Non-Litigation Mediation in Civil Disputes: A Study of its Effectiveness and Legal Standing

Dwi Anindya Harimurti[1], Andi Hartawati[2], Nasrullah[3], Amir Machmud[4], Elsarina[5]
[1]STIE Mahaputra Riau
[2]Universitas Andi Sudirman
[3]Universitas Pohuwato
[4]Universitas Nahdlatul Ulama Cirebon
[5]Universitas Dharma Indonesia
Corresponding Author: E-mail: dwianindyaharimurti@gmail.com

ABSTRACT
Non-litigation mediation has become one of the increasingly important alternative dispute resolution mechanisms within Indonesia's civil law system. This mechanism serves as a solution to the weaknesses commonly found in litigation processes, which are often time-consuming, costly, and potentially capable of creating prolonged conflicts between disputing parties. This study aims to examine the effectiveness of non-litigation mediation in resolving civil disputes and to analyze the legal force of agreements produced through the mediation process. The research employs a normative legal research method using both statutory and conceptual approaches. Legal materials were collected through library research derived from legislation, legal textbooks, and national legal journals. The findings indicate that non-litigation mediation demonstrates a relatively high level of effectiveness because it offers a dispute resolution process that is efficient, simple, flexible, and strongly oriented toward deliberation and peaceful settlement. In addition, mediation helps preserve good relationships between the parties since the process emphasizes cooperation rather than a win-or-lose outcome. Nevertheless, several obstacles still affect the effectiveness of mediation, including low public legal awareness, lack of good faith among disputing parties, and the limited availability of professional mediators. From a legal perspective, mediation agreements are legally binding upon the parties based on Article 1338 of the Indonesian Civil Code. However, to obtain stronger executorial power and legal certainty, mediation agreements should be formalized through a deed of settlement or registered before the court. Therefore, non-litigation mediation can function as an effective civil dispute resolution mechanism when supported by adequate legal regulations and a strong legal culture within society.
Keywords: Mediation, Non-Litigation, Civil Disputes, Legal Effectiveness, Legal Force

ARTICLE IDENTIFIERS

ORIGINAL ARTICLE
Volume 9 - Issue 10 - 2026
Pages: 5037-5047
DOI: 10.56338/jks.v9i10.12052

ARTICLE HISTORY

Received: 16 August 2026
Revised: 24 September 2026
Accepted: 09 October 2026

CC BY-SA 4.0

INTRODUCTION

The development of modern society has significantly transformed legal relationships among individuals and legal entities. Increasingly complex social, economic, commercial, and civil interactions have contributed to the growing potential for civil disputes. Civil disputes may arise from various legal relationships, including breach of contract, unlawful acts, inheritance conflicts, family disputes, land ownership conflicts, as well as commercial and business disagreements (Tamba & Mukharom, 2023). Within the framework of a state governed by law, every dispute requires a settlement mechanism capable of ensuring legal certainty, justice, and utility for the disputing parties.

In Indonesia, civil disputes have traditionally been resolved through litigation before the courts. Litigation is generally regarded as a formal legal mechanism because judicial decisions are legally binding and enforceable. Nevertheless, court-based dispute resolution often creates several practical problems. Judicial proceedings tend to be lengthy due to numerous procedural stages, ranging from case registration, court-annexed mediation, evidentiary hearings, and witness examinations to legal remedies such as appeals and cassation. In addition, the relatively high litigation costs frequently become an obstacle for justice seekers, particularly for individuals from lower economic backgrounds.

Furthermore, litigation commonly worsens relationships between disputing parties. The adversarial nature of court proceedings usually produces a winning party and a losing party, which may damage social or business relationships that previously existed. In commercial disputes, for instance, prolonged litigation may disrupt business activities and reduce trust between parties. Consequently, litigation cannot always provide the most effective solution for every civil dispute.

These conditions have encouraged the development of Alternative Dispute Resolution (ADR) mechanisms. ADR offers dispute settlement procedures outside the courtroom that are generally more flexible, efficient, and cooperative. One of the most widely used forms of ADR is mediation. Mediation refers to a dispute resolution process conducted through negotiation with the assistance of a neutral third party known as a mediator. Unlike judges or arbitrators, mediators do not possess the authority to impose decisions; instead, they facilitate communication and assist the parties in finding mutually acceptable solutions.

Mediation has become increasingly important because it prioritizes deliberation and peaceful settlement rather than legal confrontation. Through mediation, disputing parties are given the opportunity to openly express their interests, concerns, and expectations. As a result, the solutions achieved through mediation are not solely focused on legal rights and obligations but also consider social relationships and the long-term interests of the parties involved. Therefore, mediation is often viewed as a more humane and equitable method of dispute resolution.

Within the Indonesian legal system, non-litigation dispute settlement has received clear legal recognition. The legal basis for alternative dispute resolution is regulated under Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. This legislation legitimizes several forms of dispute settlement outside the courts, including consultation, negotiation, mediation, conciliation, and arbitration. The enactment of this law demonstrates the state's acknowledgment of peaceful dispute settlement as an essential component of the national legal system.

