

# ***Alternative Dispute Resolution: Mediation In Terms Of Dispute Resolution For Aircraft Accident Compensation For Aircraft Product Defects (Case Study of Sriwijaya Air Sjl82 Plane Accident)***

**Columbanus Priaardanto, Amad Sudiro**

Fakultas Hukum, Universitas Tarumanagara, Jakarta, Indonesia  
columbanusdanto@gmail.com

## ***Abstract***

*This study discusses mediation strategies as a legal instrument in overcoming the obstacles of the doctrine of forum non conveniens in international lawsuits for compensation due to aircraft accidents, especially in product defect cases against aircraft manufacturers in the United States. Non-conveniens forums are often an obstacle for victims from other countries to access justice through the U.S. legal system, as courts may dismiss lawsuits if alternative forums are deemed more appropriate. In this context, mediation serves as an efficient, flexible, and more humane dispute resolution mechanism. The Lion Air JT 610 accident case study is used as a prime illustration, where the victim's family managed to obtain compensation through mediation with Boeing, despite the potential lawsuit being dismissed based on a non-conveniens forum. This research shows that mediation can be an effective litigation strategy to speed up settlement, avoid complex litigation processes, and strengthen the victim's position in cross-jurisdictional negotiations. The research method used is normative juridical with a case approach and legal comparison. Data were obtained through literature review, analysis of legal documents, and review of court decisions and mediation practices in U.S. federal courts. The results of the study recommend the need to harmonize cross-border mediation procedures and strengthen access to alternative dispute resolution mechanisms for victims from developing countries.*

**Keywords:** *Aircraft Accident; International Lawsuit; Mediation; Non Conveniens Forum; Product Defects*

## **1. INTRODUCTION**

Air transportation is one of the most efficient and fast modes of transportation, but it is still inseparable from the risk of accidents that can cause large losses, both material and immaterial.<sup>1</sup> One of the tragic events that shook the Indonesian aviation world was the Sriwijaya Air SJ182 plane accident on January 9, 2021, which killed all passengers and crew on board. Based on a preliminary report by the National Transportation Safety Committee (KNKT), the accident was allegedly caused by a combination of a technical fault in the autothrottle system and a failure by the pilot to address certain flight conditions.<sup>2</sup>

This accident raises serious questions about the legal liability of aircraft manufacturers, especially in the context of product liability related to the technical feasibility of aircraft. In the context of international air law, the responsibility of the

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<sup>1</sup> Columbanus Priaardanto and Amad Sudiro, "Boeing Company's Responsibility for the Sriwijaya Air SJ182 Aircraft Accident Related to Alleged Product Defects," *Jurnal USM Law Review* 7, no. 1 (2024): 269, <https://doi.org/10.26623/julr.v7i1.8463>.

<sup>2</sup> Rahmi Rizfa Al-Fairus, Amad Sudiro, "Legal Protection of SJ-182 Passengers in Aircraft Accidents Based on Law Number 1 of 2009," *Nusantara: Journal of Social Sciences* 7, no. 2 (2020): 408–20, <https://doi.org/10.31604/jips.v9i1.2022.267-273>.

manufacturer is set out in the Montreal Convention of 1999, specifically discussed in Article 33. This provision provides compensation for the death or injury of a passenger on an international flight. This article explains the principle of absolute liability of the carrier, which means that the carrier is responsible for the losses suffered by passengers due to the accident, without the need to prove the carrier's fault.<sup>3</sup>

In the implementation of the lawsuit, it is necessary to know that the civil court procedures used in the judicial system in the United States are different from those used in the courts in Indonesia, where in the case of the implementation of this lawsuit it is known that it begins with the submission of mediation which is submitted to the parties, but before the mediation is carried out, the panel of judges will allow the defendant or in this case, namely the Boeing Company as a party to file a *Forum non conveniens* (FNC).<sup>4</sup>

Talking about mediation, it is known that mediation is a legal step because it is a procedure or indeed a process ordered by policymakers, in this case mediasi is a process of interaski between parties who are in dispute by involving third parties who are not in favor of discussing the parties' problems "personally".<sup>5</sup>

In its development, mediation has developed and is used in accordance with the evolving human desire to resolve disputes quickly and satisfy both parties. In his concept of thinking, mediation does not outwardly require the existence of a problem and dispute or difference of opinion for a long period of time. Everyone tries not to get involved in a problem even though disputes or debates cannot be eliminated from the truth of human existence.<sup>6</sup>

Mediation is a cycle that brings peace in which the group of parties provides a form of resolution to the problem to the mediator to achieve a fair and impartial final result by providing a solution to the problem solving to the parties to the dispute in order to reach an agreement in accordance with the agreement of each party.<sup>7</sup>

However, in the event that the FNC is submitted, if it is rejected, mediation can be continued with the panel of judges scheduling a mediation event in court. However, if the FNC is accepted, the panel of judges will appoint a federal court for the judicial process.<sup>8</sup> In the case that will be a discussion in this scientific paper, namely about the procedural

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<sup>3</sup> S M Mahfirah et al., "Airline Liability for Aircraft Accidents in the Perspective of Legal Protection Theory," *Journal of Education and Development* 9, no. 1 (2021): p. 643., <http://journal.ipts.ac.id/index.php/ED/article/view/2495%0Ahttps://journal.ipts.ac.id/index.php/ED/article/download/2495/1408>.

<sup>4</sup> Toni G.L.A. van der Meer et al., "Mediatization and the Disproportionate Attention to Negative News: The Case of Airplane Crashes," *Journalism Studies* 20, no. 6 (2019): 783–803, <https://doi.org/10.1080/1461670X.2018.1423632>.

