Access to Justice in Eastern Europe
ISSN 2663-0575 (Print)
ISSN 2663-0583 (Online)
http://ajee-journal.com

Research Article

A HYBRID MODEL OF EXPERT JUDGEMENT, MEDIATION AND ARBITRATION: A COMPARATIVE STUDY FOR EFFECTIVE CONSTRUCTION CONTRACT DISPUTE RESOLUTION

Meria Utama*, Rizka Nurliyantika, Irsan Irsan and Biyes Nurul Atika

DOI:
https://doi.org/10.33327/AJEE-18-9.4-a0002013

Date of submission: 10 Mar 2026
Date of acceptance: 06 Jul 2026
Online First Publication: 14 Sep 2026
Last Publication: 03 Nov 2026

Disclaimer:
The authors declare that their opinions and views expressed in this manuscript are free of any impact of any organization.

Copyright:
© 2026 Meria Utama, Rizka Nurliyantika, Irsan Irsan and Biyes Nurul Atika

ABSTRACT

Background: *International construction disputes are inherently complex, involving legal, technical, financial, and cross-border dimensions. While existing mechanisms, such as litigation, mediation, and arbitration, each offer specific advantages, they often fail to simultaneously provide speed, technical reliability, and legal finality in high-value projects. This study addresses this gap by proposing the Expert Judgement, Mediation, Arbitration (EJMA) hybrid model. This tiered architecture is introduced as a novel conceptual framework that integrates technical clarification, consensual settlement, and binding adjudication into a single, coherent procedural sequence specifically designed for the Indonesian legal landscape.*

Method: *This research employs a doctrinal legal approach conducted through four analytical lenses: sociological jurisprudence, conceptual analysis, statutory analysis, and comparative law. The study evaluates the applicable Indonesian legal framework (specifically the Construction Services Law and the Arbitration and ADR Law) and institutional practices of bodies like BANI, alongside comparative international experiences such as FIDIC dispute boards, mandatory adjudication, and Arb-Med-Arb schemes.*

Results and Conclusions: *The findings formulate the design principles and safeguards of the EJMA hybrid model. Key results include the development of a staged filtration process for technical and legal issues, the integration of technical factual records into mediation and arbitration phases, and the establishment of guarantees for confidentiality and due process. Furthermore, the study identifies mechanisms to convert mediated settlements into arbitral consent awards, which significantly enhances legal certainty and reduces the risk of annulment under Indonesian law. The EJMA hybrid model represents a significant theoretical and practical advancement in international dispute resolution. By bridging the gap between technical expertise and legal finality, it offers a more predictable pathway for stakeholders. The study concludes that the normative basis of the EJMA hybrid model should be strengthened through clearer regulations for expert panels and the establishment of an integrated Construction Dispute Resolution Board (CDRB). This hybrid model ultimately improves access to justice and enforceability in both domestic and cross-border construction contexts.*

1 INTRODUCTION

Construction contracts are widely recognized as among the most complex forms of commercial agreements because they simultaneously engage legal, technical, financial, and taxation dimensions within long-term, multi-party, and increasingly cross-border arrangements.[1] This complexity, combined with tight project deadlines and layered risk allocation, makes disputes over time, cost, and quality particularly likely in international projects involving employers, main contractors, subcontractors, and consultants.[2] Unresolved claims and delayed settlements can jeopardize project viability, disrupt cash flow, and hinder the optimal utilization of infrastructure assets, thereby undermining the broader development objectives pursued through large-scale construction programs.[3]

1 Hadi Ismanto and Hardjomuljadi Sarwono, 'Analisis Pengaruh Dewan Sengketa & Arbitrase Terhadap Penyelesaian Sengketa Konstruksi Berdasarkan Fidic Condition of Contract 2017' (2019) 10(1) Konstruksia 73, doi:10.24853/jk.10.1.73-86.

2 Pui-Lam Ng and Audrius Banaitis, 'Construction Mediation and Its Hybridization: The Case of the Hong Kong Construction Industry' (2017) 9(1) Organization, Technology and Management in Construction 1528, doi:10.1515/otmcj-2016-0015.

3 Irsan and others, 'Drafting Extension of Time for Completion to Avoid Time at Large in Construction Contract' (2024) 7(2) Notaire 247, doi:10.20473/ntr.v7i2.58379.

In Indonesia, litigation before the ordinary courts has traditionally been available for construction disputes but is widely perceived as slow, costly, public, and often ill-suited to the technical nature of construction conflicts. Generalist judges may lack sector-specific expertise, while multi-tier appeals and rigid procedural formalism tend to prolong resolution and weaken commercial certainty in time-sensitive projects.[4] As a response, parties increasingly rely on private mechanisms of dispute resolution: arbitration, mediation, conciliation, expert determination, and various forms of dispute boards that promise greater speed, confidentiality, and technical competence, especially where the project has international or hybrid public-private dimensions.[5]

However, each of these mechanisms carries structural limitations when used in isolation. Mediation offers flexibility and the possibility of mutually acceptable, interest-based solutions, but its outcomes remain consensual and depend on voluntary compliance.[6] Stand-alone expert determination or dispute boards can provide rapid, technically informed evaluations; however, their recommendations or interim decisions often require subsequent conversion into an arbitral award or court judgment to achieve full enforceability. Meanwhile, arbitration supplies final and binding decisions that are in principle enforceable under the New York Convention,[7] but it is frequently criticized for high costs, lengthy proceedings, and adversarial, win-lose dynamics that may damage commercial relationships.[8]

Against this background, there is a growing interest both in comparative practice and in Indonesian legal scholarship regarding tiered and hybrid dispute resolution clauses that combine negotiation, expert-based processes, mediation, and arbitration within a single contractual framework. Nevertheless, existing models have not yet produced a stable design that consistently delivers resolutions that are simultaneously fast, cost-efficient, confidential, technically robust, and normatively legitimate in the context of international construction projects.[9] Building on

4 Meria Utama and Irsan Irsan, 'General Overview on Selecting and Drafting Construction Contract Disputes Resolution' (2018) 2(2) Sriwijaya Law Review 152, doi:10.28946/slrev.Vol2.Iss2.129.pp152-169.

5 Meria Utama and others, 'Recognition and Enforcement of Foreign Judgments and Arbitral Awards in Indonesia: Lessons from Singapore and Malaysia' (2026) 7(3) Journal of Law and Legal Reform 1301, doi:10.15294/jllr.v7i3.37235.

6 Nan Cao and Sai On Cheung, 'Mediators' View on Voluntary Construction Dispute Mediation' (2024) 16(1) Journal of Legal Affairs and Dispute Resolution in Engineering and Construction 5023005, doi:10.1061/JLADAH.LADR-1004.

7 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) (adopted 10 June 1958) [1959] UNTS 330/3.

8 Anangga W Roosdiono and Muhamad Dzadit Taqwa, 'Questioning the Validity of the New York Convention 1958 on Recognition and Enforcement of Foreign Arbitral Awards in Indonesia' (2024) 19(2) Pandecta Research Law Journal 583, doi:10.15294/pandecta.v19i2.4099.

9 Paul Taggart, 'Dispute Boards as Pre-Arbitration Tools: Recent Developments and Practical Considerations' (*Kluwer Arbitration Blog*, 28 February 2015) <https://legalblogs.wolterskluwer.com/arbitration-blog/dispute-boards-as-pre-arbitration-tools-recent-developments-and-practical-considerations/> accessed 9 March 2026.

© 2026 Meria Utama, Rizka Nurliyantika, Irsan Irsan and Biyes Nurul Atika. This is an open-access article distributed under the terms of the Creative Commons Attribution License (CC BY 4.0), which permits unrestricted use, distribution, and reproduction in any medium, provided the original author and source are credited.

this gap, the present article addresses two core questions: first, why prevailing mechanisms for construction dispute resolution and litigation, stand-alone expert determination, mediation, arbitration, and dispute boards often fail to satisfy these cumulative demands; and second, how an EJMA hybrid model should be normatively designed, under Indonesian law, to integrate technical clarification, consensual settlement, and a final, binding, and enforceable outcome within a coherent procedural sequence.[10]

Beyond its national focus, this article is also intended to speak to a broader, particularly European, audience. The structural problems that motivate the EJMA hybrid model, the technical and legal complexity of large-scale construction projects, the limitations of fragmented ADR mechanisms, and the risks of delay, cost escalation, and award annulment are not unique to Indonesia, but are likewise encountered in cross-border projects governed by FIDIC-type contracts and arbitrated before European or international fora. By grounding its normative design in Indonesian law while drawing on comparative experiences such as FIDIC dispute boards, statutory adjudication, and Arb-Med-Arb schemes, the proposed EJMA hybrid model framework offers a transferable set of principles and safeguards that may inform ongoing debates on hybrid dispute resolution mechanisms in European jurisdictions and in Europe and Asia infrastructure cooperation.

2 RESEARCH METHOD

This study employs a doctrinal legal research method combined with a socio-legal approach to analyze the design of the EJMA hybrid model mechanism for construction dispute resolution under Indonesian law and in its international context. The research is descriptive analytical and integrates three approaches: a statute approach to map the prevailing regulatory framework; a conceptual approach to clarify key concepts such as hybrid mechanisms, consent awards, and technical legal integration; and a comparative approach to draw lessons from foreign and international practice, including FIDIC-based dispute boards, statutory adjudication regimes, and Arb-Med-Arb schemes.

The analysis is guided by a theoretical framework that treats the balancing of legal values as the benchmark for mechanism design. Gustav Radbruch's idea of law (Rechtsidee),[11] which regards justice, legal certainty, and purposiveness as three values that must be balanced, is used to assess whether a dispute resolution mechanism tilts too far toward any one value and thereby produces a justice deficit. This framework is reinforced by the theory of progressive law, which prioritizes substantive justice and views law as an instrument that must serve human beings (law in action), and by the perspective of sociological

10 *Expansion Joint Manufacturers Association (EJMA)* <https://www.ejma.org/> accessed 1 July 2026.

11 Gustav Radbruch, 'Gesetzliches Unrecht und übergesetzliches Recht' (1946) 1(5) Süddeutsche Juristen-Zeitung 105.

jurisprudence, which evaluates legal mechanisms by their capacity to solve social problems and preserve relationships rather than by mere conformity to formal procedure. These three frameworks serve as the normative lens for formulating and testing the design principles of the EJMA hybrid model.

The legal materials are distinguished according to their hierarchy. Primary legal materials comprise legislation, in particular, Law No. 2 of 2017 on Construction Services and its implementing regulations, and Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution, together with relevant court decisions on the enforcement and annulment of arbitral awards, and international instruments such as the New York Convention and the UNCITRAL Model Law. Secondary legal materials consist of academic literature, doctrine, and prior studies on construction dispute resolution. This clarification of hierarchy corrects an earlier misclassification, since legislation constitutes a primary, not a secondary, legal source.

To strengthen the socio-legal dimension and connect the normative analysis with practice, the study also draws on secondary practice data from the annual reports of the Indonesian National Board of Arbitration (BANI) for the relevant period.[12] These reports were examined to identify the patterns and trends of construction disputes handled, the volume and types of cases, and the tendencies regarding the settlement and annulment of awards. This data is treated as supporting material that complements the legal sources rather than as free-standing empirical evidence.