Further reinforcement of mediation can be seen in Supreme Court Regulation Number 1 of 2016 concerning Court-Annexed Mediation Procedures. This regulation obliges every civil case submitted to the court to undergo mediation before proceeding to substantive examination. The policy aims to encourage peaceful settlement while simultaneously reducing case congestion within the judiciary. According to Amarini, the optimization of mediation contributes to the realization of a judicial system that is simple, fast, and affordable, as mandated by Indonesian procedural principles (Amarini, 2016).

In principle, mediation possesses several advantages compared to litigation. One major advantage is its relatively fast and flexible procedure. Parties are free to determine the time, location, and procedural arrangements of the mediation process according to mutual agreement. In addition, mediation generally requires lower costs than lengthy court proceedings. Confidentiality also represents an important characteristic of mediation because the entire process is conducted privately, thereby protecting the reputation and interests of the parties, particularly in commercial disputes.

Another important advantage is that mediation seeks a win-win solution. Unlike court judgments that determine winners and losers, mediation produces agreements jointly formulated by the parties themselves. This approach creates opportunities for mutually beneficial solutions while preserving future relationships between the parties. The dialogical nature of mediation often results in more effective settlements because the parties are directly involved in the decision-making process (Yahya, 2025).

CC BY-SA 4.0

Despite these advantages, the practical effectiveness of mediation still faces various challenges. One of the primary factors influencing the success of mediation is the good faith of the disputing parties. In many cases, parties participate in mediation merely as a procedural formality before continuing litigation. As a consequence, the mediation process often fails to achieve meaningful settlement agreements. Moreover, the prevailing perception within Indonesian society that courts are the primary source of justice also contributes to the relatively low success rate of mediation.

Another obstacle concerns the limited availability of professional mediators. Mediators play a crucial role in facilitating communication and assisting parties in identifying common ground. Therefore, mediators are expected to possess strong communication skills, negotiation abilities, and legal understanding. However, the number of qualified mediators remains limited, causing inconsistencies in the quality of mediation processes. The low effectiveness of mediation in several courts is closely related to the suboptimal role of mediators and the lack of willingness among parties to reconcile (Ramadhany et al., 2020).

In addition to effectiveness issues, the legal force of mediation agreements also raises significant concerns. Under Indonesian civil law, mediation agreements are essentially binding contracts governed by Article 1338 of the Indonesian Civil Code. The article stipulates that legally concluded agreements shall bind the parties as law. Consequently, mediation agreements possess binding legal force provided that they satisfy the legal requirements of a valid contract, namely mutual consent, legal capacity, a specific object, and a lawful cause.

Nevertheless, many people still lack adequate understanding regarding the legal enforceability of mediation agreements. Some parties assume that mediation settlements do not possess sufficient legal strength because they are not judicial decisions. In fact, mediation agreements formalized in the form of a deed of settlement and registered before the court possess executorial force equivalent to final and binding court judgments. The legalization of mediation outcomes through settlement deeds therefore becomes essential in ensuring legal certainty and protecting the rights of the parties involved (Fadlillah & Harry, 2025).

In the contemporary era, technological advancements have also influenced mediation practices. The emergence of electronic mediation and online dispute resolution has introduced new alternatives for resolving disputes, particularly in digital business transactions and electronic commerce. Online mediation is considered more efficient because it allows dispute resolution without requiring physical meetings between parties. However, the implementation of technology-based mediation also requires adequate legal regulation and human resource readiness to ensure its effectiveness.

In fact, non-litigation mediation is closely aligned with Indonesian cultural values that emphasize deliberation and consensus. Within various customary communities and social traditions, peaceful dispute settlement has long been practiced as part of local legal culture. Therefore, strengthening mediation is important not only from the perspective of positive law but also as an effort to preserve social values in conflict resolution.

Considering both its advantages and challenges, non-litigation mediation possesses significant potential as an effective civil dispute resolution mechanism in Indonesia. However, optimizing mediation requires stronger regulatory support, improved mediator competence, and greater public legal awareness regarding the importance of peaceful dispute resolution. In this regard, mediation should not merely function as a procedural formality but rather as an effective mechanism capable of delivering justice, legal certainty, and social benefit for disputing parties.

Based on these considerations, this research examines the effectiveness of non-litigation mediation in resolving civil disputes and analyzes the legal force of mediation agreements within the Indonesian legal system. The study is expected to contribute to the development of alternative dispute resolution mechanisms and to enhance public understanding regarding the importance of mediation in achieving fair and effective dispute settlement.

RESEARCH METHOD

This study employs normative legal research, also known as doctrinal legal research. Normative legal research is conducted by examining legal norms, legal principles, legal doctrines, and statutory regulations related to the subject matter under discussion (Soekanto, 2007). The primary focus of this research is to analyze the effectiveness of non-litigation mediation in resolving civil disputes and to examine the legal enforceability of mediation agreements within the Indonesian legal system.

