

Comparative Roles of Mediators in Non-Litigation Dispute Resolution: Indonesia and Thailand

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Abstract

This study aims to comparatively analyze the role of mediators in non-litigation dispute resolution in Indonesia and Thailand and to examine how differences in legal and sociological orientations influence mediation effectiveness. Existing mediation studies predominantly focus on procedural or institutional aspects, leaving a limited understanding of how mediator positioning as legal and social actors affects dispute resolution outcomes. This research employs a normative legal method using statutory and comparative law approaches, supported by the analysis of legislation, legal doctrines, and scholarly literature. The findings reveal that Indonesia adopts a formal and legalistic mediation model in which mediators function as certified facilitators to ensure legal certainty and enforceability, but with relatively limited social acceptance. In contrast, Thailand applies a community-based mediation model that positions mediators as socially legitimate actors capable of fostering trust and voluntary compliance, although with weaker formal legal guarantees. This study contributes to mediation scholarship by conceptualizing mediators as hybrid legal–social institutions whose effectiveness depends on balancing juridical authority and social legitimacy. The findings imply that developing an integrative mediation framework combining legal certainty with sociological legitimacy is essential to strengthen the effectiveness, accessibility, and sustainability of non-litigation dispute resolution systems.

Keywords: *Alternative Dispute Resolution; Comparative Law; Dispute Resolution; Mediation*

1. INTRODUCTION

Disputes arise as an inevitable consequence of legal and social interactions, particularly when parties bound by legal relationships hold conflicting interpretations of their rights and obligations. In civil law doctrine, disputes commonly emerge from contractual relations when one party fails to perform obligations as agreed (*wanprestasi*), as regulated under Article 1239 and Article 1243 of the Indonesian Civil Code, which establish liability arising from non-performance or delayed performance. Such disputes transform private dissatisfaction into a legal conflict once opposing claims are asserted, thereby generating legal consequences that require formal or non-formal resolution mechanisms.¹

Judicial dispute resolution remains the primary avenue for enforcing legal rights, as affirmed by Article 24 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which mandates judicial power as an independent authority to uphold the law and justice. However, extensive legal scholarship and empirical practice reveal inherent weaknesses in court-based dispute resolution, including lengthy procedures, high litigation costs, and adversarial processes that often undermine substantive justice and social harmony. These limitations are reflected in the growing reliance on non-litigation dispute resolution mechanisms, formally recognized in Indonesia through Law Number 30 of 1999 on

¹ Aista Wisnu Putra et al., “Online Dispute Resolution (ODR) Dalam Sengketa Investasi Pasar Modal Syariah Di Indonesia,” *Jurnal USM Law Review* 3, no. 2 (2021): 235–58, <https://doi.org/https://doi.org/10.26623/julr.v3i2.2707>.

Arbitration and Alternative Dispute Resolution, particularly Article 6, which explicitly allows disputes to be resolved through consultation, negotiation, mediation, conciliation, or expert assessment based on the parties' agreement.

Mediation has gained prominence as a preferred form of Alternative Dispute Resolution due to its emphasis on consensus, dialogue, and the preservation of relationships. In Indonesia, mediation is institutionally integrated into the judicial system through Supreme Court Regulation (PERMA) Number 1 of 2016 on Mediation Procedures in Courts, which defines mediation as a mandatory step before civil adjudication (Article 3) and regulates mediator qualifications and certification (Articles 13–15). This framework reflects a formal and normative legal approach that prioritizes procedural certainty and the enforceability of mediated agreements.²

In contrast, Thailand adopts a more flexible and socially embedded mediation model. Mediation practices are supported by provisions within the Civil and Commercial Code of Thailand, particularly those governing compromise (Sections 850–853), and are strengthened by the Dispute Mediation Act B.E. 2562 (2019), which recognizes community-based mediators and encourages dispute resolution outside the court system. Unlike Indonesia, Thai law does not strictly require mediator certification or procedural formalism; instead, it emphasizes community trust, cultural legitimacy, and social harmony as core elements of mediation effectiveness.³

Existing studies on mediation generally focus on three themes: procedural effectiveness, mediator neutrality, and cultural approaches to dispute settlement. However, these studies tend to analyze mediation within single jurisdictions and rarely examine how formal legal regulation interacts with social legitimacy in shaping the mediator's role. This research addresses that gap by conducting a comparative analysis of Indonesia and Thailand, demonstrating that mediation effectiveness is influenced not only by statutory authority but also by the level of societal acceptance of mediators. The novelty of this study lies in its conceptualization of the mediator as both a legal actor governed by statutory norms and a social actor whose legitimacy derives from community trust, thereby offering a more integrative framework for strengthening mediation systems in plural legal contexts.⁴

The increasing complexity of social and economic relations has led to a growing number of disputes that demand effective, efficient, and fair resolution mechanisms. Judicial dispute resolution, while formally authoritative, is often criticized for being time-consuming, costly, rigid, and adversarial. These limitations have encouraged the development of non-litigation dispute resolution mechanisms, commonly referred to as

² Sasmiar Sasmiar, Umar Hasan, and Suhermi Suhermi, "Legal Certainty of Alternative Dispute Resolution Mediation," *Bengkoelen Justice: Jurnal Ilmu Hukum* 14, no. 1 (2024): 25–44, <https://doi.org/10.33369/jbengkoelenjust.v14i1.33432>.

