

# Reconstruction of the Executorial Power of Dispute Council Decisions in Infrastructure Projects through Harmonization of the Binding but Not Final Principle in the Indonesian Civil Law System

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**Abstract:** *This study aims to analyze and reconstruct the binding and executory power of Dispute Board decisions in infrastructure projects within the Indonesian legal system. The main problem lies in the lack of normative recognition of Dispute Board decisions as executorial titles in civil procedural law, even though they are contractually binding under the Civil Code. This study uses a normative juridical method with a statutory and conceptual approach, and is supported by a comparative legal analysis of practices in the United Kingdom and Malaysia that have adopted the principles of Binding But Not Final and Pay Now Argue Later through special regulations. The results of the study indicate that legal reconstruction is needed through civil procedural law reform, recognition of construction adjudication mechanisms, and integration of international principles into the national legal system to increase the effectiveness of construction dispute resolution.*

**Keywords:** *Dispute Board, executive power, construction adjudication, Binding But Not Final*

## Introduction

Infrastructure development is a fundamental instrument in driving national economic growth, equitable development, and increasing investment competitiveness (Sirega, 2023). In Indonesia, this is reflected in various strategic state policies that prioritize infrastructure development (Hulu, 2021). However, the multi-party nature of construction projects, large contract values, and high technical risks and uncertainties make this sector highly vulnerable to disputes. The complexity of legal relationships between service users, service providers, consultants, and subcontractors creates a high potential for conflict, whether related to work delays, changes in scope (variation orders), or payment claims (Manurung, 2022). Unresolved disputes directly impact project delays, cost overruns, and reduced investment certainty, ultimately hampering national development goals. Within the

national legal framework, construction contracts are subject to the provisions of the Civil Code, specifically Article 1338 paragraph (1), which affirms the principle of *pacta sunt servanda*. However, in practice, this principle has not been able to guarantee effective dispute resolution that is swift and adaptable to the dynamics of construction projects (Nachrawi, 2023).

The limitations of conventional dispute resolution mechanisms further exacerbate this situation. Settlement through litigation under the *Herzien Inlandsch Reglement* (Inland Law) and the *Rechtsreglement voor de Buitengewesten* (Regional Law) is known to be time-consuming, expensive, and faces limitations in the judge's capacity to understand the technical aspects of construction (Solikhin, 2023). On the other hand, arbitration, as regulated in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, does offer a more flexible forum, but still has weaknesses due to its final and binding nature, as stipulated in Article 60, making it less responsive to the need for interim dispute resolution in ongoing projects (Muntazhor, 2025). The absence of mechanisms such as summary judgments or interim decisions that can be immediately executed creates a legal vacuum to ensure project continuity. Thus, there is an urgent need for a dispute resolution mechanism that is fast, technical, and temporary, yet still has coercive power.

In international practice, this need is addressed through the establishment of a Dispute Adjudication Board (DAB), which has developed in international construction contracts, particularly those using FIDIC standards. The DAB functions not only as a dispute resolution mechanism but also as a means of dispute avoidance through active involvement from the outset of the project (Wibowo, 2019). DAB decisions are characterized by being fast, based on technical expertise, and delivered in a short timeframe, thus ensuring project continuity. Conceptually, DAB decisions are temporary but binding, meaning they must be implemented by the parties, although further disputes through arbitration or litigation remain possible (Pardede, 2022). This model has proven effective in global practice because it can reduce dispute escalation and maintain the stability of contractual relationships in complex construction projects.

The primary foundation of the DAB mechanism lies in the "Binding But Not Final" principle, which positions decisions as directly binding but not final. This principle is closely related to the "Pay Now, Argue Later" doctrine, which emphasizes that payment obligations must be fulfilled first to maintain cash flow and project continuity, while legal objections can be filed later. From the perspective of Indonesian civil law, this principle actually overlaps with the principle of good faith as stipulated in Article 1338 paragraph (3) of the Civil Code, but has not been explicitly institutionalized in the positive legal system. Consequently, there is no strong normative basis for compelling the implementation of interim decisions, so the principle cannot function optimally in national practice (Maryono, 2023).