The research applies both a statutory approach and a conceptual approach. The statutory approach is carried out by reviewing various legal regulations concerning dispute resolution through mediation, including the Indonesian Civil Code, Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, and Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in Court. Meanwhile, the

CC BY-SA 4.0

conceptual approach is used to explore legal concepts related to legal effectiveness, alternative dispute resolution, the principle of peaceful settlement, and the binding force of agreements under civil law.

The legal materials utilized in this research consist of primary, secondary, and tertiary legal sources. Primary legal materials include statutory regulations related to mediation and civil dispute resolution. Secondary legal materials are obtained from legal literature such as legal textbooks, national scientific journals, legal articles, previous research findings, and other scholarly works relevant to the research topic. Tertiary legal materials include legal dictionaries, legal encyclopedias, and other supporting references that assist in clarifying legal terminology and concepts.

The collection of legal materials is conducted through library research by gathering, reading, and analyzing various legal sources relevant to the research issues. This method is intended to obtain comprehensive data and information regarding the concept of non-litigation mediation, the effectiveness of dispute resolution, and the legal force of mediation outcomes.

The analysis of legal materials in this study uses a descriptive qualitative method. The analysis is conducted by systematically interpreting and explaining legal provisions, legal theories, and expert opinions related to the research topic. Subsequently, the analyzed legal materials are used to formulate conclusions regarding the effectiveness of non-litigation mediation in civil disputes and the legal strength of mediation agreements within the Indonesian legal framework.

By applying this research method, the study is expected to provide a comprehensive understanding of the position of non-litigation mediation as an effective alternative mechanism for resolving civil disputes while also ensuring legal certainty for the disputing parties.

DISCUSSION

The Concept of Non-Litigation Mediation in Civil Disputes

Non-litigation mediation is one form of alternative dispute resolution conducted outside the court system with the assistance of a neutral third party known as a mediator. In this mechanism, the mediator acts as a facilitator who helps disputing parties reach a peaceful settlement without coercion or binding judgments such as those imposed in judicial proceedings. The development of non-litigation mediation emerged as a response to the weaknesses of litigation, which is often considered time-consuming, costly, and procedurally complicated.

Conceptually, the term mediation originates from the Latin word mediare, meaning “to be in the middle.” This reflects the mediator’s role as a neutral intermediary positioned between the disputing parties in order to facilitate communication and encourage mutual agreement. Unlike judges in litigation, mediators do not possess authority to determine which party is right or wrong. Instead, mediators assist parties in understanding the root of the dispute, identifying their respective interests, and finding solutions acceptable to both sides.

In civil disputes, non-litigation mediation emphasizes deliberation and consensus as the fundamental principles of dispute settlement. Mediation prioritizes dialogue, cooperation, and a familial approach rather than legal confrontation. Therefore, mediation is frequently regarded as more capable of producing a win-win solution, where both parties obtain satisfaction and mutual benefit. This differs significantly from litigation, which generally results in one winning party and one losing party, often creating prolonged conflict and hostility.

The existence of non-litigation mediation is closely aligned with Indonesian cultural values that highly uphold deliberation and consensus in resolving conflicts. Within customary communities and broader social interactions, peaceful dispute settlement through dialogue has long been practiced as part of local legal traditions. Consequently, mediation is not an unfamiliar concept in Indonesian society but rather a modernization of traditional peaceful conflict resolution practices that have existed for generations.

The legal foundation for non-litigation mediation in Indonesia is provided by Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. This law formally recognizes various forms of out-of-court dispute settlement, including consultation, negotiation, mediation, conciliation, and arbitration. The enactment of this regulation demonstrates the government’s commitment to providing broader opportunities for society to resolve disputes peacefully without resorting to litigation.

Further reinforcement of mediation is reflected in Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in Court, which requires civil disputes submitted to the courts to undergo mediation before entering substantive judicial examination. This regulation indicates that mediation is regarded as an essential instrument in realizing a judicial system that is simple, efficient, and affordable in accordance with the principles of Indonesian justice (Dewi, 2022).

CC BY-SA 4.0

The primary purpose of non-litigation mediation is to achieve dispute settlement voluntarily accepted by all parties without pressure or coercion. Agreements reached through mediation are based on the collective will of the disputing parties, resulting in a higher level of compliance compared to court judgments. Since the parties are directly involved in formulating the settlement terms, they are more likely to implement the agreement effectively in practice.

In addition to promoting peace, mediation also seeks to preserve relationships between disputing parties. In family, business, and employment disputes, maintaining long-term social and economic relationships is often an important consideration. Litigation frequently damages these relationships because of the adversarial competition that occurs in court proceedings. Conversely, mediation encourages communication and cooperation, enabling parties to maintain positive relationships even after the dispute has been resolved.

According to Yahya, mediation represents a more efficient dispute resolution mechanism because it offers a process that is faster, less expensive, and more flexible than court proceedings (Awaludin, 2022). This flexibility can be seen in the parties' freedom to determine the time, place, and procedural arrangements of mediation according to their mutual needs. Furthermore, mediation guarantees confidentiality because the process is conducted privately, thereby minimizing negative impacts on the reputation of the parties, especially in business and commercial disputes.