³ Francisca Romana and Meicke Caroline, "Studi Komparatif Penyelesaian Sengketa Lingkungan Di Pengadilan Tata Usaha Negara Indonesia Dan Thailand," 2022, 371–91, <https://doi.org/10.20885/iustum.vol29.iss2.art7>.

⁴ Tinuk Dwi Cahyani and Fauzan Saputra, "Enhancing Mediation Skills through Legal Counseling for Indonesian Citizens in Thailand: A Case Study of PCIM Thailand" 5, no. 1 (2025): 49–60, <https://doi.org/https://doi.org/10.22219/jdh.v5i1.39222>.

Alternative Dispute Resolution (ADR), which aim to provide more flexible, consensual, and participatory processes. Among the various ADR methods, mediation has gained prominence due to its emphasis on dialogue, mutual agreement, and the preservation of relationships between disputing parties.⁵

Several recent studies have examined mediation within specific legal contexts. A study by Dalinama Telaumbanua (2021) highlights the effectiveness of court-annexed mediation in Indonesia in reducing case backlogs and enhancing procedural efficiency. However, the study primarily focuses on institutional outcomes and does not adequately analyze the substantive role of mediators in managing power imbalances between the parties.⁶

These studies indicate that, although mediation has been widely discussed, existing research remains fragmented, either focusing on procedural efficiency, professional standards, or sociocultural acceptance in isolation. There is a noticeable research gap in comparative studies that comprehensively analyze the role of mediators by integrating normative legal structures and sociological dimensions across different legal systems. This gap underscores the need for a comparative examination of Indonesia and Thailand, two countries with distinct legal orientations yet similar objectives in promoting mediation as an alternative dispute resolution mechanism.⁷

This research offers a distinct contribution by comparatively analyzing the role of mediators in non-litigation dispute resolution within the legal systems of Indonesia and Thailand. Unlike previous studies, this research simultaneously evaluates legal formalism, institutional frameworks, and social legitimacy, thereby addressing unresolved gaps in prior scholarship. The study demonstrates that legal certainty and social acceptance are not mutually exclusive but can be integrated to enhance mediation effectiveness.

This research aims to analyze and compare the legal regulation and practical implementation of mediation in Indonesia and Thailand as a non-litigation dispute resolution mechanism. It further seeks to examine the role and function of mediators in influencing the effectiveness of mediation in both legal systems, particularly in terms of legal certainty and social acceptance. Through a comparative approach, this study also aims to identify the strengths and weaknesses of each mediation model and to formulate an integrated approach that combines normative legal frameworks with the social legitimacy of mediators to strengthen mediation as a fair, effective, and sustainable dispute resolution mechanism.

⁵ Erly Aristo, Karen Michaelia Arifin, and Shenny Rustam Moidady, "Establishment of Special Land Courts as an Effort to Settlement of Land Cases" 8 (2023): 450–65, <https://doi.org/https://doi.org/10.26623/jic.v8i3.7837>.

⁶ Dalinama Telaumbanua, "Penyelesaian Sengketa Perjanjian Pinjam Meminjam Yang Dilakukan Di Luar Pengadilan" 1, no. 1 (2021): 1–4, <https://doi.org/https://media.neliti.com/media/publications/341566-penyelesaian-sengketa-perjanjian-pinjam-460600de.pdf>.

⁷ Callesta Aydelwais De Fila Asmara, Zaenal Arifin, and Fahrudin Mubarak Anwar, "Penyelesaian Sengketa Hak Cipta Antara Pencipta Lagu Dan Penyanyi," *Jurnal USM Law Review* 6, no. 2 (2023): 860, <https://doi.org/10.26623/julr.v6i2.7499>.

2. METHOD

This research employs a normative legal method that examines law as a system of norms governing non-litigation dispute resolution, with particular emphasis on mediation and the role of mediators within the legal systems of Indonesia and Thailand. The study focuses on the analysis of positive law through statutory provisions, legal doctrines, and court-related regulatory frameworks, aiming to understand how mediation is normatively structured and legally conceptualized in each jurisdiction. Accordingly, this research does not utilize empirical methods such as interviews or field observations, as its scope is confined to normative legal analysis rather than an empirical evaluation of mediation practices.

The study applies a statutory approach and a comparative law approach. The statutory approach is used to identify, interpret, and systematize legal norms regulating mediation and alternative dispute resolution in Indonesia and Thailand, including Law Number 30 of 1999 and Supreme Court Regulation Number 1 of 2016 in Indonesia, as well as the Civil Procedure Code and the Alternative Dispute Resolution Act B.E. 2562 (2019) in Thailand. The comparative law approach is conducted using a functional comparison framework, whereby legal rules and institutions are compared based on how they function in addressing similar legal problems, namely, the resolution of civil disputes through mediation and the positioning of mediators within each system. This approach is complemented by a contextual analysis to account for differences in legal culture and institutional orientation that influence mediator authority and legitimacy.