The analysis was carried out through deductive reasoning and qualitative prescriptive content analysis. Normative premises drawn from legislation and doctrine were systematically tested against annulment decisions, data from BANI's annual reports, and comparative experience, and were then formulated into the design principles of the EJMA hybrid model. In this way, each design conclusion can be transparently traced back to the legal source or evidence underpinning it. The study produces a normative framework intended to improve efficiency, fairness, and enforceability, while acknowledging its limitation: the proposed model has not yet been tested through primary empirical data in actual construction disputes; therefore benefits described remain theoretical propositions requiring further validation.

12 *Badan Arbitrase Nasional Indonesia (BANI Arbitration Center)* <https://baniarbitration.org/> accessed 1 July 2026.

© 2026 Meria Utama, Rizka Nurliyantika, Irsan Irsan and Biyes Nurul Atika. This is an open-access article distributed under the terms of the Creative Commons Attribution License (CC BY 4.0), which permits unrestricted use, distribution, and reproduction in any medium, provided the original author and source are credited.

3 LIMITATIONS OF EXISTING CONSTRUCTION DISPUTE RESOLUTION MECHANISMS

This section critically assesses why existing construction dispute resolution mechanisms, both litigation and stand-alone ADR, often fail to deliver outcomes that are simultaneously fast, cost-efficient, confidential, and technically dependable. It highlights how the multi-disciplinary nature of construction claims (delay analysis, variation valuation, quality defects, payment certification, and risk allocation) frequently exposes gaps in judicial technical competence, increases transaction costs, and encourages strategic behavior that prolongs settlement.[13] In international projects, these problems are amplified by cross-border enforcement concerns, differing contract standards (e.g., EPC/FIDIC-based arrangements), multi-party interfaces, and cultural or legal diversity, all of which complicate evidence, procedure, and compliance.[14] By mapping these recurring constraints, the section provides the analytical foundation for the subsequent subsections, which detail the governing legal framework, available dispute resolution forms, the roles of key institutions, empirical indications from practice, and the specific performance trade-offs that motivate a staged hybrid approach.

3.1. Legal Framework and Pathways for Construction Dispute Resolution in Indonesia

Law No. 2 of 2017 on Construction Services, together with its implementing regulation Government Regulation No. 22 of 2020 as amended by Government Regulation No. 14 of 2021,[15] forms the primary (lex specialis) framework for construction dispute resolution in Indonesia by requiring parties to stipulate and prioritize non-court mechanisms in their contracts[16], while still leaving litigation as a residual option when agreed ADR cannot be implemented or is absent.[17] Law No. 30 of 1999 on Arbitration and Alternative Dispute

13 Christopher Amoah and Hlatshwayo Nkosazana, 'Effective Management Strategies for Construction Contract Disputes' (2022) 41(6) International Journal of Building Pathology and Adaptation 70, doi:10.1108/IJBPA-01-2022-0004.

14 Dede Amar Udi Ilma and others, 'A Comparative Study of National and International Contracts Document Refers to the FIDIC Standard on Construction Projects in Indonesia' (InCEESS 2020: Proceedings of the 1st International Conference on Economics Engineering and Social Science, 17-18 July 2020, Bekasi, Indonesia) doi:10.4108/eai.17-7-2020.2303003.

15 Law of the Republic of Indonesia no 2 of 2017 'On Construction Services' (adopted 12 January 2017) <https://www.scribd.com/document/561088974/UU-2-2017-Versi-inggris> accessed 9 March 2026; Regulation of the Government no 14 of 2021 'Amendment to Government Regulation Number 22 of 2020 concerning the Implementing Regulation to Law no 2 of 2017 on Construction Services' (adopted 2 February 2021).

16 Dede Amar Udi Ilma and others, 'State of the Art Perselisihan Kontrak Konstruksi Di Indonesia' (2020) 16(2) INERSIA Informasi Dan Ekspose Hasil Riset Teknik Sipil Dan Arsitektur 158, doi:10.21831/inersia.v16i2.36901

17 Lintang Yudhantaka, Yohanes Sogar Simamora and Ghansham Anand, 'Binding Power of Dispute Board Judgment in Construction Dispute Settlement' (2023) 38(1) Yuridika 159, doi:10.20473/ydk.v38i1.42717.

Resolution[18] operates as a general (lex generalis) regime that legitimizes out-of-court settlement efforts, regulates arbitration based on party agreement, and grants arbitral awards final and binding force with a defined enforcement procedure before the courts, thereby supplying the procedural backbone that allows construction-specific ADR pathways under the construction-services regime to culminate in enforceable decisions.

3.2. Forms of Dispute Resolution: ADR and Litigation

Construction disputes in Indonesia are generally channelled through non-litigation (ADR) and litigation pathways; each mechanism presents structural trade-offs that justify the search for a more integrated hybrid design.[19] In practice, negotiation is almost always attempted first because it is simple and inexpensive, yet it tends to stall in complex projects where there are power imbalances, information asymmetries, or multi-issue claims, so that unresolved matters are merely postponed rather than resolved.[20]

Expert judgement or adjudication, whether through ad hoc experts or dispute boards, can quickly clarify technical causation and quantum, thereby narrowing the dispute; however, its effectiveness is reduced when expert outputs are only provisionally binding or easily bypassed, so that parties simply relitigate the same engineering issues in later forums.[21] Arbitration offers confidentiality and a final, binding award with international enforceability; however, in construction practice, it often remains expensive, evidentially heavy, and adversarial, especially when technical issues were not filtered earlier; this can erode its expected advantages over litigation.[22] Litigation before the general courts, finally, operates as a residual pathway but is widely seen as slow, public, and less attuned to sector-specific technical complexity, making it a last resort rather than a preferred solution for time-sensitive construction projects.[23]

18 Law of the Republic of Indonesia no 30 of 1999 'On Arbitration and Alternative Dispute Resolution' (adopted 12 August 1999) <https://www.scribd.com/document/424953489/arbitrationindonesia-pdf> accessed 1 July 2026.

19 Taufik Hidayat and Sami'an, 'Construction Dispute Resolution: Alternative Construction Dispute Resolution, Mediation, and Arbitration' (2025) 8(3) Indonesian Interdisciplinary Journal of Sharia Economics 13002, doi:10.31538/iijse.v8i3.6347.

20 Amila NKK Gamage and Suresh Kumar, 'Review of Alternative Dispute Resolution Methods in Construction Projects' (2024) 9(2) Saudi Journal of Engineering and Technology 75, doi:10.36348/sjet.2024.v09i02.007.

21 Yudhantaka, Simamora and Anand (n 17).

22 Niniek Lannyati and Samian, 'Comprehending Non-Litigative Resolution of Construction Disputes Through Arbitration' (2025) 5(4) Journal of Law, Politic and Humanities 2659, doi:10.38035/jlph.v5i4.1599.

23 Supriyadi Supriyadi, Mohammad Gufron AZ and Kadek Wiwik Indrayanti, 'Juridical Review of Construction Contract Disputes in Indonesia' (2022) 13(3) Jurnal Cakrawala Hukum 325, doi:10.26905/idjch.v13i3.8916.

© 2026 Meria Utama, Rizka Nurliyantika, Irsan Irsan and Biyes Nurul Atika. This is an open-access article distributed under the terms of the Creative Commons Attribution License (CC BY 4.0), which permits unrestricted use, distribution, and reproduction in any medium, provided the original author and source are credited.

3.3. Key Institutions Handling Construction Disputes

Indonesia's construction-dispute landscape is supported by several arbitration and ADR institutions that could serve as hosts for an EJMA hybrid model mechanism. BANI (Badan Arbitrase Nasional Indonesia) functions as the main general commercial arbitration forum and already provides services beyond arbitration, including mediation and other ADR procedures, making it a natural institutional anchor for an integrated expert mediation arbitration pathway. BADAPSKI operates as a construction-focused arbitration and ADR body that emphasizes decision makers with sectoral expertise[24]; therefore, it is particularly relevant for the expert-judgement and technical assessment components of the EJMA hybrid model. In parallel, the Ministry of Public Works and Housing (PUPR) has promoted Construction Dispute Boards (Dewan Sengketa Konstruksi) as preventive and project-embedded mechanisms for early dispute management in works financed by public funds or loans,[25] which can supply the standing expert forum envisaged at the front end of the EJMA hybrid model sequence. For projects with Sharia-based financing or contractual frameworks, BASYARNAS (Badan Arbitrase Syariah Nasional and MUI) provides a specialized forum that could host an EJMA hybrid model design adapted to Islamic legal principles. In the financial-services sphere, LAPS Sektor Jasa Keuangan (LAPS-SJK) offers an institutional ADR framework that, while not construction-specific, illustrates the growing recognition of structured, multi-tier dispute resolution within Indonesia's regulatory architecture and reinforces the feasibility of embedding EJMA-like hybrids in sectoral regimes.

3.4. Why Current Mechanisms Often Fall Short (Time, Cost, Confidentiality, and Technical Reliability)

Construction contract disputes in Indonesia typically combine tightly interwoven technical and legal issues, such as delay and disruption analysis, design changes, progress-payment certification, variation valuation, and workmanship quality, so any forum must be capable of testing engineering facts and contractual consequences in an integrated manner. However, court proceedings tend to be protracted, public, and formalistic, while judges may lack consistent sector-specific expertise; thus, litigation often struggles to handle complex construction evidence efficiently and to provide

24 Rumainur and Eeng Witjaksono, 'Legal Review of the Authority of the Indonesian Arbitration and Construction Dispute Settlement Board (Badapski) as an Alternative for Dispute Settlement in Indonesia' (2025) 8(12) International Journal of Social Science and Human Research 10108, doi:10.47191/ijsshr/v8-i12-106.

25 Jeffery Yuliyanto Waisapi, 'The Role of the Construction Dispute Board in The Settlement of Construction Disputes' (2023) 3(8) Eduvest - Journal of Universal Studies 1498, doi:10.59188/eduvest.v3i8.891.

commercially acceptable outcomes. Stand-alone ADR processes also reveal structural gaps when deployed in isolation: negotiation and mediation may reduce some conflicts but cannot guarantee finality when parties act strategically or refuse to comply with settlements, and expert judgement or adjudication may be bypassed or treated merely as evidentiary input, leading to duplication across forums rather than closure.[26] Even arbitration, which is generally preferred for its confidentiality and final, binding awards, can become expensive, evidentially heavy, and adversarial in large construction cases, especially when technical issues are not filtered early, so that tribunals effectively have to reconstruct the entire engineering narrative from scratch. Against this backdrop, many construction contracts adopt a baseline progression: negotiate, mediate, seek expert input, arbitrate, and only as a last resort, litigate; but this sequence remains fragmented in practice, with weak linkages between stages and no guarantee that the overall pathway will deliver outcomes that are both commercially efficient and legally robust. These recurring shortcomings motivate the normative search for a more integrated, staged mechanism that can stabilize technical facts early, channel them into genuine settlement efforts, and ultimately support an enforceable decision that is less vulnerable to challenge.

3.5. Empirical Indications: Trends, Compliance, and Annulment Risks in Arbitration

Practice indicators show that arbitration, particularly through BANI, has become an increasingly used forum in Indonesian construction disputes, reflecting the industry's preference for a faster, more specialized process than court litigation. This aligns with the normative design of arbitration under Indonesian law, which curbs protracted proceedings through a time ceiling of 180 days from the constitution of the tribunal, extendable only with the parties' consent. Yet the fragility of arbitral finality is illustrated by the Batam District Court Decision No. 147/Pdt.Sus-Arb/2024/PN Btm of 24 June 2024,[27] which annulled BANI Award No. 46013/II/ARB-BANI/2023 of 5 March 2023. The significance of this case lies in its legal basis. Under Article 70 of Law No. 30 of 1999, an arbitral award may be annulled only on narrow grounds: forged documents, concealment of decisive documents, or deceit discovered after the award, rather than on any error in the technical merits.[28] The recurring vulnerability therefore lies not in the substance of the engineering dispute but in the evidentiary integrity of the record underpinning the

26 Amaliyah Noor Indahwati, Sami'an and Sarwono Hardjomuljadi, 'Arbitration in Resolving Construction Cost Claim Disputes Due to Time Extensions: A Study of Contract Law in Indonesia' (2024) 6(2) SIGn Jurnal Hukum 263, doi:10.37276/sjh.v6i2.388.