<sup>5</sup> Rikart Maha Riskianti, "The Authority of Religious Courts to Carry Out Mediation of Sharia Banking Disputes in Semarang City," *Jurnal USM Law Review* 2, no. 1 (2019): 1–27, <https://doi.org/10.26623/julr.v2i1.2256>.

<sup>6</sup> Imam Haryanto Anggie Artha Gayo, Diani Sadiawati, "Alternative Dispute Resolution in the Grant Agreement of the Government of Indonesia to Foreign Governments Alternative," *Jurnal Ius Constituendum* 7, no. 2 (2022): 207–15, <https://doi.org/10.26623/jic.v7i2.5488>.

<sup>7</sup> Sylvia Janisriwati, "Settlement of International Arbitration Disputes in Indonesia through the Ratification of the Singapore Mediation Convention," *Jurnal USM Law Review* 7, no. 3 (2024): 1419–30, <https://doi.org/10.26623/julr.v7i3.8404>.

<sup>8</sup> Stephen Rice et al., "How Do Depression Medications Taken by Pilots Affect Passengers' Willingness to Fly—A Mediation Analysis," *Review of European Studies* 7, no. 11 (2015): 200, <https://doi.org/10.5539/res.v7n11p200>.

aspects of the implementation of FNC itself if accepted or rejected in the implementation of the settlement of the case in the lawsuit for compensation for the Sriwijaya Air SJ182 aircraft accident and in this case also discusses several arguments that can be considered by the judge so that FNC can be rejected and/or accepted by the Panel of Judges and the Jury.<sup>9</sup>

This research is different from Priaardanto (2024), whose focus is on *the Boeing Company's* responsibility in the Sriwijaya Air SJ182 aircraft accident, which implicitly explains *the mistakes of the Boeing Company* in its mistakes as an aircraft manufacturer that needs and must ensure that aircraft products used by airline companies globally are safe products. In the journal, the concept of absolute responsibility for *the Boeing Company* is clearly discussed, but it does not discuss the procedure for resolving legal remedies carried out by the victim's family and heirs.<sup>10</sup>

In addition, this research is also different from what was explained by Ramadhan (2025). Where this research the focuses on the discussion leads to the basis and basis for the mistakes of aircraft manufacturers, which are taken from several theories and principles of responsibility, both in consumer protection law and international air law. This journal is also not enough to discuss the procedures in legal remedies carried out by the families and heirs of aircraft accident victims, where this process is even more essential than the prosecution procedure for compensation for aircraft accidents.<sup>11</sup>

Then this research is also different from the research conducted by Priaardanto (2023), where in this study the focus of discussion is also based on seeking *legal standing* for compensation payments by aircraft manufacturers due to the demand for compensation for aircraft accidents in the case of the Lion Air JT610 aircraft accident. This journal looks quite complete in explaining the details of the case, but the explanation of the legal procedure carried out is not presented in the discussion.<sup>12</sup>

In the research carried out by the author in this focus, the focus of the author's research focuses on explain and explain the procedure for legal remedies for victims and heirs of aircraft accidents in carrying out legal remedies for compensation lawsuits for aircraft accidents against aircraft manufacturers. In this study, the author focuses on a case study regarding a product defect lawsuit in the case of the Sriwijaya Air SJ182 aircraft accident, dengan fokus tujuan penelitian adalah untuk Mediation Procedure in the Matter of Settlement of Dispute Over Compensation for the Sriwijaya Air Aircraft Accident SJ182 in

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<sup>9</sup> Francesca Farrington, "A Return to the Doctrine of Forum Non Conveniens after Brexit and the Implications for Corporate Accountability," *Journal of Private International Law* 18, no. 3 (2022): 399–423, <https://doi.org/10.1080/17441048.2022.2151092>.

<sup>10</sup> Priaardanto and Sudiro, "Boeing Company's Responsibility for the Sriwijaya Air SJ182 Aircraft Accident Related to Alleged Product Defects."

<sup>11</sup> Dhafin Ramadhan and Rachminawati Rachminawati, "Compensation for Aircraft Accident Victims: The Responsibility of Airlines or Aircraft Manufacturers? (Case Study of Sriwijaya Air SJ 182)," *Dialogia Iuridica* 17, no. 1 (2025): 001–021, <https://doi.org/10.28932/di.v17i1.10493>.

<sup>12</sup> Journal of Citizenship et al., "A Juridical Review of the Delay in Payment of Compensation Costs by The Boeing Company to Victims of Plane Crashes (Case Study of Families of Victims in the Lion Air JT610 Plane Crash)" 7, no. 2 (2023): 1772–77.

the Court in the United States dan *Non Conveniens Forum* in Mediation for the Settlement of Disputes for Aircraft Accident Compensation Lawsuits.

## 2. METHOD

The type of research in this scientific paper is normative legal research. It's just that the approach and materials used must be presented.<sup>13</sup> Then in the specification of legal research used in this paper, which is basically an effort to find answers to questions, as long as this law is said to be a norm that has been formed and has a positive form (ius constitutum or ius constituendum) then during that time, this legal research is said to be a normative research.<sup>14</sup>

In this study, a normative research method is used that uses secondary data sources, and the data used in this study is taken from several literature materials. The type of data used in this study is primary material in the form of all legal rules that are formally formed and/or made by a state institution, and/or government agencies.<sup>15</sup> Which, for the sake of upholding, will be pursued based on coercion carried out officially by state apparatus. Included in this primary legal material are<sup>16</sup> laws, statutes, charters/international charters, government regulations, government regulations in lieu of laws (PERPU), presidential regulations. This is then followed by secondary legal material, namely all information about the applicable law or that has been in force in a country. However, unlike primary legal materials, this secondary legal material cannot formally be said to be positive law. Even though it is loaded with legal material, it is because it has not/has never been formalized through a formal positivization process as a law. Therefore, obedience to his obedience is never guaranteed based on the authority and coercion of the state apparatus that has authority. Secondary legal materials that function as material legal sources are none other than all information relevant to legal issues. Examples of secondary legal materials are books, journals, thesis/thesis/dissertations, criticism of experts, research approaches.<sup>17</sup>