This research is descriptive-analytical in nature, as it systematically describes existing mediation regulations and critically analyzes their normative foundations, coherence, and regulatory objectives. The scope of the study is limited to non-litigation dispute resolution in civil matters and to the legal position, authority, and function of mediators under Indonesian and Thai law. The legal materials used consist of primary, secondary, and tertiary sources. Primary legal materials include binding legislation and formal regulations on mediation. Secondary legal materials comprise legal textbooks, peer-reviewed journals, prior scholarly research, and expert opinions relevant to mediation and dispute resolution. Tertiary legal materials include legal dictionaries and encyclopedias used solely to clarify legal terminology.

Data collection is conducted through library research using documentation techniques, whereby legal materials are systematically collected, classified, and organized according to thematic relevance. Qualitative analysis is carried out through a structured process of norm identification, interpretation, and comparison. Legal norms are first analyzed to extract underlying principles governing mediation and then compared across jurisdictions to assess differences in legal orientation, mediator roles, and regulatory effectiveness. This systematic analysis enables the formulation of deductive normative conclusions regarding the ideal

integration of legal certainty and social legitimacy in strengthening mediation as a fair, effective, and sustainable non-litigation dispute resolution mechanism.⁸

3. RESULTS AND DISCUSSION

3.1 Regulation of Mediators in Out-of-Court Dispute Resolution in Indonesia and Thailand

Civil disputes fundamentally arise from the existence of legal relationships between parties, particularly when rights and obligations stipulated in an agreement are not fulfilled as agreed or are interpreted differently by the parties.⁹ In the Indonesian legal system, the occurrence and resolution of disputes are closely linked to the principle of freedom of contract (freedom of contract) as stipulated in Article 1338 paragraph (1) of the Indonesian Civil Code, which affirms that all legally formed agreements shall bind the parties as law. Consequently, the mechanism for dispute resolution, including the choice between litigation and non-litigation methods such as mediation or arbitration, largely depends on the choice of law and dispute resolution clause agreed upon by the parties in the contract. This clause functions as a legal instrument that determines not only the applicable law but also the forum and method for resolving disputes, thereby reflecting the autonomy of the parties in designing their own legal protection and dispute resolution framework. In this context, mediation emerges as one of the dispute resolution options whose legitimacy and implementation are grounded in both statutory regulation and the contractual agreement of the disputing parties.¹⁰

The regulation of mediators in out-of-court dispute resolution in Indonesia reflects a legal system that places legal certainty and procedural order at the center of its dispute resolution framework. Mediation is formally recognized as a legitimate mechanism through Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution, which establishes mediation as a lawful alternative to judicial proceedings. This recognition is not merely symbolic; it positions mediation within a structured legal hierarchy, granting mediators a clearly defined juridical role as neutral third parties authorized to assist disputing parties in reaching consensual agreements. From a normative standpoint, this framework emphasizes predictability, accountability, and institutional control as essential components of justice.¹¹

This orientation toward legal certainty is further reinforced by Supreme Court Regulation (PERMA) Number 1 of 2016 concerning Mediation Procedures in Court.

⁸ Sonia Nahda, Emy Hajar Abra, and Pristika Handayani, "Pelaksanaan Mediasi Berdasarkan Peraturan Mahkamah Agung Nomor 1 Tahun 2016 Tentang Prosedur Mediasi." *Jurnal USM Law Review* 8, no. 3 (2023): 1377-1391, <https://doi.org/https://doi.org/10.26623/julr.v8i2.12696>.

⁹ Zaenal Arifin, Soegianto Soegianto, and Diah Sulistyani RS, "Perlindungan Hukum Perjanjian Kemitraan Pengadaan Barang /Jasa Pemerintah Pada Bidang Konstruksi," *Jurnal USM Law Review* 3, no. 1 (2020): 59-76, <https://doi.org/http://dx.doi.org/10.26623/julr.v3i1.2134>.

¹⁰ Meirina Nurlani, "Alternatif Penyelesaian Sengketa Dalam Sengketa Bisnis Di Indonesia," *Jurnal Kepastian Hukum Dan Keadilan* 3, no. 1 (2021): 26-31, <https://doi.org/https://doi.org/10.32502/khk.v3i1.4519>.

¹¹ Nur Mohamad Kasim and Fibriyanti Karim, "The Impact of Mediation on the Settlement of Divorce Cases in Religious Courts," *Jurnal Ius Constituendum* 10, no. 2 (2025): 11-21, <https://doi.org/10.26623/jic.v10i1.10912>.

Although PERMA No. 1 of 2016 is formally designed to regulate court-connected mediation, its normative influence extends beyond judicial settings. The principles it establishes, such as neutrality, confidentiality, good faith, and structured procedural stages, have become reference points for mediation practices outside the court. More importantly, the regulation introduces mandatory mediator certification, thereby formalizing the mediator's role as a legal professional subject to ethical standards, procedural obligations, and institutional supervision.

