

CHAPTER 1

INTRODUCTION

1.1 Background of Study

Dispute resolution can be carried out through two processes. The oldest method of dispute resolution is litigation through the courts, which later evolved into cooperative dispute resolution processes conducted outside the courts. Litigation typically results in adversarial agreements that often fail to accommodate mutual interests, tend to create new issues, are slow to resolve, require high costs, are unresponsive, and can lead to hostility between the disputing parties.

In contrast, out-of-court processes result in agreements that provide a "win-win solution," ensure the confidentiality of the parties' dispute, avoid delays caused by procedural and administrative matters, resolve issues comprehensively in a spirit of cooperation, and preserve good relationships between the parties. The primary advantage of non-litigation processes is their confidentiality, as both the proceedings and even the outcomes are not made public. This form of out-of-court dispute resolution is commonly referred to as Alternative Dispute Resolution (ADR), representing the third wave in the cycle of business dispute resolution. In the era of globalization, where the characteristic of business is "moving quickly," dispute resolution demands methods that involve informal procedures and can be initiated rapidly.¹

The settlement of civil disputes is a fundamental aspect of upholding justice in society. For many years, litigation has been the primary mechanism for resolving disputes; however, this approach is often criticized for being slow, costly, and prone to escalating conflicts between the parties involved. The formal judicial system is also burdened with an overwhelming caseload, making the resolution process less effective. In response to these limitations, alternative dispute resolution methods have emerged, one of which is

¹ M. Yahya Harahap. "Beberapa Tinjauan Mengenai Sistem Peradilan dan Penyelesaian Sengketa." Bandung: Citra Aditya Bakti, 1997.

mediation, offering a peaceful, participatory, and efficient process. Mediation emphasizes not only the final outcome but also the reconciliation process between the parties. In this context, mediation has emerged as a form of conflict resolution capable of addressing dissatisfaction with the conventional legal system.²

In an effort to establish an alternative dispute resolution mechanism that is faster, more cost effective, and humane, mediation has become one of the most widely promoted option within judicial system. However, the actual effectiveness of mediation in practice significant disparities across jurisdictions, particularly between Indonesia and Singapore.

In Indonesia, although mediation is formally mandated under Supreme Court Regulation (PERMA) No. 1 of 2016, its success rate remains relatively low in many general courts. For instance, according to a report by the Supreme Court, in 2022 there were 20,861 cases successfully resolved through mediation. *“Through 2022, 20,861 cases were successfully settled through mediation process”*.³ However, when examined at more localized level, the success rate in certain courts is significantly lower. At the East Jakarta District Court, as of 2024 only 21 out of 273 cases (7.69%) result in a settlement. Of the total number, only a small portion managed to reach a settlement, namely 21 cases (7.69%).⁴

Conversely, in Singapore Mediation demonstrates a significantly higher success rate, particularly in commercial dispute and within judicial settings. The Singapore Mediation Center (SMC) reports that approximately 70 percent of mediation cases are successfully resolved, with more than 90

² Harahap, M. Y. “Hukum Acara Perdata.” Jakarta: Sinar Grafika. 2015.

³ Mahkamah Agung Republik Indonesia. (2023, 23 Februari). *Selama tahun 2022, 20.861 perkara berhasil didaftarkan melalui proses mediasi*.
<https://www.mahkamahagung.go.id/id/berita/5669/selama-tahun-2022-20861-perkara-berhasil-didaftarkan-melalui-proses-mediasi>

⁴ Marinews, “Persentase Keberhasilan Mediasi di PN Jakarta Timur hingga April 2025 Lebih Baik dari Periode yang Sama 2024”, 2025,
<https://marinews.mahkamahagung.go.id/berita/persentase-keberhasilan-mediasi-di-pn-jakarta-timur>.

percent of those settlement being reached within a single working day. The settlement rate at the Singapore Mediation Center is about 70 percent more than 90 percent of them being within one working day.⁵ At the higher judicial level, cases referred to mediation at the Supreme Court of Singapore have achieved settlement rates between 66 percent and 81 percent in recent year.⁶

This comparison indicates that although the legal framework for mediation has been formally established across various jurisdictions, operational variables such as mediator capacity, institutional incentives within the courts, dispute resolution culture, and infrastructural support play a crucial role in realizing the effectiveness of mediation.