27 Decision no 147/Pdt.Sus-Arb/2024/PN Btm (PN Batam, 24 June 2024).

28 Setyawati Fitrianggraeni, Eva Fatimah Fauziah and Sri Purnama, 'Dealing with Unsatisfactory Arbitral Awards: Observing the Grounds of Annulment of Arbitral Awards in Indonesia' (2023) 40(6) Journal of International Arbitration 735, doi:10.54648/joia2023030.

© 2026 Meria Utama, Rizka Nurliyantika, Irsan Irsan and Biyes Nurul Atika. This is an open-access article distributed under the terms of the Creative Commons Attribution License (CC BY 4.0), which permits unrestricted use, distribution, and reproduction in any medium, provided the original author and source are credited.

award. This directly justifies the EJMA design: by placing documented, independent expert judgement at the front end and enforcing procedural discipline at the arbitration stage, the model strengthens the evidentiary basis of the eventual award and narrows the grounds on which annulment can succeed.

4 NORMATIVE DESIGN OF THE EJMA HYBRID MODEL FOR EFFECTIVE AND EFFICIENT RESOLUTION

This section formulates the normative design of the Expert Judgement Mediation and Arbitration (EJMA) hybrid model as a tiered dispute resolution architecture tailored to the technical and commercial realities of construction projects. Building on the shortcomings identified in existing mechanisms, the EJMA hybrid model is structured to (i) stabilize and narrow the dispute through an early, expert-driven clarification of technical facts and causation, (ii) convert clarified technical positions into negotiable settlement options through confidential, facilitated mediation, and (iii) preserve legal certainty by providing a final, binding arbitral award when agreement cannot be achieved. The discussion therefore focuses on how the EJMA hybrid model should be designed under Indonesian law, its procedural sequence, escalation triggers, institutional roles, standards of assessment, and safeguards to ensure efficiency and relationship preservation without sacrificing enforceability and alignment.

4.1. Concept and Rationale of the EJMA Hybrid Model

The EJMA hybrid model combines expert judgement, mediation, and arbitration in a single tiered process designed to balance efficiency, substantive justice, flexibility, and legal certainty in construction disputes, particularly in large-scale EPC-type projects.[29] In the first stage, independent experts clarify technical issues and quantify claims, which narrows the dispute and filters out matters that do not warrant full adjudication; mediation then uses this stabilized factual record to facilitate interest-based negotiation and voluntary settlement; and only unresolved, material issues proceed to arbitration, where a final and binding award is rendered, backed by the general framework of the Arbitration and ADR Law. This structure reduces duplication between forums, encourages earlier and more informed settlement, preserves working relationships through the consensual middle stage, and ensures that any ultimate adjudicative outcome remains grounded in technical realities while retaining enforceability. The main advantages of the EJMA hybrid model compared to stand-alone ADR or pure arbitration can be summarized as follows.

29 John Uff, *Construction Law* (8th edn, Sweet & Maxwell 2002).

***Table* 1. Advantages of the EJMA Model**

Aspect	Advantages
Time and cost efficiency	Each stage filters out issues, so only substantial disputes proceed to arbitration.
Substantive justice	Expert opinions ensure that decisions are based on technical facts, not just legal arguments.
Flexibility	The parties may terminate the process at any stage if an agreement is reached.
Legal certainty	Arbitration outcomes remain final and enforceable, without disregarding engineering aspects.

As shown in Table 1, the EJMA hybrid model is designed not merely to combine existing mechanisms, but to sequence them in a way that simultaneously reduces time and cost, strengthens the factual and substantive basis of outcomes, preserves consensual resolution options, and secures a final decision that remains enforceable in line with the Indonesian arbitration framework.

4.2. Design Principles and Safeguards (Efficiency, Fairness, Confidentiality, Due Process, Independence)

Construction disputes require design choices that go beyond a purely textual reading of contract clauses or statutory provisions, because the disputes arise within complex socio-economic relationships among owners, contractors, consultants, and suppliers, often under tight project pressures and unequal bargaining positions. For that reason, the EJMA hybrid model must be built on principles and safeguards that ensure that speed does not erode legitimacy: efficiency (clear sequencing and time limits), fairness (balanced participation and proportional outcomes), confidentiality (to protect commercial information and ongoing projects), due process (a genuine right to be heard and to respond), and independence (neutral decision-makers with robust conflict-of-interest controls). These safeguards also address recurring practical risks in construction disputes: information gaps, technical asymmetry, and power imbalance that can distort outcomes if the process is not carefully structured.[30]

From a sociological jurisprudence perspective, the mechanism should function as an instrument of social problem-solving and relationship repair, not merely a forum for legal victory. In construction projects, where performance must often continue during disputes, safeguards such as structured party participation, non-adversarial

30 Jeffry Yuliyanto Waisapi, 'Analysis of Construction Dispute Resolution Reform Perspective of Law Number 2 of 2017' (2024) 4(6) Journal of Law, Politic and Humanities 2524, doi:10.38035/jlph.v4i6.780.

© 2026 Meria Utama, Rizka Nurliyantika, Irsan Irsan and Biyes Nurul Atika. This is an open-access article distributed under the terms of the Creative Commons Attribution License (CC BY 4.0), which permits unrestricted use, distribution, and reproduction in any medium, provided the original author and source are credited.

communication channels, and confidential facilitated dialogue help prevent project disruption and preserve the continuing relationship.[31] This is why the EJMA hybrid model emphasizes early technical clarification and mediated engagement: they reduce escalation and support restorative and preventive justice by resolving the dispute while maintaining cooperation and project continuity.

From the standpoint of legal philosophy, the EJMA model is designed to reconcile substantive justice with formal legal certainty rather than to treat them as rivals. The rationale for each stage is specific. Expert judgement advances substantive justice because, in construction disputes, material truth resides largely in engineering facts such as the causes of delay, the value of variations, and the quality of works. Stabilizing those facts through an independent expert ensures that the outcome rests on technical reality rather than on litigation skill.[32] Arbitration, in turn, secures formal justice through a final and binding award, since legal certainty is a function of predictability and enforceability, the very values that judicial annulment of arbitral awards places at risk.[33] Mediation bridges the two by converting the stabilized technical truth into an interest-based settlement accepted by the parties themselves. This design is reinforced by two theoretical commitments. First, Rawls' justice as fairness requires procedural equality: both parties must have an equal opportunity to submit technical evidence at the expert stage, to engage in balanced dialogue at mediation, and to receive a due-process-compliant hearing at arbitration, so that outcomes are not dominated by economic power.[34] Second, a progressive conception of law, which holds that law must serve substantive justice rather than rigid procedural form, grounds the requirement that the mechanism remain adaptive in practice (law in action).[35]

Conceptually, these principles translate into a workable safeguard architecture based on three pillars: tiered filtration, technical legal integration, and procedural flexibility. Tiering ensures proportional escalation: technical issues are stabilized early before legal adjudication; integration ensures that expert outputs are usable and transparently carried into mediation/arbitration; and flexibility allows termination at any stage once settlement is reached.[36] To operationalize these safeguards, the EJMA hybrid model should include (i) independence and disclosure rules for experts/mediators/arbitrators (including challenge procedures), (ii) confidentiality undertakings across all stages, (iii) equality of

31 Hansen Seng, 'A Sociolegal Analysis of Land Mafia Practices in Construction Projects' (2023) 15 Journal of Legal Affairs and Dispute Resolution in Engineering and Construction 4523021, doi:10.1061/JLADAH.LADR-980.

32 Gamage and Kumar (n 20).

33 Udechukwu Ojiako, 'The Finality Principle in Construction Arbitration: An Evolutionary Perspective' (2023) 15(1) Journal of Legal Affairs and Dispute Resolution in Engineering and Construction 4522035, doi:10.1061/(ASCE)LA.1943-4170.0000591.

34 John Rawls, *A Theory of Justice* (rev edn, Harvard UP 1999).

35 Satjipto Rahardjo, *Hukum Progresif: Sebuah Sintesa Hukum Indonesia* (Genta Pub 2009).

36 Waisapi, 'Analysis (n 30).

arms protections (balanced access to documents and the right to respond), and (iv) due process minimums (notice, opportunity to be heard, reasoned outcomes, and an auditable procedural record). These safeguards are consistent with the efficiency and proportionality orientation of out-of-court resolution under Indonesia's ADR framework, including the spirit of Article 6 of Law No. 30/1999, which encourages swift and fair settlement outside the courts. The effectiveness of the EJMA hybrid model ultimately depends on how clearly it is embedded in the parties' arbitration clause, since imprecise or pathological drafting can generate jurisdictional disputes and undermine the very finality that hybrid ADR is meant to secure.[37]

4.3. Party Involvement at Each Stage (Expert Judgement ⟶ Mediation ⟶ Arbitration)

4.3.1. Expert Judgement (Technical Expert Assessment)

At this initial stage, both parties appoint an independent expert or panel of experts, typically senior engineers, quantity surveyors, or construction law specialists, to assess complex technical issues such as delays, variations, quality defects, or cost discrepancies,[38] based on contract documents, progress reports, and site inspections. Although the expert's assessment is not legally binding, it carries significant evidentiary weight and provides the factual foundation for the subsequent mediation and arbitration stages.[39] The resulting report is transparent, accessible to all parties, and does not constitute a confidential communication.

A key design choice in the EJMA model concerns whether the same neutral may act across all three stages. Consistent with established international practice, this article adopts a separation-of-roles approach: the expert, the mediator, and the arbitrator must be different persons in the same dispute. This safeguards two fundamental principles. The first is independence and impartiality (nemo judex in causa sua), which requires that the arbitrator hold no interest or knowledge acquired outside the adversarial context. The second is the confidentiality of mediation (without-prejudice privilege): a neutral who has heard the parties' confidential positions as mediator cannot, in fairness, later decide the same dispute as arbitrator, since that decision could be influenced by information obtained outside the formal proceedings.

This approach aligns with leading comparative frameworks. The SIAC-SIMC Arb-Med-Arb Protocol expressly requires that the arbitrator(s) and mediator(s) be appointed separately

37 Qais Mahafzah and Mohammad Taha Alflaieh, 'Proper Legal Drafting of Arbitration Clauses' (2023) 11(12) Journal of Law and Sustainable Development e1948, doi:10.55908/sdgs.v11i12.1948.

38 Waisapi, 'The Role (n 25).

39 Nurindria Naharista Vidyapramatya and others, 'Authority of the Dispute Council in the Resolution of Construction Disputes in Indonesia' (2023) 19(1) Law Reform 88, doi:10.14710/lr.v19i1.49141.

© 2026 Meria Utama, Rizka Nurliyantika, Irsan Irsan and Biyes Nurul Atika. This is an open-access article distributed under the terms of the Creative Commons Attribution License (CC BY 4.0), which permits unrestricted use, distribution, and reproduction in any medium, provided the original author and source are credited.

and independently,[40] and the FIDIC dispute-board system likewise keeps the technical adjudicator distinct from the arbitral tribunal. Indonesian practice under the BANI Rules 2025 is more permissive, allowing an arbitrator to also act as a mediator where the parties so agree;[41] however, the EJMA model deliberately departs from this permissive stance in favor of clearer procedural legitimacy.