From the perspective of legal positivism, Indonesia's regulatory approach demonstrates coherence and internal consistency. Legal authority is derived from written norms, and the legitimacy of mediators depends on formal recognition by state institutions. This model aligns to ensure legal certainty (*rechtszekerheid*), which is traditionally regarded as a fundamental element of the rule of law. By standardizing mediator qualifications and procedures, the Indonesian legal system seeks to minimize arbitrariness and protect disputing parties from unqualified or biased intervention.

However, when analyzed through the lens of legal culture theory, particularly Lawrence M. Friedman's framework, which distinguishes between legal structure, substance, and culture, this formalistic orientation reveals structural tensions. While the legal substance governing mediation is well-developed, the legal culture, namely public attitudes, awareness, and trust toward mediation, has not fully adapted to this institutional model. Mandatory certification and procedural rigidity, although normatively justified, may unintentionally restrict access to mediation services, especially in rural or marginalized communities where certified mediators are scarce. As a result, mediation risks becoming an elite or court-dependent mechanism rather than a genuinely accessible alternative to litigation.

This situation illustrates a broader systemic issue: the over-formalization of mediation may weaken its functional effectiveness. Mediation, by its nature, relies on voluntariness, flexibility, and trust. Excessive procedural constraints can transform mediation into a mere procedural formality, particularly when parties perceive it as an obligatory step before litigation rather than a meaningful opportunity for consensual resolution. Thus, Indonesia's strong emphasis on legal certainty, while normatively sound, may undermine the social effectiveness of mediation if not balanced with cultural responsiveness.¹²

In contrast, the regulation of mediators in Thailand reflects a markedly different legal philosophy that prioritizes social legitimacy and cultural embeddedness over strict procedural formalism. The Civil Procedure Code and the Alternative Dispute Resolution Act B.E. 2562 (2019), complemented by the Mediation Act B.E. 2562 (2019), provide a flexible normative framework that encourages mediation both within and outside judicial institutions. Rather than imposing rigid certification requirements, Thai law allows

¹² Huala Adolf, *Hukum Penyelesaian Sengketa Internasional*, 2020.

mediation to be conducted by individuals who are socially recognized and trusted by the disputing parties, including community leaders, customary authorities, and local officials.¹³

This regulatory approach is rooted in a sociological conception of law, where legal effectiveness is closely linked to social acceptance and communal harmony. In Thailand's legal culture, dispute resolution is not viewed solely as a matter of enforcing legal rights but also as a process of restoring social relationships. The establishment of the Department of Alternative Dispute Resolution (DADRA) further demonstrates the state's commitment to institutionalizing mediation while preserving its social character. DADRA functions as a coordinating body rather than a rigid supervisory authority, reflecting a governance model that values facilitation over control.

From a practical standpoint, Thailand's flexible regulation enhances accessibility and encourages voluntary participation in mediation. Parties are more likely to trust mediators who share their cultural background and understand local social dynamics. This trust-based model often leads to high levels of compliance with mediation outcomes, even in the absence of strong formal enforcement mechanisms. However, the same flexibility that strengthens social legitimacy also generates normative challenges. The absence of uniform professional standards may result in inconsistencies in mediator quality, procedural fairness, and outcome predictability.¹⁴

From the perspective of legal certainty, Thailand's approach may, therefore, be less effective in disputes involving significant economic interests, power imbalances, or cross-border elements. Without standardized qualifications and clear procedural safeguards, mediation outcomes may lack enforceability and expose weaker parties to potential coercion or unfair settlements. This highlights a structural trade-off between accessibility and legal protection, demonstrating that social legitimacy alone is insufficient to guarantee justice.¹⁵

Comparatively, Indonesia and Thailand represent two distinct regulatory paradigms that reflect different legal objectives. Indonesia conceptualizes mediators as formal legal professionals, embedded within a hierarchical legal system that prioritizes certainty, uniformity, and enforceability. Thailand, by contrast, views mediators as social actors with legal legitimacy, emphasizing trust, cultural relevance, and communal harmony. Each model embodies specific strengths and weaknesses: Indonesia excels in predictability and institutional accountability, while Thailand demonstrates adaptability and social effectiveness.¹⁶

This comparison reveals that the regulation of mediators cannot be evaluated solely on the basis of normative completeness or procedural sophistication. Instead, it must be

¹³ Sarfika Datumula, "Mediasi Dalam Penyelesaian Perkara Perceraian Di Luar Pengadilan" 3 (2023), https://doi.org/https://j-innovative.org/index.php/Innovative_Mediasi.

¹⁴ Siti Nur Umariyah Febriyanti, "Tinjauan Filosofis Terhadap Mediasi Di Luar Pengadilan Sebagai Alternatif Penyelesaian Sengketa," 2025.

¹⁵ Rini Eka Agustina, "Efektifitas Arbitrase Sebagai Penyelesaian Perselisihan," *Ethics and Law Journal: Business and Notary* 2, no. 1 (2024): 263–72, <https://doi.org/10.61292/eljbn.130>.