In the research, a type of approach is also used, namely the legal approach, where the legal approach is carried out by examining all laws and regulations related to the legal issues being handled. For research for practical activities, this approach of law will open up opportunities for researchers to study whether there research is consistency and in conformity between a law and another law or between a law and a constitution or regulations and laws. The results of the study are an argument to solve the issues at hand.<sup>18</sup>

In particular, this study analyzes the approach that is carried out specifically to the main legal materials used in the resolution of mediation cases in aircraft accident cases,

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<sup>13</sup> Peter Mahmud Marzuki, *Legal Research* (Jakarta: Kencana Prenada Media Group, 2013).

<sup>14</sup> Soetandyo Wignjosoebroto, *Law, Concepts and Methods* (Malang: Setara Press, 2020).

<sup>15</sup> Nina Juwitasari et al., "Consumer Protection for Expedition Service Users," *Jurnal USM Law Review* 4, no. 2 (2021): 688, <https://doi.org/10.26623/julr.v4i2.4249>.

<sup>16</sup> Soetandyo Wignjosoebroto, *Law, Concepts and Methods*.

<sup>17</sup> Soetandyo Wignjosoebroto.

<sup>18</sup> Soetandyo Wignjosoebroto.

namely by focusing on the approach of the statutes contained in the 1999 Montreal convention and Law Number 1 of 2009 concerning Aviation which is then followed by an approach to the applicable regulations in the judicial system in the United States, namely the Federal Rules of Civil Procedure (FRCP). In addition, specifically in this study, a case approach was used as a comparison, such as the case of the Lion Air JT610 aircraft accident and the Ethiopian Airlines case. And in this case, the Comparative Approach is also used to compare the practice in the implementation of mediation carried out in the United States with that applicable in Indonesia. So that the method used in writing this article is combined, namely the normative juridical method where the collection of writing materials is carried out by researching primary literature materials or secondary data as basic materials to be researched by conducting a search of regulations and literature related to the problem being researched. The studies used in this paper also refer to the scientific theories and doctrines (doctrinal)<sup>19</sup> of the experts in charge of the problems concerned in order to formulate the discussion and to revealing the problem in this paper.<sup>20</sup>

The data analysis technique used in this study is the deductive analysis method. The method of deductive analysis is a method that departs from a general statement to arrive at a conclusion that will be able to answer a question. And in this writing, it is also carried out with a literature study method where this study includes the study and analysis of rules and regulations, literature and doctrine of experts related to problem solving in this paper.<sup>21</sup>

### **3. RESULTS AND DISCUSSION**

#### **3.1 Mediation Procedure in the Matter of Settlement of Dispute Over Compensation for the Sriwijaya Air Aircraft Accident SJ182 in the Court in the United States**

Mediation in the United States is governed by a combination of federal law, state court regulations, and professional practice. One of the important instruments is the *Uniform Mediation Act (UMA)*, which provides standard guidelines regarding the confidentiality, neutrality, and autonomy of the parties. Although not all states have adopted the UMA, its principles have become a reference in the practice of mediation nationwide in the United States.<sup>22</sup>

In civil cases, courts often require mediation as part of the initial dispute resolution process. Court-annexed mediation programs allow parties to resolve disputes with the help of a mediator appointed by the court. Mediators typically have certifications and expertise

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<sup>19</sup> Anjaly Natalia Triswulandari and Deny Slamet Pribadi, "Juridical Review of the Partnership Agreement Between Alfamidi and MSMEs in Balikpapan City," *Journal of Humani (Law and Civil Society)* 13, no. 2 (2023): 262–82, <https://doi.org/http://dx.doi.org/10.26623/humani.v13i2.7388>.

<sup>20</sup> Aista Wisnu Putra et al., "Online Dispute Resolution (Odr) in Sharia Capital Market Investment Disputes in Indonesia," *Journal of Usm Law Review* 3, no. 2 (2020): 235–58, <https://doi.org/10.26623/julr.v3i2.2707>.

<sup>21</sup> Inas Audah, "Legal Protection for Consumers for the Use of Bisphenol A in Drinking Water Packaging," *Jurist-Diction* 5, no. 5 (2022): 1791–1808, <https://doi.org/10.20473/jd.v5i5.38551>.

<sup>22</sup> Mangaraja Manurung et al., "Mediation as an Alternative to Industrial Relations Dispute Resolution," *Humani (Law and Civil Society)* 14, no. 1 (2024): 123–32, <https://journals.usm.ac.id/index.php/humani/article/view/8272>.

in specific areas, such as defective products, corporate liability, or transportation accidents, so they are able to understand the technical and emotional complexities of the case.<sup>23</sup>

Mediation in cases such as the Sriwijaya Air SJ182 accident not only serves as a means of resolving disputes, but also as a mechanism to demand corporate accountability. In mediation forums, companies like Boeing have the opportunity to demonstrate social and ethical responsibility by offering a settlement that goes beyond simply fulfilling legal obligations. This reflects a shift from a defensive approach to a restorative approach to corporate dispute resolution.<sup>24</sup>

Corporate accountability through mediation can be realized in the form of fair compensation, recognition of wrongdoing, and commitment to system improvement. In the SJ182 case, mediation allowed Boeing to hear directly the voices of the victims' families and respond with concrete actions. This approach not only improves the company's image, but also builds public trust in the aviation industry as a whole.<sup>25</sup>