In Indonesian legal practice, non-litigation mediation is widely applied in various types of civil disputes. In family disputes, mediation is commonly used in divorce cases, child custody matters, and the distribution of marital property. In inheritance disputes, mediation facilitates peaceful agreement regarding the distribution of inherited assets without damaging family relationships. Meanwhile, in business and commercial conflicts, mediation is preferred because it helps preserve cooperative relationships among business actors.

Within land disputes, mediation is also frequently used to settle ownership conflicts and boundary disputes. Land conflicts often involve complex social relationships within communities, making mediation a more effective approach than litigation. Through mediation, parties can seek solutions that balance legal considerations with social and communal interests.

Moreover, non-litigation mediation has developed in resolving consumer disputes, banking conflicts, and labor disputes. In consumer disputes, mediation provides opportunities for consumers and business actors to achieve settlement agreements without undergoing lengthy judicial processes. Similarly, in industrial relations, mediation serves as an important mechanism for peacefully resolving disputes between employers and employees.

Despite its numerous advantages, the implementation of non-litigation mediation still encounters several challenges. One major challenge is the limited public understanding regarding the benefits of mediation. Many individuals continue to believe that legally binding dispute resolution can only be achieved through court judgments. As a result, mediation is often perceived merely as a procedural formality before disputes proceed to litigation.

Additionally, the success of mediation strongly depends on the good faith of the parties involved. If one party lacks the willingness to reconcile, achieving a settlement through mediation becomes difficult. The competence of mediators also plays a crucial role in determining the effectiveness of mediation. Mediators are expected to possess strong communication skills, negotiation abilities, and adequate legal knowledge in order to assist parties in finding fair and balanced solutions.

According to Lenatia and Wiraguna, the effectiveness of mediation is influenced by legal culture, mediator professionalism, and the awareness of parties to resolve disputes peacefully (Ananda & Afifah, 2023). Therefore, strengthening non-litigation mediation requires not only adequate legal regulations but also improvements in human resources and broader legal education for society.

The Effectiveness of Non-Litigation Mediation in Resolving Civil Disputes

The effectiveness of non-litigation mediation in resolving civil disputes can be assessed through its ability to provide dispute resolution that is fast, simple, cost-efficient, and capable of creating sustainable peace between the disputing parties. In modern legal systems, the effectiveness of a dispute resolution mechanism is not measured solely by the final outcome in the form of a judgment or agreement, but also by its capacity to simultaneously deliver legal certainty, justice, and practical benefits for the parties involved.

Non-litigation mediation emerged as an alternative to litigation, which has long been criticized for its various shortcomings. Court proceedings often require a considerable amount of time due to complicated procedural stages, including case registration, evidentiary hearings, witness examinations, and further legal remedies such

CC BY-SA 4.0

as appeals and cassation. In many cases, civil disputes may take years before obtaining a final and binding judgment. Such conditions inevitably increase litigation costs and create legal uncertainty for the parties.

Unlike litigation, mediation offers a more efficient and flexible settlement process. The parties are free to determine the schedule, location, and procedures of mediation according to their mutual agreement. As a result, disputes may be resolved within a relatively short period without being constrained by rigid procedural formalities. According to Nurfayz and colleagues, mediation contributes significantly to reducing case congestion in courts while also providing more effective and beneficial solutions for disputing parties (Makhfiroh, 2017).

In addition to time efficiency, mediation is also considered effective from a financial perspective. Litigation generally involves administrative fees, attorney fees, summons expenses, and enforcement costs, all of which may become burdensome. Conversely, non-litigation mediation tends to be less expensive because the process is simpler and does not require lengthy procedural stages. This becomes particularly advantageous for individuals with limited financial resources who seek access to justice.

The effectiveness of mediation is further supported by its flexible and informal nature. In litigation, judges are bound by strict procedural rules and formal legal requirements. In mediation, however, parties are given broader freedom to formulate settlement arrangements that best suit their interests and needs. Such flexibility allows the creation of more innovative and practical solutions that extend beyond purely normative legal provisions.

One of the key elements contributing to the effectiveness of mediation is the principle of confidentiality. Mediation proceedings are conducted privately, meaning that information disclosed during the process cannot be publicly disseminated. This principle is particularly important in commercial and business disputes because it protects the reputation and professional relationships of the parties. In contrast, court hearings are generally open to the public, which may expose parties to reputational, moral, or financial harm.

Through mediation, parties are also given greater opportunities to openly communicate their interests and concerns. The mediator facilitates constructive communication and creates an atmosphere conducive to dialogue, enabling the parties to better understand each other's positions and work toward mutually beneficial solutions. Consequently, mediation outcomes are generally easier to accept and implement because they result from mutual agreement rather than unilateral judicial decisions.

The effectiveness of mediation can also be observed in its ability to preserve relationships between disputing parties. In litigation, the adversarial system frequently intensifies hostility because each side seeks victory over the other. Mediation, on the other hand, prioritizes cooperation and consensus, thereby helping maintain social and business relationships after the dispute has been resolved. In family, commercial, and employment disputes, long-term relationships often play a crucial role, making mediation a more appropriate mechanism than litigation.