¹⁶ Tinuk Dwi Cahyani And Fauzan Saputra, "Enhancing Mediation Skills Through Legal Counseling For Indonesian Citizens In Thailand : A Case Study Of Pcim Thailand" 5, No. 1 (2025): 49–60.

assessed in relation to broader systemic goals, including access to justice, social cohesion, and the balance between legal certainty and cultural legitimacy. An effective mediation framework requires not the dominance of one paradigm over the other but a calibrated integration of both. Indonesia may benefit from incorporating community-based mediation mechanisms to enhance social trust, while Thailand could strengthen mediator professionalism through minimum competency standards without eroding cultural flexibility.

Ultimately, the comparative analysis of mediator regulation in Indonesia and Thailand underscores a central insight: the effectiveness of mediation is determined not only by legal norms but also by the interaction between legal structure and legal culture. This finding provides a conceptual foundation for rethinking mediation regulation in plural legal systems and contributes to international discourse on alternative dispute resolution by demonstrating the necessity of balancing legal certainty with social legitimacy.

Furthermore, when examined through the lens of access to justice theory, as articulated by Mauro Cappelletti and Bryant Garth, the contrasting regulatory approaches of Indonesia and Thailand illustrate two different pathways toward achieving substantive justice. Indonesia's formalized mediation framework strengthens the dimension of formal legal access by ensuring procedural clarity, enforceability, and institutional accountability. However, its rigidity may limit practical accessibility for broader segments of society. Conversely, Thailand's socially embedded mediation model enhances functional access to justice by making dispute resolution more culturally relevant, participatory, and accessible at the community level, even though it may lack strong formal legal safeguards. This comparison confirms that mediator regulation is not merely a technical legal arrangement but a strategic institutional design that directly affects the inclusiveness, legitimacy, and effectiveness of dispute resolution. Therefore, the optimal development of mediation systems requires a balanced regulatory approach that integrates formal legal certainty with sociological legitimacy, ensuring that mediation can simultaneously deliver juridical protection and socially sustainable conflict resolution.

3.2 Dispute Resolution by Mediators in Indonesia and Thailand

Dispute resolution by mediators in Indonesia is structured within a relatively formal and standardized procedural framework, reflecting the country's broader orientation toward legal certainty and institutional control in civil dispute resolution. Mediation is conducted through defined stages that begin with the voluntary consent of the parties and proceed through facilitated dialogue sessions led by a certified mediator. Within this framework, the mediator's authority is carefully circumscribed: mediators are expected to guide communication, clarify disputed issues, and assist parties in exploring settlement options

while strictly refraining from imposing decisions or providing substantive legal judgments. This procedural restraint is designed to safeguard neutrality and preserve party autonomy.¹⁷

From a normative standpoint, Indonesian mediation emphasizes core principles such as confidentiality, voluntariness, and good faith. These principles function as legal safeguards intended to ensure procedural fairness and create a safe environment for open negotiation. However, the mediator's role remains primarily facilitative rather than transformative. Mediators are positioned as procedural managers rather than substantive actors, which limits their capacity to actively intervene in cases involving deep relational conflict or significant power imbalances. As a result, the effectiveness of mediation in Indonesia is highly dependent on the willingness of the parties to compromise rather than on the mediator's ability to actively reshape the dynamics of the dispute.¹⁸

When analyzed through the perspective of dispute resolution theory, particularly the distinction between facilitative and evaluative mediation as developed by Leonard Riskin, Indonesia's mediation model clearly aligns with the facilitative orientation, where mediators act primarily as neutral facilitators rather than active evaluators or intervenors. This approach normatively reinforces party autonomy (self-determination) as the central pillar of mediation legitimacy. However, the strict limitation on mediator intervention may also reduce the mediator's capacity to address structural inequalities between the parties, such as disparities in legal knowledge, bargaining power, or socio-economic status. In such situations, procedural neutrality does not always translate into substantive fairness, as weaker parties may formally consent to agreements that do not fully reflect equitable outcomes. This condition demonstrates that procedural fairness alone is insufficient to guarantee substantive justice, highlighting the need to reconceptualize mediator authority not only as a passive facilitator but also as a guardian of balanced and fair negotiation processes.

From a broader legal system perspective, this restrained mediator role reflects Indonesia's strong adherence to legal positivism and *rechtszekerheid* (legal certainty), where the legitimacy of dispute resolution is primarily derived from procedural compliance rather than relational transformation. However, when examined using Lawrence M. Friedman's legal system theory, this orientation reveals an imbalance between legal structure and legal culture. While the legal structure provides clear procedural rules and institutional safeguards, the limited transformative role of mediators reduces mediation's ability to function as a mechanism for restoring social relationships and addressing the underlying causes of conflict. Consequently, mediation risks becoming a formalized extension of litigation rather than an autonomous and socially responsive dispute resolution mechanism.

¹⁷ Ahmad Adi Fitriyadi, "Urgensi Pembentukan Association Of Southeast Asian Nations Court Of Justice (Pengadilan Asean) Sebagai Lembaga Penyelesaian Sengketa Hukum Internasional Regional Untuk Menanggulangi Berbagai Sengketa Di Asia Tenggara," 2025.