Thus, mediation becomes a space for dialogue between victims and corporations, which is not always available in formal litigation processes. Accountability built through mediation is more personal and has a long-term impact. In the context of transnational justice, mediation that encourages corporate accountability can be a model of more ethical and sustainable dispute resolution.<sup>26</sup>

Mediators in defective product cases, such as lawsuits against Boeing, have a very strategic role. They not only act as facilitators of communication, but also as keepers of the balance between legal and humanitarian interests. In the case of SJ182, the mediator must understand the technical aspects of the aircraft system, as well as the emotional and economic impact experienced by the victim's family. Therefore, the selection of a competent and experienced mediator is the key to the success of mediation.<sup>27</sup>

The mediator is also responsible for maintaining neutrality and confidentiality throughout the process. They should not be biased or provide legal advice, but can help the parties understand each other's positions and explore mutually beneficial solutions. In cross-border cases, mediators must be able to bridge differences in legal culture and the expectations of the parties. It requires cross-cultural communication skills and an understanding of the international legal system.<sup>28</sup>

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<sup>23</sup> Joshua Tambalean, "Investigation of Civil Aircraft Accidents According to Law No. 1 of 2009 on Aviation," *Lex et Societatis* 8, no. 1 (2020): 1–4, <https://doi.org/10.35796/les.v8i1.28478>.

<sup>24</sup> Nina Juwitasari et al., "Consumer Protection for Expedition Service Users," *Jurnal USM Law Review* 4, no. 2 (2021): 688, <https://doi.org/10.26623/julr.v4i2.4249>.

<sup>25</sup> Tambalean, "Investigation of Civil Aircraft Accidents According to Law Number 1 of 2009 concerning Aviation."

<sup>26</sup> Khamozaro Waruwu and Ida Nadirah, "Mediation as an Alternative to E-Book Copyright Dispute Resolution," *Journal of Usm Law Review* 6, no. 1 (2023): 141–57, <https://doi.org/10.26623/julr.v6i1.6368>.

<sup>27</sup> Tambalean, "Investigation of Civil Aircraft Accidents According to Law Number 1 of 2009 concerning Aviation."

<sup>28</sup> Meirina Nurlani, "Alternative Dispute Resolution in Business Disputes in Indonesia," *Journal of Legal Certainty and Justice* 3, no. 1 (2022): 27, <https://doi.org/10.32502/khdk.v3i1.4519>.

In a lawsuit against *the Boeing Company*, the courts of the United States have the jurisdiction and capacity to conduct effective mediation. The law firm representing the victim's family can apply for mediation or follow a court-facilitated mediation program. This process provides an opportunity for the parties to reach a fair agreement without having to go through lengthy and expensive trials. Mediation is a widely used and recognized method of dispute resolution, offering a flexible, fast, and low-cost process that parties need to implement in the litigation stage.<sup>29</sup> This can happen because the need for dispute resolution outside the court is colored by the tendency of the community to have a dispute resolution that is felt to be fast and profitable. Among the elements that are the most important reasons for choosing mediation are due to the smaller cost factors, Indonesian cultural factors that prioritize deliberation, the variables used tend to be more acceptable to human instincts, and the settlement process is not as complicated as litigation procedures.<sup>30</sup>

Mediation allows the parties to convey their interests directly and personally. The victim's family can express a sense of loss, a hope for corporate responsibility, and a need for recognition. Boeing, as a defendant, can show empathy and commitment to system improvement. This kind of dialogue is unlikely to occur in a formal trial, but it is essential in building restorative and sustainable justice. The legal basis for mediation as set forth in the United States Positive Law in addition to what has been described above is composed of several provisions which include *the Federal Rules of Civil Procedure (FRCP) – Rule 16 & Rule 26* which contain substance including *Rule 16(c)(2)(I)*: Federal courts may order or encourage the use of mediation as part of case management. *Rule 26(f)*: In the initial conference, the parties are required to discuss the possibility of settlement through mediation or other forms of ADR. Furthermore, there is a provision also regulated in the Alternative Dispute Resolution Act of 1998 that substantially addresses the obligation of all federal courts in the U.S. to provide ADR programs, including mediation. The goal is to reduce the burden on the courts and speed up dispute resolution. In addition, this provision also has substance regarding the US federal courts also have their own policies regarding the implementation of mediation, including the appointment of mediators and technical procedures.<sup>31</sup>

Before entering into the mediation procedure carried out in the courts in the United States, in this case it is necessary to first discuss the overview of mediation in the legal system in the United States Circuit Court, where in this case mediation is an alternative *dispute resolution (ADR)* method that involves a neutral third party (*mediator*) to help the

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<sup>29</sup> Muhammad Alvin Saputra et al., "The Urgency of Mediation on Joint Property Distribution Disputes," *Journal of Usm Law Review* 7, no. 2 (2024): 788–803, <https://doi.org/10.26623/julr.v7i2.9012>.

<sup>30</sup> Waruwu and Nadirah, "Mediation as an Alternative to Resolution of Electronic Book Copyright Disputes."