In Indonesia, the effectiveness of mediation is also closely connected to efforts aimed at reducing the burden of court cases. The large number of civil disputes filed before courts has contributed to delays in judicial proceedings. Therefore, mediation is viewed as a strategic solution for minimizing case backlogs while improving judicial efficiency. Supreme Court Regulation Number 1 of 2016 even requires every civil dispute to undergo mediation before proceeding to substantive examination. This policy demonstrates the significant role of mediation within the Indonesian judicial system.

Despite its numerous advantages, the practical effectiveness of non-litigation mediation in Indonesia still faces several obstacles. One major challenge is the lack of good faith among disputing parties during the mediation process. In many situations, parties participate in mediation merely to fulfill procedural requirements before continuing litigation. Consequently, mediation often fails to operate effectively and does not result in peaceful settlement agreements.

Research conducted by Ramadhany, Rosdiana, and Makmur indicates that the success rate of mediation in several Indonesian courts remains relatively low due to the limited willingness of parties to settle disputes amicably (Putra et al., 2017). Many disputants still maintain a win-or-lose orientation, making them reluctant to compromise during mediation proceedings.

In addition to the issue of good faith, the competence of mediators greatly influences the effectiveness of mediation. Mediators play a vital role in facilitating communication and assisting parties in identifying common ground for settlement. Therefore, mediators are expected to possess adequate communication skills, negotiation techniques, psychological understanding, and legal knowledge. However, the number of professional mediators in Indonesia remains limited, resulting in uneven quality in mediation practices.

CC BY-SA 4.0

Another obstacle is the lack of public understanding regarding the benefits of mediation. Many people still believe that legally enforceable dispute resolution can only be achieved through court judgments. The dominance of litigation culture causes mediation to be perceived as a mechanism that lacks legal certainty. In reality, mediation agreements formalized in the form of settlement deeds possess the same legal force as final and binding court judgments.

The legal culture within society also significantly affects the effectiveness of mediation. Some individuals continue to assume that disputes must be resolved through formal judicial procedures in order to be considered legitimate and fair. Such perceptions hinder mediation from becoming the primary option in resolving civil disputes. According to Lenatia and Wiraguna, the effectiveness of mediation is strongly influenced by societal legal culture and the level of legal awareness among disputing parties regarding peaceful conflict resolution (Saragih, 2021).

Furthermore, the limited dissemination of information concerning mediation also impedes its effectiveness. Many members of society remain unfamiliar with mediation procedures, advantages, and the legal force of mediation agreements. Therefore, broader legal education and public outreach are necessary to improve public understanding regarding the importance of mediation as an effective dispute resolution mechanism.

Technological developments have also created new opportunities to enhance mediation effectiveness through online mediation systems. Technology-based mediation enables disputes to be resolved without requiring face-to-face meetings between the parties. This approach is especially beneficial in digital business disputes and interregional conflicts where distance and time limitations may exist. Nevertheless, the implementation of online mediation also requires adequate regulatory support and technological infrastructure in order to function effectively and efficiently.

The Legal Force of Non-Litigation Mediation Agreements

The legal force of non-litigation mediation agreements constitutes an essential aspect of resolving civil disputes outside the court system. The success of mediation is not only measured by the achievement of peace between disputing parties, but also by the extent to which the resulting agreement provides legal certainty and can be effectively implemented. In civil law practice, mediation outcomes are fundamentally regarded as agreements established through the mutual consent of the parties to settle their disputes amicably.

From a juridical perspective, the binding force of mediation agreements is grounded in Article 1338 of the Indonesian Civil Code, which stipulates that every legally concluded agreement shall bind the parties as law. This provision demonstrates the state's recognition of contractual freedom, allowing parties to create agreements as long as they do not violate legal norms, morality, or public order. Consequently, non-litigation mediation agreements formed through mutual consent possess legally binding force upon the parties involved.

Under Indonesian civil law, an agreement is considered valid when it fulfills the requirements set forth in Article 1320 of the Indonesian Civil Code, namely mutual consent, legal capacity, a specific object, and a lawful cause. Therefore, mediation agreements only obtain legal validity if these conditions are satisfied. Agreements reached through coercion, fraud, or mistake may be declared void or voidable because they fail to meet the requirement of genuine consent.

In principle, the legal force of mediation agreements is similar to that of contracts in general. Parties who have agreed upon the terms of mediation are obligated to implement the agreement in good faith. The principle of pacta sunt servanda in contract law affirms that legally established agreements must be honored by the parties. As such, mediation agreements cannot simply be ignored because violations may result in legal consequences.

Nevertheless, the legal force of non-litigation mediation agreements differs from judicial decisions. Court judgments possess executorial power that allows enforcement through state authority if one party fails to comply with the ruling. In contrast, mediation agreements outside the court system are essentially civil agreements whose implementation largely depends on the awareness and good faith of the parties involved.