¹⁸ Erni Yoesry, "Effectiveness of Commercial Mediation in Resolution of Transnational Business Disputes : A Comparative Analysis of Legal Frameworks" 1, no. 3 (2025): 114–27, <https://doi.org/https://doi.org/10.56107/penalaw.v2i2.185>.

Strengthening mediation effectiveness in Indonesia, therefore, requires a gradual shift toward a more responsive mediation model that maintains procedural certainty while allowing mediators sufficient flexibility to address relational, psychological, and structural dimensions of disputes, thereby enhancing both legal justice and social sustainability of mediation outcomes.¹⁹

This restrained model of mediator authority reflects Indonesia's commitment to legal certainty (*rechtszekerheid*) as a dominant legal objective. Mediation outcomes are expected to be predictable, clearly documented, and enforceable within the formal legal system. Agreements reached through mediation gain strong juridical force once formalized in writing, particularly when incorporated into court procedures. In this sense, mediation in Indonesia operates as a complementary mechanism to litigation rather than as an autonomous dispute resolution culture. From the perspective of dispute resolution theory, this approach aligns with a rights-based and rule-oriented model of justice, where the legitimacy of outcomes is derived primarily from procedural compliance and legal enforceability.²⁰

In contrast, dispute resolution through mediation in Thailand demonstrates a markedly different conception of mediator authority and legal purpose. Mediation in Thailand is more participatory and consensus-based, with mediators often functioning as respected community figures rather than purely neutral facilitators. Their authority is grounded in social trust, moral standing, and cultural proximity to the disputing parties. This social legitimacy enables mediators to exercise a more active role in guiding parties toward settlement, including the use of moral persuasion and relational intervention. Unlike the Indonesian model, mediators in Thailand are not strictly confined to procedural facilitation but may engage more substantively with the underlying social and relational dimensions of the dispute.²¹

Thailand's community mediation model exemplifies this broader conception of mediator authority. By involving local leaders, elders, and customary figures, mediation processes are embedded within the social fabric of the community. Mediators often possess intimate knowledge of the parties' social relationships, economic conditions, and cultural norms, allowing them to contextualize disputes beyond formal legal claims. As a result, dispute resolution in Thailand is not limited to determining legal rights and obligations but is oriented toward restoring social harmony and maintaining long-term communal

¹⁹ Miftah Arifin, Zaenal Arifin, and Mac Thi Hoai Thuong, "The Principle of Proportionality on Digital Business Agreements: Between Mitigation and Orientation," *Indonesia Private Law Review* 4, no. 1 (2023): 47–56, <https://doi.org/10.25041/iplr.v4i1.2954>.

²⁰ Romana and Caroline, "Studi Komparatif Penyelesaian Sengketa Lingkungan Di Pengadilan Tata Usaha Negara Indonesia Dan Thailand."

²¹ Nur Kamilia et al., "Jurnal Kajian Hukum Islam Dan Hukum Ekonomi Islam," 2024, <https://doi.org/https://doi.org/10.33650/jhi>.

relationships. This approach reflects a relational and communitarian conception of justice, where social cohesion is regarded as a central legal value.²²

The flexibility of Thailand's mediation process allows disputes to be resolved in a manner that is adaptive and responsive to local conditions. The absence of rigid procedural stages enables mediators to tailor the mediation process to the specific needs of the parties and the nature of the dispute. This adaptability often leads to quicker resolutions and higher levels of voluntary compliance, as parties are more likely to honor agreements reached through processes they perceive as fair and culturally legitimate. From a sociological perspective, this model strengthens the social effectiveness of mediation by fostering trust and mutual understanding.²³

However, the same flexibility that enhances social legitimacy also introduces normative challenges. Without standardized procedural safeguards and clearly defined limits on mediator authority, mediation practices in Thailand may vary significantly in quality and fairness. The reliance on social consensus and moral influence may expose weaker parties to subtle forms of pressure, particularly in disputes involving economic inequality or hierarchical social relationships. Moreover, the absence of strong formal enforcement mechanisms may reduce legal predictability, especially in disputes involving high economic value or cross-border elements. From the standpoint of legal certainty, Thailand's mediation model may, therefore, be less effective in ensuring uniform and enforceable outcomes.

The contrasting mediation practices in Indonesia and Thailand illustrate how differences in mediator authority are closely linked to differing orientations of legal objectives. Indonesia's mediation system prioritizes legal certainty, procedural uniformity, and institutional accountability, resulting in a constrained but legally secure role for mediators. Thailand's system prioritizes social harmony, accessibility, and cultural legitimacy, granting mediators broader informal authority at the expense of standardized legal safeguards. These differences confirm that mediation is not a neutral, technical process but a legal institution shaped by underlying conceptions of justice and social order.