A crucial problem arises when DAB decisions are confronted with the Indonesian legal system, which does not provide direct enforceability. DAB decisions are generally positioned as part of the contract, so if one party fails to enforce the decision, the other party must file a new lawsuit in court or arbitration. It contradicts the principle of efficiency and speed, which are the primary objectives of DAB. In the Indonesian civil procedural law system, execution can only be pursued against decisions that have an executory title, such

as a court decision that has become legally binding as stipulated in Article 195 of the HIR or an arbitration decision that has obtained an exequatur order from the court as stipulated in Article 59 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. The absence of a mechanism for recognizing DAB decisions results in a loss of enforceability, thus severely limiting their effectiveness in maintaining project continuity (Simanjuntak, 2020).

This situation demonstrates a disharmony between international construction contract practices and the national legal system. On the one hand, many infrastructure projects in Indonesia adopt FIDIC standards that recognize and rely on DABs, while on the other hand, national law does not yet provide a normative framework to support its implementation. Unlike common law countries such as the United Kingdom and Malaysia, which have adopted statutory adjudication mechanisms through the Housing Grants Construction and Regeneration Act 1996 and the Construction Industry Payment and Adjudication Act 2012, respectively, Indonesia still experiences a normative vacuum regarding the recognition, binding force, and enforcement mechanisms of DAB decisions. This vacuum creates normative disharmony and legal uncertainty, necessitating a comprehensive legal reconstruction through civil procedure law reform and the integration of the "Binding But Not Final" principle into the national legal system. This reconstruction is urgently needed to achieve legal certainty, efficient dispute resolution, and support the success of sustainable infrastructure development.

## Methodology

The article is normative juridical research that focuses on the study of legal norms as an autonomous system by placing law as a rule or regulation that applies in society, especially those related to the executive power of the Dispute Council's decision in infrastructure projects. The approach used is the statute approach and the conceptual approach. The statutory approach is conducted by examining various relevant laws and regulations, including provisions in the Civil Code, especially those related to the principles of freedom of contract and good faith, *Herzien Inlandsch Reglement* and *Rechtsreglement voor de Buitengewesten*, which regulate civil procedural law, and Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution related to the binding force and implementation of arbitration decisions. Meanwhile, a conceptual approach is used to study and analyze legal concepts that develop in international practice, such as the principles of Binding But Not Final and Pay Now Argue Later, in the framework of FIDIC-based construction contracts, as well as legal theories related to the binding power of decisions and legal certainty. The legal materials used consist of primary legal materials in the form of statutory regulations, secondary legal materials in the form of literature, scientific journals, and expert doctrines, as well as tertiary legal materials as supporting materials, which are then analyzed qualitatively using legal interpretation and legal argumentation methods to produce new legal constructions that are able to answer problems related to the executorial power of Dispute Council decisions in the Indonesian civil law system.

The methodology provides a clear explanation of the normative juridical, statutory, and conceptual approaches employed in the study. However, it does not sufficiently explain how comparative legal interpretations from the United Kingdom and Malaysia were

systematically adapted into the Indonesian civil law framework. While the methodology mentions the examination of legal concepts developed in international practice, such as *Binding But Not Final* and *Pay Now Argue Later*, it does not describe the comparative legal method used, the criteria for selecting the United Kingdom and Malaysia as comparative jurisdictions, nor the analytical process through which common law principles were evaluated, contextualized, and harmonized with Indonesian civil law doctrines and procedural rules. To strengthen the methodology, the manuscript should explicitly explain the comparative legal framework, including how foreign legal concepts were assessed for compatibility with Indonesian legal principles and how they contributed to the proposed legal construction regarding the executorial force of Dispute Council decisions.

## **Result and Discussion**

### **Legal Construction of the Binding and Executorial Power of Dispute Council Decisions in the Indonesian Legal System**

The legal structure of the binding and executory power of Dispute Adjudication Board (DAB) decisions in the Indonesian legal system must first be placed within the legal framework of contracts as stipulated in the Civil Code. According to Article 1320, the validity of an agreement requires the agreement of the parties, capacity, a specific matter, and a lawful cause. Article 1338 paragraph (1) emphasizes that all legally concluded agreements apply as law to the parties (*pacta sunt servanda*). In this context, the existence of the DAB stems from the contractual clauses agreed upon by the parties in the construction contract. Therefore, normatively, the DAB decision has binding force because it embodies the parties' will. However, this binding force remains within the obligatory (commitment) realm and has not yet reached the executory stage, so its implementation remains dependent on the parties' voluntary compliance (Toni, 2019).

