JURNAL AKTA
Volume 11 No. 4, December 2024
SINTA 2,
Decree No. 164/E/KPT/2021

Comparative Mediation and Arbitration in Civil Dispute Resolution in Indonesia

Nanang Naisabur
Faculty of Law, Universitas Islam Negeri Sunan Gunung Djati Bandung, Indonesia, E-mail: nanangnaisabur@uinsgd.ac.id

Abstract. *The increasing number of civil disputes in Indonesia has created an urgency to find more effective dispute resolution methods to alleviate the burden on the judiciary. This study aims to compare the effectiveness of mediation and arbitration in dispute resolution, as regulated by Supreme Court Regulation No. 1 of 2016 and Law No. 30 of 1999. The normative juridical method was chosen to analyze the relevant legal framework to understand the strengths, weaknesses, and legal impacts of these two methods. This analysis also includes Roscoe Pound's theory of legal efficiency and Satjipto Rahardjo's progressive law approach, which emphasizes the importance of legal adaptability. Through this approach, the study is expected to provide comprehensive insights to assist legal practitioners, business actors, and the public in selecting the most appropriate method for efficiently resolving civil disputes. The research finds that mediation and arbitration have distinct advantages in resolving civil disputes in Indonesia; mediation is effective for maintaining relationships and cost-efficiency, while arbitration provides legal certainty with final decisions. Mediation, though fast, relies on formal agreements to be binding, whereas arbitration is more costly and does not permit appeals except under certain circumstances. Understanding these strengths and limitations helps stakeholders choose the most appropriate method to achieve substantive justice and efficiency in practice.*

Keywords: *Arbitration; Comparison; Mediation; Resolution.*

1. INTRODUCTION

Civil disputes in Indonesia are a frequent phenomenon, involving various parties ranging from individuals, companies, to government institutions. The high number of disputes poses a major challenge to Indonesia's judicial system, which often faces a backlog of cases and limited resources. According to data from the Supreme Court, the number of cases that accumulate each year reaches thousands, indicating that settlement through litigation tends to be

time-consuming and burdensome for the courts. In this context, efforts to find efficient and effective settlement methods are crucial to maintain legal certainty and justice for the community. One of the solutions considered is the use of alternative dispute resolution methods, such as mediation and arbitration, which are regulated in the applicable laws and regulations.[1] Mediation is regulated in Article 130 HIR (*Herzien Inlandsch Reglement*) and Article 154 R.Bg. (*Reglement op de Burgerlijke Rechtsvordering*), and further strengthened through Supreme Court Regulation (PERMA) No. 1 of 2016 on Mediation Procedures in Court. On the other hand, arbitration is comprehensively regulated in Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution. Both of these methods play an important role in providing a more flexible, quicker and often more economical route to resolution than traditional litigation.[2]

Mediation and arbitration have fundamental differences in terms of mechanism and outcome. According to jurist Roscoe Pound, mediation can be described as a dispute resolution method that emphasizes deliberation and consensus between the parties, allowing for a mutually beneficial outcome and maintaining good relations. Meanwhile, arbitration is more like a private court, where arbitrators have the authority to issue final and binding decisions. Lawrence Friedman in his theory of legal system effectiveness asserts that the efficiency of a dispute resolution method can affect public confidence in the law itself. The importance of comparing mediation and arbitration lies in choosing the method that best suits the type of dispute at hand. Based on the opinion of legal expert Satjipto Rahardjo, who emphasizes a progressive legal approach, the use of alternative dispute resolution methods must be tailored to the needs of the parties and the characteristics of the dispute.[3] Thus, an in-depth understanding of the advantages and disadvantages of these two methods is essential. Through a comprehensive understanding, it is hoped that the practice of dispute resolution in Indonesia can be more efficient and effective, in line with the principles of justice stipulated in the constitution and Law No. 48 of 2009 on Judicial Power. The Indonesian court system has advantages in terms of formal procedures that guarantee legal validity and binding decisions. However, this system is not free from weaknesses. According to Law No. 48 of 2009 on Judicial Power, the principles of simple, speedy and low-cost justice are often difficult to realize in practice. This is due to complicated bureaucratic procedures and the high workload of the courts. The high costs that must be borne by the parties to a dispute are one of the main obstacles in seeking settlement through litigation. This opinion is in line with Richard Posner's theory

[1] Syaroni, I., & Widyaningrum, T. (2024). Peningkatan Efektivitas Penyelesaian Sengketa Administrasi Negara Melalui Pendekatan Alternatif. Wacana Paramarta: Jurnal Ilmu Hukum, 23(1), 80–92.
[2] Sitompul, M. H. Z., & Ansari, T. S. (2023). Kepastian Hukum Eksekusi dan Pembatalan Putusan Arbitrase Syariah. YUSTISI, 10(3), 152–159.
[3] Mulyana, D. (2019). Kekuatan Hukum Hasil Mediasi Di Dalam Pengadilan Dan Di Luar Pengadilan Menurut Hukum Positif. Jurnal Wawasan Yuridika, 3(2), 177–198.

of legal economic analysis, which suggests that efficiency in dispute resolution is important to reduce the social and economic burden on the justice system.

