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THE IMPLEMENTATION OF INTELLECTUAL PROPERTY DISPUTE RESOLUTION THROUGH MEDIATION & ARBITRATION[1]

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Abstract

This article aims at determining, describing, and analyzing the application of intellectual property rights through mediation & arbitration from the perspective of Indonesian law and its practice in the Arbitration Regulations of the Indonesian National Arbitration Board. Intellectual Property dispute resolution among the disputing parties by mediation and arbitration (out-of-state court settlement) has not been effective because of limited and lack of socialization from the Government or mediation and arbitration institution. The resolution of IPR disputes has not been effective, this is evident from the results of discussions with the DJKI and the West Java Kanwilkumham, which are still few IPR cases that have been registered to be resolved. Likewise, very few IPR cases have been submitted to the Dispute Resolution Institution.

Keywords: *Arbitration; Dispute; Intellectual Property; Mediation Settlement.*

A. Introduction

Intellectual property is an intangible product born of creativity or human thinking. The results of intellectual work are made by requiring quite a lot of time, in addition to talent, work and money to finance it. In the fields of literature, patents, trademarks, as well as in new technologies such as software for computers, biotechnology, and chips, it is clear that certain protections are urgently needed. If there is no protection for intellectual creativity that applies in this field of art, industry, and knowledge, then everyone can copy and make copies freely and produce without limits. There is no incentive to develop new creations. It is also clear that thus development in the fields of art and science will be disrupted. It is clear, then, that proper legal protection of this intellectual property right is needed. To be able to guarantee the continued development of intellectual rights and to avoid unfair competition, a proper protection is needed, although with this protection a certain monopoly right is given to the creator/designer/inventor.

Many creative endeavors are flourishing without strong intellectual property protection (Dreyfuss, 2010). Legal protection is provided with the aim of anticipating violations of IPR, increasing competitiveness in the era of free trade (Sutra Disemadi & Kang, 2021). In addition, the results of human intellectual work need to be conducted legal protection to provide justice for the creator/designer/inventor.

[1] This article is the result of independent research in 2023, Faculty of Law, Langlangbuana University.

In principle, everyone is obliged to respect the intellectual property rights of others protected by law. Such protection is stated in the applicable laws and regulations, provided that intellectual property rights may not be used by others without the permission of the owner. Legal protection applies to both registered intellectual property rights, evidenced by registration certificates (except copyrights and trade secrets) and valid for a certain period according to the field and classification. In the event of violation, violators must be processed legally and if proven will be subject to punitive sanctions in accordance with applicable legal provisions. In Indonesia, laws in the field of intellectual property rights have regulated the types of violations and their sanctions, both civil and criminal.

The issue of intellectual property rights is increasingly complex. The problem is no longer purely in the field of intellectual property rights alone. Because there are many interests related to intellectual property rights, the economic field and the legal field have become an inseparable element in discussing this intellectual property rights issue. Settlement of IPR Disputes is closely related to economic and legal aspects, therefore the settlement of IPR disputes to support a conducive business climate, safe and comfortable conditions as well as legal certainty in business, doing business and ensuring legal protection has a great influence on the financial aspect. The most important aspect regarding intellectual property issues besides the economic aspect is the legal aspect. The law is expected to be able to overcome various problems that arise related to the Intellectual Property. The law must be able to provide protection for intellectual works, to develop the creative power of the community which leads to the goal of successful protection of Intellectual Property. Dispute resolution requires a certain amount of money in the process. Disputes should be avoided so that we do not spend much money to resolve disputes.

Intellectual property disputes occur for several reasons, both due to violations of intellectual property laws and those that occur based on violations of intellectual property license agreements. Intellectual property disputes can occur in copyright disputes, trademark rights disputes, industrial design rights disputes, patent rights disputes, integrated circuit layout design rights disputes, or plant variety rights disputes.

However, IP rights are only valuable if they can be efficiently enforced. Infringement of IP rights through copying or free riding can cause a loss of market shares and tarnish the business reputation of the IP holder (Jolly, A and Philpott, 2009). After a dispute occurs, it is necessary to make efforts to resolve the dispute. Dispute resolution is quite important in managing the intellectual property system.