International mediation literature reinforces this analytical distinction. Scholars such as Carrie Menkel-Meadow emphasize that effective mediation requires balancing procedural fairness with relational responsiveness. Similarly, Frank Sander's concept of the "multi-door courthouse" underscores the importance of aligning dispute resolution mechanisms with the nature of the dispute and the needs of the parties. Comparative ADR studies further suggest that overly formal mediation risks becoming indistinguishable from litigation, while excessively informal mediation may lack accountability and legal protection. Viewed within

²² Putra Halomoan Hsb, "Manajemen Penyelesaian Sengketa Ekonomi Syari'ah Putra," 2021, 269–302, <https://doi.org/https://doi.org/10.24952/tad.v2i2.3293>.

²³ Sri Anggraini Kusuma Dewi, "Legal Arrangements Regarding Dispute Resolution Through Mediation In Civil Cases," *Yurisdiksi: Jurnal Wacana Hukum Dan Sains* 20, no. 1 (2024): 66–72, <https://doi.org/10.55173/yurisdiksi.v20i1.230>.

this framework, the Indonesian and Thai models represent two ends of a normative spectrum rather than mutually exclusive approaches.

In terms of outcomes, mediation in Indonesia tends to produce agreements with strong juridical enforceability but may struggle to achieve deep relational resolution. Parties may comply with agreements due to legal obligation rather than genuine reconciliation. In Thailand, mediation outcomes often enjoy broader social acceptance and voluntary compliance, as agreements are embedded within social norms and community expectations. However, their legal force may be less certain, particularly in the absence of formal documentation or judicial endorsement. These contrasting outcomes demonstrate that mediation effectiveness cannot be assessed solely by enforceability or social acceptance, but by the system's capacity to integrate both dimensions.

Accordingly, dispute resolution by mediators in Indonesia and Thailand exhibits distinct yet complementary characteristics. Indonesia excels in safeguarding legal certainty and procedural justice, while Thailand excels in promoting social effectiveness and community trust. A comparative understanding of these systems suggests that an ideal mediation framework should integrate structured legal safeguards with culturally responsive mediator authority. Such an integrative approach would enable mediation to function not only as an alternative to litigation but as a holistic mechanism for achieving both legal justice and social peace within plural legal systems.

3.3 Obstacles and Efforts in Out-of-Court Dispute Resolution in Indonesia and Thailand

The obstacles to effective out-of-court dispute resolution in Indonesia cannot be understood merely as technical shortcomings but must be analyzed as manifestations of deeper structural weaknesses within the legal system.²⁴ The low level of public awareness and understanding of mediation reflects a legal culture that remains litigation-oriented, where courts are perceived as the primary symbol of justice and legal authority. This cultural orientation limits the social legitimacy of mediation and reduces the mediator's role to a procedural complement rather than an autonomous dispute resolution mechanism.²⁵

Moreover, the high degree of formalization in Indonesia's mediation framework, including strict procedural requirements and mandatory mediator certification, reflects an institutional emphasis on legal certainty and professional accountability. While normatively justified, this structural design has practical implications. The limited availability of certified mediators, particularly in rural and remote areas, creates unequal access to mediation services and undermines the inclusiveness of non-litigation dispute resolution. In this

²⁴ Syahrul Rizqian and Putu Ade Martana Harriestha, "Kedudukan Mediator Dalam Mediasi Penyelesaian Sengketa Pembagian Harta Peninggalan," *Jurnal Kertha Wicara* Vol 11, no. 06 (2022): 1319–30, <https://doi.org/DOI: KW.2022.v11.i06.p13>.

²⁵ Irwan, "Alternative Land Dispute Resolution Outside the Court Through Mediation" 15, no. 02 (2025): 440–47, <https://doi.org/10.58471/justi.v15i02>.

context, mediation risks becoming structurally dependent on judicial institutions, thereby weakening its function as a flexible and accessible alternative to litigation.²⁶

Another structural challenge in Indonesia lies in the instrumentalization of mediation within the litigation process. The frequent lack of good faith among disputing parties is not solely an individual behavioral issue but a systemic consequence of mediation being treated as a mandatory procedural step rather than a genuinely voluntary process. When mediation is perceived merely as a formality preceding court adjudication, its transformative potential is significantly diminished. This condition illustrates a misalignment between legal structure and legal culture, where formal regulation is not fully internalized by legal actors and society.²⁷

In Thailand, structural obstacles to mediation arise from the opposite orientation of the legal system. The high degree of flexibility and reliance on social consensus reflects a strong emphasis on social harmony and community-based dispute resolution. However, the absence of uniform professional standards for mediators constitutes a structural weakness that may compromise procedural fairness and legal predictability. Variations in mediator competence and authority can result in inconsistent outcomes, particularly in disputes involving power imbalances or significant economic interests.