<sup>31</sup> Thomas J. Stipanowich, "ADR and the 'Vanishing Trial': The Growth and Impact of 'Alternative Dispute Resolution,'" *Journal of Empirical Legal Studies* 1, no. 3 (2004): 843–912, <https://doi.org/10.1111/j.1740-1461.2004.00025.x>.

parties reach an agreement. In the U.S. civil law system, mediation is often used in complex cases such as product defect lawsuits, including in aircraft crash cases.<sup>32</sup>

Furthermore, entering into mediation for the settlement of the Aircraft Accident dispute in the case of the Sriwijaya Air SJ182 accident starts from several stages, namely First, that mediation needs to begin with an initiation that comes both from the litigating Parties and from the court organs that help resolve the dispute on the matter, in the case of the Sriwijaya Air Aircraft Accident compensation dispute in the United States, It is known that Mediation was initiated or initiated by the *Boeing Company* in the dispute.<sup>33</sup>

Furthermore, the second process of the mediation procedure is to choose a mediator in the peace effort. The selection of this mediator is carried out by the panel of judges and the court apparatus involved. In terms of mediation activities carried out in the United States Court, there is a difference where, in Indonesia, the Mediation function is only carried out by a Mediator Judge and/or a certified Professional Mediator issued by the Supreme Court, but in the United States, Mediation is carried out by appointing a mediator who comes from the Registrar, although in the system it looks different, but the duties and functions of the mediator are both in the United States and Indonesia The outline is the same.<sup>34</sup>

Furthermore, it is included in the core agenda of mediation activities where in this case it begins with the implementation of *Positioning* or explaining the *Legal Standing* of each party to be able to support the arguments that have been mentioned in the previous case application, in this stage the arguments prepared by the parties become so crucial and important because it will later affect the decision of the jury in the determining the verdict and final outcome of this case, and no less important is the role of the mediator who handles the case, where the mediator plays the role of a facilitator, maintaining an atmosphere of productive dialogue and encouraging mutual understanding. In the SJ182 case, the victim's family was able to convey the emotional and economic impact of the crash, while Boeing explained its legal and technical position.<sup>35</sup>

Furthermore, after the *implementation of the Positioning*, a negotiation meeting will be held or in judicial terms in Indonesia known as *the term Caucus* or in this case a mediation meeting, in this meeting will be discussed about the considerations of each party, and also conveyed about the reasons for the arguments made by each party to each other, which of course this is expected to achieve a Deal. In *the Caucus*, if the peace agreement is accepted by the parties, the case is decided and finished by only going through and choosing the process and stages in mediation as a solution, but if the effort of a peace is not accepted by one of the parties, the parties agree to enter the subject matter in the trial. However, if a

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<sup>32</sup> Toni G.L.A. van der Meer et al., "Mediatization and the Disproportionate Attention to Negative News: The Case of Airplane Crashes," *Journalism Studies* 20, no. 6 (2019): 783–803, <https://doi.org/10.1080/1461670X.2018.1423632>.

<sup>33</sup> Forum Necessitatis and Forum Non Conveniens, "Working Paper," 2024.

<sup>34</sup> Njak Fakultas, Pravnih Nauka, and Banja Luka, "Forum Non Convenience as a Basis for Determining of Jurisdiction," 2024, 19–33, <https://doi.org/10.7251/GFP2414019C>.

<sup>35</sup> Tambalean, "Investigation of Civil Aircraft Accidents According to Law Number 1 of 2009 concerning Aviation."

mediation is declared successful, it will be followed by a written agreement by including things that have been agreed upon by the parties so that the parties bind themselves to the provisions that have been agreed upon in the mediation.<sup>36</sup>

If mediation results in an agreement, then the settlement agreement document can be submitted to the court to be ratified as a decision. In the United States, courts have the authority to certify and enforce the outcome of mediation, so the agreement has the same legal force as a court ruling. In the case of SJ182, this provides a guarantee that the agreed compensation and commitments will be implemented consistently. However, because the parties are from different jurisdictions, the implementation of the mediation results also requires cross-border recognition. If the victim's family is in Indonesia, then the implementation of compensation or recovery programs must be in accordance with applicable national laws and international agreements. In this case, the principles of *comity* and cooperation between countries are important to ensure that the outcome of mediation is not only valid in the US, but can also be applied in Indonesia.<sup>37</sup>

International recognition of the outcome of mediation also reflects a commitment to global justice. In transnational disputes such as SJ182, successful mediation demonstrates that dispute resolution does not have to be confrontational or formalistic. Instead, a collaborative and restorative approach can result in a more sustainable and acceptable solution for all parties. Therefore, the implementation of mediation results must be designed with legal, social, and cultural aspects holistically in mind.<sup>38</sup>

The mediation procedure in the settlement of the SJ182 aircraft accident compensation dispute in the United States court shows that mediation can be an effective and fair instrument in cross-border disputes. With the support of a strong legal system, professional mediators, and principles of substantive and procedural justice, mediation provides room for a more humane and meaningful settlement for victims' families.<sup>39</sup>

However, the success of mediation also depends on the readiness of the parties, institutional support, and cross-jurisdictional recognition. In the case of SJ182, challenges such as differences in legal culture, power imbalances, and international coordination must be addressed with an inclusive and collaborative approach. The court, mediators, and legal counsel must work together to ensure that the mediation process takes place fairly and that the outcome can be implemented effectively. As a recommendation, the legal system in developing countries such as Indonesia needs to strengthen the capacity of mediation in international civil cases. In addition, cooperation between countries in the recognition of mediation results and cross-jurisdictional implementation must be enhanced. Thus,

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<sup>36</sup> Tambalean.

<sup>37</sup> Manurung et al., "Mediation as an Alternative to Industrial Relations Dispute Resolution."

<sup>38</sup> Aista Wisnu Putra et al., "Online Dispute Resolution (ODR) in Sharia Capital Market Investment Disputes in Indonesia," *Jurnal USM Law Review* 3, no. 2 (2020): 235–58, <https://doi.org/10.26623/julr.v3i2.2707>.