Continuity of understanding across stages is preserved not through the continuity of persons, but through the documented technical record. The expert's reasoned report travels forward as a shared factual basis for both mediation and arbitration, so that each successive neutral inherits an established technical foundation without the parties having to reconstruct the facts from the beginning. This design secures the efficiency benefits of case familiarity while maintaining the independence that separation of roles requires.

4.3.2. Mediation (Facilitation of Peaceful Negotiation)

If the expert opinion does not resolve the dispute, the matter progresses to mediation, where a neutral third-party mediator facilitates discussions between the parties to help them reach a voluntary settlement.[42] At this stage, both parties participate actively in discussions, often presenting their views based on the expert's findings. The mediator assists by exploring common ground and proposing potential solutions, ensuring that the discussions remain focused on resolving the dispute amicably.

4.4. Risks and Weakness

The most fundamental limitation of mediation as a dispute resolution mechanism is its reliance on voluntary participation and good-faith cooperation of all parties. In contrast to arbitrations that end in binding awards that can be enforced under the New York Convention, mediation does not produce an enforceable outcome unless the parties reach and formalize a settlement agreement.[43] In the context of construction contract disputes that often arise between parties who are already in opposite positions after project failure, cost overruns, or defective claims, the conditions for meaningful voluntary involvement can be structurally disrupted from the outset.[44]

40 Singapore International Arbitration Centre, *Annual Report 2024* (SIAC 2025).

41 Badan Arbitrase Nasional Indonesia, *Arbitration Rules* (BANI 2025).

42 Alen Panov and others, 'Alternative Ways of Resolving Disputes in the Field of Contract Law' (2024) 13(76) Revista Amazonia Investiga 258, doi:10.34069/AI/2024.76.04.21.

43 Sen Lin, Keyao Li and Saion Cheung, 'Managing Disputes for a Sustainable Construction: A Perspective of Settlement Facilitating Elements in Negotiations' (2023) 13(10) Buildings 2578, doi:10.3390/buildings13102578.

44 Cao and Cheung (n 6).

In the EJMA model, this risk is structurally mitigated by the sequential design of the mechanism: the existence of prior expert determination (Phase 1) provides an empirical foundation for mediation discussions, narrowing the area of factual dispute and reducing the room for strategic non-engagement. Nevertheless, it is recognized that a deadlock in mediation remains a real possibility, particularly in high-value disputes where the parties may consider that a full arbitration hearing offers a more favorable outcome than the compromise inherent in mediation settlement. To present a balanced analysis, this study is equipped with an evaluative framework that systematically maps the strengths, weaknesses, opportunities and threats (SWOT) of the proposed model. This analysis is not intended to undermine the central thesis of the study, but rather to reinforce its validity by objectively demonstrating the structural limits of the proposed model. This analysis is presented in the following table.

***Table* 2. SWOT Analysis of the Mediation Phase in the EJMA Model**

Strength	**Weakness**
Technical objectivity through independent expert determination, reducing informational asymmetries prior to negotiation. Structured sequential design provides an empirical anchor for mediation discussions, narrowing the zone of factual dispute Facilitates staged amicable settlement before recourse to costly arbitration Enforceability of mediated settlements as consent awards under the New York Convention through the SIAC-SIMC AMA Protocol	Cumulative costs across three phases generate multiple sets of professional fees, potentially exceeding the cost of a single arbitration Expert report functions as a 'factual anchor', narrowing the scope of negotiation and constraining party autonomy Risk of stronger parties exploiting mediation to delay arbitration through bad-faith engagement Expert selection difficulties: disagreement on the appropriate expert may produce an impasse at the first phase.
EXTERNAL FACTORS	
Opportunities	**Threat**
Singapore Convention on Mediation (2020) strengthens enforceability of international mediated settlements on par with arbitral awards	Risk of mediation communications leaking into arbitration if information firewall protocols are not rigorously applied.

© 2026 Meria Utama, Rizka Nurliyantika, Irsan Irsan and Biyes Nurul Atika. This is an open-access article distributed under the terms of the Creative Commons Attribution License (CC BY 4.0), which permits unrestricted use, distribution, and reproduction in any medium, provided the original author and source are credited.

Opportunities	Threat
Growing cross-border construction disputes within BRI and ASEAN corridors increase demand for hybrid model penetration across common law and civil law jurisdictions Compatibility with FIDIC 2017 DAAB, already established as the international standard construction contract, facilitates institutional adoption. Opportunity for codification of the hybrid model as a standard clause by leading arbitral institutions (ICC, SIAC, AIAC, and BANI).	Legal uncertainty in jurisdictions that have not adopted the Singapore Convention or lack specific mediation legislation Risk of arbitral award annulment if an arbitrator is shown to have accessed confidential information from the mediation phase Resistance from parties accustomed to single-mechanism dispute resolution (direct arbitration), perceived as simpler and more certain

This model addresses this structural shortfall through the institutional design of the Arb-Med-Arb SIAC-SIMC protocol (2014, updated 2024), under which any settlement reached during the mediation phase '*shall be referred to the arbitral tribunal appointed by SIAC and may be made a consent award on agreed terms*.'[45] Consent awards recorded in this way are accepted as arbitral awards under the New York Convention and can be enforced in more than 170 jurisdictions. This design converts potentially unenforceable contractual settlements into internationally enforceable arbitral awards, thus effectively eliminating the enforceability gap that would otherwise be inherent in the mediation phase.

Nonetheless, it is recognized that the conversion of a mediation settlement into an arbitration consent award requires the affirmative cooperation of the arbitral tribunal and can be opposed by a party on the basis that there was no actual 'dispute' at the time the award was rendered, given that the parties had reached an agreement in the mediation. This challenge of 'no dispute' is an unresolved doctrinal risk in jurisdictions that interpret arbitrability strictly and is an inherent limitation of hybrid model design that cannot be eliminated through contract drafting.[46]

45 Singapore International Arbitration Centre, *Arb-Med-ArbArb-Med-Arb SIAC-SIMC Protocol* (2024) <https://simc.com.sg/Arb-Med-ArbArb-Med-Arb> accessed 1 July 2026.

46 Nurbaedah, 'The Disparity Between Arbitration Award Number 01/LPS-PBJP/01/2024 and Kediri District Court Decision Number 56/Pdt.Sus-Arb/2024/PN Kdr on the Settlement of a Dispute over Green Open Space Land in the Kediri City Square' (2026) 24(1) Al Qidiri: Jurnal Pendidikan, Sosial dan Keagamaan 567, doi:10.53515/alqodiri.v24i1.165.

4.5. Challenges and Implementation

Beyond the structural risks discussed above, the implementation of the mediation phase in the EJMA model faces practical challenges that are particularly relevant in the context of the construction industry. Construction disputes often involve complex technical issues of delays, attribution of defects, and assessment of variances that may require a mediator with specialized knowledge of construction contracts, engineering standards, and project management practices. The scarcity of such specialist construction mediators, particularly in developing jurisdictions, is a significant obstacle to effective implementation.[47]

4.6. Confidentiality of Mediation and Prohibition of Submission of Mediation Records to the Arbitration Panel

Mediation confidentiality and without-prejudice privilege are not mere procedural conventions; they are both substantive principles that underpin the overall benefits of mediation as a dispute resolution mechanism. As stated by the World Intellectual Property Organization (WIPO) Arbitration and Mediation Center: '*confidentiality serves to encourage frankness and openness in the process by assuring the parties that any admissions, proposals, or offers for settlement will not have any consequences beyond the mediation process.*'[48] Without these guarantees, the parties will be forced to hide their true interests, withhold their reservation prices, and engage in strategic behavior rather than problem-solving, thus rendering the mediation process futile.

The mediator and the arbitration panel must be appointed separately from an independent neutral group. No individual acting as a mediator may act as an arbitrator in the same dispute, except with the unanimous written consent of all parties. This principle reflects the institutional design of the SIAC–SIMC Arb–Med–Arb (AMA) Protocol and is treated as a structural feature that cannot be ruled out of the EJMA model.[49]

The EJMA dispute resolution agreement must contain an explicit provision, binding on all parties and their legal representatives, that: (a) all statements, documents, acknowledgements, concessions, and offers made during the mediation phase are protected by without-prejudice privilege; (b) none of such communications are admissible in, or submitted to, the arbitration proceedings; and (c) such prohibition applies regardless of the relevance or evidentiary value of such information to the case in arbitration. This clause

47 Paul Yohanna and others, 'Effectiveness of Mediation in Reducing Dispute Resolution Time in Construction Projects' (2026) 41(1) Revista Ingeniería de Construcción 1, doi:10.7764/RIC.00176.21

48 'What is Mediation?' (*World Intellectual Property Organization (WIPO)*, 2025) <https://www.wipo.int/en/web/amc/mediation/guide/index#whatis> accessed 1 July 2026.

49 MRDP Wijerathna, MARN Kularathna and KGAS Waidyasekara, 'Challenges Encountered by Contractors in the Practice of Construction Arbitration' (2026) 18(3) Journal of Legal Affairs and Dispute Resolution in Engineering and Construction 4526022, doi:10.1061/JLADAH.LADR-1525.

© 2026 Meria Utama, Rizka Nurliyantika, Irsan Irsan and Biyes Nurul Atika. This is an open-access article distributed under the terms of the Creative Commons Attribution License (CC BY 4.0), which permits unrestricted use, distribution, and reproduction in any medium, provided the original author and source are credited.

reflects the language of the JAMS Comprehensive Arbitration Rules, Rule 22(f) and the JAMS International Mediation Rules, Rule 11.

At the beginning of the mediation phase, all parties, their legal representatives, and the technical experts present in the mediation must sign a written confidentiality guarantee acknowledging: (a) the binding nature of the mediation's confidentiality obligations; (b) prohibition on relying on mediation communications in any subsequent arbitration or tribunal proceeding; and (c) that such breach of warranty may result in punitive costs, adverse inferences, and orders to exclude evidence in arbitration proceedings.[50]

4.7. Arbitration (Final and Binding Decision)

If mediation does not result in a settlement, the dispute proceeds to arbitration, where an arbitrator (or arbitration panel) makes a final, binding decision. In this stage, the parties submit the relevant documentation, including the expert reports and any admissible evidence presented during the earlier stages, to the arbitrators. Consistent with the confidentiality regime governing the mediation phase, however, communications, offers, and concessions made during mediation are protected by without-prejudice privilege and are not admissible before the arbitral tribunal. Both parties may also present witnesses and expert testimony to support their arguments.

The role of the parties at this stage is to appoint the arbitrators, draft the Terms of Reference for the arbitration, and participate fully in hearings, including providing evidence, answering questions, and cross-examining witnesses.[51] The arbitrators will then render a decision based on the legal and technical arguments presented during the proceedings. While arbitration is the final stage, the earlier expert and mediation stages still influence the decision, as they help frame the technical issues and establish a record of the parties' positions. The arbitrator's decision is legally enforceable, providing a clear and final resolution to the dispute.[52]

Throughout the entire process, party involvement ensures that both sides can present their case, engage in dialogue, and seek a resolution. This structured participation is crucial for maintaining fairness, protecting each party's rights, and ensuring that the dispute is handled efficiently, in line with both technical realities and legal requirements.[53]

50 Ramadurai Venkataraghavan, 'Beyond the Courtroom: The Essential Role of Expert Determination in Alternative Dispute Resolution' (2026) 18(1) Journal of Legal Affairs and Dispute Resolution in Engineering and Construction 4525096, doi:10.1061/JLADAH.LADR-1371.