Settlement of intellectual property rights disputes is considered better through non-litigation channels or through mediation institutions because it is faster and cheaper. However, in its implementation, there are still many actors of Intellectual Property disputes who resolve their disputes through litigation (Kurniawaty, 2017). This is a serious concern, considering the advantages and goodness obtained by the parties to the dispute in resolving their intellectual property disputes outside the court. Settlement of intellectual property disputes can be done outside the court, namely by using arbitration and alternative dispute resolution. This paper will focus on the settlement of intellectual property disputes using arbitration and mediation conducted by the Indonesian National Arbitration Board (BANI) and the Directorate General of Intellectual Property of the Republic of Indonesia.

B. Research Method

This article uses socio-legal research methods. In principle, law contains aspects of ideals and reality or normative aspects and empirical aspects (Fuad, 2021). Legal analysis is directly related to the analysis of social situations where law must be placed in the perspective of that situation by looking at the role of law in the creation, maintenance and/or situation (Schiff, 1976). In this case, the meaning contained in these articles can be explained to analyze the resolution of intellectual property disputes through mediation and arbitration. This research analyzes the implementation of

intellectual property dispute resolution, which is resolved through mediation and arbitration, especially those resolved at the Indonesian National Arbitration Board (BANI). This research was conducted in two places, namely at the Directorate General of Intellectual Property of the Republic of Indonesia and at BANI.

C. Result and Discussion

The IPR regulation has its own regulations regarding the settlement of civil disputes outside the provisions of the civil procedural law except for the Plant Variety Protection Law which only regulates the right to sue without any regulation on civil dispute settlement, where Protection of Plant Varieties rights holders or licensees have the right to claim compensation through the District Court (Article 67 paragraph (1) of the Protection of Plant Varieties Law (Indonesia, 2000). Likewise, the Trade Secret Law gives the right to sue the Trade Secret Rights Holder or Licensee to the District Court for compensation or termination of all acts.

Resolution of intellectual property disputes in Indonesia can be done through the courts, can be done through arbitration, and Alternative Dispute Resolution. The choice is for the parties to the dispute. There are advantages and disadvantages in resolving intellectual property disputes through the courts and outside the court. In general, the settlement of intellectual property rights disputes in court is conducted in the Commercial Court for disputes over copyright, trademark rights, industrial design rights, patent rights, specifically for trade secret disputes registered in the district court. Out-of-court dispute resolution can be done through arbitration institutions and alternative dispute resolution (Sulistianingsih & Prabowo, 2019). One of the institutions in Indonesia that has the competence to resolve intellectual property rights disputes through channels outside the court is the Indonesian National Arbitration Board (BANI).

The choice of ADR by the disputing parties is based on the desire to resolve disputes between them outside the dispute resolution process through the court (litigation). The disputing parties especially from the business environment have realized that the resolution of business disputes must be resolved in a way and according to the business paradigm, i.e., fast, fair, free/flexible, and cheap (Diah, 2008) . Intellectual property disputes that are resolved through non-litigation channels are based on the desire of both parties to the dispute to resolve it out of court. If there is no such agreement, it will still be resolved through the Court.

Alternative Dispute Resolution (or “ADR”) shall mean a mechanism for the resolution of disputes or differences of opinion through procedures agreed upon by the parties, i.e., resolution outside the courts by consultation, negotiation, mediation, conciliation, or expert assessment. Resolving intellectual property disputes can be resolved through arbitration and alternative dispute resolution such as consultation, negotiation, mediation, conciliation, or expert assessment.

1. Intellectual Property Dispute Resolution through Mediation and Arbitration

Intellectual property rights disputes can involve various legal subjects, as well as large and small entities such as manufacturers, inventors, research institutions, pharmaceutical companies, software developers, joint venture partners, telecommunications companies, the fashion industry, consulting companies, employees, and artists (Jolly, A and Philpott, 2009). Intellectual property disputes that are resolved through non-litigation channels can be conducted using mediation or arbitration. Both mechanisms are intellectual property dispute resolution mechanisms that require a third person to resolve the dispute. In contrast to negotiations that do not involve a third person as a mediator. Mediation is an effort to resolve disputes by involving neutral third parties, who do not have decision-making authority, which helps the disputing parties reach a settlement (solution) that is accepted by both parties.

