact in higher cost. With that consideration, arbitration can lead ahead compared to judiciary process in terms of efficiency [4]. By analyzing the arbitration process applied in the Indonesian National Board of Arbitration (BANI), the risk that can cause failure in dispute resolution process will be more efficient in terms of time. The performed evaluation is assessment of dispute resolution processes which is conducted through arbitrage. Furthermore, identifying hence to further anticipate the risks which will negatively affect the arbitrage processes and its achievement means the performance itself, nevertheless, can be improved.

2. Claim, Dispute and Risk Management
The claim can be defined as a demand or statement by one of the parties in seeking justification, whether for the rights, adjustment or interpretation in contract, payment, time extension, and other work-related to contract [5]. The unfulfilled claim or demand in construction projects can change to dispute. Construction dispute is a dispute related to implementation of construction service between related parties mentioned in the construction contract. Construction dispute is part of dispute in Civil Law. According to Act No. 30/1999 Clause 5, construction project is one of allowable disputes to be resolved through arbitrage or alternative way for dispute resolution. Risk management is a systematic process from planning, identification, analysis, response, and control the risk that may possibly lead to disadvantages. The objective of risk management is to maximize opportunity and consequence from positive events and also to minimize opportunity and consequence from negative events in response a goal. Risk management planning is a process to identify how risk management activity can be conducted. This risk management planning is urgent to communicate and formulate and also support from related parties in the project in order to held project life cycle effectively. The key success of this step is by convincing the created risk management is appropriate with the possible risk in project [6]. The risk aspect has a major impact on the performance of time in arbitrage process. In this research, the duration of time of arbitrage process is minimized to the possible level. Compared to other disputes, construction dispute is more exposed to risk since it is strongly related to time, complexity of the process, and no agreement between parties.

3. Methodology
The design in this study involved the selection of research strategy, survey process, research variables, research instruments, data collection, and method analysis. It used descriptive and parametric statistical correlation analysis. The research analysis for questionnaire result is done gradually, which is initialized by interview and continued by descriptive analysis, validity and reliability test to identify and extract most important or dominant factors. A homogeneity test is implemented to see the understanding of respondents on risk variables. Two used homogeneity tests are Kruskal-Wallis and Mann-Whitney test. The objective of descriptive analysis in this research is to present certain characteristics of data in particular sample to find out value of mean and median. Meanwhile, the validity test is a test for the accuracy of an instrument. A reliability test is used to determine the consistency of the measuring tool. In next step, qualitative risk analysis, level of risk is established in order to be set for further action. Cause and effect analysis is applied as well for any major or dominant risk to develop risk response strategy includes the implementation of preventive and corrective actions. Validation of research results is performed by experts to gain type of action input which is expected to be utilized in improving the performance of the arbitration.

4. Results and Discussions
4.1. Risk Identification
Identification of risk rating includes response and controls to the potential risks that considered as the obstacle in dispute resolution process in BANI are obtained in result of analysis (Table 1). This also includes improvement of the construction dispute resolution process through arbitrage based on
previous result of analysis. The intention of the improvement is in preventive action and further in analysis of time impact to the process. There are three dominant risk factors which are divided into few process variable factors. Below are the dominant risk factors.

### Table 1. Risk Identification.

| Process       | Risk Event                                                                 | Weight | Risk Level |
|---------------|-----------------------------------------------------------------------------|--------|------------|
| Arbitrage verification | Lack of evidence or documentation of the pleading from respective mentioned parties in contract whether the dispute issue can affect the arbitration verdict | 15,9   | High       |
| Arbitrage pleading        | The defendant has no willingness to pay the arbitration fee, so that the applicant shall pay the amount before the trial is started. | 14,4   | High       |

#### 4.2. Cause and Effect Analysis of the Arbitration Verdict

Based on described matrix in the previous section, all causes and effects from each mapped risk are dominant (Table 2). After the dominant risks identified and analysis of cause is performed for respective risk, it is then followed by arranging risk response strategy. As the result, recommendation for improvement to the construction dispute resolution through the Indonesian National Board for Arbitration (BANI) which is referred to risk handling can be formulated.