51 Indahwati, Sami'an and Hardjomuljadi (n 26).

52 Muhammad Imam Dani Putra and Hengki Andora, 'Position of Dispute Board in Construction Dispute Resolution in Indonesia' (2023) 10(6) International Journal of Multicultural and Multireligious Understanding 344, doi:10.18415/ijmmu.v10i6.4796

53 Ng and Banaitis (n 2).

The transition from mediation to arbitration is the most legally sensitive intersection in the hybrid model. The transition formally begins with the mediator's statement that the mediation process has ended without resulting in a binding settlement agreement. This statement is designed to be as narrow in scope as possible: it only notes the final result of the failure to reach a settlement without disclosing the position of each party, the issues that cannot be resolved, the settlement offers submitted or rejected, or the mediator's own facilitative observations during the process.

This restriction reflects the absolute scope *of the without-prejudice privilege* as recognized in Article 9 of the UNCITRAL Model Law on International Commercial Mediation (2018).[54] Any disclosure that goes beyond a simple statement of mediation failure would violate this privilege and potentially be the basis for an exception to the mediator's own statement in subsequent proceedings. The arbitration panel is further established through a completely independent appointment process, which is administered by a designated arbitration body. Panel members must meet the requirements of applicable standards of impartiality and independence under relevant institutional rules including, as applicable, the ICC Arbitration Rules 2021 (Article 11),[55] and the SIAC Rules 2025 (Rule 14).[56] It is a condition that cannot be ruled out in this model that no person who has participated in Phase 1 as a designated expert, nor in Phase 2 as a mediator or co-mediator, can be appointed as an arbitrator in the same dispute.

Finally, the expert assessment report from Phase 1 is officially resubmitted back to the arbitration panel as one of the items of documentary evidence in the early stages of the arbitration trial. This resubmission is procedurally different from the submission of the report to the parties that was originally carried out. The arbitral tribunal shall have full discretion in assessing the weight to be given to the report, and may, where it deems appropriate, exercise its authority under Article 6 of the same Rules to appoint *tribunal-appointed experts* to supplement or test the findings of the Phase 1 report.

54 United Nations Commission on International Trade Law, *UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation with Guide to Enactment and Use (2018)* (UN 2022).

55 International Chamber of Commerce, *Rules of Arbitration* (ICC 2021) <https://iccwbo.org/dispute-resolution/dispute-resolution-services/arbitration/rules-procedure/2021-arbitration-rules/> accessed 1 July 2026.

56 Singapore International Arbitration Centre, *Arbitration Rules* (7th edn, SIAC 2025) <https://siac.org.sg/siac-rules-2025> accessed 1 July 2026.

© 2026 Meria Utama, Rizka Nurliyantika, Irsan Irsan and Biyes Nurul Atika. This is an open-access article distributed under the terms of the Creative Commons Attribution License (CC BY 4.0), which permits unrestricted use, distribution, and reproduction in any medium, provided the original author and source are credited.

5 ENFORCEABILITY DESIGN: FROM MEDIATION OUTCOMES TO BINDING RESULTS (CONSENT AWARD) AND THE ROLE OF EXPERT OPINION

The enforceability of outcomes in the EJMA hybrid model is critical to ensuring that the process results in definitive, legally binding resolutions. A unique feature of this hybrid model is how it bridges the non-binding stages (Expert Judgement and Mediation) with the final, enforceable decision made in Arbitration. This ensures that the entire process maintains legal certainty while preserving flexibility, encouraging parties to participate in settlement discussions at earlier stages with the confidence that any agreement reached will be upheld.[57]

5.1. From Mediation Outcomes to Binding Results (Consent Award)

While mediation results are typically non-binding, the EJMA hybrid model includes provisions that transform successful mediation outcomes into legally enforceable agreements. When the parties reach an agreement during the mediation phase, the mediator prepares a settlement agreement that outlines the terms of the resolution. Importantly, this agreement can be formalized as a consent award. A consent award is a formally recognized legal instrument within the arbitration process, and once it is signed by both parties, it can be registered with the relevant court (e.g., the District Court) for enforcement purposes.[58]

This approach effectively improves the enforceability of mediated agreements, which are typically difficult to enforce unless there is a subsequent agreement to make them binding. The consent award ensures that mediation outcomes are not merely advisory but are given the same weight as an arbitration decision, providing a clear path for enforcement if one party fails to comply with the settlement terms. Thus, the mediation stage, which focuses on maintaining business relationships and reaching a win-win solution, is made legally enforceable, offering both parties the assurance that their negotiated settlement will be upheld in a court of law.[59]

57 Cao and Cheung (n 6).

58 Yaraslau Kryvoi and Dmitry Davydenko, 'Consent Awards in International Arbitration: From Settlement to Enforcement' (2015) 40(3) Brooklyn Journal of International Law 827.

59 Suprihantosa Sugiarto, 'Online Dispute Resolution (ODR) Sebagai Alternatif Penyelesaian Sengketa Di Era Modernisasi' (2019) 3(1) Qawānïn Journal of Economic Syaria Law 50, doi:10.30762/q.v3i1.1484.

5.2. Role of Expert Opinion in Enforceability

The role of expert opinion is pivotal in strengthening the enforceability of the entire process. In the Expert Judgement stage, the independent technical assessment provided by the expert panel serves as a critical reference point for both mediation and arbitration. The expert's findings are not only important for clarifying the technical aspects of the dispute, such as delays, quality defects, or variations, but they also carry significant evidentiary weight in subsequent stages of the dispute resolution process.

Expert opinions provide a solid factual basis for mediation discussions, helping to shape realistic and acceptable settlement terms. If the dispute proceeds to arbitration, the expert's findings become important evidence for the arbitrators to consider when making the final decision. This linkage between expert opinion and enforceability is one of the key strengths of the EJMA hybrid model: it allows technical issues to be resolved and preserved at every stage, ensuring that the arbitral award is grounded in accurate and mutually accepted technical facts rather than legal argument alone. Because the expert's findings are impartial and integrated from the outset, they also strengthen the eventual award against annulment based on alleged factual inaccuracy, ensuring that both technical and legal dimensions rest on a firm foundation.[60] The enforceability design in the EJMA hybrid model thus not only preserves flexibility during mediation but also ensures that a successful mediated settlement is translated into a binding outcome through the consent award.

6 COMPARATIVE LESSONS SUPPORTING EJMA HYBRID MODEL (FIDIC DAB, MALAYSIA CIPAA 2012, SINGAPORE ARB-MED-ARB)

In selecting the comparative references for this study, this article deliberately focuses on three influential models: the FIDIC Dispute Adjudication Board (DAB), Malaysia's Construction Industry Payment and Adjudication Act (CIPAA) 2012, and Singapore's Arb-Med-Arb protocol. The FIDIC DAB is examined because it operates as a de facto global standard in many international construction projects, including in Europe, and represents a mature form of dispute board practice. CIPAA 2012 is chosen as a statutory adjudication regime in a developing Asian jurisdiction that faces structural challenges similar to those of Indonesia in managing payment disputes and cash-flow risks in construction. The Arb-Med-Arb framework in Singapore is included as one of the most prominent hybrid mechanisms recognized in international arbitration practice. Together, these three models provide complementary building blocks for the design of the EJMA hybrid model informing its tiered filtration of issues, the use of consent awards to strengthen enforceability, and the structured integration of expert judgement, mediation, and arbitration into a single coherent sequence.

60 Ng and Banaitis (n 2).

© 2026 Meria Utama, Rizka Nurliyantika, Irsan Irsan and Biyes Nurul Atika. This is an open-access article distributed under the terms of the Creative Commons Attribution License (CC BY 4.0), which permits unrestricted use, distribution, and reproduction in any medium, provided the original author and source are credited.

The design of the EJMA hybrid model is informed by successful comparative practices from other countries that have implemented hybrid dispute resolution systems in construction. These systems, though differing in procedural details, share core features namely, the integration of expert judgement, mediation, and arbitration to resolve disputes efficiently while maintaining fairness and legal certainty.

6.1. The United Kingdom and the FIDIC System

The Dispute Adjudication Board (DAB) system, as applied in FIDIC contracts, has proven to be effective in managing disputes in international construction projects.[61] DAB decisions are binding unless revised, meaning that the parties must implement the decision immediately unless there is a subsequent settlement or arbitration ruling. The DAB mechanism ensures project continuity, prevents work stoppages, and provides efficiency by resolving issues quickly through provisional decisions that must be followed until further revision. These practices align well with the EJMA approach, where expert assessments provide the technical foundation, followed by mediation, and concluding with arbitration if necessary. The efficiency of DAB offers a useful comparative model for incorporating expert and arbitration stages within a hybrid framework, reducing time and cost for the parties involved.

6.2. Malaysia and the Construction Industry Payment and Adjudication Act (CIPAA) 2012

Malaysia's CIPAA 2012 introduces a fast adjudication process that must be exhausted before escalating to arbitration or litigation.[62] This mandatory adjudication for construction payment disputes aims to provide a swift resolution (typically within 100 days) and ensures that payments are made promptly, thus maintaining the financial flow of construction projects. Like the FIDIC model, CIPAA's adjudication decisions are provisional and binding, offering enforceability unless revised in arbitration or court. This system mirrors aspects of the EJMA's hybrid model, where technical issues are resolved first through expert judgement and, if necessary, proceed to mediation or arbitration. CIPAA's focus on rapid adjudication enhances the efficiency and certainty of dispute resolution, ensuring that disputes are addressed without unduly delaying project completion.[63] This system is particularly relevant to the EJMA hybrid model, as it emphasizes fast resolution and certainty, helping to prevent project delays.

61 Jeremy Glover, 'FIDIC Dispute Adjudication Boards' (2014) 12 Fenwick Elliott, International Quarterlies <https://www.fenwickelliott.com/knowledge-hub/international-quarterlies/issue-12/fidic-dispute-adjudication-boards/> accessed 1 July 2026.

62 Asian International Arbitration Centre, *Construction Industry Payment and Adjudication Act 2012* (AIAC 2018) <https://www.aiac.world/Adjudication-Adjudication> accessed 1 July 2026.

63 Tay Zi Keng and Kong Sio Kah, 'Effectiveness of Construction Industry Payment and Adjudication Act (CIPAA) In Remedying Payment Issues Among Sub-Contractors' (2018) 2(5) INTI Journal-Built Environment 1.

6.3. Singapore and the Arb-Med-Arb Protocol

In Singapore, the Arb-Med-Arb protocol integrates arbitration, mediation, and arbitration in a seamless process. Under this protocol, disputes are initially filed as arbitration cases with the Singapore International Arbitration Centre (SIAC), but the arbitration process is suspended to allow mediation at the Singapore Mediation Centre (SMC) or Singapore International Mediation Centre (SIMC). If the mediation is successful, the settlement agreement is converted into a consent award by the arbitration tribunal, which carries the same enforceability as a standard arbitration award. If mediation fails, the dispute automatically proceeds to full arbitration, ensuring that a final decision is made. This integration of mediation as an intermediary step provides a structured process to encourage settlement while maintaining legal certainty.[64] The EJMA hybrid model incorporates a similar philosophy, where expert judgement precedes mediation, and arbitration ensures finality when necessary. The Singapore model's use of consent awards adds a layer of enforceability to the mediation stage, which can be directly applied in the EJMA hybrid model through the formalization of mediation outcomes into binding awards.