Settlement of IPR disputes is the ultimum remedium, the last resort. In line with the philosophy in dispute resolution including IPR, it gives a role to the parties to resolve

problems/disputes and resolve problems/disputes in a cooperative and non-confrontational manner based on the Pancasila principles. Efforts are made to negotiate, deliberation for consensus, if it fails then assistance from a third party/expert, mediator or arbitrator. The arbitration decision is final & binding. While in the judicial body there are levels, appeals and cassation and even judicial review.

The elements that can be known from mediation are (Margono, 2010): (1) A dispute resolution process based on negotiation; (2) The mediator is involved and accepted by the parties to the dispute in the negotiation; (3) The mediator is tasked with assisting the parties to the dispute to find a resolution; (4) The mediator does not have decision-making authority during negotiations; (5) The purpose of mediation is to reach or produce an agreement acceptable to the disputing parties in order to end the dispute.

Dispute resolution by mediation is in line with the principle of intellectual property, which is more personal rights*, thus the use of non-litigation channels* (Alternative Dispute resolution *(ADR) in resolving disputes of intellectual property rights infringement is in line with intellectual property principles.* After the enactment of Perma No. 1 of 2016 concerning Mediation Procedures in Court, all civil disputes submitted to the court must be resolved through mediation procedures and if these efforts are unsuccessful, then proceed with an examination of the subject matter of the dispute (Dewi & Putra, 2019). The terms of resolving intellectual property disputes using mediation can be done through the courts or outside the court. Dispute resolution in court, judges who will function as mediators, while for mediators outside the court can be done by anyone who has the ability to be a mediator and agreed upon by the parties to the dispute.

Civil disputes according to the custom of settlement first by mediation process. So, all cases submitted to the Court of first instance must first be settled through peace with the help of a mediator. If mediation results in an agreement, from the parties with the help of a mediator. The mediator is obliged to formulate in writing. This agreement was signed by the parties. The judge confirmed the agreement as a peace deed (Mawu, 2017). Outside the court, mediation is conducted on the basis of the agreement of the parties to the dispute and if there has been peace, a peaceful deed can be made.

In addition to mediation, intellectual property disputes can be resolved using arbitration in accordance with the provisions in Arbitration and Alternative Dispute Resolution. Settlement of intellectual property disputes through arbitration is conducted with several advantages when compared to using court channels. The advantages of using arbitration include (Sidik, 2016): (1) Guaranteed confidentiality of the parties' disputes; (2) Delays caused by procedural and administrative issues can be avoided; (3) The parties may select arbitrators who in their belief have sufficient knowledge, experience and background on the disputed matter, are honest and fair; (4) The parties may determine the choice of law to resolve the matter and the process and place of arbitration; (5) The arbitrator's award shall be binding on the parties and by means of simple or direct procedures may be enforced.

In accordance with the provisions in Arbitration and Alternative Dispute Resolution Law, the settlement of intellectual property disputes can be resolved using an arbitration mechanism. Mediation and arbitration, depend on the agreement of the disputing parties (whether before a dispute arises, as in an arbitration clause contained in a contract governing the transaction, or after a dispute arises, as in a written agreement to submit an existing dispute to arbitration), and many disputes IPR – particularly infringement claims – occur between parties who have no prior relationship and are unwilling to submit their disputes to arbitration or mediation (Dean & Farage, 2002).

Arbitration means a mechanism of settling civil disputes outside the general courts based upon an arbitration agreement entered in writing by the disputing Parties. Intellectual property disputes to be resolved by arbitration must have an arbitration agreement. Arbitration agreement means a written agreement in the form of an arbitration clause entered by the parties before a dispute arises,

or a separate written arbitration agreement made by the parties after a dispute arises. An arbitration agreement made before a dispute occurs is called an acta compromitendo, while an arbitration agreement made after a dispute occurs is called an acta compromise.