<sup>39</sup> Dhafin Ramadhan and Rachminawati Rachminawati, "Compensation for Aircraft Accident Victims: The Responsibility of Airlines or Aircraft Manufacturers? (Case Study of Sriwijaya Air SJ 182)," *Dialogia Iuridica* 17, no. 1 (2025): 001–021, <https://doi.org/10.28932/di.v17i1.10493>.

mediation can be an integral part of a global dispute resolution system oriented towards justice, restoration, and shared responsibility.<sup>40</sup>

### **3.2 *Non Conveniens Forum* in Mediation for the Settlement of Disputes for Aircraft Accident Compensation Lawsuits**

In international lawsuits arising out of aircraft crashes, plaintiffs often face cross-jurisdictional challenges. One of the main obstacles is the *doctrine of forum non conveniens*, which allows U.S. courts to dismiss a lawsuit if there are other forums that are deemed more appropriate and efficient. In this context, mediation strategies are an important instrument to overcome these obstacles, especially in cases involving product defect lawsuits against aircraft manufacturers such as Boeing.<sup>41</sup>

The link between *forums non conveniens* and mediation arises when the court considers whether alternative forums also provide an equivalent mediation mechanism. If geographically "convenient" forums do not have a robust mediation system, then denial of jurisdiction can be detrimental internationally to access justice for victims. Therefore, the court must assess not only the efficiency of the forum, but also the capacity of the forum to support the fair resolution of disputes through mediation. *Forum non conveniens* itself is a legal principle that originates from *the common law* and has been widely adopted in the United States legal system. This doctrine gives the court the authority to dismiss a lawsuit even if it has jurisdiction, if there is a more appropriate alternative forum to resolve the dispute. In aircraft accident cases, a *forum non conveniens* is often used by defendants (usually multinational companies) to move the case to the country where the accident occurred or where the victim lived. This is based on considerations such as: Location of witnesses and physical evidence, Local public interest and administrative burden of the court. However, the application of a *forum non conveniens* can create injustice for victims, especially if the legal system in alternative countries does not provide equal legal protection or access to adequate redress.<sup>42</sup>

In aircraft accident cases, a *forum non conveniens* is often filed by the defendant to transfer the case to the victim's country of origin or the scene of the incident. For example, in a lawsuit against Boeing by the families of the victims of Sriwijaya Air SJ182, the company could argue that Indonesia is a more relevant forum. However, U.S. courts should consider whether such forums are really more appropriate, including in terms of access to evidence, expert witnesses, and dispute resolution mechanisms. The United States courts have a strong tradition of handling defective product and transportation accident cases, and provide professional and structured mediation facilities. If the case is transferred to an alternative forum that does not have an equal mediation system, then the rights of victims

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<sup>40</sup> Nurlani, "Alternative Dispute Resolution in Business Disputes in Indonesia."

<sup>41</sup> Christabel Narh, "Zooming Our Way Out of the Forum Non Conveniens Doctrine," *Columbia Law Review* 123, no. 3 (2023): 761–804.

<sup>42</sup> Eun Sol Sara Lee, "Forum Can Non Save Us Now," *German Law Journal* 25, no. 3 (2024): 447–62, <https://doi.org/10.1017/glj.2024.15>.

can be threatened. In this case, the forum non conveniens is not only a procedural issue, but also concerns the principles of substantive justice and access to an effective settlement.<sup>43</sup>

Mediation in the United States legal system is often facilitated by certified mediators, with support from the courts themselves. This process allows the parties to explore more humane and recovery-oriented solutions, rather than mere legal victories. Therefore, maintaining jurisdiction in the United States can provide a fairer and more meaningful mediation opportunity for the families of plane crash victims. Mediation offers a flexible and efficient approach to resolving disputes without having to go through a full litigation process. In the context of international lawsuits, mediation can be used as a strategy to avoid the rejection of lawsuits based on a forum non conveniens, speed up the settlement and compensation process, reduce diplomatic and jurisdictional tensions between countries, as a strategy this is done by filing a lawsuit in U.S. court against the aircraft manufacturer which is then followed by pro-actively encouraging mediation before the court decides on the appropriate forum. and drafting mediation agreements that are legally binding and avoid litigation. Mediation also allows the parties to negotiate directly, without having to prove the most appropriate formal jurisdiction or forum. This is especially important in cases where victims come from developing countries and have limited access to the domestic legal system.<sup>44</sup>

Mediation in an airplane crash case is not only about negotiating compensation, but also about psychological recovery and acknowledgment of the losses suffered by the victims and their families. In the U.S. legal system, mediation allows the parties to convey their interests directly, without getting bogged down in the formalities of litigation. This reflects the principle of substantive justice, which is a settlement that takes into account the real needs and losses of the parties. If a forum non conveniens is implemented and cases are transferred to countries that do not have a strong tradition of mediation, then the settlement process can become more formalistic and less responsive to the needs of victims. For example, in some jurisdictions, mediation has not yet become an integral part of the judicial system, and dispute resolution still relies on a lengthy and expensive litigation process. This can exacerbate the trauma and uncertainty experienced by the victim's family.<sup>45</sup>

The Sriwijaya Air SJ182 accident in 2021 is a clear example of the application of mediation strategies in dealing with *non-conveniens* forums.<sup>46</sup> Although the accident occurred in Indonesia and all the victims were Indonesian citizens, a lawsuit was filed in the United States federal court against Boeing as the aircraft manufacturer. Boeing filed an objection based on a *non-conveniens forum*, arguing that Indonesia is a more appropriate

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<sup>43</sup> Fakultas, Nauka, and Luka, "Forum Non Convenience as a Basis for Determining of Jurisdiction."