The importance of alternative dispute resolution such as mediation and arbitration is becoming increasingly apparent in the face of these challenges. These alternatives allow for faster and more cost-effective resolution, and reduce pressure on the courts. Under Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution, arbitration provides the advantage of a final and binding award, and preserves the privacy of the parties. Mediation, on the other hand, which is governed by PERMA No. 1 of 2016, offers a participatory approach where the parties are encouraged to reach a mutual agreement. Satjipto Rahardjo's opinion in the progressive legal approach states that this alternative method should be seen as an effort to uphold substantial justice and prioritize the interests of the community.[4]

The efficiency of alternative methods in reducing the burden on the courts is evident from the data presented by the Indonesian National Arbitration Board (BANI), where arbitration cases provide settlements in a shorter time than litigation. Mediation has also proven to help resolve disputes more quickly, especially after the implementation of PERMA No. 1 of 2016. According to Eugene Volokh, an expert in the field of law, the flexibility and ability of alternative methods to tailor the process to the needs of the parties makes it more adaptive and responsive to various dispute situations. As such, the time and cost savings offered by mediation and arbitration compared to formal litigation processes provide a more welcoming solution for the public in their quest for efficient and effective justice. Mediation in the context of civil dispute resolution is one of the alternative methods emphasized by Supreme Court Regulation No. 1 of 2016 on Mediation Procedures in Courts. The mediation process involves a neutral third party, the mediator, whose role is to assist the parties in reaching an amicable agreement without imposing a decision.[5] The mediator acts as a facilitator who ensures communication runs smoothly and steers the discussion towards a mutually beneficial solution. According to Leonard Riskin, an expert in the field of mediation, the success of mediation often depends on the mediator's ability to create an environment conducive to open and honest negotiations.

One of the main advantages of mediation is that it is faster and more participatory, allowing disputes to be resolved without the need for lengthy litigation. In addition, mediation tends to preserve the relationship between the parties to the dispute, due to its non-confrontational approach. The process promotes an agreement that is acceptable to both parties, allowing for a satisfactory and sustainable outcome. According to Mochtar Kusumaatmadja,

[4] Rahmad, N., & Hafis, W. (2020). Hukum Progresif dan Relevansinya Pada Penalaran Hukum di Indonesia. El-Ahli: Jurnal Hukum Keluarga Islam, 1(2), 34–50.
[5] Saladin, T. (2017). Penerapan mediasi dalam penyelesaian perkara di pengadilan agama. Mahkamah: Jurnal Kajian Hukum Islam, 2(2).

the principles that prioritize deliberation and consensus in mediation reflect Indonesian local wisdom values, making it a relevant method in cultural and social contexts. However, mediation has notable shortcomings. One of the obstacles is the lack of binding force if the mediation outcome is not set out in a strong written agreement. Mediation decisions are only final if the parties agree and sign them, unlike court or arbitration decisions which are legally binding. In addition, the success of mediation relies heavily on the good faith of each party to reach a solution. If one party is not committed, the process may fail. Lon L. Fuller's theory on forms of dispute resolution states that mediation has limitations in dealing with cases involving strongly opposing positions or complex disputes.

Arbitration, on the other hand, is governed by Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution. In arbitration, arbitrators function like private judges who decide disputes based on evidence and arguments presented by the parties. The arbitrator's decision is binding and final, thus providing legal certainty for the parties involved.[6] This process has the advantage of privacy, where the arbitration proceedings are not publicized and keep sensitive information confidential. Gary Born, an expert on international arbitration law, emphasizes that arbitration is effective in handling disputes that require certainty and quick solutions, especially in the business context. However, arbitration also has some disadvantages. One of them is the higher costs compared to mediation, especially if it involves experienced arbitrators or arbitration panels. Such costs often include the arbitrator's honorarium, administrative costs and other related expenses. In addition, the finality of arbitration decisions limits appeals, so there is limited flexibility to correct an award that may be deemed unfair or incorrect.[7] According to Redfern and Hunter, arbitration is characterized by its formal tendencies and can become bureaucratic if not effectively regulated. The flexibility of arbitration is useful in many cases, but it is not always suitable for disputes that require a more collaborative approach as in mediation. Both methods, mediation and arbitration, offer important alternatives for dispute resolution in Indonesia. Both are governed by regulations that provide legitimacy and a clear structure, although each has its own advantages and disadvantages.

Mediation and arbitration are both non-litigation methods of resolving civil disputes, providing a more flexible alternative to formal litigation. Both have the advantage of saving time and costs and providing greater privacy for the parties involved. In the context of Indonesian law, both are regulated to encourage efficient dispute resolution in accordance with the principles set out in Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution and

[6] ANGGRAINI, A. & others. (t.t.). Studi Komparatif Antara Hybrid Arbitration dengan Arbitration Dalam Penyelesaian Perkara Perdata. Jurnal Hukum Prodi Ilmu Hukum Fakultas Hukum Untan (Jurnal Mahasiswa S1 Fakultas Hukum) Universitas Tanjungpura, 5(2).
[7] Agustina, R. E. (2024). Efektifitas Arbitrase sebagai Penyelesaian Perselisihan. Ethics and Law Journal: Business and Notary, 2(1), 263–272.

Supreme Court Regulation No. 1 of 2016 on Mediation Procedures in the Courts.[8] Both are designed to provide quick solutions with simpler processes and reduce the burden on courts that have long suffered from case backlogs. However, there are fundamental differences between mediation and arbitration in terms of their mechanisms and outcomes. Mediation is non-binding unless followed by a written agreement ratified by the parties. The mediator acts as a facilitator and the final decision is entirely in the hands of the parties involved, in accordance with the deliberative approach. On the other hand, arbitration has binding powers as the arbitrator has the authority to issue a final award equivalent to a court judgment. According to Julian D.M. Lew, an international law expert, the binding nature of arbitration makes it more similar to formal litigation while maintaining confidentiality. This is in line with Hans Kelsen's theory emphasizing the hierarchy of legal norms, where arbitral decisions carry the same force as first instance court decisions. The impact of using mediation and arbitration on long-term relationships is also different. Mediation places more emphasis on collaboration and communication between parties, allowing for a better relationship after the dispute is resolved. This is important in the context of disputes involving business partners or families, where ongoing relationships are a priority. In contrast, arbitration, while efficient and providing legal certainty, tends to be more confrontational and can damage relationships if parties do not find the outcome satisfactory or fair. John Paul Lederach, an expert in the field of reconciliation and conflict resolution, underscores that mediation is effective in building bridges of communication, while arbitration is more effective in disputes that require a final and non-negotiable judgment.

