

## ABSTRAK

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Sebagai salah satu unsur penting dalam kegiatan pembangunan nasional, bidang kegiatan Jasa Konstruksi perlu dilandasi dengan peraturan perundang-undangan yang jelas, efektif dan memadai. Hal ini penting karena dalam praktek kerap muncul sengketa yang melibatkan para pelaku Jasa Konstruksi, terutama yang lahir dari Kontrak Kerja Konstruksi. Di Indonesia, Sengketa Konstruksi lebih banyak diselesaikan melalui jalur litigasi atau jalur arbitrase, yang dinilai kurang efisien dari sisi kepentingan bisnis. Keputusan yang bersifat adjudikatif dinilai kurang mengakomodir kebutuhan bisnis para pelaku Jasa Konstruksi karena seringkali mengakhiri relasi dan potensi terganggunya kerjasama di kemudian hari. Dengan menggunakan metode normatif yuridis, Penelitian ini mengkaji Mediasi sebagai mekanisme penyelesaian Sengketa Konstruksi dengan *output* berupa Perjanjian Perdamaian Konstruksi yang bersifat *win-win solution* berdasarkan itikad baik dari para pihak. Adapun bahan hukum yang digunakan adalah peraturan perundang-undangan, putusan pengadilan, jurnal dan juga buku-buku hukum. Hasil Penelitian menyimpulkan bahwa Mediasi di Indonesia masih bersifat alternatif sehingga hanya dijadikan salah satu tahapan yang perlu dilalui sebelum akhirnya memilih penyelesaian secara arbitrase atau litigasi. Di negara maju, Mediasi telah menjadi salah satu opsi penyelesaian sengketa bisnis, termasuk konstruksi, yang memberikan hasil yang cukup memuaskan bagi para pihak yang bersengketa, terutama dari aspek keberlanjutan hubungan bisnis di kemudian hari. Penelitian ini merekomendasikan perlunya mediator dalam Mediasi memiliki posisi netral agar dapat membantu dan mengawal para pihak yang bersengketa menemukan kesepakatan sesuai dengan kehendak dan kemampuan mereka sendiri. Dengan demikian, Perjanjian Perdamaian Konstruksi dapat segera dieksekusi. Untuk itu, Indonesia perlu melakukan reformasi terkait dengan Mediasi, baik yang berupa regulasi dan kelembagaan maupun budaya hukum masyarakat yang menjadi pelaku usaha Jasa Konstruksi.

Kata kunci : Mediasi, Sengketa Konstruksi, *Win-Win Solution*

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*As one of the essential elements in national development activities, activity of Construction Services needs to be based on statutory regulations which are clear, effective and adequate. This is important because in practice disputes often arise which involves Construction Services parties, especially disputes arising from Construction Work Contract. In Indonesia, Construction Disputes are mostly resolved through litigation or arbitration, which are considered less efficient in terms of business interests. Adjudicative decisions are considered less accommodating the business needs of the Construction Services' parties because they often ended the relationship and potentially disrupted cooperation in the future. By using the judicial normative method, this Research intended to examine Mediation as a resolution mechanism of Construction Disputes with Construction Settlement Agreement as the output that provides a win-win solution for disputed parties based on good faith of each party. The legal materials used are laws and regulations, courts' verdicts, journals and also law books. The result of this Research concluded that Mediation in Indonesia was still an alternative, so that it was only considered as a stage that needed to be passed before finally choosing a solution through arbitration or litigation. In developed countries, Mediation has become one of the options for resolving businesses disputes, including on the Construction Services area, which provides quite satisfactory results for the disputing parties, especially from the aspect of sustainability of business relationships in the future. This Research recommends the need for Mediators in Mediation to always have a neutral position in order to assist and escort the disputing parties to find agreement of settlement according to their own will and ability, so that the Construction Settlement Agreement can be executed immediately. For this reason, Indonesia needs to carry out reformation related to Mediation, both in the form of regulations and institutions as well as the legal culture of the community of Construction Services.*

*Keywords : Mediation, Construction Disputes, Win-Win Solution*