<sup>44</sup> Liang Zhao, "Forum Non Conveniens in China: From Judicial Practice to Law," *Chinese Journal of Comparative Law* 11, no. 3 (2023), <https://doi.org/10.1093/cjcl/cxae002>.

<sup>45</sup> van der Meer et al., "Mediatization and the Disproportionate Attention to Negative News: The Case of Airplane Crashes."

<sup>46</sup> Margaret G Stewart and I I T Chicago-kent College, "Forum Non Conveniens : A Doctrine in Search of a Role" 1259, no. March (1986).

forum.<sup>47</sup> However, before the court decides, most of the victims' families choose to settle the lawsuit through mediation. The mediation process is carried out behind closed doors and results in a significant compensation agreement. This strategy has succeeded in avoiding lawsuit rejection and accelerating the provision of compensation to victims, without having to go through a long and complex litigation process. Mediation also allows for a more humane and sensitive resolution to the trauma experienced by the victim's family.<sup>48</sup>

Mediation in this case is used as a tactic or strategy in overcoming an obstacle that may arise due to the enactment of the principle of *Non Conveniens Forum*, this is possible because mediation offers a more efficient and flexible approach in resolving cases without the need to go through a long litigation process, in the context of international lawsuits mediation can be used in strategies including as a medium to avoid rejection lawsuits based on *the Non-Conveniens Forum, as well as an element that can speed up* the process of resolving the provision of compensation and can reduce diplomatic and jurisdictional information between countries. This strategy is carried out by following the rules as by filing a lawsuit in the United States court against the Aircraft Manufacturer, which is then followed by mediation before the implementation of the court decision deciding the appropriate forum (*Forum Non Conveniens*) and drafting a legally binding mediation agreement and avoiding the trial process. Mediation also allows the parties to negotiate directly, without having to prove the most appropriate formal jurisdiction or forum. This is especially important in cases where victims come from developing countries and have limited access to the domestic legal system.<sup>49</sup>

Therefore, courts should consider the capacity of alternative forums in providing effective mediation before implementing a non conveniens forum. If a geographically closer forum is not able to guarantee a fair mediation process, then retaining jurisdiction in the U.S. would be a more appropriate option. This approach is in line with the principles of procedural and substantive justice, and reflects a commitment to remediation and reconciliation-oriented dispute resolution. Mediation in cross-border disputes faces its own challenges, especially in terms of the different legal cultures, languages, and expectations of the parties. In an airplane crash case, the victim's family may be from a country with a different legal system, while the defendant's company is domiciled in a developed country such as the United States. So in this case, mediation must be able to bridge these differences and create an equal and inclusive space for dialogue.<sup>50</sup>

One of the strategies used in transnational mediation is the appointment of a mediator who understands the cultural and legal context of both parties. In the legal system used by

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<sup>47</sup> Patricya Wedha Hutapea, "Legal Protection for Aviation Service Users in the Midst of the Covid-19 Pandemic," *Jurist-Diction* 4, no. 3 (2021): 1085, <https://doi.org/10.20473/jd.v4i3.26984>.

<sup>48</sup> Ramadhan and Rachminawati, "Compensation for Aircraft Accident Victims: The Responsibility of Airlines or Aircraft Manufacturers? (Case Study of Sriwijaya Air SJ 182)."

<sup>49</sup> John Bies, "Conditioning Forum Non Conveniens," *The University of Chicago Law Review* 67, no. 2 (2000): 489, <https://doi.org/10.2307/1600494>.

<sup>50</sup> William S. Dodge, Maggie Gardner, and Christopher A. Whytock, "The Many State Doctrines of Forum Non Conveniens," *Duke Law Journal* 72, no. 6 (2023): 1164–1256.

the United States, professional mediators often have an international background and experience in handling cross-jurisdictional cases. In addition, mediation can be conducted online or hybrid, reducing geographical and logistical barriers. This approach allows the mediation process to continue even if the parties are in different countries. However, if a *forum non conveniens* is implemented and the case is transferred to a forum that does not have the capacity for transnational mediation, then this strategy cannot be implemented effectively. Therefore, the court must consider the impact of a *forum non conveniens* on the continuity and quality of mediation. In the context of global justice, maintaining a forum that supports transnational mediation is part of a commitment to inclusive and fair dispute resolution.<sup>51</sup>

The Sriwijaya Air SJ182 accident in 2021 is a clear example of the application of mediation strategies in dealing with *non-conveniens* forums. Although the accident occurred in Indonesia and all the victims were Indonesian citizens, a lawsuit was filed in the United States federal court against Boeing as the aircraft manufacturer. Boeing filed an objection based on a *non-conveniens forum*, arguing that Indonesia is a more appropriate forum. However, before the court decides, most of the victims' families choose to settle the lawsuit through mediation. The mediation process is carried out behind closed doors and results in a significant compensation agreement. This strategy has succeeded in avoiding lawsuit rejection and accelerating the provision of compensation to victims, without having to go through a long and complex litigation process. Mediation also allows for a more humane and sensitive resolution to the trauma experienced by the victim's family.<sup>52</sup>

Furthermore, strategically, mediation as a knife in cutting the enactment of the *Non-Conveniens Forum* has advantages and limitations that need to be observed. Among the advantages of mediation in resolving aircraft accident lawsuits in the United States is the most important regarding procedural efficiency, which is considered so dominant, where this can avoid the process of proving the right forum (*Forum Non Conveniens*), which often takes up considerable time and costs. Next is the advantage in terms of the substance of a fair legal system, although it seems frontal, but in fact it can be seen that victims can obtain compensation effectively without having to face the bureaucracy that often occurs in jurisdictions outside the United States. Furthermore, the last advantage is in terms of negotiation flexibility in terms of negotiation offers between the parties that can be wide open and can be adjusted to needs.<sup>53</sup>

In addition, this mediation system also has limitations, including the existence of an imbalance of power between the parties, where in the case of Sriwijaya Air, the victims came from Indonesia, which is a developing country in the background and does not have a

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<sup>51</sup> Necessitatis and Conveniens, "Working Paper."