In practice, problems often arise when one party refuses to fulfill the mediation agreement. If the settlement is merely drafted as an ordinary contract without additional legal reinforcement, the injured party must file a new lawsuit before the court in order to demand enforcement of the agreement. Such circumstances may reduce the effectiveness of mediation as a fast and simple dispute resolution mechanism.

For this reason, strengthening the legal status of mediation agreements is crucial to ensure legal certainty and protect the rights of the parties. One method of reinforcing the legality of mediation outcomes is through court registration or by formalizing the agreement in the form of a deed of settlement (akta perdamaian). A deed of settlement is an agreement acknowledged and ratified by the court, thereby granting it stronger legal authority.

CC BY-SA 4.0

According to Fuqoha (2020), the legal enforceability of mediation outcomes becomes significantly stronger when the agreement is registered before the court and formalized as a deed of settlement. Such a deed possesses executorial power equivalent to a final and binding court judgment. Therefore, if one party breaches the agreement, the other party may directly request execution without initiating a new lawsuit.

The existence of a deed of settlement provides substantial benefits in ensuring legal certainty for mediation outcomes. The parties obtain stronger legal protection because the agreement has received judicial legitimacy. Moreover, formalizing mediation outcomes in this manner can prevent the emergence of future disputes arising from violations of the agreement.

In the context of civil dispute resolution, the legal force of mediation agreements is closely associated with the principles of legal certainty and justice. Legal certainty is necessary to ensure that parties feel secure and confident that the agreements they have reached will be respected and implemented. Meanwhile, justice is reflected in the mediation process itself, which gives parties the opportunity to determine settlement arrangements that best accommodate their respective interests and needs.

Beyond providing legal certainty, mediation agreements with strong legal enforceability may also increase public confidence in non-litigation dispute resolution mechanisms. Many people still assume that out-of-court settlements lack sufficient legal authority. In reality, Indonesian law recognizes mediation agreements as valid and binding contracts with legal consequences for the parties involved.

The strengthening of mediation agreements is also reflected in several Indonesian legal regulations. Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution provides the legal basis for mediation and other forms of alternative dispute settlement. In addition, Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in Court establishes mechanisms for ratifying settlement agreements into deeds of settlement with executorial force.

Despite these legal protections, various obstacles still exist in the implementation of mediation agreements. One major issue is the limited public awareness regarding the importance of legalizing mediation outcomes. Many parties believe that written agreements alone are sufficient without considering the necessity of legal reinforcement through court registration. As a result, when violations occur, the parties often face prolonged legal proceedings once again.

Another obstacle is the lack of public understanding regarding the procedures for registering mediation agreements before the court. Not all parties are aware that mediation settlements may be formally registered and granted executorial power. Therefore, broader legal education and public outreach are necessary to increase awareness regarding the importance of formalizing mediation agreements in order to ensure legal certainty.

Mediators themselves also play an important role in informing parties about the legal consequences of mediation agreements. A mediator's responsibility extends beyond facilitating settlement; mediators should also explain the importance of documenting agreements in legally enforceable forms. Through such guidance, parties can better understand their rights and obligations following the mediation process.

In today's technological era, the legal force of mediation agreements has also become associated with electronic documents and online mediation systems. Agreements concluded electronically require clear legal regulation to ensure they possess the same evidentiary value and legal certainty as conventional written documents. Consequently, legal technological development presents both challenges and opportunities in strengthening the legality and enforceability of mediation agreements in the future.

Obstacles and Efforts to Strengthen Non-Litigation Mediation in Indonesia

Although non-litigation mediation offers numerous advantages compared to litigation-based dispute resolution, its implementation in Indonesia continues to face various challenges that affect its overall effectiveness. These obstacles are not limited to legal issues alone, but are also influenced by societal legal culture, the quality of human resources, and the development of institutional systems that remain insufficiently optimized. Therefore, comprehensive efforts are required to strengthen non-litigation mediation so that it can function as an effective, efficient, and legally reliable mechanism for resolving disputes within society.

One of the primary obstacles in the implementation of non-litigation mediation is the low level of public legal awareness regarding the importance of peaceful dispute settlement. Many people still believe that legitimate and legally enforceable dispute resolution can only be achieved through court judgments. As a result, mediation is often perceived merely as an additional procedural step or a formality before disputes proceed to litigation. The dominance of litigation culture in society encourages individuals to bring disputes before courts rather than resolve them through dialogue and deliberation.

CC BY-SA 4.0

This lack of legal awareness is closely related to the limited public understanding of the advantages offered by mediation. Many individuals do not fully realize that mediation can provide faster, less expensive, and more flexible dispute resolution compared to litigation. In addition, a significant portion of society remains unaware that mediation agreements possess binding legal force when established in accordance with applicable legal requirements. Such circumstances indicate that public dissemination and education concerning mediation have not yet been conducted effectively.

Beyond the issue of legal awareness, another major factor influencing the success of mediation is the absence of good faith among disputing parties. In practice, many parties attend mediation solely to fulfill procedural obligations without any genuine intention to reconcile. Consequently, mediation processes frequently fail to operate effectively and often end without settlement agreements. Egoistic attitudes, a strong desire to win, and unwillingness to compromise are among the principal causes of mediation failure in many civil disputes.