Problems then arise when the DAB decision is analyzed from the perspective of its legal qualifications. Conceptually, there is debate as to whether the DAB's decision constitutes a contractual mechanism, a quasi-judicial body, or an alternative form of dispute resolution. If positioned as part of the agreement, its binding force is solely internal and lacks external coercive power. However, if positioned as a quasi-adjudicatory body, it should have the legitimacy to grant it executive power. Under Indonesian positive law, the category of quasi-judicial institution is not explicitly recognized in the context of civil construction disputes, creating a normative vacuum. Even within the framework of alternative dispute resolution as stipulated in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, the DAB is not explicitly mentioned as a recognized form of dispute resolution, unlike arbitration, mediation, or conciliation (Pratama, 2025).

A major weakness in the Indonesian legal system lies in the lack of a legal basis for granting executive power to DAB decisions. In civil procedural law, as regulated by the *Herzien Inlandsch Reglement* (Inland Law) and the *Rechtsreglement voor de Buitengewesten* (Regional Law), enforcement can only be carried out against court decisions that have become legally binding, as stipulated in Article 195 of the HIR (Regional Law). Furthermore, the Indonesian civil procedural legal system does not recognize the concept

of an interim binding decision, which is therefore interim in nature, and does not find a place in the existing legal structure. This situation demonstrates the rigidity of civil procedural law, which is not adaptive to developments in modern dispute resolution practices (Abuthakub, 2024).

From an arbitration law perspective, there is an opportunity to draw an analogy with DAB decisions, but this also faces normative limitations. Based on Articles 59 and 60 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, arbitration awards are final and have permanent legal force and can be executed after obtaining an exequatur order from the district court. This final and binding character is fundamentally different from DAB decisions, which are binding but not final. Therefore, it is impossible to directly equate or construct DAB decisions as arbitration decisions, as this difference in nature is precisely the essence of the DAB's existence in maintaining project continuity (Permata, 2025).

The lack of recognition of DAB decisions as executory has serious implications for the effectiveness of construction dispute resolution. In practice, if one party fails to implement a DAB decision, the other party must file a new lawsuit in court or arbitration, which actually eliminates the speed and efficiency of the DAB mechanism. It contradicts the principle of simple, expeditious, and low-cost justice as embodied in the general principles of judicial power stipulated in Law Number 48 of 2009 concerning Judicial Power, specifically Article 2 paragraph (4). Furthermore, this situation also undermines the principle of legal certainty because contractually binding decisions cannot be legally enforced (Setiyono, 2025).

It can be concluded that the current legal structure is unable to provide legitimacy and enforceability to DAB decisions within the Indonesian legal system. A normative gap exists, creating disharmony between international contractual practices and the national legal system. Therefore, a legal reconstruction is needed that relies not only on a contractual approach based on the Civil Code, but also includes reforms to civil procedural law and the possibility of establishing special regulations that recognize DAB decisions as binding and subject to limited enforcement. This reconstruction is crucial to ensure legal certainty, increase the effectiveness of dispute resolution, and support the success of national infrastructure development.

### **Comparative Legal Analysis of the Application of Construction Adjudication in the Common Law System**

A comparative legal approach to analyzing construction adjudication under common law demonstrates that the UK was a pioneer in institutionalizing the adjudication mechanism through the Housing Grants Construction and Regeneration Act 1996 (HGCRA 1996). This law explicitly grants parties to a construction contract the right to refer a dispute to an adjudicator "at any time," as stipulated in Section 108(1). This provision emphasizes that adjudication is a rapid mechanism and is not hindered by other dispute resolution processes. Furthermore, Section 108(2) stipulates that the adjudicator must render a decision within 28 days of the dispute being submitted, reflecting the fast-track nature of the procedure. Therefore, from a normative perspective, the UK has provided a strong legal

foundation for efficient and responsive construction dispute resolution to project needs. The binding power of adjudicator decisions in the English legal system is affirmed in Section 108(3) of the Housing Grants, Construction, and Regeneration Act 1996, which states that adjudicator decisions are binding until the dispute is finally resolved through arbitration or litigation. It reflects the "Binding But Not Final" principle that characterizes adjudication. In practice, English courts consistently uphold adjudicator decisions through summary enforcement mechanisms, particularly through procedures in the Technology and Construction Court (TCC). Courts will only refuse enforcement in limited circumstances, such as a jurisdictional breach or a violation of the principles of natural justice. It demonstrates that the common law system fully supports the effectiveness of adjudication through the integration of legislative norms and judicial practice.