Disputes or differences of opinion that are not of a criminal nature may be resolved by the parties through Alternative Dispute Resolution ("ADR") based on their good faith, by waiving such resolution by litigation in the District Court. Resolution of disputes or differences of opinion through ADR, shall be carried out through a direct meeting of the parties not later than fourteen (14) days and the outcome shall be set out in a written agreement. In the event the dispute or difference of opinion cannot be resolved, then by a written agreement of the parties, the dispute or difference of opinion between the parties may be resolved through the assistance of one or more expert advisors or a mediator. If the parties fail to reach an agreement as to the resolution of such dispute within fourteen (14) days with the assistance of one or more expert advisors or a mediator, or the mediator is not successful in reconciling the parties concerned, such parties may request an Arbitration or ADR Institution to appoint a mediator. After the appointment of the mediator by such arbitration or ADR institution, the mediation process shall be commenced within seven (7) days. Efforts to resolve disputes or differences of opinion through mediation, as contemplated in paragraph (5), shall be undertaken in confidentiality. The settlement reached shall be set out in a written agreement, signed by all parties concerned, within thirty (30) days. The written agreement for such resolution of the dispute or difference of opinion shall be *final and binding* on the parties concerned, shall be implemented in good faith, and shall be *registered in the District Court* within no more than thirty (30) days after it has been signed. District Court means the District Court having jurisdiction over the Respondent. The agreement for resolution of the dispute or difference of opinion shall be completely implemented within no more than thirty (30) days after its registration.

If attempts to reach an amicable settlement, as contemplated are unsuccessful, the parties, based on a written agreement, may submit the matter for resolution by an arbitration institution or ad-hoc arbitration. (Article 6 paragraph 1 – 9 in Arbitration and Alternative Dispute Resolution Law). The hearings on the dispute must be completed within not more than one hundred eighty (180) days from the formulation of the arbitral panel. The determination of 180 days as the time for arbitration hearings for arbitrator to settle the dispute is to ensure the certainty of time. (Article 48 paragraph (1) in Arbitration and Alternative Dispute Resolution Law). Within thirty (30) days from the date the arbitral award is rendered, the original or an authentic copy of the award shall be submitted for registration to the Clerk of the District Court by the arbitrator(s) or a legal representative of the arbitrator(s). The arbitration award shall be final and binding upon both parties to the dispute. The decision of arbitration is a final decision and therefore it cannot be appealed, cassation or reviewed. (Article 60 in Arbitration and Alternative Dispute Resolution Law). (Article 59 paragraph (1) & Article 60 Arbitration and Alternative Dispute Resolution Law).

In the event the parties have previously agreed that disputes between them are to be resolved through *arbitration and have granted such authority,* the arbitrators are *competent to* determine in their award the rights and obligations of the parties if these matters are not regulated in their agreement. The agreement to resolve disputes through arbitration, contained in a document signed by the parties. (Article 4 Arbitration and Alternative Dispute Resolution Law). In the event the parties choose resolution of the dispute by arbitration after a dispute has arisen, their designation of arbitration as the means of resolution of such dispute must be given in a written agreement signed by the parties. In the event the parties are unable to sign the written agreement, such written agreement must be drawn by a Notary in the form of a notarial deed. The written agreement must contain: (a) The subject matter of the dispute; (b) The full names and addresses of residence of the parties; (c) The full name and place of residence of the arbitrator or arbitrators; (d). The place the arbitrator or arbitration panel will make their decision; (e) The full name of the secretary; (f) The period in which the dispute shall be resolved; (g) A statement of willingness by the arbitrator(s);

and (h). A statement of willingness of the disputing parties that they will bear all costs necessary for the resolution of the dispute through arbitration. A written agreement not containing the matters specified above will be *null and void*. (Article 9 Arbitration and Alternative Dispute Resolution Law).

The role and function of clause or arbitration agreement are (i) given legal certainty to choose Dispute Settlement forum; (ii) granted authority or competent to experts as mediator or arbitrators to resolve the disputes; (iii) to hide or resolve the competent or authority dispute of the settlement forum institutions of the courts or the arbitration.