<sup>52</sup> National Committee on Transportation Accidents, "Sriwijaya Air Aircraft Accident Investigation Report" (Jakarta, 2022).

<sup>53</sup> Francesca Farrington, "A Return to the Doctrine of Forum Non Conveniens after Brexit and the Implications for Corporate Accountability," *Journal of Private International Law* 18, no. 3 (2022): 399–423, <https://doi.org/10.1080/17441048.2022.2151092>.

strong bargaining position in negotiations. Furthermore, the limitation in the mediation method in this case, namely the absence of the recognition of legal responsibility that occurred, often resulted in a settlement that seemed easy and without openly admitting the mistake that was the cause and main reason for the accident to occur. Then the last limitation is regarding the risk of not being transparent in the information received by the public, which because in the event that the implementation of this mediation is *confidential*, the public does not know the details of the settlement and responsibility of the Company.<sup>54</sup>

By comparison, in many cases, the victim's home country legal system does not have a robust mediation mechanism or access to produce defect lawsuits against multinational companies. Therefore, filing a lawsuit in the US and using mediation is the only realistic way to obtain justice. However, this raises questions about the inequality of access to justice globally and the need to harmonize cross-border dispute resolution procedures. The mediation strategy in dealing with *the forum non conveniens* is an effective and pragmatic approach in international lawsuits for aircraft accidents. While not perfect, mediation provides room for victims to obtain compensation and avoid complex jurisdictional barriers. The case study of the Sriwijaya Air SJ182 accident shows that mediation can be a powerful tool in fighting for justice across countries.<sup>55</sup>

Based on the description and analysis in the previous sections, it is understood that mediation has a strategic and significant role in resolving international disputes arising from aircraft accidents, especially in the case of product defect lawsuits against aircraft manufacturers in the United States. The doctrine of *forum non conveniens* is often a major obstacle for victims from other countries to access justice through the U.S. legal system. In this context, mediation serves as a middle ground that allows dispute resolution without having to go through a full litigation process and without having to prove that the US is the most appropriate forum. The case study of the Sriwijaya Air SJ182 plane crash shows that mediation strategies can be used effectively to avoid rejection of lawsuits based on *non-conveniens forums*, accelerate the provision of compensation, and reduce the emotional and financial burden on victims' families. Mediation also provides flexibility in negotiations and maintains the confidentiality of the process, although it still has limitations in terms of transparency and recognition of legal responsibility. Thus, mediation is not only a procedural instrument, but also a substantive strategy in fighting for cross-jurisdictional justice in international air transport disputes.<sup>56</sup>

Non-conventional forums and mediation are two interrelated concepts in the settlement of international civil disputes, especially in aircraft accident cases. Courts considering forum transfers should evaluate not only procedural efficiency, but also the capacity of alternative forums to provide fair and effective mediation. If alternative forums do not have an adequate mediation system, then the implementation of non-conveniens

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<sup>54</sup> Original Article, Mohammad Majd Kabry, and Azam Ansari, "The Doctrine of Forum Non Conveniens and Its Development in The" 28, no. 110 (2025): 221–42.

<sup>55</sup> Fakultas, Nauka, and Luka, "Forum Non Convenience as a Basis for Determining of Jurisdiction."

<sup>56</sup> College, Science, and Port.

forums can be detrimental to victims' rights. In the context of the United States, mediation systems have evolved to become an important instrument in the resolution of defective product disputes and transportation accidents. Mediation provides space for a more humane, efficient, and recovery-oriented settlement. Therefore, maintaining jurisdiction in the U.S. in cases like SJ182 can provide significant benefits to victims, both in terms of compensation and a more meaningful settlement process.<sup>57</sup>

As a recommendation, the court should make mediation capacity one of the main indicators in assessing the most appropriate forum. In addition, international cooperation in strengthening the cross-border mediation system needs to be improved, so that alternative forums are also able to provide an equal settlement mechanism. Thus, the principle of justice in international civil law can be realized, not only in litigation, but also in an inclusive and solution-oriented mediation process.<sup>58</sup>

#### 4. CONCLUSION

In this study, the novelty analyzed in this study is in the form of a manifestation of a serious discussion of mediation, which is carried out as a strategy and strategy in the implementation of litigation procedures where this is an effort to overcome obstacles from the Non-Conveniens Forums in international lawsuit cases sought by the victims' families. Besides this study demonstrates that mediation plays a strategic role in surmounting the barriers posed by the forum non conveniens doctrine in U.S. courts, which have often impeded victims from developing countries seeking to hold U.S. aircraft manufacturers accountable. For these victims, mediation provided an efficient and humane cross-border dispute resolution mechanism that delivered timely and fair compensation without the need for protracted litigation or the risk of jurisdictional dismissal. This underscores that legal harmonization and international cooperation are vital to ensure that the justice achieved through mediation is upheld, with mediated outcomes recognized and enforceable across jurisdictions. Accordingly, a key recommendation is to strengthen mediation capacity in developing countries through enhanced legal frameworks, mediator training, and institutional support. In parallel, the study advocates for improved cross-border recognition of mediated settlements—such as through broader adoption of international conventions on mediation—to solidify mediation's role as a reliable mechanism for resolving transnational disputes.

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<sup>57</sup> Bies, "Conditioning Forum Non Conveniens."

<sup>58</sup> Lee, "Forum Can Non Save Us Now."

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