Mediation, as part of Alternative Dispute Resolution (ADR), began to receive serious attention in Indonesia following the enactment of Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. This regulation provides a legal basis for the implementation of mediation as a legitimate mechanism outside the court system. However, in practice, mediation in Indonesia has not yet been fully effective. Although it has been further regulated through Supreme Court Regulation (PERMA) No. 1 of 2016 on Mediation Procedures in Court, the success rate of dispute resolution through mediation remains low.⁷ Many mediation processes end without reaching an agreement and often serve merely as an administrative formality within legal proceedings. The low quality of mediators, lack of public awareness, and the prevailing litigious culture in society are the main inhibiting factors.

The legal foundation of mediation in Indonesia provides a clear normative framework; however, its implementation still faces significant challenges. Supreme Court Regulation (PERMA) No. 1 of 2016 stipulates that

⁵ Singapore Law Watch, "Alternative Dispute Resolution in Singapore", <https://www.singaporelawwatch.sg/About-Singapore-Law/Civil-Practice-ADR>.

⁶ Singapore International Mediation Center, "Mediation and Rule of Law", <https://simc.com.sg/insights/mediation-and-rule-law>.

⁷ Indonesia, Mahkamah Agung RI. "PERMA No. 1 Tahun 2016 tentang Prosedur Mediasi di Pengadilan," JDIH, 2016, <https://peraturan.bpk.go.id/Details/209641/perma-no-1-tahun-2016>

mediation is a procedural requirement in civil cases, yet this obligation is often fulfilled merely as a formality. Obstacles arise when parties perceive mediation as an administrative step rather than an effective means of dispute resolution. This stands in contrast to Singapore, which has the Mediation Act 2017 regulating the process in detail, including the recognition of mediation outcomes. Such differences highlight the importance of comparative research, enabling Indonesia to identify effective regulatory elements from Singapore to enhance the function of mediation.

Singapore has a more integrated legal framework for mediation through the Mediation Act 2017. This regulation provides definitions, procedures, and mechanisms for the enforcement of mediation outcomes, thereby creating legal certainty for the parties involved. In addition, judicial policies in Singapore actively promote the use of mediation in almost all types of disputes, including international commercial disputes. Singapore's success lies not only in the substance of its legislation but also in the institutional support and legal culture that prioritizes compromise.⁸ This marks a distinction from Indonesia, which, despite having mediation regulations, has not yet achieved optimal implementation.

The results of mediation in Indonesia, as set out in a deed of settlement, carry binding legal force and are equivalent to a court decision. However, in practice, the enforcement of such deeds remains problematic when one party refuses to voluntarily comply with the agreement. This is often due to weak oversight and complicated enforcement procedures. Although, in theory, mediation outcomes provide legal certainty, their implementation offers limited assurance of compliance by the parties.⁹ Therefore, it is important to examine Singapore's model, which provides a clearer legal pathway for enforcing mediation outcomes.

⁸ Quek Anderson, D. "Institutionalizing Mediation in Singapore's Judiciary". *Asian Journal of Comparative Law*, 2016. 11(2), 1–27. <https://doi.org/10.1017/asjcl.2016.18>

⁹ Pasal 130 HIR dan Pasal 1851 KUHPerdara

Singapore ensures that mediation outcomes carry strong legal force through a mechanism of registering mediation results with the Court, thereby granting them the status of official judgments that can be immediately enforced. In addition, Singapore pioneered the Singapore Convention on Mediation 2019, which provides international recognition of cross-border mediation outcomes. This mechanism has established Singapore as a trusted forum for international mediation. In contrast, Indonesia has not yet ratified the convention, while Singapore has leveraged international recognition to expand the scope of dispute resolution.

The choice of Singapore as a comparison is based on the differences between Indonesia's civil law system and Singapore's common law system, the varying levels of success in mediation, and Singapore's achievement in adopting international standards. This comparison is relevant for identifying best practices that can be adapted in Indonesia.