Article 95, Law No. 28 of 2014 regarding Copy Rights says that: "Resolution of Copyright disputes may be made through alternative dispute resolution, arbitration, or court. The competent court is the Commercial Court. Other courts other than the Commercial Court are not authorized to manage the resolution of Copyright disputes. In addition to violations of Copyright and/or Related Rights in the form of Piracy, as long as the parties to the dispute are known to exist and/or are in the territory of the Unitary State of the Republic of Indonesia, they must first take dispute resolution through mediation before making criminal charges."

Mediation referred to in the Copyright Law as a dispute resolution of Copyright infringement is penal mediation and voluntary mediation. Penal mediation is conducted if the dispute over copyright infringement which is a criminal offense is other than piracy by involving victims and perpetrators of criminal acts assisted by the police with their discretionary authority. Meanwhile, voluntary mediation is conducted by parties outside the court in resolving disputes over copyright infringement in the realm of civil law (Krisnawati, 2019). Copyright provisions in intellectual property disputes where disputes cannot be conducted through mediation outside the court, then a lawsuit is made to the court. The judge will first offer mediation to the parties, if unsuccessful it will continue the case in court.

Article 153 Arbitration and Alternative Dispute Resolution Law regarding Patent says that: "In addition to dispute resolution through the Commercial Court, the parties may resolve disputes through arbitration or alternative dispute resolution. Dispute resolution through arbitration or alternative dispute resolution is conducted in accordance with the provisions of laws and regulations". "Instead of resolving through the commercial court, the Dispute Settlement can be resolved through arbitration or alternative dispute resolution refers to provisions Law" Article 93, Law No. 20 of 2016 regarding Mark and Geographic Indication say that: "In addition to the settlement of claims through the Commercial Court, the parties may resolve disputes through arbitration or alternative dispute resolution." "Instead of resolving through the commercial court, The Dispute Settlement can be resolved through arbitration or alternative dispute resolution."

Article 11 & 12 Law No.30 of 2000 regarding Trade Secret says that: "In addition to the settlement of claims through the District Court, the parties may resolve the dispute through arbitration or alternative dispute resolution." "Instead of resolving through the commercial court, the Dispute Settlement can be resolved through arbitration or alternative dispute resolution*"* Article 46 & 47 Law No.31 of 2000 regarding Industrial Design: *"*In addition to the settlement of claims through the Commercial Court, the parties may resolve the dispute through arbitration or alternative dispute resolution". "Instead of resolving through the commercial court, the Dispute Settlement can be resolved through arbitration or alternative dispute resolution.*"*

Article 38 & 39 Law No. 32 of 2000 regarding Design of Integrated Positioning Circuit say that: "In addition to the settlement of claims through the Commercial Court, the parties may resolve such disputes through arbitration or alternative dispute resolution." Instead of resolving through the commercial court, the Dispute Settlement can be resolved through arbitration or alternative dispute resolution*".* Division of Mediation. (1) Mediation based on request. Mediation based on request of mediation submitted by disputing parties address to Directorate of Dispute Settlement as third party; and (2) Mediation based on Reporting Process of Claim. Mediation based on Reporting Process of Claim regarding suspect of criminal action on Intellectual Property. This

mediation is based on the provision of RI Law. There are two characteristics of alternative Dispute Settlement: (1) Mandatory. Dispute Settlement through Mediation is mandatory nature regarding IP dispute in Copy Rights and Patent sectors; and (2) are able to. It means Dispute Settlement can nature based on disputing parties request regarding IP dispute in Mark, Geographical Indication, DTLST & Trade Secret.

Implementation of Mediation. (1) Offline Mediation; and (2) Online Mediation. Total of IP Mediator as 30 (thirty IP Mediator, per 2021). Still Limited IP Mediator. The Process of Mediation. (1) Mediation is a process of Dispute Settlements through third party as Mediator; (2) Mediation based on voluntary agreement of disputing parties; (3) Mediation uses win-win solution; (4) Decision based on voluntary mutual agreement.