To highlight the main comparative lessons, Table 3 below summarizes the key normative principles found in the United Kingdom (FIDIC DAB), Malaysia (CIPAA 2012), and Singapore (Arb-Med-Arb), and indicates how these can inform the Indonesian design of the EJMA hybrid model.

***Table* 3. Normative Principles That Indonesia Can Adopt Based on Comparative Law of Other Countries**

Aspect	UK (FIDIC DAB)	Malaysia (CIPAA 2012)	Singapore (Arb-Med-Arb)	Implications for Indonesia
Type of Mechanism	Dispute Adjudication Board	Fast adjudication	Integrated Mediation Arbitration	Combination of all: Hybrid Expert Mediation Arbitration
Nature of the Decision	Provisionally binding (binding unless revised)	Provisionally binding	Mediation may result in a consent award	May be arranged as a provisional decision that must be implemented

64 Peter Pettibone, John S Siffert and Angela Zhu, 'An Examination of Institutional Arb-Med-ArbArb-Med-Arb Protocols and Practices' (2022) 76(1) Dispute Resolution Journal 99.

© 2026 Meria Utama, Rizka Nurliyantika, Irsan Irsan and Biyes Nurul Atika. This is an open-access article distributed under the terms of the Creative Commons Attribution License (CC BY 4.0), which permits unrestricted use, distribution, and reproduction in any medium, provided the original author and source are credited.

Aspect	UK (FIDIC DAB)	Malaysia (CIPAA 2012)	Singapore (Arb-Med-Arb)	Implications for Indonesia
Main Purpose	Ensuring the continuity of the project	Ensuring payment and smooth progress of the project	Accelerating completion and efficiency	Ensuring the sustainability, fairness, and efficiency of the project
Implementing Agency	DAB/FIDIC	AIAC (Asian International Arbitration Centre)	SIAC + SIMC	BANI + LPJK + PUPR
Processing Time	Relatively quick (depending on the contract)	±100 days	Flexible, integrated	Recommended 60–120 days per stage
Execution Strength	Binding unless revised	Enforceable by the High Court	Mediation outcome = consent award	Requires legal basis for enforcement under the Supreme Court

As shown in Table 3, each jurisdiction offers a distinct element provisionally binding decisions supporting project continuity (FIDIC DAB), rapid statutory adjudication to secure payment (CIPAA), and enforceable mediated settlements through consent awards (Arb-Med-Arb) which, if combined and adapted, can underpin EJMA as a hybrid mechanism that is both practically workable and normatively grounded in the Indonesian context.

7 IMPLEMENTATION STRATEGY IN INDONESIA: INSTITUTIONS, CONTRACT CLAUSES, AND REGULATORY REFORM

The operationalization of the EJMA hybrid model in Indonesia requires a pragmatic strategy that prioritizes project continuity above all else. Indonesia, although not yet explicitly regulated through a single hybrid ADR framework, has the opportunity to reform its construction governance by adopting the British principle 'pay now, argue later'. This principle, rooted in the FIDIC DAB system, ensures that infrastructure development remains uninterrupted by requiring parties to execute expert decisions immediately, while reserving the right to challenge such decisions in later arbitration.[65]

65 Sarwono Hardjomuljadi, 'Use of Dispute Avoidance and Adjudication Boards' (2020) 12(4) Journal of Legal Affairs and Dispute Resolution in Engineering and Construction 3720004, doi:10.1061/(ASCE)LA.1943-4170.0000431.

To avoid institutional overlap, the proposed strategy distinguishes between the technical-preventive role of the Construction Dispute Resolution Board (CDRB) and the adjudicative-final role of BANI. The establishment of a CDRB under the oversight of the Ministry of Public Works (PUPR) and the Construction Services Development Board (LPJK) is proposed not as a substitute for arbitration, but as a mandatory technical filter. Unlike BANI, which focuses on rendering a final legal award, the CDRB functions as a front-end mechanism designed to stabilize technical facts during the project lifecycle.[66]

By mandating that disputes must pass through a CDRB-led expert judgement and mediation phase before entering the arbitral tribunal, the system ensures that BANI only receives cases that are purely legal in nature and have failed all settlement attempts. This gatekeeper role prevents BANI from being overburdened with complex engineering fact finding, thereby optimizing the duration and cost efficiency of the entire dispute ecosystem.[67] To ensure that this strategy is enforceable, two specific regulatory actions are required:

1) Legislative Amendment: Reforming Law No. 2 of 2017 to explicitly recognize the interim binding status of CDRB decisions. This provides the statutory basis for the 'implement-first' rule, where refusal to implement a CDRB technical decision can be categorized as a breach of statutory duty.[68]

2) Procedural Integration via PERMA: To ensure that the filter is effective, a Supreme Court Regulation (PERMA) should be issued to recognize CDRB- mediated settlements as consent awards. This bridges the institutional gap between the CDRB and the judiciary, ensuring that agreements reached at the filter stage carry the same weight as a court-sanctioned arbitral award.[69]

The implementation must be finalized through the standardization of dispute clauses in all state-owned EPC contracts. These clauses must clearly delineate the EJMA hybrid model sequence, providing specific triggers and strict timelines. This structural clarity prevents parties from bypassing the CDRB filter, ensuring that Justice as Fairness is upheld by providing a fast, merit-based resolution for all actors, including smaller subcontractors who are most vulnerable to project delays.

66 Putra and Andora (n 52).
67 Waisapi, 'Analysis (n 30).
68 Putra and Andora (n 52).
69 Hardjomuljadi (n 65).

© 2026 Meria Utama, Rizka Nurliyantika, Irsan Irsan and Biyes Nurul Atika. This is an open-access article distributed under the terms of the Creative Commons Attribution License (CC BY 4.0), which permits unrestricted use, distribution, and reproduction in any medium, provided the original author and source are credited.

8 SUBSTANTIVE JUSTICE AS THE NORMATIVE ANCHOR OF EJMA'S NOVELTY VIS-A-VIS THE FIDIC TIERED STRUCTURE

Both FIDIC's multi-tiered dispute resolution structure and the EJMA model rest on a filtration logic: disputes are screened stage by stage so that only genuinely intractable issues reach arbitration. Within FIDIC's rainbow suite, the 1999 Edition (Clause 20) sets out three tiers: the Engineer's determination, referral to a Dispute Adjudication Board (DAB), and then arbitration, while the 2017 Edition separates claims (Clause 20) from disputes (Clause 21) and rebrands the DAB as a Dispute Avoidance/Adjudication Board (DAAB), adding an explicit dispute avoidance function.[70] Functionally, the Engineer's determination corresponds to EJMA's Expert Judgement stage, and arbitration is final in both models. The decisive difference lies in the middle tier: FIDIC places adjudication (DAB/DAAB), whereas EJMA places mediation.

***Table* 4. Comparison of Dispute Resolution Stages in FIDIC and EJMA**

Function	FIDIC 1999/2017	EJMA	Note
Upstream technical clarification	Determined Engineer (Cl. 3.5 / 3.7)	Expert Assessment (Phase I)	Both place technical assessment as the first gateway
Interim adjudication	DAB / DAAB (Cl. 20 / 21)	(no direct equivalent)	This is where EJMA differs
Consensual settlement	Amicable settlement negotiation (Cl. 20.5 / 21.5)	Structured mediation (Phase II)	FIDIC refers to negotiation; EJMA formalizes it into mediation and a consent award
Final adjudication	Arbitration (ICC)	**Arbitration** (Phase III)	The same

Viewed through the theory of substantive justice, this difference is consequential. Substantive justice requires that the outcome of a process reflect material truth and the merits of the case, rather than mere compliance with form; it is distinct from formal justice, which emphasizes certainty and adherence to procedure. The classic tension in procedural law is that overly rigid procedure may yield outcomes that are formally valid yet substantively unjust: *summum ius, summa iniuria*. Radbruch's idea of law (Rechtsidee)

70 Cyril Chern, 'Time-Bar Clauses, Special Situations and Pitfalls' in Cyril Chern, *Chern on Dispute Boards: Practice and Procedure* (4th edn, Routledge 2020) ch 16.

frames justice, legal certainty, and purposiveness as three values to be balanced; an imbalance tilting too far toward any one of them produces a justice deficit.[71]

On this analysis, two weaknesses of the FIDIC structure can be read as failures of substantive justice. First, the textual tension in the FIDIC 1999 Edition, between the mandatory language of Sub-Clause 20.2 (shall refer disputes to the DAB) and the latitude of Sub-Clause 20.8, under which a dispute may be referred directly to arbitration where there is 'no DAB in place… whether by reason of the expiry of the DAB's appointment or otherwise', has generated divergent judicial interpretations. In Peterborough City Council v Enterprise Managed Services Ltd (2014) EWHC 3193 (TCC), the English court held the DAB tier to be mandatory and stayed proceedings to allow adjudication to proceed, while the Swiss Federal Supreme Court (Decision 4A-124/2014 of 7 July 2014) likewise treated the DAB as a mandatory precondition, permitting only a narrow good faith exception.[72] The very need for such litigation illustrates the problem: the parties' energy is diverted from the merits to a jurisdictional quarrel over whether the adjudication tier must be exhausted, so that the certainty of procedural form comes at the expense of a substantive resolution of the merits. Second, the binding but not final principle ('pay now, argue later') mandates enforcement of an interim decision that is deliberately left potentially erroneous; substantive finality is deferred to arbitration, so that the party that is in fact correct may first bear a burden under a decision later shown to be wrong.[73]

EJMA reorders the relationship between substantive and formal justice rather than opposing them. Expert judgement first stabilizes technical truth – as the core of substantive justice in construction disputes indeed lies in engineering facts such as the causes of delay, the value of variations, and the quality of works – which guarantees that any decision is built on technical reality rather than litigation skill. Mediation then converts that technical truth into an interest-based settlement agreed by the parties themselves, the highest form of substantive justice because the outcome is accepted as fair by both sides rather than imposed. The consent award then clothes that substantively fair outcome with formal certainty as a final and enforceable award. EJMA thus sequences the two forms of justice: substance is stabilized first through expert judgement and mediation, and only then wrapped in formal certainty through a consent award or arbitral award, the inverse of FIDIC, which front loads an interim formal decision whose substance is left suspended.[74]

71 Ramdani Husein Renngur, 'Deconstruction of Gustav Radbruch's Basic Legal Idea of Zweckmäßigkeit' (2026) 10(1) Refleksi Hukum: Jurnal Ilmu Hukum 23, doi:10.24246/jrh.2025.v10.i1.p23-44.

72 'Adjudication Ordered in £1.3m Dispute between Council and Solar Business' (*Local Government Lawyer*, 13 October 2014) <https://www.localgovernmentlawyer.co.uk/property/404-property-news/20368-adjudication-ordered-in-p13m-dispute-between-council-and-solar-energy-business> accessed 1 July 2026.

73 Yudhantaka, Simamora and Anand (n 17).

74 Rahardjo (n 35).

© 2026 Meria Utama, Rizka Nurliyantika, Irsan Irsan and Biyes Nurul Atika. This is an open-access article distributed under the terms of the Creative Commons Attribution License (CC BY 4.0), which permits unrestricted use, distribution, and reproduction in any medium, provided the original author and source are credited.