In Malaysia, a similar development can be seen in the Construction Industry Payment and Adjudication Act 2012 (CIPAA 2012), which adopts the English adjudication model with adjustments to the national context. Sections 5 to 12 regulate the procedures for filing adjudication claims, appointing adjudicators, and ensuring a speedy and efficient hearing process. Furthermore, Section 13 stipulates that the adjudicator's decision must be rendered within a limited timeframe, emphasizing the fast-track nature of this mechanism. More importantly, Section 28 of the CIPAA explicitly states that adjudication decisions are binding unless overturned or finalized through arbitration or the courts, thus explicitly adopting the "Binding But Not Final" principle within Malaysia's national legal framework.

From an enforcement perspective, the CIPAA 2012 provides a more progressive mechanism than the Indonesian legal system. Sections 28 and 30 of the Construction Industry Payment and Adjudication Act 2012 allow adjudication decisions to be registered with the High Court and treated as court decisions, thus having enforceable force. Furthermore, additional sanctions include the right to suspension of work and the right to direct payment, strengthening the implementation of the "Pay Now, Argue Later" principle. Thus, Malaysia not only recognizes adjudication normatively but also provides effective enforcement instruments to ensure its implementation in practice.

The implementation of the Pay Now, Argue Later principle in the common law system has a strong economic and legal rationale, namely, maintaining cash flow in the construction industry so that projects continue to proceed. This principle is implicitly accommodated in the Housing Grants, Construction, and Regeneration Act 1996 and explicitly in the Construction Industry Payment and Adjudication Act 2012 through provisions requiring the implementation of adjudication decisions before disputes are finally resolved. In this context, the law functions not only as an instrument for dispute resolution but also as a tool to maintain the economic stability of the construction sector. This approach differs fundamentally from the Indonesian civil law system, which emphasizes formal certainty through final decisions, making it less responsive to practical needs on the ground.

When compared with the Indonesian legal system, significant gaps are evident in both normative and implementative aspects. Indonesia, through its Civil Code, *Herzien Inlandsch Reglement*, and Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, does not accommodate a rapid and temporarily binding adjudication

mechanism. The Indonesian legal system tends to be formalistic, placing final decisions as the sole basis for execution, thus not providing space for interim decisions such as adjudication. Therefore, practices in the UK and Malaysia can be used as best practices in formulating national legal reforms, particularly in integrating the principles of Binding But Not Final and Pay Now Argue Later into the Indonesian legal system to increase the effectiveness of construction dispute resolution.

### **Legal Reconstruction of the Executorial Power of Dispute Council Decisions in the Indonesian Civil Law System**

Legal reconstruction of the enforceability of Dispute Adjudication Board (DAB) decisions must begin with the recognition that Indonesia's current civil procedural law system is unable to accommodate the need for expeditious, adaptive, and technically based construction dispute resolution. Within the positive legal framework, enforcement is only possible for decisions that have become legally binding, as stipulated in Article 195 of the *Herzien Inlandsch Reglement* (Hindu Law), thus leaving no room for interim but binding decisions. Therefore, the first concrete step that needs to be taken is legislative reform of civil procedural law through a revision of the HIR/RBg (Regulation of the Indonesian Constitution) or the creation of a new Civil Procedure Law that explicitly recognizes the concept of interim binding decisions, including DAB decisions, as decisions that can be requested for limited enforcement (interim enforcement) without waiting for a final decision.

Furthermore, in the legal aspect of contracts, a reinterpretation of the principles of the Civil Code, particularly Article 1338 paragraphs (1) and (3), concerning the principles of *pacta sunt servanda* and good faith, is required. The DAB decision must be constructed as an integral part of the parties' will, directly binding and obligatory to be implemented as a form of good faith implementation of the agreement. Concrete actions that can be taken include encouraging the Supreme Court to issue a Supreme Court Regulation (Perma) or a Supreme Court Circular (SEMA) providing guidelines for judges to recognize and enforce DAB decisions as contractual obligations with limited enforceable power, thus not always requiring substantive reexamination.

To strengthen normative legitimacy, the establishment of specific regulations that comprehensively govern construction adjudication is necessary, as has been done in other countries. This regulation could take the form of legislation or at least government regulations that adopt the principles of the FIDIC standards, including recognition of the principles of "Binding But Not Final" and "Pay Now, Argue Later." A concrete action in this regard would be the preparation of a Draft Law on Construction Dispute Resolution that would include the DAB as an official, state-recognized mechanism, complete with provisions regarding its formation, authority, procedures, and the binding and enforceability of its decisions.