Flowcharts of Mediation. (1) Proposal of Mediation; (2) Examine of Documents Requirements; (3) Noted at Register Book; (4) Appointment of Mediator; (5) Pre-Mediation; (6) Applied Mediation; (7) Mediation is successful or un-successful; (7) If successful will be set out in a written agreement; (8) Monitoring of execution of mediation; (9) Mediation is successful or un-successful will be set out in a written Agreement. Important things in mediation. (1) Mediation proses is not a pick-pocket disputing parties; (2) Compensation is given to recovered parties condition (victims); (3) Panties are not able to claim irrational things; (4) Compensation is adjust to disputing parties (or victims). Cases IP submitted to DJKI (PPNS KI) per August 2023, period: 2018 – 2023, as in Figure 1. Intellectual Property Infringement can be known by data: 2018 = 36 cases, (Mark = 20 cases, Design Industry = 10 cases, Copy Rights = 5 cases & Patent = 1 cases). 2019 = 47 cases, (Mark = 33 cases, Copy Rights = 7. Design Industry = 4 cases, & Patent = 3 cases). 2020 = 30 cases, (Patent = 16 cases, Mark = 8 cases, Copy Rights = 6 cases). 2021 = 36 cases, (Mark = 22 cases, Copy Rights = 13 cases, Patent = 1 cases). 2022 = 46 cases, (Mark = 29 cases, Copy Rights = 10 cases, Paten = 5 cases, Patent = 1 cases & Trade Secret = 1 cases). 2023 = 21 cases, (Mark=15 cases, Copy Rights = 5 cases & Patent = 1 cases). Cases IP submitted to Mediation KI, per August 2023, period: 2018 – 2023 as follow: 2018 = 8 cases, 2019 = 5 cases, 2020 = 3 cases, 2021 = 22 cases, 2022 = 35 cases, 2023 = 14 cases.

Implementation of IP Mediation trough DJKI (periode 2019 – 2023) as in Table 1. Total data of mediation Dispute Settlement based on Reporting and Claim from Disputing Parties submitted to DJKI during 2021 – 2023 as follow: 2021 = 21 cases, 2022 = 35 cases, and 2023 = 14 cases. Threats in implementation of IP Mediation trough DJKI:

(1) The Long distance location / domicile of disputing parties. The parties to the dispute are not in one city, but different cities. Even the parties to the dispute are far from the city of Jakarta, where the implementation of mediation is conducted at the office of the Directorate General of Ki in Jakarta. As for online mediation, the Directorate General of IP has not been able to do this with several obstacles related to facilities and infrastructure as well as the agreement of the parties to the dispute.
(2) The Time factor of disputing parties un-mutual face to face by mediator. Difficulty bringing together the right schedule for the mediator and the parties to meet in person. This requires one's own attention, especially for the mediation process that cannot be done with one meeting.
(3) Lack of Cost Money of Disputing Parties. Cost is also one of the elements because the implementation of mediation conducted by the Directorate General of IP is not optimal. The costs for the implementation of mediation are also considerable, including transportation costs for the parties and other costs associated with the mediation process.
(4) Lack of Competence of Human Resources as Mediator. The availability of mediators at the Directorate General of IP is not optimal because a mediator has special skills and is generally certified. The mediator is very important in the success of the mediation process, so the mediator's ability must be truly qualified.
(5) Lack of using IT as resources to serve society. Intellectual Property disputes that occur will not be far from the technological system. Intellectual property infringement also occurs in

cyberspace. Therefore, the use of technology is a special concern for the Directorate General of IP in resolving intellectual property disputes.

The main challenges in resolving IPR disputes through mediation and arbitration include, among others, the lack of socialization to the parties regarding the understanding and benefits of mediation and arbitration, limited human resources for mediators and arbitrators, limited dispute resolution institutions concentrated in big cities, not reaching remote areas and limited ability to utilize technology (IT). Such as the Ministry of Law and Human Rights Office located in the Provinces, limited human resources.