Furthermore, mediation outcomes in Thailand, which rely heavily on social compliance rather than formal enforceability, may face limitations in the context of modern commercial disputes. In such cases, the lack of clear legal certainty may reduce confidence among business actors and undermine the credibility of mediation as a reliable dispute resolution mechanism. This structural limitation highlights the challenge of adapting culturally embedded mediation models to increasingly complex and transnational legal environments.²⁸

Rather than addressing these challenges through isolated reforms, this comparative analysis supports the development of an integrative mediation model that reconciles the strengths of both legal systems. For Indonesia, integrating community-based mediation mechanisms and recognizing socially legitimate mediators could enhance accessibility and public trust without dismantling existing legal safeguards. Such integration would help align legal structure with social realities and strengthen the cultural foundation of mediation.²⁹

Conversely, Thailand could benefit from adopting minimum professional standards and basic competency requirements for mediators, particularly in commercial and high-

²⁶ Meirina Nurlani, "Alternatif Penyelesaian Sengketa Dalam Sengketa Bisnis Di Indonesia Meirina Nurlani" 3, no. 1 (2021): 26–31, <https://doi.org/https://doi.org/10.32502/khk.v3i1.4519>.

²⁷ Agnes Monika Gultom, Hisar Siregar, and Ria Juliana Siregar, "Legal Review of Settlement of Customary Land Disputes Through Mediation According to Positive Law," *Journal of Legal and Cultural Analytics* 4, no. 1 (2025): 109–18, <https://doi.org/10.55927/jlca.v4i1.13656>.

²⁸ Sasmiar, Sasmiar, Umar Hasan, And Suhermi Suhermi. "Legal Certainty Of Alternative Dispute Resolution Mediation." *Bengkoelen Justice: Jurnal Ilmu Hukum* 14, No. 1 (2024): 25–44. <https://doi.org/10.33369/jbengkoelenjust.v14i1.33432>

²⁹ Suparno Mulyanto, Akh, "Reforming the Land Boundary Dispute Resolution Mechanism Based on Mediation for Legal Certainty and Social Sustainability," *Jurnal Greenation Sosial Dan Politik* 3, no. 4 (2025): 836–46.

stakes disputes. This approach would enhance legal certainty and protect vulnerable parties while preserving the cultural flexibility that underpins the social effectiveness of mediation. The role of institutions such as the Department of Alternative Dispute Resolution (DADRA) is crucial in operationalizing this balance by coordinating mediation practices without imposing excessive formalization.

The comparative value of this subchapter lies in its demonstration that mediation effectiveness depends on the interaction between legal structure, legal culture, and legal objectives. For an international audience, this analysis offers a transferable framework for understanding how hybrid mediation systems can be designed to balance legal certainty with social legitimacy. By moving beyond normative recommendations and focusing on structural integration, this study contributes to broader discussions on the future of alternative dispute resolution in plural and evolving legal systems.

Ultimately, optimizing the role of mediators requires not only regulatory support and institutional strengthening but also a recalibration of legal culture toward greater acceptance of consensual dispute resolution. Both Indonesia and Thailand possess significant potential to position mediation as a central pillar of out-of-court dispute resolution, provided that reforms are guided by an integrative and context-sensitive approach rather than a one-dimensional pursuit of either formal legality or social harmony.

From a systemic reform perspective, the obstacles faced by Indonesia and Thailand in mediation-based dispute resolution demonstrate that the future effectiveness of mediation depends not merely on regulatory expansion but on achieving structural coherence between legal norms, institutional capacity, and legal culture. Drawing on the theory of responsive law as developed by Philippe Nonet and Philip Selznick, mediation should evolve beyond a purely formal legal instrument or a purely informal social practice, and instead function as a responsive legal mechanism capable of adapting to the needs and realities of disputing parties. In Indonesia, this requires regulatory refinement that enhances mediator accessibility and strengthens public trust without undermining professional standards. In Thailand, it necessitates the gradual institutionalization of mediator competence and procedural safeguards to ensure fairness and legal protection. Ultimately, the long-term sustainability of mediation in both jurisdictions depends on their ability to develop a hybrid institutional model in which legal certainty, professional accountability, and social legitimacy operate in a mutually reinforcing manner, thereby positioning mediation not only as an alternative dispute resolution mechanism but as an integral component of a modern, inclusive, and justice-oriented legal system.

4. CONCLUSION

This study demonstrates that the effectiveness of mediation in non-litigation dispute resolution is fundamentally determined by the dynamic interaction between legal structure, legal culture, and the functional positioning of mediators within each legal system. Indonesia's mediation framework emphasizes legal certainty through formal regulation, certification, and procedural standardization, thereby ensuring enforceability but limiting

social accessibility, whereas Thailand's model prioritizes social legitimacy and community trust, enhancing voluntary compliance while presenting challenges in legal predictability. Theoretically, this research advances mediation scholarship by conceptualizing mediators as hybrid legal–social actors whose effectiveness depends on balancing juridical authority and sociological legitimacy, moving beyond conventional single-dimension analyses focused solely on procedural compliance or cultural acceptance. Practically, the findings suggest that mediation systems should adopt an integrative regulatory approach that combines minimum professional standards with culturally embedded legitimacy to strengthen both enforceability and social effectiveness. This study also highlights the importance of aligning formal legal frameworks with societal trust to enhance access to justice and dispute resolution sustainability. However, as this research is limited to normative comparative analysis, future studies should incorporate empirical and interdisciplinary approaches to evaluate how hybrid mediation models operate in practice and to assess their impact on dispute resolution outcomes, legal compliance, and long-term social cohesion.

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