The urgency of choosing the appropriate dispute resolution method is greatly influenced by several factors, including the nature of the dispute, time and cost. Disputes that are complex and involve technical or legal aspects that require a final decision are usually better suited to arbitration. In contrast, disputes that emphasize relational aspects and flexibility are better suited to mediation.[9] Socialization of the advantages and limitations of each method is crucial, so that parties understand the options available. Roscoe Pound, with his theory of the administration of justice, emphasized that the efficiency and adaptability of dispute resolution methods can increase public confidence in the legal system. The implications of the choice of dispute resolution method are also significant for legal practitioners, business people, and the wider community.

This research aims to comprehensively analyze the comparison between mediation and arbitration in the settlement of civil disputes in Indonesia, focusing on the effectiveness and efficiency of each method in providing fast

[8] Ananda, H., & Afifah, S. N. (2023). Penyelesaian Secara Litigasi Dan NonLitigasi. Sharia and Economy: Jurnal Hukum Ekonomi Syariah dan Keuangan Islam (Sharecom), 1(1), 55–64.

[9] Hopipah, E. N., Saepullah, U., Sucipto, I., Nurkholis, M., & Syarif, N. (2023). Efektivitas Mediasi Non Litigasi Dengan Menggunakan Metode Couple Therapy Sebagai Cara Penyelesaian Sengketa Perceraian. JURNAL SYNTAX IMPERATIF: Jurnal Ilmu Sosial dan Pendidikan, 4(3), 226–240.

and fair legal solutions. This research aims to identify the advantages and disadvantages of mediation and arbitration based on the applicable legislative framework, including Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution as well as Supreme Court Regulation No. 1 of 2016 on Mediation Procedures in Courts.[10] In addition, this research intends to assess the social and legal impact of the two methods, especially in maintaining long-term relationships between the disputing parties and in creating legal certainty. By referring to relevant data and expert opinions, this research aims to provide strategic recommendations for legal practitioners, policy makers, and the public in choosing the dispute resolution method that best suits the characteristics of the civil case at hand.

2. RESEARCH METHODS

This research uses the normative juridical method to analyze the comparison of mediation and arbitration in civil dispute resolution in Indonesia. The normative juridical method was chosen because this research aims to examine the legal rules governing dispute resolution mechanisms through mediation and arbitration, as well as comparing their effectiveness and legal implications based on applicable laws and regulations. This research will utilize secondary data sources, such as laws, judicial regulations, official documents, legal literature, scientific journals, and relevant opinions of legal experts. In this research, the statutory approach will be used to analyze Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution and Supreme Court Regulation No. 1 of 2016 on Court Mediation Procedures. Literature review and legal theory are also an integral part of this method. Roscoe Pound's administration of justice theory will be used to assess the efficiency of the legal system in the context of mediation and arbitration, while Satjipto Rahardjo's progressive law theory will help highlight the importance of flexibility and adaptability in the dispute resolution process. This approach allows the research to not only understand aspects of the applicable law, but also highlight the advantages and disadvantages of each method from a substantive legal standpoint. Comparative analysis will be used to dissect the differences in mechanisms and socio-legal impacts between mediation and arbitration. As such, this research is expected to provide a clear picture of the advantages and disadvantages of both dispute resolution methods, as well as the implications for the long-term relationship between the parties involved and the resulting legal certainty.[11]

[10] Rahman, A. & others. (2018). Penyelesaian Sengketa Konsumen Melalui Badan Penyelesaian Sengketa Konsumen (BPSK) Kota Serang. Jurnal Ilmu Hukum, 2(1), 21–42.
[11] Sari, I. (2019). Keunggulan Arbitrase Sebagai Forum Penyelesaian Sengketa Di Luar Pengadilan. Jurnal Ilmiah Hukum Dirgantara, 9(2).

3. RESULT AND DISCUSSION

3.1. Comparison between Mediation and Arbitration in the Practice of Civil Dispute Resolution

Effectiveness and efficiency in the settlement of civil disputes are essential for the parties involved to achieve optimal results and minimize adverse impacts. In Indonesia, both mediation and arbitration have been accommodated in the legal system with comprehensive regulations. Mediation, which is governed by Supreme Court Regulation No. 1 of 2016 on Mediation Procedures in Courts, is designed to reduce the burden on the courts and allow parties to resolve issues in a quick and flexible manner. The mediation process led by a mediator aims to help the parties reach a mutually satisfactory agreement. Leonard Riskin, an expert in the field of mediation, emphasizes that the success of this process is determined by the mediator's ability to establish a productive dialogue and an atmosphere conducive to open communication.[12] In the Indonesian context, the positive results of mediation can be seen in the increase in non-litigation settlement of civil cases, especially in the courts of first instance. Arbitration, as stipulated in Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution, offers a more formal but still faster approach than litigation in the general courts. The main advantage of arbitration lies in its binding and non-appealable decision, providing clearer legal certainty for the parties involved. This is recognized by Gary Born, an international arbitration expert, who mentions that arbitration has advantages in terms of a relatively short process and guaranteed confidentiality, making it a top choice in commercial disputes. According to data from the Indonesian National Arbitration Board (BANI), the number of cases resolved through arbitration increases every year, indicating the high confidence of the business community in this method. This increase is in line with the global trend that shows companies' preference for arbitration to avoid longer and publicly exposed judicial proceedings.[13]

In practice, mediation provides a more participatory solution and is able to maintain good relations between the parties after the dispute is resolved. Mediation is often used in conflicts that require a more personalized approach, such as family disputes or business agreements where long-term relationships are to be maintained. John Paul Lederach, an expert in conflict resolution, highlights that effective mediation can rebuild communication and trust between conflicting parties, creating a stronger foundation for future relationships. Meanwhile, arbitration is more effective in settlements that require a definitive and binding judgment, especially in complex disputes or

[12] Simanjuntak, S. M., Darwis, N., & others. (2024). Analisis Yuridis Terhadap Penyelesaian Sengketa Perdagangan Berjangka Komoditi pada Perkara Nomor: 049/Bakti-Arb-R/11.2021 Berdasarkan Undang-Undang Nomor 30 Tahun 1999 Tentang Arbitrase dan Alternatif Penyelesaian Sengketa. IBLAM LAW REVIEW, 4(3), 91–108.