The effectiveness of mediation is also highly dependent on the competence and professionalism of mediators. Mediators play a crucial role as neutral facilitators who assist parties in building communication and creating a constructive atmosphere for reaching agreements. Therefore, mediators are expected to possess strong communication skills, negotiation abilities, psychological understanding, and adequate legal knowledge. They must also maintain neutrality, objectivity, and impartiality throughout the mediation process.

However, the quality of mediators in Indonesia remains a significant concern. Not all mediators possess sufficient expertise and experience in handling disputes effectively. Mediators lacking professionalism often encounter difficulties in managing conflict, facilitating communication, and guiding parties toward fair and balanced solutions. According to research conducted by Fikrih and Harimurti, the limited number of professional mediators and the insufficient duration allocated for mediation constitute major obstacles to the effectiveness of civil dispute resolution through mediation (Widjaja, 2025).

The limited availability of certified mediators also poses challenges, particularly in regions with inadequate access to mediation institutions. This condition makes it difficult for communities to obtain competent and experienced mediators. Furthermore, the uneven quality of mediator training programs affects the overall professionalism of mediators in carrying out their responsibilities.

Another challenge faced by non-litigation mediation concerns the inadequacy of regulations governing out-of-court mediation procedures. Although Indonesia has enacted Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, as well as Supreme Court Regulation Number 1 of 2016 concerning Court-Annexed Mediation Procedures, the specific regulation of non-litigation mediation remains relatively limited. As a result, mediation conducted outside the court system often lacks standardized and uniform procedural guidelines.

The absence of comprehensive regulation also affects the legal certainty of mediation outcomes. In some situations, mediation agreements are not formally registered before the court and therefore remain ordinary contracts whose implementation depends entirely on the good faith of the parties. When one party violates the agreement, the other party is forced to pursue litigation again in order to enforce the settlement. Such conditions diminish the effectiveness of mediation as a fast and simple dispute resolution mechanism.

In addition to regulatory issues, societal legal culture also significantly influences mediation practices. Some members of society continue to believe that success in a dispute can only be achieved through judicial victory. Competitive attitudes and a win-or-lose mindset make it difficult for mediation to produce compromise-based solutions. In fact, the primary objective of mediation is to create mutually beneficial settlements for all parties involved.

Technological developments have also introduced new challenges in the implementation of non-litigation mediation. On one hand, technology creates opportunities for online mediation systems that are faster and more efficient. On the other hand, not all members of society possess adequate technological access or digital literacy to participate in electronic mediation processes. Moreover, issues concerning the legality of electronic documents and data security in online mediation still require stronger legal regulation and institutional support.

To overcome these obstacles, comprehensive efforts are necessary to strengthen non-litigation mediation in Indonesia. One important step is increasing public legal awareness through education and socialization programs regarding the advantages and importance of mediation. Government institutions, educational organizations, legal professional associations, and mediation centers should collaborate in promoting the understanding that peaceful dispute settlement represents a more effective and equitable solution.

Another essential effort involves improving the quality and professionalism of mediators. Mediator training programs should be conducted regularly and should cover not only legal aspects but also communication skills,

CC BY-SA 4.0

negotiation strategies, conflict psychology, and professional ethics. In addition, mediator certification processes must be implemented rigorously to ensure that certified mediators possess sufficient competence and professionalism.

Strengthening mediation institutions is equally important for enhancing the effectiveness of non-litigation mediation. The government should encourage the establishment of accessible mediation centers both within and outside court environments. Professional mediation institutions can help communities obtain reliable, efficient, and trustworthy dispute resolution services.

Furthermore, more comprehensive regulations concerning non-litigation mediation are necessary. Such regulations should govern mediation procedures, mediator competency standards, mechanisms for ratifying mediation agreements, and the legal enforceability of settlement outcomes. Clear and comprehensive regulations would provide stronger legal certainty for mediation practices.

Strengthening the registration system for mediation agreements is also crucial to ensure executorial legal force. Mediation agreements that are registered before the court and formalized as deeds of settlement provide stronger legal protection for the parties involved. Consequently, if violations occur, enforcement may be requested directly without requiring a new lawsuit.

In the digital era, technology-based mediation or online mediation may serve as an effective solution for improving public access to dispute resolution. Online mediation allows disputes to be resolved without requiring physical meetings between parties, thereby increasing efficiency in terms of time and cost. This mechanism is particularly relevant for digital business disputes, electronic transactions, and disputes involving parties from different geographical regions.

Nevertheless, the implementation of online mediation must be supported by adequate technological infrastructure, personal data protection, and clear legal regulations regarding the evidentiary and legal force of electronic documents within mediation processes. The government must also ensure that the use of technology in mediation continues to uphold the principles of confidentiality, security, and fairness for all parties involved.