1.2 Problem Formulation

1. How does the mediation system function in the resolution of civil disputes in Indonesia?
2. How does the mediation system function in the resolution of civil disputes in Singapore?
3. What are the strengths and weaknesses of the mediation systems in Indonesia and Singapore in resolving civil disputes?

1.3 Research Objectives

1. To describe the mediation systems in the resolution of civil disputes in Indonesia and Singapore.
2. To identify the strengths and weaknesses of the mediation systems in resolving civil disputes in Indonesia and Singapore.

1.4 Research Benefits

1. Theoretical Benefits

Theoretically, this research is expected to enrich existing references and provide positive contributions to the development of mediation as an alternative dispute resolution mechanism.

2. Practical Benefits

- a. To provide policy recommendations to the government for improving the mediation system.
- b. To enhance public understanding of the importance of mediation in dispute resolution.

1.5 Literature Review

In this proposal, the author uses previous studies that are relevant to this research. The following are several previous studies that are pertinent:

No	Author's Name	Research Title	Methodology	Research Findings	Research Novelty
1.	Amalia Nurafifah, Devi Siti Hamzah Marpaung, 2022	Mediasi sebagai Alternatif Penyelesai an Sengketa	Descriptive, qualitative research with a literature study	Examining mediation in detail as an alternative dispute resolution mechanism	Focusing on a comparison between Indonesia and Singapore in the settlement of civil disputes through mediation
2.	Dorcas Quek Anderson, 2015	The Development of Mediation for Civil Dispute	Empirical research with a policy analysis and case study approach	Discussing the development of mediation in Singapore	This research provides a cross-country comparative perspective, rather than focusing solely on developments

					within a single country.
3.	Sulaiman, 2018	Peran Mediasi Dalam Upaya Menyelesaikan Perkara Perdata (Studi Kasus di Mahkamah Syar'iyah Lhokseumawe)	Empirical research with a case study at the Sharia Court of Lhokseumawe	Discussing the effectiveness of mediation at the Sharia Court of Lhokseumawe	Comparing the mediation systems in two countries (Indonesia–Singapore), not limited to a single location.
4.	Ahmad Syahrul Zulkifli, 2021	Kekuatan Hukum Hasil Mediasi Oleh Mediator Non Hakim Diluar Pengadilan Menurut Hukum Perdata Di Indonesia	Normative research with a statutory approach and literature study	Mediation outcomes facilitated by non-judge mediators have limited legal force and require court homologation to be enforceable.	Comparative analysis of enforcement mechanisms and legal frameworks
5.	Dedy Mulyana, 2019	Kekuatan Hukum Hasil	Normative research with	Mediation agreements reached outside the	Comparative analysis of enforcement mechanisms

		Mediasi di Luar Pengadilan Menurut Hukum Positif	statutory analysis	court have legal force as contracts; however, their enforcement requires a court ruling.	and legal framework
6.	Nurul Anissa Hasanah, 2021	AMBIGUITAS Prosedur Mediasi dalam Proses Persidangan: Analisis Perma Nomor 1 Tahun 2016	Normative research with an analysis of Supreme Court Regulation (PERMA) No. 1 of 2016	Supreme Court Regulation (PERMA) No. 1 of 2016 provides a clear procedural framework; however, its implementation still faces practical challenges.	Cross-jurisdictional procedural analysis with implementation evaluation
7.	Eunice Chua, 2019	The Singapore Convention on Mediation - A Brighter Future for Asian Dispute Resolution	Analytical research with an international law approach	The Singapore Convention establishes an international framework for the enforcement of mediation outcomes and strengthens Asia's position in global	Bilateral domestic comparison in the context of an international framework

				dispute resolution.	
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1.6 Research Methodology

1. Type of Research

This study is normative legal research. Ahmad Mukti Fajar N.D. and Yulianto explain that normative legal research is a type of legal research in which law itself is the object of study.¹⁰ According to Soerjono Soekanto and Sri Mamuji, normative legal research, also referred to as library research, is a type of legal research conducted by examining secondary materials only.

The type of research used is prescriptive research. Prescriptive research aims to provide an overview or formulate problems in accordance with existing conditions and facts.¹¹ This type of research also offers recommendations on what actions should be taken to address the issues discussed in this study. This research provides a depiction based on the actual conditions and facts regarding the mediation system in the resolution of civil disputes in Indonesia and Singapore.