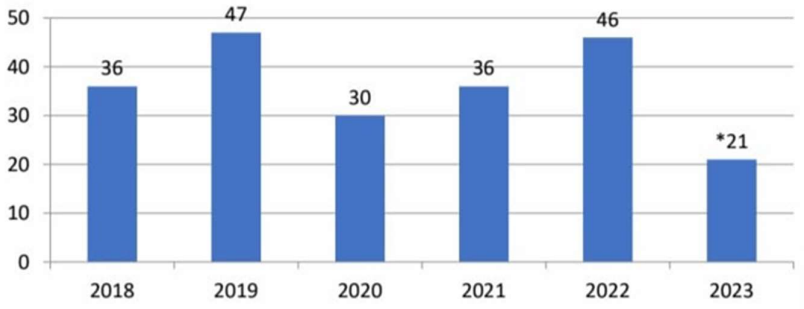

Figure 1. Total Intellectual Property Infringement
Source: Research Results at the Directorate General of IP

Table 1.
Cases Resolved in DJKI

Year	Progress	Copy Rights	Mark	Patent	Design
2018	Success	1	0		1
	Failed	2	4		
	In Process				
2019	Success	0	1	0	1
	Failed	2	0	1	0
	In Process				
2020	Success	0	0	1	0
	Failed	1	0		1
	In Process			0	
2021	Success	3	2	1	0
	Failed	4	5	0	0
	In Process	3	4	0	0
2022	Success	10	4	0	1
	Failed	10	6	1	2
	In Process	1	0	0	0
2023	Success	2	2	0	
	Failed	1	3	0	
	In Process	4	1	1	

Source: Processed research results

2. BANI Experience in IP Dispute Settlement

The Indonesian National Arbitration Board (BANI) is an arbitration institution established by the Indonesian Chamber of Commerce and Industry (KADIN Indonesia) based on the Decree of the Management Board of the Indonesian Chamber of Commerce and Industry dated November 30, 1977. In addition, the name and logo of BANI has also been protected by the registration of the trademark of the Badan Arbitrase Nasional Indonesia at the Directorate General of Intellectual Property of the Ministry of Law and Human Rights of the Republic of Indonesia. As the oldest arbitration institution in Indonesia, BANI has experience in handling disputes in various trade and industrial sectors, including disputes in the fields of commerce, construction, banking, finance, natural resources, telecommunications, investment, insurance, intellectual property, agency, shipping/maritime, sharia, and others, in national and international scope.

BANI recommends all parties wishing to refer to BANI Arbitration Institution. To use the following standard clause in their contracts: *"*All disputes arising from this contract shall be finally settled bu arbitration under the administrative and procedural Rules of Badan Arbitrase Nasional Indonesia (BANI) by arbitrators appointed in accordance with said Rules, which decision shall bind the parties and serve as a decision in the first and final instance."

Total Cases Registered at BANI Arbitration Center, Jakarta from period 1977 – 2021 for 44 years total 1.424 cases, excluded cases registered at BANI Region: Bandung, Surabaya, Medan, Palembang, Jambi, Bali Nusatenggara, Pontianak (vide Figure 2). As mentioned above, BANI has extensive for more than 44 year experience in handling disputes in various sectors, including disputes in the fields of intellectual property (0.75%) equal 3 (three) cases (vided Figure 3).

BANI has rules and arbitration procedures in resolving disputes. These rules and procedures continue to be developed from time to time in accordance with developments in arbitration practices and procedures in the country and in the world.

Internationally, BANI is active in the association of the international arbitration community, where BANI is a founding member of the Asia-Pacific Regional Arbitration Group (APRAG). In fact, in the 2016-2019 period, BANI was trusted as the Secretariat of APRAG and the Chairman of BANI at that time, M. Husseyn Umar, S.H., FCBArb., FCIArb. acting as President of APRAG. In addition, BANI is also a founding member of the Regional Arbitral Institute Forum (RAIF). BANI's membership in RAIF was then continued by the Indonesian Institute of Arbitrator (IArbI).

To advance arbitration globally, BANI also cooperates with various arbitration institutions in various countries. These institutions include: The Japan Commercial Arbitration Association (JCAA); The Netherlands Arbitration Institute (NAI); The Korean Commercial Arbitration Board (KCAB); Australian Centre for International Commercial Arbitration (ACICA); The Philippines Dispute Resolution Centre (PDRCI); Hong Kong International Arbitration Centre (HKIAC); The Foundation for International Commercial Arbitration and Alternative Dispute Resolution (SICA-FICA); The Singapore Institute of Arbitrators (SIArb); Arbitration Association Brunei Darussalam (AABD); Asian International Arbitration Centre (AIAC); The Belgian Centre for Arbitration and Mediation (CEPANI); Thai Arbitration Centre (THAC); Bangladesh International Arbitration Centre (BIAC); China International Economic and Trade Arbitration Commission (CIETAC).