This substantive justice framework accurately delineates the novelty of the EJMA model. Its contribution lies not in inventing new components but in resequencing the function of the middle tier, from adjudicative (DAB/DAAB) to consensual (mediation), coupled with an enforceability bridge (the consent award) and an interphase confidentiality firewall not expressly regulated in the FIDIC regime. For balance, FIDIC's 'pay now, argue later' principle is not without substantive justification; it protects contractors, especially smaller ones, from payment delays that damage cash flow. EJMA is therefore positioned not as an absolutely superior replacement, but as a rebalancing of priorities better suited to complex, high value disputes within the Indonesian enforcement context. This claim of substantive advantage remains a plausible theoretical proposition supported by comparative experience, not an empirically measured result.

9 CONCLUSIONS

Indonesia's current landscape for resolving construction disputes remains fragmented and suboptimal for complex, high-value projects. Litigation is generally slow, public, and often ill-equipped to address dense engineering and quantum questions, while stand-alone ADR mechanisms, negotiation, mediation, expert determination, and dispute boards frequently fail to deliver definitive outcomes because they depend on voluntary compliance or produce determinations that are easily bypassed. Even arbitration, although confidential and formally final, can become costly, evidentially heavy, and vulnerable to annulment when technical issues are not stabilized early and when procedural safeguards are not sufficiently robust. As a result, the existing progression from negotiation to mediation, expert involvement, arbitration, and only ultimately litigation has not yet evolved into an integrated system that reliably combines efficiency, technical reliability, and legal certainty in international construction disputes.

In response, this article develops the Expert Judgement Mediation Arbitration (EJMA) hybrid model as a structured hybrid mechanism that sequences early technical clarification by independent experts, confidential and interest-based settlement efforts through mediation, and, where necessary, a final and binding arbitral award grounded in a strengthened factual record. The EJMA hybrid model's normative design rests on a limited set of safeguards — tiered filtration of issues, integration of expert outputs into subsequent stages, confidentiality, and minimum due-process guarantees — that are consistent with Indonesia's construction-services regime and the general framework of the Arbitration and ADR Law, while also drawing on comparative lessons from dispute boards, statutory adjudication, and arb–med–arb schemes. The model is intended to reduce duplication between forums, enhance compliance with settlements, and lower annulment risks, thereby improving substantive outcomes and access to justice for both public and private construction stakeholders. These benefits, however, should be read within the study's scope: as a doctrinal-normative work, its claims are theoretical

propositions derived from statutory analysis, case law, and comparative practice rather than results validated through primary empirical data, and the novelty asserted is confined to the procedural re-sequencing of established mechanisms rather than the invention of new ones. Empirical testing of the model in actual construction disputes therefore remains an essential agenda for future research.

REFERENCES

1. Amoah C and Nkosazana H, 'Effective Management Strategies for Construction Contract Disputes' (2022) 41(6) International Journal of Building Pathology and Adaptation 70, doi:10.1108/IJBPA-01-2022-0004
2. Cao N and Cheung SO, 'Mediators' View on Voluntary Construction Dispute Mediation' (2024) 16(1) Journal of Legal Affairs and Dispute Resolution in Engineering and Construction 5023005, doi:10.1061/JLADAH.LADR-1004
3. Chern C, 'Time-Bar Clauses, Special Situations and Pitfalls' in Chern C, *Chern on Dispute Boards: Practice and Procedure* (4th edn, Routledge 2020) ch 16
4. Fitrianggraeni S, Fauziah EF and Purnama S, 'Dealing with Unsatisfactory Arbitral Awards: Observing the Grounds of Annulment of Arbitral Awards in Indonesia' (2023) 40(6) Journal of International Arbitration 735, doi:10.54648/joia2023030
5. Gamage ANKK and Kumar S, 'Review of Alternative Dispute Resolution Methods in Construction Projects' (2024) 9(2) Saudi Journal of Engineering and Technology 75, doi:10.36348/sjet.2024.v09i02.007
6. Glover J, 'FIDIC Dispute Adjudication Boards' (2014) 12 Fenwick Elliott, International Quarterlies
7. Hardjomuljadi S, 'Use of Dispute Avoidance and Adjudication Boards' (2020) 12(4) Journal of Legal Affairs and Dispute Resolution in Engineering and Construction 3720004, doi:10.1061/(ASCE)LA.1943-4170.0000431
8. Hidayat T and Sami'an, 'Construction Dispute Resolution: Alternative Construction Dispute Resolution, Mediation, and Arbitration' (2025) 8(3) Indonesian Interdisciplinary Journal of Sharia Economics 13002, doi:10.31538/iijse.v8i3.6347
9. Ilma DAU and others, 'A Comparative Study of National and International Contracts Document Refers to the FIDIC Standard on Construction Projects in Indonesia' (InCEESS 2020: Proceedings of the 1st International Conference on Economics Engineering and Social Science, 17-18 July 2020, Bekasi, Indonesia) doi:10.4108/eai.17-7-2020.2303003
10. Ilma DAU and others, 'State of the Art Perselisihan Kontrak Konstruksi Di Indonesia' (2020) 16(2) INERSIA Informasi Dan Ekspose Hasil Riset Teknik Sipil Dan Arsitektur 158, doi:10.21831/inersia.v16i2.36901

© 2026 Meria Utama, Rizka Nurliyantika, Irsan Irsan and Biyes Nurul Atika. This is an open-access article distributed under the terms of the Creative Commons Attribution License (CC BY 4.0), which permits unrestricted use, distribution, and reproduction in any medium, provided the original author and source are credited.

11. Indahwati AN, Sami'an and Hardjomuljadi S, 'Arbitration in Resolving Construction Cost Claim Disputes Due to Time Extensions: A Study of Contract Law in Indonesia' (2024) 6(2) SIGn Jurnal Hukum 263, doi:10.37276/sjh.v6i2.388

12. Irsan and others, 'Drafting Extension of Time for Completion to Avoid Time at Large in Construction Contract' (2024) 7(2) Notaire 247, doi:10.20473/ntr.v7i2.58379

13. Ismanto H and Hardjomuljadi S, 'Analisis Pengaruh Dewan Sengketa & Arbitrase Terhadap Penyelesaian Sengketa Konstruksi Berdasarkan Fidic Condition of Contract 2017' (2019) 10(1) Konstruksia 73, doi:10.24853/jk.10.1.73-86

14. Kryvoi Ya and Davydenko D, 'Consent Awards in International Arbitration: From Settlement to Enforcement' (2015) 40(3) Brooklyn Journal of International Law 827

15. Lannyati N and Samian, 'Comprehending Non-Litigative Resolution of Construction Disputes Through Arbitration' (2025) 5(4) Journal of Law, Politic and Humanities 2659, doi:10.38035/jlph.v5i4.1599

16. Lin S, Li K and Cheung S, 'Managing Disputes for a Sustainable Construction: A Perspective of Settlement Facilitating Elements in Negotiations' (2023) 13(10) Buildings 2578, doi:10.3390/buildings13102578

17. Mahafzah Q and Alflaieh MT, 'Proper Legal Drafting of Arbitration Clauses' (2023) 11(12) Journal of Law and Sustainable Development e1948, doi:10.55908/sdgs.v11i12.1948

18. Ng PL and Banaitis A, 'Construction Mediation and Its Hybridization: The Case of the Hong Kong Construction Industry' (2017) 9(1) Organization, Technology and Management in Construction 1528, doi:10.1515/otmcj-2016-0015

19. Nurbaedah, 'The Disparity Between Arbitration Award Number 01/LPS-PBJP/01/2024 and Kediri District Court Decision Number 56/Pdt.Sus-Arb/2024/PN Kdr on the Settlement of a Dispute over Green Open Space Land in the Kediri City Square' (2026) 24(1) Al Qidiri: Jurnal Pendidikan, Sosial dan Keagamaan 567, doi:10.53515/alqodiri.v24i1.165

20. Ojiako U, 'The Finality Principle in Construction Arbitration: An Evolutionary Perspective' (2023) 15(1) Journal of Legal Affairs and Dispute Resolution in Engineering and Construction 4522035, doi:10.1061/(ASCE)LA.1943-4170.0000591

21. Panov A and others, 'Alternative Ways of Resolving Disputes in the Field of Contract Law' (2024) 13(76) Revista Amazonia Investiga 258, doi:10.34069/AI/2024.76.04.21

22. Pettibone P, Siffert JS and Zhu A, 'An Examination of Institutional Arb-Med-Arb Protocols and Practices' (2022) 76(1) Dispute Resolution Journal 99

23. Putra MID and Andora H, 'Position of Dispute Board in Construction Dispute Resolution in Indonesia' (2023) 10(6) International Journal of Multicultural and Multireligious Understanding 344, doi:10.18415/ijmmu.v10i6.4796

24. Radbruch G, 'Gesetzliches Unrecht und übergesetzliches Recht' (1946) 1(5) Süddeutsche Juristen-Zeitung 105

25. Rahardjo S, *Hukum Progresif: Sebuah Sintesa Hukum Indonesia* (Genta Pub 2009)

26. Rawls J, *A Theory of Justice* (rev edn, Harvard UP 1999)

27. Renngur RH, 'Deconstruction of Gustav Radbruch's Basic Legal Idea of Zweckmäßigkeit' (2026) 10(1) Refleksi Hukum: Jurnal Ilmu Hukum 23, doi:10.24246/jrh.2025.v10.i1.p23-44

28. Roosdiono AW and Taqwa MD, 'Questioning the Validity of the New York Convention 1958 on Recognition and Enforcement of Foreign Arbitral Awards in Indonesia' (2024) 19(2) Pandecta Research Law Journal 583, doi:10.15294/pandecta.v19i2.4099

29. Rumainur and Witjaksono E, 'Legal Review of the Authority of the Indonesian Arbitration and Construction Dispute Settlement Board (Badapski) as an Alternative for Dispute Settlement in Indonesia' (2025) 8(12) International Journal of Social Science and Human Research 10108, doi:10.47191/ijsshr/v8-i12-106

30. Seng H, 'A Sociolegal Analysis of Land Mafia Practices in Construction Projects' (2023) 15 Journal of Legal Affairs and Dispute Resolution in Engineering and Construction 4523021, doi:10.1061/JLADAH.LADR-980

31. Sugiarto S, 'Online Dispute Resolution (ODR) Sebagai Alternatif Penyelesaian Sengketa Di Era Modernisasi' (2019) 3(1) Qawãnïn Journal of Economic Syaria Law 50, doi:10.30762/q.v3i1.1484

32. Supriyadi S, Gufron AZ M and Indrayanti KW, 'Juridical Review of Construction Contract Disputes in Indonesia' (2022) 13(3) Jurnal Cakrawala Hukum 325, doi:10.26905/idjch.v13i3.8916

33. Taggart P, 'Dispute Boards as Pre-Arbitration Tools: Recent Developments and Practical Considerations' (*Kluwer Arbitration Blog*, 28 February 2015) <https://legalblogs.wolterskluwer.com/arbitration-blog/dispute-boards-as-pre-arbitration-tools-recent-developments-and-practical-considerations/> accessed 9 March 2026

34. Tay ZK and Kong SK, 'Effectiveness of Construction Industry Payment and Adjudication Act (CIPAA) In Remedying Payment Issues Among Sub-Contractors' (2018) 2(5) INTI Journal-Built Environment 1

35. Uff J, *Construction Law* (8th edn, Sweet & Maxwell 2002)

36. Utama M and Irsan I, 'General Overview on Selecting and Drafting Construction Contract Disputes Resolution' (2018) 2(2) Sriwijaya Law Review 152, doi:10.28946/slrev.Vol2.Iss2.129.pp152-169

© 2026 Meria Utama, Rizka Nurliyantika, Irsan Irsan and Biyes Nurul Atika. This is an open-access article distributed under the terms of the Creative Commons Attribution License (CC BY 4.0), which permits unrestricted use, distribution, and reproduction in any medium, provided the original author and source are credited.