[13] Ritonga, Z. (2024). Studi Kasus Alternatif Penyelesaian Sengketa (Penyelesaian Sengketa Pembatalan Perkawinan). Jurnal Cendikia ISNU SU, 1(1), 39– 50.

those that require a deep mastery of technical aspects.[14] It should be recognized that while arbitration promises certainty and confidentiality, its costs are often higher than mediation. According to a report published by the National Mediation Center, mediation manages to resolve disputes at a lower cost of up to 60% compared to arbitration and litigation processes, and with a shorter settlement time. Roscoe Pound in his theory of the administration of justice states that the efficiency of the legal system is not only measured by the speed of the process, but also by its ability to provide equal and affordable access to justice. Therefore, an in-depth understanding of the fundamental differences between mediation and arbitration is essential for parties who must choose the settlement method that best suits the needs and circumstances of the dispute.

The mediation process in the settlement of civil disputes in Indonesia has been recognized as one of the effective methods to reduce the burden on the courts. Based on Supreme Court Regulation No. 1 of 2016 concerning Mediation Procedures in Court, mediation is conducted before the case enters the main hearing, with the mediator acting as a neutral party who helps facilitate communication and negotiation between the parties. The mediator serves to encourage the parties to reach a mutual agreement that benefits both parties without coercion. The effectiveness of mediation lies in its flexibility; the process allows for more open and informal discussions, so parties feel more directly involved. Mediation often results in quicker solutions than conventional litigation, which is generally lengthy and formal. The advantages of mediation in terms of speed and active participation of the parties make it an attractive option, especially for disputes involving long-term relationships such as family disputes or business partnerships. Data from the courts shows that many cases are resolved at the mediation stage, which not only saves costs but also maintains good relations between the parties. The process emphasizes a win-win solution, where the final outcome does not place either party as the winner or the loser. Leonard Riskin's opinion confirms that the effectiveness of mediation is greatly influenced by the mediator's skill in creating a conducive atmosphere and encouraging constructive negotiations. Meanwhile, arbitration as a dispute resolution method regulated by Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution has more formal characteristics than mediation. The arbitration process involves arbitrators who act as decision-makers and have the authority to issue binding decisions. This decision is equivalent to a court judgment and cannot be appealed, except in very limited circumstances such as evidence of fraud. The effectiveness of arbitration is often measured by its ability to quickly provide legal certainty, which is important in commercial and business disputes. A closed arbitration process

[14] Faradhiba, T. & others. (2023). Penyelesaian Sengketa Kepemilikan Atas Tanah Antara Para Pemegang Hak. Jurnal Hukum & Pembangunan Masyarakat, 14(3).

also offers the advantage of keeping sensitive information confidential, an aspect that is highly valued in the business world.[15]

Arbitration has the advantage of providing a final and binding award, reducing the risk of lengthy and protracted legal proceedings. The process is generally more structured and formalized than mediation, with procedures for presenting evidence and arguments that resemble a court hearing. In practice, arbitration can be resolved more quickly than litigation in court, although it is more costly than mediation. Gary Born, an expert on arbitration law, underlines that arbitration provides flexibility in terms of timing and location of hearings, making it easier for parties to adjust their schedules. The finality of the decision makes arbitration an efficient solution for parties who prioritize legal certainty and privacy.[16]

Mediation has significant advantages in terms of maintaining good relations between the parties after dispute resolution. Due to its participatory and cooperative nature, mediation allows the parties to interact directly and find mutually acceptable solutions. This is particularly important for disputes involving long-term relationships such as families or business partnerships. The process does not focus on who is wrong or right, but how to structure an agreement that accommodates the interests of all parties. This not only helps to de-escalate the conflict, but also supports a more peaceful outcome and reduces the likelihood of similar disputes in the future. The costs involved in mediation are also relatively lower than litigation or arbitration, making mediation a more affordable option for many parties.

Arbitration, on the other hand, offers the advantage of higher legal certainty than mediation. The award issued in arbitration is final and binding, comparable to a court judgment, which provides assurance for the parties regarding the certainty of problem resolution. The privacy maintained in the arbitration process is also a reason why this method is widely chosen by business people, especially when the dispute involves sensitive information. This is regulated by Law No. 30 of 1999, which ensures that the arbitration proceedings can be conducted in private and separate from public scrutiny. This advantage makes arbitration a very attractive option for parties who prioritize confidentiality.[17] However, while mediation has many advantages, its disadvantages must still be considered. One of the main drawbacks is the lack of binding force if the outcome of the mediation is not set out in a valid written agreement. The

[15] Wantu, F., Muhtar, M. H., Putri, V. S., Thalib, M. C., & Junus, N. (2023). Eksistensi Mediasi Sebagai Salah Satu Bentuk Penyelesaian Sengketa Lingkungan Hidup Pasca Berlakunya Undang-Undang Cipta Kerja. Bina Hukum Lingkungan, 7(2), 267–289.
[16] Taqiuddin, H. U., & Risdiana, R. (2022). Penerapan Keadilan Restoratif (Restorative Justice) Dalam Praktik Ketatanegaraan. JISIP (Jurnal Ilmu Sosial dan Pendidikan), 6(1).
[17] Ritonga, H. N., Sembiring, R. B., Manurung, N., Samzidane, M. H., & others. (2024). Kewenangan Arbitrase Dalam Penyelesaian Sengketa Bisnis Di Indonesia. Jurnal Cendikia ISNU SU, 1(2), 97–105.

mediation process depends entirely on the willingness of the parties to abide by the outcome reached. Without a strong commitment, mediation outcomes can easily be ignored, rendering dispute resolution ineffective. Reliance on the goodwill and commitment of the parties is a weak point that can reduce the effectiveness of mediation in complex disputes or those involving less cooperative parties.