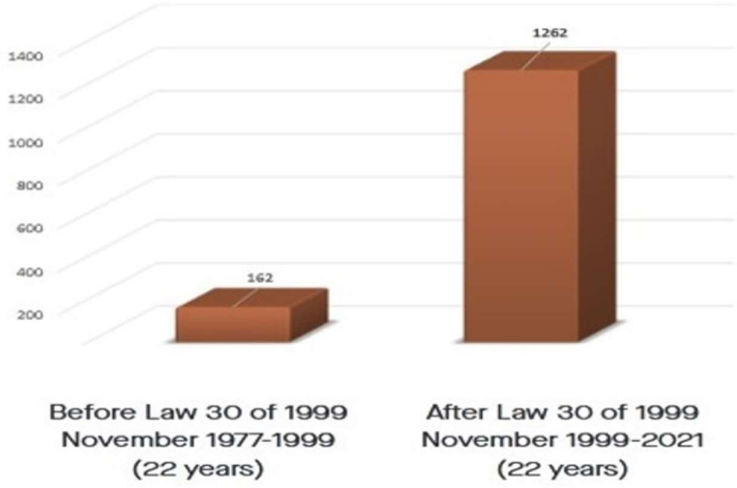

Figure 2. Cases Registered at BANI Arbitration Center 1977-2021

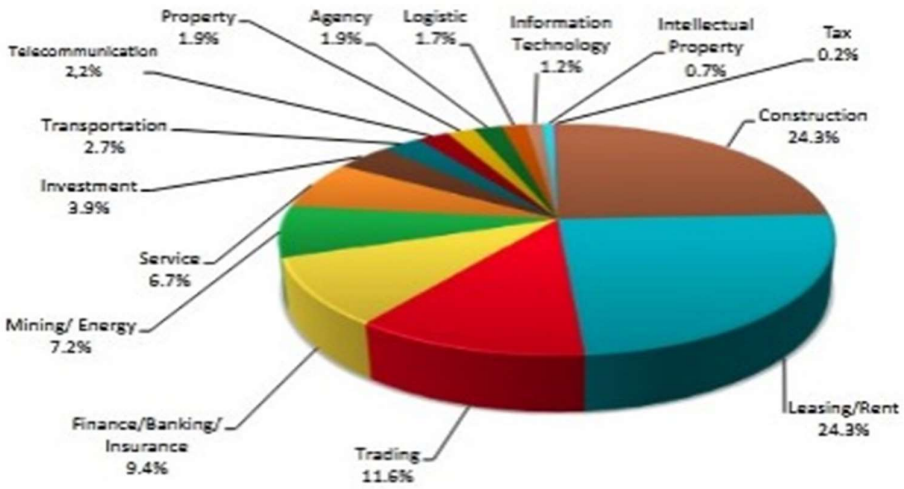

Figure 3. Types of Disputes Resolved by BANI

D. Conclusion and Recommendation

Legal provisions related to the resolution of intellectual property disputes clearly state the mechanism for conducting the settlement of intellectual property disputes both conducted by litigation and carried out by arbitration and alternative dispute resolution. The implementation of intellectual property dispute resolution is still ineffective. Because of (1) The Long-distance location / domicile of disputing parties; (2) The Time factor of disputing parties un-mutual face to face by mediator or arbitrator; (3) Lack of Cost Money of Disputing Parties; (4) Lack of Competence of Human Resources as Mediator; (5) Lack of using IT as resources to serve society. Providing certainty and legal protection for IPR Owners that there are alternative

institutions/agencies for dispute resolution outside the state courts, namely through mediation and arbitration, which have a legal umbrella in positive Indonesian law, whose decisions are final and binding and have legal force for the parties, confidential processes, short, brief, fast and simple procedures. Recommendations, readiness of Higher Education to educate human resources who have competence in the field of IPR, establish an IPR Study Center. establish an IPR Clinic, include it in the Faculty of Law Curriculum and optimize movements through Research and Community Service.

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