2. Sources of Data

1) Primary Legal Materials

Primary legal materials are binding sources of law and serve as the main foundation of this research. These sources include statutory regulations that specifically govern mediation in both Indonesia and Singapore. In Indonesia, the main regulations used as reference are Law Number 30 of 1999 concerning Arbitration and Alternative Dispute

¹⁰ E. Saefullah Wirandipraja, "Penuntut Praktis Metode Penelitian Dan Penulisan Karya Ilmiah Hukum," (Bandung: Kemi Media, n.d.)

¹¹ Salim HS., Erlis S Nurbani, "Penerapan Teori Hukum Pada Penelitian Tesis dan Disertasi," PT Raja Grafindo Persada, Jakarta, 2013, hlm.9.

Resolution and Supreme Court Regulation (PERMA) Number 1 of 2016 concerning Mediation Procedures in Court. Meanwhile, in Singapore the comparative framework consists of the Mediation Act 2017, which regulates the recognition and enforcement of non-litigation mediation outcomes, as well as the Singapore Convention on Mediation 2019, which extends the enforceability of mediation settlement to the international level.

2) Secondary Legal Materials

Secondary legal materials include all publications about the law that are considered official legal references. These publications consist of textbooks discussing specific legal issues, as well as legal theses, dissertations, and scholarly journals that address topics related to the subject of this study.

3. Data Collection Technique

The data collection technique used in this study is library research. Library research is "a literature-based study conducted by reading, examining, and taking notes from various sources or reading materials relevant to the subject matter, which are then filtered and organized into a theoretical framework."¹² This technique is used to strengthen the factual understanding of the advantages and disadvantages between theory and practice in the author's comparative analysis of mediation in the resolution of civil disputes in Indonesia and Singapore.

4. Data Analysis Technique

In this study, the author uses a qualitative data analysis method. The qualitative research approach is a research process aimed at understanding and exploring social phenomena and human issues.¹³ This aligns with the definition of qualitative research, which produces descriptive data in the form of words or spoken accounts from individuals and participants who

¹² Kartini Kartono, Pengantar Metodologi Research, ALUMNI, Bandung, 1998, hlm.78

¹³ Iskandar, "Metodologi Penelitian Kualitatif", (Jakarta: Gaung Persada, 2009) cet.1 h. 11

can be observed.¹⁴ In this research, the researcher analyzes the strengths and weaknesses of the mediation system in resolving civil disputes in Indonesia and Singapore.

This analysis is also relevant in employing the comparative method. The comparative method is a type of research that focuses on comparison¹⁵, by examining the mediation system applied in Indonesia and Singapore. Through this approach, the research can identify the strengths and weaknesses of each system, both in terms of regulation, implementation, and their effectiveness in resolving civil dispute.

1.7 Systematics of Discussion

The structure of the writing refers to the sequence of various sections in an academic work. In relation to this thesis, it consists of four chapters, each containing several sub-sections that are interconnected, forming a systematic and cohesive description. The structure of this thesis can be outlined as follows:

Chapter I: Introduction

This chapter contains the background of the issue researched by the author, titled "Comparative Analysis of the Mediation System in Resolving Civil Disputes in Indonesia and Singapore." It includes the problem background, problem formulation, research objectives, research benefits, literature review, theoretical framework, research methodology, and the structure of the writing.

¹⁴ Lexy J. Moleong, *Metode Penelitian Kualitatif*, (Bandung: Remaja Rosdakarya, 2008), hal. 4.

¹⁵ Ragin, C. C. *The Comparative Method: Moving Beyond Qualitative and Quantitative Strategies*. University of California Press. 2014

Chapter II:

This chapter presents a general discussion on the theoretical foundations, including the definition of mediation, the concept of mediation, and the mediation systems in Indonesia and Singapore.

Chapter III:

In this chapter, the author will discuss the strengths and weaknesses of the mediation system in resolving civil disputes in Indonesia and Singapore.

Chapter IV:

This chapter contains the conclusion and recommendations related to the issues researched by the author.