Arbitration also has its drawbacks, mainly related to the higher costs compared to mediation. Arbitration costs include the arbitrator's honorarium, administrative costs, as well as other expenses that may arise during the process. In addition, although the arbitral award is final and binding, the limitation of appeal means that the parties must accept the award without any opportunity to correct it, except in certain cases such as allegations of fraud or procedural errors. These limitations make arbitration a less flexible process when compared to other dispute resolution options that allow for judicial review. According to Redfern and Hunter, the nature of finality in arbitration can be a double-edged sword: on the one hand it provides legal certainty, but on the other hand it reduces flexibility for parties who feel the award is unfair.

The social impact of the application of mediation and arbitration in civil dispute resolution includes its effect on the long-term relationship between the parties involved. Mediation, with its dialog and consensus-focused approach, tends to maintain and even improve relationships between parties. Because of its collaborative nature and emphasis on mutually beneficial settlements, mediation can reduce tensions and rebuild trust that may have been damaged during the dispute. These positive implications are particularly beneficial for disputes involving personal or professional relationships that must continue after the dispute is resolved. The implementation of regulations such as Supreme Court Regulation No. 1 Year 2016 reinforces mediation's position as an important tool in humane and constructive dispute resolution.[18]

The legal certainty generated by mediation and arbitration also has a significant impact in the Indonesian legal world. Arbitration provides a high degree of legal certainty as the arbitrator's decision is final and cannot be appealed, except in very limited cases. This makes arbitration an option for parties who need a quick and decisive settlement. On the other hand, although mediation does not result in an award as strong as arbitration, the result of an agreement reached voluntarily has a strong potential in maintaining long-term commitments between parties, especially if it is set forth in a legally valid agreement. This is in line with the principles of justice set out in Law No. 48 of 2009 on Judicial Power, which emphasizes the importance of substantial justice.

[18] Najib, A. (2019). Kepastian Hukum Eksekusi Dan Pembatalan Putusan Arbitrase Syariah Dalam Perspektif Politik Hukum. Jurnal Hukum Ius Quia Iustum, 26(3), 565–584.

From a legal theory perspective, Roscoe Pound emphasized the importance of law as a tool to achieve larger social goals. In this context, mediation and arbitration can be seen as tools that not only resolve disputes, but also maintain social stability and reduce the negative impacts that can arise from prolonged conflict. Pound argued that law should be responsive to the needs of society, and in this regard, mediation reflects a progressive approach in meeting those needs. On the other hand, Satjipto Rahardjo in his progressive legal approach asserts that the law must be flexible and adaptive, prioritizing essential justice over formal rules.[19] This approach supports the use of mediation and arbitration as methods that allow for a more humane and appropriate resolution of disputes. Socially, mediation and arbitration reduce the burden on the courts, which has a positive impact on the efficiency of the justice system. The reduction of case backlogs allows courts to focus on more complex cases that require judicial intervention. This impact strengthens the role of the legal system in creating order and providing greater access to justice. According to Eugene Volokh, the use of alternative methods such as these not only provides concrete solutions for the parties involved, but also increases public confidence in the ability of the legal system to resolve disputes fairly and quickly.[20]

Case studies of mediation and arbitration in Indonesia demonstrate the effectiveness of these methods in dispute resolution, although each has its own peculiarities.[21] One example of dispute resolution through mediation is the case of a land dispute in Blulukan Village, Colomadu District, Karanganyar. The dispute involved the purchase of land by a businessman, who later discovered that part of the land was village treasury land. The case was successfully mediated by the Karanganyar National Land Agency (BPN), which applied mediation models such as facilitative and transformative mediation to resolve the dispute peacefully and fairly for both parties. Empirical data from the Supreme Court revealed that in 2022, as many as 20,861 cases were successfully reconciled through the mediation process. This figure shows an increase from previous years and highlights the effectiveness of mediation as an alternative to litigation that reduces the burden on the courts and accelerates case resolution (Slawi District Court).

On the other hand, arbitration has relevant cases in the banking context, such as the settlement of a dispute between BCA Bank and a customer. The case was resolved through arbitration which offered a final and binding decision, and protected the privacy of the parties involved. This shows how arbitration is used for disputes that require legal certainty and speed in resolution. Statistics from the Indonesian National Arbitration Board (BANI) show that arbitration is

[19] Prayuti, Y., Lany, A., Takaryanto, D., Hamdan, A. R., Ciptawan, B., & Nugroho, E. A. (2024). Efektivitas Mediasi Dan Arbitrase Dalam Penyelesaian Sengketa Konsumen Kesehatan. Syntax Idea, 6(3), 1533–1544.
[20] Astarini, D. R. S., & Sh, M. (2021). Mediasi Pengadilan. Penerbit Alumni.
[21] Sari, F. P., Setiawan, P. A. H., & Nurmawati, B. (2024). Alternatif Penyelesaian Sengketa. MEGA PRESS NUSANTARA.

increasingly being used by business entities in Indonesia, underscoring its role in providing a more closed and binding resolution route than mediation. Both methods, mediation and arbitration, play an important role in Indonesia's legal system with advantages that suit the needs of different types of disputes.