### Table 2 Risk Factor, Cause, Preventive Action and Development Process.

| Risk rank | Risk factor                                                                                     | Cause                                                                                                                                                                                                 | Preventive action                                                                 | Development process                                                                                                                                 |
|-----------|-------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------|
| 1         | Arbitrage verdict very rely on the arbitrageur competency                                       | Arbitrageur qualification is not relevant to the area of dispute issue                                                                                                                              | BANI is expected to develop and provide access to list of trial groups and arbitrageur that meet the area of dispute complete with a competency profile that can be found through website. | Add a selection of arbitrageur steps with required competency in the construction project dispute.                                                                                     |
| 2         | Lack of evidence/documentaion of pleading from mentioned parties in contract whether the disputed issue can affect the arbitration verdict. | The service provider neglects the documentation of events in the project, whether addendum or work changes.                                                                                       | Each documentation and evidence related to contract and claims shall be arranged in sequence and complete in order to speed up the arbitration verification process. | Add notification that in the project arbitration verification, the required documentation shall be arranged in sequence and complete.                                                                 |
| 3         | The defendant party has no willingness to pay the arbitration fee, so that the applicant shall pay the amount. | For plea submission, one of the parties (the applicant) shall pay the arbitration fee since most of the defendant has no willingness to pay in early arbitration process. | Both parties have to prepare the necessary fees to resolve the construction dispute resolution once the construction contract is agreed and included in clause of arbitration registration fee responsibility. | Both parties shall prepare the necessary fee for construction dispute resolution once the construction contract is agreed and included in a clause of arbitration registration fee responsibility. |

From the perspective of preventive action, the possible objective to eliminate necessary time for construction dispute resolution through arbitration is by developing the following processes:
a. Improving the process of plea and selection of arbitrageur through the addition of arbitrageur selection step as per required competency in construction project dispute in the area of the case and arbitrageur competency and experience profile in the website.

b. Erasing rejection process to an arbitrageur since the person is already appointed earlier according to the area of the case and known by the parties so the rejection process is no longer necessary.

c. Speeding up arbitration administration fee payment by the parties since the resolution fee is already prepared by the applicant and the parties have also created a written agreement in a contract stating their willingness to pay the necessary fee for dispute resolution.

d. Speeding up arbitration verification process through arbitrageur selection that has a strong competency in the area of dispute and with complete and well-arranged documentation from the mentioned parties since the first arbitration verification process. This step will ease the verification process that helps to speed up the verification time.

4.3. Improvement Process for Construction Dispute Resolution through the Indonesian National Board for Arbitration (BANI)

There are 14 steps in the dispute resolution process through BANI (Figure 1) and these can be reduced to 13 steps. The process with dominant risk value is arbitration verdict, arbitration verification, and arbitration pleading. By risk response from expert judgment, duration of time for construction dispute resolution process through the Indonesian National Board for Arbitration (BANI) can be reduced. The more efficient arbitration process can be achieved base on risk potential that has passed the identification process and risk response. Therefore, the improvement step of the arbitrage process is suggested as follows: (1) BANI Secretariat verifies the submitted plea file. Scopes of verification file are: persona standi judicio, fundamentum petendi (posita), petitum, and the expected resolution complete with the selection of an arbitrageur by the applicant. (2) BANI appoints Arbitrageur Secretary internally. Arbitrageur Secretary responds by handed-over one copy of the arbitration plea and its attachment to the applicant. (3) Defendant responses by providing argument or inserting encountered lawsuit. (4) The head of BANI determines the arbitration board. (5) Calculation and announcement of administration fee bill to related parties by the Arbitration Secretary. (6) Payment of administration fee by the parties which can be paid directly by one party, the applicant or the defendant. (7) Payment confirmation and distribution of first trial invitation. (8) The first trial invitation is received by the parties. (9) Arbitration verification process (trial process). (10) Trial closing by Chief of Board. (11) Verdict signing by the arbitrageurs and final verdict announcement. (12) Administrative correction request, if any. (13) BANI register the arbitration verdict to State Court.

4.4. Effect of Time to Improve Dispute Resolution Process

Based on the research result, the total time for dispute resolution through the arbitrage process in BANI after the suggested improvement applied is 202 calendar days. It is way shorter compared to the maximum of 334 calendar days stated on the Procedure of BANI as in Act No. 30/1999 about Arbitrage and Alternative of Dispute Resolution [7]. The improvement reduces necessary time to close the construction dispute resolution at about 39.52%. The improved steps are:

1) The selection of arbitrageur in response to the defendant is more efficient at 15 days from 30 days in the current existing process. Profile of arbitrageur can be seen online and there is no rejection process for the selected arbitrageur.

2) Verification of arbitrage is more accurate and efficient. Previously, the verification issue of the arbitrage resolution can be completed in less than 90 days, with the conditions: complete and well-managed evidences as well as the commitment between both parties.

3) Payment process of administration fee by related parties. In existing condition, the maximum duration is 14 days, while it can be improved to 1 day. The total indicated time to be saved is 13 days.
5. Conclusion
As described in Figure 1, there are 14 steps in the arbitrage process practiced by the Indonesian National Board for Arbitration (BANI). From the questionnaire, 39 risk factors that considered
potential to be generated in the process of arbitrage in BANI are derived. The qualitative analysis result suggested three dominant risk factors in dispute resolution in BANI: (i) arbitration verdict rely on competency of the arbitrageur, (ii) lack of evidence or pleading from respective parties in contract whether the disputed issue can change the arbitration result, (iii) the defendant party has no goodwill to pay the arbitration fee so that the applicant shall pay the fee before the trial is started.

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