In procedural law, reconstruction should also include the adoption of mechanisms similar to summary judgment or expedited procedure. Currently, the Indonesian legal system does not explicitly recognize such a mechanism in general civil disputes. Therefore, a concrete action that needs to be taken is to introduce an application for enforcement

procedure against DAB decisions in the district court, which would be examined expeditiously and limited to formal aspects, such as the DAB's authority and the existence of the agreement. This model could be integrated into the revision of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution by adding new provisions governing the execution of adjudication decisions, analogous to *exequatur* arbitration, but without requiring finality.

Legal harmonization is also necessary through the integration of international contract standards into the national legal system. In practice, many infrastructure projects in Indonesia have used FIDIC standards, but without national regulatory support, their implementation is ineffective. Concrete actions that could be taken include making DAB clauses mandatory in government project construction contracts through revisions to procurement regulations, and explicitly recognizing DAB decisions as the basis for payment collection or the performance of other contractual obligations. This creates synchronization between contractual norms and national legal norms.

Ideal legal reconstruction must encompass three main aspects: substance, structure, and legal culture. From a substantive perspective, it is necessary to update legislation that recognizes and regulates DAB; from a structural perspective, it is necessary to strengthen the role of the judiciary in supporting the enforcement of DAB decisions through expeditious and efficient procedures; and from a cultural perspective, a paradigm shift is needed for law enforcement and construction industry players to accept the "Binding But Not Final" principle as part of the national legal system. Concrete actions that can be taken include training for judges and construction law practitioners, developing technical guidelines, and outreach to stakeholders. With this comprehensive reconstruction, it is hoped that a legal system can be created that can guarantee legal certainty, justice, and expediency in resolving construction disputes in Indonesia more effectively and sustainably.

## Conclusion

The conclusion of this study shows that the binding and executive power of Dispute Adjudication Board (DAB) decisions in the Indonesian legal system still face fundamental normative weaknesses. Although contractually the DAB decision can be considered binding based on the principle of *pacta sunt servanda* in the Indonesian Civil Code, specifically Article 1338, in practice the decision does not have executive power because it is not recognized as an executive title in the Indonesian civil procedural law system as regulated in the *Herzien Inlandsch Reglement*. The absence of an interim enforcement mechanism and the failure to accommodate the Binding But Not Final principle cause the DAB decision to lose its effectiveness in maintaining the continuity of construction projects. Meanwhile, practices in common law countries such as the United Kingdom, through the Housing Grants Construction and Regeneration Act 1996, and Malaysia, through the Construction Industry Payment and Adjudication Act 2012, show that construction adjudication can function effectively if supported by a legal framework that provides interim binding power and a fast execution mechanism. Therefore, there is an urgent need for legal reconstruction

that integrates these principles into the national legal system to ensure legal certainty, efficient dispute resolution, and sustainable infrastructure development.

Suggestions include the need for concrete and comprehensive legal reform, both at the legislative and implementation levels. The government and legislators need to immediately formulate specific regulations that recognize and regulate construction adjudication mechanisms, including providing a legal basis for the enforceability of DAB decisions through an interim enforcement mechanism. Furthermore, revisions to national civil procedure law are needed to accommodate expedited procedures such as summary judgments or interim enforcement mechanisms. The Supreme Court is also expected to play an active role by issuing Supreme Court Regulations or Circulars as guidelines for judges in handling cases related to DAB decisions. Furthermore, the integration of FIDIC standard principles into national contracting practices needs to be strengthened through procurement regulations and sectoral policies. Thus, legal reforms should be not only normative but also implementable, thereby creating an effective, adaptive construction dispute resolution system oriented toward legal certainty and economic benefit.

The study's contribution extends beyond merely identifying legal gaps by offering a normative legal reconstruction model for integrating construction adjudication into the Indonesian legal system. The research contributes to Construction Law by conceptualizing how the principles of *Binding But Not Final* and *Pay Now, Argue Later*, which have been successfully implemented in the United Kingdom and Malaysia, can be adapted to enhance the effectiveness of dispute resolution in Indonesian construction projects. From the perspective of Indonesian civil procedural law reform theory, the study proposes a new framework that expands the traditional understanding of executorial power by advocating the recognition of DAB decisions as temporarily enforceable instruments, supported by interim enforcement mechanisms and expedited judicial procedures. Thus, the study contributes not only to the identification of normative deficiencies but also to the development of a theoretical and regulatory model for modernizing civil procedure and strengthening legal certainty, efficiency, and continuity in infrastructure development.

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