3.2. Implications of Mediation and Arbitration for Long-Term Relationships and Legal Certainty

Mediation and arbitration, as part of Indonesia's dispute resolution system regulated in the relevant laws and regulations, carry significant social and legal implications, both for the long-term relationship between parties and in the context of legal certainty. Mediation, as stipulated in Supreme Court Regulation No. 1 of 2016 on Mediation Procedures in Courts, aims to provide a settlement solution that prioritizes open and collaborative dialogue, where the parties have full control in the negotiation process. This approach allows for the building of trust and mutual understanding, which according to John Paul Lederach, an expert in conflict reconciliation, has the potential to create a space conducive to deeper communication and solutions oriented towards the sustainability of the relationship. The social implications of mediation, therefore, are often more positive than other dispute resolution processes, due to its nature of encouraging participation and fair mutual agreement.[22] On the legal side, mediation provides flexibility in the settlement process and a more inclusive outcome for the parties. However, the binding force of the mediation outcome relies heavily on the commitment of both parties to adhere to the resulting agreement. If the agreement is not set out in an authentic binding deed, the potential for legal uncertainty can be a challenge. Roscoe Pound, with his theory of the administration of justice, emphasized that an effective law is one that is able to provide substantive justice that can be understood and accepted by society. In this regard, mediation is able to bridge formal and substantive justice, although it is still vulnerable in terms of enforcement without strong authorization.[23]

Arbitration, on the other hand, which is regulated in Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution, provides more certain legal guarantees through final and binding decisions, and has the same power of execution as court decisions.[24] This is important in providing legal certainty for parties who want a definitive and inviolable solution. Gary Born, an international

[22] Raditya, A. (2024). Peran Pemerintah Indonesia untuk Meningkatkan Perlindungan Hukum bagi Investor Asing Melalui Klausul Persetujuan Peningkatan dan Perlindungan Penanaman Modal (P4M) antara IndonesiaSingapura. Jurnal Ilmu Hukum, Humaniora dan Politik, 4(4), 567–578.

[23] Puger, F., & Marpaung, D. S. H. (2022). Metode Mediasi Dalam Penyelesaian Sengketa Pertanahan Selama Masa Pandemi Covid-19. JUSTITIA: Jurnal Ilmu Hukum dan Humaniora, 9.

[24] Saragi, M. (2014). Litigasi dan Non Litigasi Untuk Penyelesaian Sengketa Bisnis dalam Rangka Pengembangan Investasi di Indonesia (Kajian Penegakan Undang-Undang Nomor 48 Tahun 2009 Tentang Kekuasaan Kehakiman jo Undang-Undang Nomor 30 Tahun 1999 Tentang Arbitrase Dan Altern. EJournal Graduate Unpar, 1(2), 54–73.

arbitration expert, emphasizes that arbitration is an effective option for resolving disputes that require quick, credible and confidential awards, making it a method relied upon by many businesses and institutions. However, the litigation-like nature of arbitration in terms of formality and the win-lose nature of dispute resolution can lead to tensions and feelings of dissatisfaction, especially if one party feels aggrieved. The social impact of arbitration also includes implications on the relationship between parties after the award is rendered. The nature of arbitration, which resembles litigation in terms of formality and win-lose dispute resolution, can lead to tension and dissatisfaction, especially if one party feels aggrieved. Eugene Volokh, in his analysis of dispute resolution, suggests that arbitration is appropriate for disputes that are technical in nature and require in-depth judgment, but less effective for cases that require the maintenance of long-term relationships or where social interests are prioritized. This makes arbitration a more suitable option in situations where privacy, efficiency, and certainty of the award take precedence over relational aspects.[25]

In practice, both mediation and arbitration have an important place in Indonesia's dispute resolution system, with their respective advantages and disadvantages. Mediation can improve or maintain social relations between the parties involved, create opportunities for constructive communication, and enable sustainable settlements. Meanwhile, arbitration provides firm and binding legal guarantees, which are essential in disputes that require legal clarity and finality. A comprehensive understanding of the social and legal impacts of these two methods is essential for legal practitioners, policymakers, and the public in order to wisely assess the most appropriate dispute resolution method according to the characteristics of the dispute at hand and the interests to be achieved.[26] One of the advantages of arbitration is its ability to maintain the privacy of the process, making it an ideal solution for companies looking to protect sensitive information. Badan Arbitrase Nasional Indonesia (BANI) has handled more than 1,000 cases since its establishment, covering disputes in construction, financing and trade.[27] BANI statistics show an increase in the number of cases, confirming the confidence of business actors in arbitration as a fast and decisive settlement alternative. This efficient arbitration process minimizes delays and ensures confidentiality, with awards that can be immediately enforced without having to go through the appeal stage, except in very limited circumstances. Case studies show how arbitration is effective in handling complex debt disputes, such as cases between creditors and debtors in debt settlements, confirming arbitration's ability to deliver final and

[25] Dwijayanti, I. A. S., Budiartha, I. N. P., & Arini, D. G. D. (2021). Penyelesaian Sengketa Perasuransian oleh Badan Mediasi dan Arbitrase Asuransi Indonesia (BMAI). Jurnal Preferensi Hukum, 2(2), 377–381.

[26] Fadillah, F. A., & Putri, S. A. (2021). Alternatif Penyelesaian Sengketa Dan Arbitrase (Literature Review Etika). Jurnal Ilmu Manajemen Terapan, 2(6), 744–756.

[27] Riza, F., & Abduh, R. (2019). Alternatif Penyelesaian Sengketa Secara Arbitrase Melalui Pemanfaatan Teknologi Informasi. De Lega Lata: Jurnal Ilmu Hukum, 4(1), 77–86.

enforceable outcomes. Despite its effectiveness, challenges in the implementation of arbitral awards remain, particularly regarding the enforcement and fulfillment of obligations by the losing party. However, BANI continues to work to overcome these obstacles through a more comprehensive approach, ensuring the resulting decisions have enforceable legal force.