37. Utama M and others, 'Recognition and Enforcement of Foreign Judgments and Arbitral Awards in Indonesia: Lessons from Singapore and Malaysia' (2026) 7(3) Journal of Law and Legal Reform 1301, doi:10.15294/jllr.v7i3.37235

38. Venkataraghavan R, 'Beyond the Courtroom: The Essential Role of Expert Determination in Alternative Dispute Resolution' (2026) 18(1) Journal of Legal Affairs and Dispute Resolution in Engineering and Construction 4525096, doi:10.1061/JLADAH.LADR-1371

39. Vidyapramatya NN and others, 'Authority of the Dispute Council in the Resolution of Construction Disputes in Indonesia' (2023) 19(1) Law Reform 88, doi:10.14710/lr.v19i1.49141

40. Waisapi JY, 'Analysis of Construction Dispute Resolution Reform Perspective of Law Number 2 of 2017' (2024) 4(6) Journal of Law, Politic and Humanities 2524, doi:10.38035/jlph.v4i6.780

41. Waisapi JY, 'The Role of The Construction Dispute Board in The Settlement of Construction Disputes' (2023) 3(8) Eduvest - Journal of Universal Studies 1498, doi:10.59188/eduvest.v3i8.891

42. Wijerathna MRDP, Kularathna MARN and Waidyasekara KGAS, 'Challenges Encountered by Contractors in the Practice of Construction Arbitration' (2026) 18(3) Journal of Legal Affairs and Dispute Resolution in Engineering and Construction 4526022, doi:10.1061/JLADAH.LADR-1525

43. Yohanna P and others, 'Effectiveness of Mediation in Reducing Dispute Resolution Time in Construction Projects' (2026) 41(1) Revista Ingeniería de Construcción 1, doi:10.7764/RIC.00176.21

44. Yudhantaka L, Simamora YS and Anand G, 'Binding Power of Dispute Board Judgment in Construction Dispute Settlement' (2023) 38(1) Yuridika 159, doi:10.20473/ydk.v38i1.42717

AUTHORS INFORMATION

Meria Utama*
Dr., Faculty of Law, Universitas Sriwijaya, Palembang, Indonesia
meriautama@fh.unsri.ac.id
https://orcid.org/0000-0002-6724-3002
Corresponding author, responsible for Conceptualization, Formal Analysis, Funding Acquisition, Methodology, Supervision, Visualization, Validation, Writing – original draft, Writing – review & editing.

Rizka Nurliyantika
LL.M, Faculty of Law, Universitas Sriwijaya, Palembang, Indonesia
rizkanurliyantika@fh.unsri.ac.id
https://orcid.org/0000-0003-3336-0240
Co-author, responsible for Formal Analysis, Investigation, Resources, Writing – review & editing.

Irsan Irsan
Dr., Faculty of Law, Universitas Sriwijaya, Palembang, Indonesia
irsan@fh.unsri.ac.id
https://orcid.org/0009-0002-0317-3794
Co-author, responsible for Data Curation, Funding Acquisition, Software, Writing – review & editing.

Biyes Nurul Atika
M.H., Faculty of Law, Universitas Sriwijaya, Palembang, Indonesia
biyesnurulatika@fh.unsri.ac.id
https://orcid.org/0009-0000-8560-9154
Co-author, responsible for Data Curation, Methodology, Project Administration, Visualization, Writing – review & editing.

Competing interests: No competing interests were disclosed.

Disclaimer: The authors declare that their opinions and views expressed in this manuscript are free of any impact of any organization.

RIGHTS AND PERMISSIONS

Copyright: © 2026 Meria Utama, Rizka Nurliyantika, Irsan Irsan and Biyes Nurul Atika. This is an open access article distributed under the terms of the Creative Commons Attribution License, (CC BY 4.0), which permits unrestricted use, distribution, and reproduction in any medium, provided the original author and source are credited.

EDITORS

Managing Editor – Mag. Yuliia Hartman.

ABOUT THIS ARTICLE

Cite this article
Utama M, Nurliyantika R, Irsan I and Atika BN, 'A Hybrid Model of Expert Judgement, Mediation and Arbitration: A Comparative Study for Effective Construction Contract Dispute Resolution' (2026) 9(4) Access to Justice in Eastern Europe 255-90 <https://doi.org/10.33327/AJEE-18-9.4-a0002013>

DOI: https://doi.org/10.33327/AJEE-18-9.4-a0002013

Summary: 1. Introduction. – 2. Research Method. – 3. Limitations of Existing Construction Dispute Resolution Mechanisms. – *3.1. Legal Framework and Pathways for Construction Dispute Resolution in Indonesia.* – *3.2. Forms of Dispute Resolution: ADR and Litigation.* – *3.3.* Key Institutions Handling Construction Disputes**.** – *3.4. Why Current Mechanisms Often Fall Short (Time, Cost, Confidentiality, and Technical Reliability).* – *3.5. Empirical Indications: Trends, Compliance, and Annulment Risks in Arbitration*. – 4. Normative Design of the EJMA Hybrid Model for Effective and Efficient Resolution. – *4.1. Concept and Rationale of the EJMA Hybrid Model.* – *4.2. Design Principles and Safeguards (Efficiency, Fairness, Confidentiality, Due Process, Independence).* – *4.3. Party Involvement at Each Stage (Expert Judgement → Mediation → Arbitration).* – *4.4. Risks and Weakness.* – *4.5. Challenges and Implementation.* – *4.6. Confidentiality of Mediation and Prohibition of Submission of Mediation Records to the Arbitration Panel.* – 4.7. Arbitration (Final and Binding Decision). – 5. Enforceability Design: From Mediation Outcomes to Binding Results (Consent Award) and the Role of Expert Opinion. – *5.1. From Mediation Outcomes to Binding Results (Consent Award).* – *5.2. Role of Expert Opinion in Enforceability*. – 6. Comparative Lessons Supporting EJMA Hybrid Model (FIDIC DAB, Malaysia CIPAA 2012, Singapore Arb-Med-Arb). – *6.1. The United Kingdom and the FIDIC System.* – *6.2. Malaysia and the Construction Industry Payment and Adjudication Act (CIPAA) 2012.* – *6.3. Singapore and the Arb-Med-Arb Protocol.* – 7. Implementation Strategy in Indonesia: Institutions, Contract Clauses, and Regulatory Reform. – 8. Substantive Justice as the Normative Anchor of EJMA's Novelty vis-a-vis the FIDIC Tiered Structure. – 9. Conclusions.

Keywords**:** *international contract law, dispute settlement, comparative law, construction contract.*

DETAILS FOR PUBLICATION

Date of submission: 10 Mar 2026
Date of acceptance: 06 Jul 2026
Online First Publication: 14 Sep 2026
Last Publication: 03 Nov 2026
Whether the manuscript was fast tracked? - No
Number of reviewer report submitted in first round: 3 reports
Number of revision rounds: 2 rounds with major revisions

FUNDING STATEMENT

This research received no external funding. The APC for this publication was funded by the authors.

Technical tools were used in the editorial process

Plagiarism checks - Turnitin from iThenticate
https://www.turnitin.com/products/ithenticate/
Scholastica for Peer Review
https://scholasticahq.com/law-reviews
Paperpal for Academic Editing & Proofreading
https://paperpal.com/

AI DISCLOSURE STATEMENT

The authors declare that AI-assisted tools were used only for grammatical refinement and language editing. No AI tools were used in the conceptualization, analysis, or development of the substantive content.

АНОТАЦІЯ УКРАЇНСЬКОЮ МОВОЮ

Дослідницька стаття

ГІБРИДНА МОДЕЛЬ ЕКСПЕРТНОЇ ОЦІНКИ, МЕДІАЦІЇ ТА АРБІТРАЖУ: ПОРІВНЯЛЬНЕ ДОСЛІДЖЕННЯ ЕФЕКТИВНОГО ВРЕГУЛЮВАННЯ СПОРІВ, ЩО ВИНИКАЮТЬ ІЗ ДОГОВОРІВ БУДІВЕЛЬНОГО ПІДРЯДУ

Меріа Утама*, Різка Нурліянтіка, Ірсан Ірсан та Бієс Нурул Атіка

АНОТАЦІЯ

Передумови. *Міжнародні будівельні спори за своєю природою є складними, оскільки охоплюють правові, технічні, фінансові та транскордонні аспекти. Хоча наявні механізми — судовий розгляд, медіація та арбітраж — мають певні переваги, вони часто не дають змоги одночасно забезпечити оперативність, технічну обґрунтованість та юридичну остаточність рішення під час реалізації високовартісних проєктів. З метою подолання цієї проблеми у дослідженні запропоновано гібридну модель «Експертна*

© 2026 Meria Utama, Rizka Nurliyantika, Irsan Irsan and Biyes Nurul Atika. This is an open-access article distributed under the terms of the Creative Commons Attribution License (CC BY 4.0), which permits unrestricted use, distribution, and reproduction in any medium, provided the original author and source are credited.

оцінка — Медіація — Арбітраж» (EJMA). Ця поетапна структура є новою концептуальною моделлю, що інтегрує технічне з'ясування обставин, консенсуальне врегулювання та обов'язкове врегулювання спору в єдину послідовну процедуру, спеціально адаптовану до правового середовища Індонезії.

Методи. *Дослідження проведено із застосуванням доктринального правового підходу за чотирма аналітичними напрямами: соціологічної юриспруденції, концептуального аналізу, нормативно-правового аналізу та порівняльного правознавства. Проаналізовано відповідне законодавство Індонезії (зокрема Закон про будівельні послуги та Закон про арбітраж і альтернативне вирішення спорів), інституційну практику таких органів, як BANI, а також міжнародний порівняльний досвід, зокрема досвід функціонування рад з врегулювання спорів (Dispute Boards) у практиці FIDIC, обов'язкової ад'юдикації та моделі «арбітраж – медіація – арбітраж» (Arb-Med-Arb).*

Результати та висновки. *За результатами дослідження сформульовано принципи побудови та процесуальні гарантії гібридної моделі EJMA. До ключових результатів належать: розроблення поетапного механізму розмежування та попереднього опрацювання технічних і правових питань, інтеграція документально зафіксованих технічних та фактичних даних у процедури медіації та арбітражу, а також закріплення гарантій конфіденційності й належної правової процедури. Крім того, визначено механізми оформлення врегулювання, досягнутого під час медіації, у формі арбітражних рішень на узгоджених умовах (consent awards), що значно підвищує рівень правової визначеності та зменшує ризик скасування такого рішення за законодавством Індонезії. Гібридна модель EJMA є вагомим теоретичним і практичним внеском у сфері міжнародного врегулювання спорів. Поєднання фахової технічної експертизи з юридичною остаточністю арбітражного рішення забезпечує сторонам більш передбачуваний механізм врегулювання спорів. У висновках зазначено, що нормативну базу моделі EJMA доцільно посилити за допомогою чіткішого нормативного регулювання діяльності експертних груп та створення інтегрованої Ради з врегулювання будівельних спорів. Запропонована гібридна модель сприяє ефективному доступу до правосуддя та забезпечує виконання рішень як у національному, так і в транскордонному контексті будівництва.*

Ключові слова: *міжнародне договірне право, врегулювання спорів, порівняльне правознавство, договір будівельного підряду.*