CONCLUSION

Non-litigation mediation represents an important form of alternative civil dispute resolution within the Indonesian legal system. The presence of mediation provides a solution to the weaknesses commonly associated with litigation, which often involves lengthy procedures, high costs, and complicated legal processes. Unlike litigation, mediation emphasizes deliberation, communication, and mutual agreement, enabling disputing parties to achieve win-win solutions while maintaining harmonious relationships after the dispute has been resolved.

The effectiveness of non-litigation mediation can be observed through its ability to provide dispute resolution that is fast, simple, flexible, and cost-efficient. In addition, the confidentiality principle in mediation offers protection for the interests of the parties, particularly in business disputes and other civil matters. Mediation also contributes to reducing case congestion in courts, thereby supporting the creation of a more efficient and effective judicial system. Nevertheless, the implementation of mediation still faces several obstacles, including low public legal awareness, lack of good faith among disputing parties, the limited number of professional mediators, and the continuing dominance of litigation culture within society.

From a legal perspective, mediation agreements fundamentally possess binding legal force as contractual arrangements under Article 1338 of the Indonesian Civil Code. Mediation outcomes become legally valid and enforceable when they satisfy the legal requirements of a valid agreement as stipulated in Article 1320 of the Civil Code. However, in order to ensure stronger legal certainty and executorial power, mediation agreements should be registered before the court and formalized in the form of a deed of settlement. Through such legalization, the implementation of mediation outcomes may be legally enforced if one of the parties fails to comply with the agreement.

To improve the effectiveness of non-litigation mediation in Indonesia, stronger regulations, enhanced mediator competence, broader public legal education, and the development of technology-based mediation or online mediation systems are required. These measures are essential to ensure that mediation functions not merely as a procedural formality, but as an effective dispute resolution mechanism capable of delivering justice, legal certainty, and practical benefits for society.

CC BY-SA 4.0

DAFTAR PUSTAKA

Amarini, I. (2016). Penyelesaian Sengketa Yang Efektif Dan Efisien Melalui Optimalisasi Mediasi Di Pengadilan. Kosmik Hukum, 16(2).

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.

Awaludin, R. (2022). Penyelesaian Sengketa Keluarga Secara Mediasi Non Litigasi dalam Kajian Hukum Islam dan Hukum Positif. Al Maqashidi: Jurnal Hukum Islam Nusantara, 4(2), 1-16.

Dewi, N. M. T. (2022). Penyelesaian Sengketa Non Litigasi Dalam Penyelesaian Sengketa Perdata. Jurnal Analisis Hukum, 5(1), 81-89.

Fadlillah, M. R., & Harry, M. (2025). Legalitas dan kekuatan hukum hasil mediasi non-litigasi dalam sistem hukum Indonesia. Indonesian Journal of Sharia and Law, 2(2), 137-148.

Fuqoha, F. (2020). Tinjauan Yuridis Kekuatan Hukum Penyelesian Perselisihan non-Litigasi dalam Perselisihan Hubungan industrial. Indonesian State Law Review (ISLRev), 2(2), 119-137.

Makhfiroh, I. (2017). Efektivitas Mediasi Non Litigasi Dalam Penyelesaian Permasalahan Keluarga (StudiPeranKiyaidanTokohAdat di KampungRebangTinggiKecamatanBanjitKabupaten Way Kanan) (Doctoral dissertation, IAIN Raden Intan Lampung).

Putra, R. K., Kalsum, U., Gusmarani, R., & Sony, E. (2024). Efektivitas penyelesaian sengketa secara non litigasi. Jurnal Kolaboratif Sains, 7(6), 2200-2206.

Ramadhany, S., Rosdiana, R., & Makmur, S. (2020). Efektivitas Pelaksanaan Mediasi Dalam Penyelesaian Perkara Perdata Di Pengadilan Negeri Jakarta Selatan (Analisis Peraturan Mahkamah Agung Nomor 01 Tahun 2016 tentang Prosedur Mediasi Di Pengadilan). Journal of Legal Research, 2(3).

Saragih, N. M. R. (2021). Efektivitas Mediasi dalam Penyelesaian Sengketa Perdata di Pengadilan Negeri Lubuk Pakam Kelas IA. JURNAL RECTUM: Tinjauan Yuridis Penanganan Tindak Pidana, 3(1), 385-396.

Soekanto, S. (2007). Penelitian hukum normatif: Suatu tinjauan singkat.

Tamba, T., & Mukharom, M. (2023). Efektivitas Peran Mediator Dalam Penyelesaian Sengketa Non Litigasi Dalam Bidang Bisnis Maupun Hukum. Jurnal Ilmiah Mahasiswa Perbankan Syariah (JIMPA), 3(2), 445-460.

Widjaja, G. (2025). Peningkatan Efektivitas Penyelesaian Sengketa Medis Melalui Alternatif Non-Litigasi (Mediasi Dan Arbitrase) Pasca Penerapan Uu No. 17 Tahun 2023. Journal Of Community Dedication, 4(4), 95-105.

Yahya, A. S. (2025). Pengaturan Hukum Terhadap Praktik Mediasi dalam Penyelesaian Sengketa. Jurnal Hukum Caraka Justitia, 5(1), 107-119.

CC BY-SA 4.0