One significant limitation of mediation in dispute resolution is the lack of binding force on the final outcome if it is not set out in a formal written agreement. Mediation relies entirely on the good faith of the parties to honor and implement the agreement reached.[28] When one party does not have a strong commitment, the agreement can easily be ignored, reducing the effectiveness of mediation in disputes that require strict enforcement. In addition, obstacles to the implementation of mediation often arise from the limited capacity of mediators, both in terms of numbers and expertise, as well as a lack of support from the parties involved in the process. Lack of training and resources for mediators is also an inhibiting factor in achieving optimal results. From a theoretical perspective, Roscoe Pound argued that law must serve the needs of society and must be flexible to accommodate evolving social realities. In the context of mediation in Indonesia, this view underscores the importance of creating a system that supports the effective implementation of mediation, including by improving the quality of mediators and strengthening regulations so that mediation outcomes can be more binding. Pound's view emphasizes that law is not only a formal rule, but also an instrument that should strengthen substantive justice in society. Thus, challenges in mediation in Indonesia need to be addressed through capacity building of mediation actors as well as stronger regulatory support to ensure that mediation outcomes are respected and implemented by all parties.

Arbitration, while having significant advantages in legal certainty and efficiency, also has some limitations that need to be considered. One of the main disadvantages of arbitration is its higher cost compared to alternative methods such as mediation. The costs of arbitration include the arbitrators' fees, administrative costs, as well as additional expenses during the process, which can be a significant burden on the parties involved. This often makes arbitration more appropriate for high-value disputes, while for smaller-scale disputes, mediation or a simple litigation route may be more economical. In addition, one of the distinguishing features of arbitration is the final and binding nature of the award, which limits appeals. This limitation makes arbitration less flexible than litigation, where there is still an appeal mechanism to correct or review the award. While providing legal certainty, this finality can be a challenge if there are allegations of wrongdoing or unfairness in the process. Arbitral awards can

[28] Tamalawe, D. (2016). Efektivitas Mediasi Sebagai Bagian dari Bentuk Pencegahan Perceraian Menurut Hukum Acara Perdata. Lex Crimen, 5(3).

only be annulled in very limited situations, such as fraud or procedural non-compliance, as stipulated in Law No. 30 of 1999.[29]

Another challenge often faced in arbitration practice is the availability of competent and experienced arbitrators. Although BANI and other arbitration institutions in Indonesia have qualified arbitrators, the increasing number of commercial disputes makes the demand for experienced arbitrators even higher. This limitation may affect the waiting time and the quality of the decision. As observed by legal practitioners, increased training and certification for prospective arbitrators is expected to address this challenge and ensure arbitration remains a reliable and effective dispute resolution option.

The choice between mediation and arbitration depends on the nature of the dispute. Mediation is ideal for conflicts involving common interests and open communication, while arbitration is more appropriate for disputes that require confidentiality and quick and binding decisions, such as high-value commercial disputes. Satjipto Rahardjo in his progressive legal approach emphasizes that law should be flexible and adapt to the needs of society. This idea is relevant in the application of mediation and arbitration, where the dispute resolution approach should consider the interests of the parties and their social context. The application of appropriate methods can improve the efficiency of the justice system and substantive justice, which are the main goals of dynamic and progressive law.

4. CONCLUSION

Mediation and arbitration as civil dispute resolution methods in Indonesia have advantages and limitations that are relevant to various dispute situations. Mediation, with the support of Supreme Court Regulation No. 1 of 2016, excels in efficiency, low cost, and its ability to maintain good relations between parties, but the outcome is not binding unless formalized in a written agreement. In contrast, arbitration under Law No. 30 of 1999 provides a final, binding award and high legal certainty, but often comes with higher costs and limited appeals. Satjipto Rahardjo's approach of flexible law emphasizes that the application of dispute resolution methods should be responsive to the needs of society to ensure substantive justice. By understanding the advantages and limitations of each, legal practitioners, disputants and businesses can choose the most appropriate method, supporting the efficiency and effectiveness of dispute resolution in Indonesia.

[29] Panatagama, A. D. S., & Fuadi, M. I. N. (2023). Alternatif Dispute Resolution Dengan Asas Pacta Sunt Servanda Dalam Mediasi Penyelesaian Konflik Pertanahan. Al-'Adalah: Jurnal Syariah dan Hukum Islam, 8(2), 252–272.

5. REFERENCES

Agustina, R. E. (2024). Efektifitas Arbitrase sebagai Penyelesaian Perselisihan. *Ethics and Law Journal: Business and Notary*, *2*(1), 263–272.

Ananda, H., & Afifah, S. N. (2023). Penyelesaian Secara Litigasi Dan Non-Litigasi. *Sharia and Economy: Jurnal Hukum Ekonomi Syariah dan Keuangan Islam (Sharecom)*, *1*(1), 55–64.

ANGGRAINI, A. & others. (t.t.). Studi Komparatif Antara Hybrid Arbitration dengan Arbitration Dalam Penyelesaian Perkara Perdata. *Jurnal Hukum Prodi Ilmu Hukum Fakultas Hukum Untan (Jurnal Mahasiswa S1 Fakultas Hukum) Universitas Tanjungpura*, *5*(2).

Astarini, D. R. S., & Sh, M. (2021). *Mediasi Pengadilan*. Penerbit Alumni.

Dwijayanti, I. A. S., Budiartha, I. N. P., & Arini, D. G. D. (2021). Penyelesaian Sengketa Perasuransian oleh Badan Mediasi dan Arbitrase Asuransi Indonesia (BMAI). *Jurnal Preferensi Hukum*, *2*(2), 377–381.

Fadillah, F. A., & Putri, S. A. (2021). Alternatif Penyelesaian Sengketa Dan Arbitrase (Literature Review Etika). *Jurnal Ilmu Manajemen Terapan*, *2*(6), 744–756.

Faradhiba, T. & others. (2023). Penyelesaian Sengketa Kepemilikan Atas Tanah Antara Para Pemegang Hak. *Jurnal Hukum & Pembangunan Masyarakat*, *14*(3).

Hopipah, E. N., Saepullah, U., Sucipto, I., Nurkholis, M., & Syarif, N. (2023). Efektivitas Mediasi Non Litigasi Dengan Menggunakan Metode Couple Therapy Sebagai Cara Penyelesaian Sengketa Perceraian. *JURNAL SYNTAX IMPERATIF: Jurnal Ilmu Sosial dan Pendidikan*, *4*(3), 226–240.

Mulyana, D. (2019). Kekuatan Hukum Hasil Mediasi Di Dalam Pengadilan Dan Di Luar Pengadilan Menurut Hukum Positif. *Jurnal Wawasan Yuridika*, *3*(2), 177–198.

Najib, A. (2019). Kepastian Hukum Eksekusi Dan Pembatalan Putusan Arbitrase Syariah Dalam Perspektif Politik Hukum. *Jurnal Hukum Ius Quia Iustum*, *26*(3), 565–584.

Panatagama, A. D. S., & Fuadi, M. I. N. (2023). Alternatif Dispute Resolution Dengan Asas Pacta Sunt Servanda Dalam Mediasi Penyelesaian Konflik Pertanahan. *Al-'Adalah: Jurnal Syariah dan Hukum Islam*, *8*(2), 252–272.

Prayuti, Y., Lany, A., Takaryanto, D., Hamdan, A. R., Ciptawan, B., & Nugroho, E. A. (2024). Efektivitas Mediasi Dan Arbitrase Dalam Penyelesaian Sengketa Konsumen Kesehatan. *Syntax Idea*, *6*(3), 1533–1544.

Puger, F., & Marpaung, D. S. H. (2022). Metode Mediasi Dalam Penyelesaian Sengketa Pertanahan Selama Masa Pandemi Covid-19. *JUSTITIA: Jurnal Ilmu Hukum dan Humaniora*, *9*.

Raditya, A. (2024). Peran Pemerintah Indonesia untuk Meningkatkan Perlindungan Hukum bagi Investor Asing Melalui Klausul Persetujuan Peningkatan dan Perlindungan Penanaman Modal (P4M) antara Indonesia-Singapura. *Jurnal Ilmu Hukum, Humaniora dan Politik*, *4*(4), 567–578.

Rahmad, N., & Hafis, W. (2020). Hukum Progresif dan Relevansinya Pada Penalaran Hukum di Indonesia. *El-Ahli: Jurnal Hukum Keluarga Islam*, *1*(2), 34–50.

Rahman, A. & others. (2018). Penyelesaian Sengketa Konsumen Melalui Badan Penyelesaian Sengketa Konsumen (BPSK) Kota Serang. *Jurnal Ilmu Hukum*, *2*(1), 21–42.

Ritonga, H. N., Sembiring, R. B., Manurung, N., Samzidane, M. H., & others. (2024). Kewenangan Arbitrase Dalam Penyelesaian Sengketa Bisnis Di Indonesia. *Jurnal Cendikia ISNU SU*, *1*(2), 97–105.

Ritonga, Z. (2024). Studi Kasus Alternatif Penyelesaian Sengketa (Penyelesaian Sengketa Pembatalan Perkawinan). *Jurnal Cendikia ISNU SU*, *1*(1), 39–50.

Riza, F., & Abduh, R. (2019). Alternatif Penyelesaian Sengketa Secara Arbitrase Melalui Pemanfaatan Teknologi Informasi. *De Lega Lata: Jurnal Ilmu Hukum*, *4*(1), 77–86.

Saladin, T. (2017). Penerapan mediasi dalam penyelesaian perkara di pengadilan agama. *Mahkamah: Jurnal Kajian Hukum Islam*, *2*(2).

Saragi, M. (2014). Litigasi dan Non Litigasi Untuk Penyelesaian Sengketa Bisnis dalam Rangka Pengembangan Investasi di Indonesia (Kajian Penegakan Undang-Undang Nomor 48 Tahun 2009 Tentang Kekuasaan Kehakiman jo Undang-Undang Nomor 30 Tahun 1999 Tentang Arbitrase Dan Altern. *E-Journal Graduate Unpar*, *1*(2), 54–73.

Sari, F. P., Setiawan, P. A. H., & Nurmawati, B. (2024). *Alternatif Penyelesaian Sengketa*. MEGA PRESS NUSANTARA.

Sari, I. (2019). Keunggulan Arbitrase Sebagai Forum Penyelesaian Sengketa Di Luar Pengadilan. *Jurnal Ilmiah Hukum Dirgantara*, *9*(2).

Simanjuntak, S. M., Darwis, N., & others. (2024). Analisis Yuridis Terhadap Penyelesaian Sengketa Perdagangan Berjangka Komoditi pada Perkara Nomor: 049/Bakti-Arb-R/11.2021 Berdasarkan Undang-Undang Nomor 30 Tahun 1999 Tentang Arbitrase dan Alternatif Penyelesaian Sengketa. *IBLAM LAW REVIEW*, *4*(3), 91–108.

Sitompul, M. H. Z., & Ansari, T. S. (2023). Kepastian Hukum Eksekusi dan Pembatalan Putusan Arbitrase Syariah. *YUSTISI*, *10*(3), 152–159.

Syaroni, I., & Widyaningrum, T. (2024). Peningkatan Efektivitas Penyelesaian Sengketa Administrasi Negara Melalui Pendekatan Alternatif. *Wacana Paramarta: Jurnal Ilmu Hukum*, *23*(1), 80–92.

Tamalawe, D. (2016). Efektivitas Mediasi Sebagai Bagian dari Bentuk Pencegahan Perceraian Menurut Hukum Acara Perdata. *Lex Crimen*, *5*(3).

Taqiuddin, H. U., & Risdiana, R. (2022). Penerapan Keadilan Restoratif (Restorative Justice) Dalam Praktik Ketatanegaraan. *JISIP (Jurnal Ilmu Sosial dan Pendidikan)*, *6*(1).

Wantu, F., Muhtar, M. H., Putri, V. S., Thalib, M. C., & Junus, N. (2023). Eksistensi Mediasi Sebagai Salah Satu Bentuk Penyelesaian Sengketa Lingkungan Hidup Pasca Berlakunya Undang-Undang Cipta Kerja. *Bina Hukum Lingkungan*, *7*(2), 267–289.