

## Legal Certainty in out-of-Court Dispute Resolution: Evaluation of Mediation and Arbitration Mechanisms

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**Abstract:** *Out-of-court dispute resolution through mediation and arbitration has become increasingly preferred due to its efficiency, speed, and non-adversarial nature, yet the effectiveness of these mechanisms critically depends on the legal certainty of enforcing settlement results. This normative juridical research analyzes the regulatory framework governing the enforcement of mediation settlement agreements and arbitration awards, as well as the challenges in practice. The findings reveal three major issues that undermine legal certainty: a legal vacuum regarding the executorial authority of mediation settlements, ambiguity concerning the legal status of settlement outcomes, and normative contradictions between the principle of finality in non-litigation dispute resolution and judicial control. These issues prevent mediation and arbitration from fully guaranteeing finality, legal protection, and access to justice for disputing parties. Legal reform is therefore required to ensure automatic executorial power over mediation and arbitration outcomes and to harmonize regulatory norms to minimize excessive judicial intervention, enabling mediation and arbitration to function as independent and equivalent dispute-resolution forums that provide optimal legal certainty.*

**Keywords:** *Arbitration, Court, Dispute Resolution, Legal Certainty, Mediation*

### INTRODUCTION

Out-of-court dispute resolution through mediation and arbitration is increasingly occupying a strategic position in the Indonesian legal system, especially when litigation is considered too lengthy, expensive, and often fails to provide comprehensive solutions for the parties in conflict. The development of modern society, which is fraught with business transactions, complex civil contracts, and multi-level social interactions, demands dispute resolution mechanisms that are not only efficient but also guarantee legal certainty. Without the guarantee of legal certainty, out-of-court dispute resolution cannot provide legal protection equivalent to litigation, and in turn will lose its appeal as an alternative forum for dispute resolution.<sup>1</sup> Theoretically, mediation and arbitration are designed to complement the formal court system. Mediation emphasizes consensus and dialogue as the basis for resolution, while arbitration presents a quasi-judicial process with concise procedures that still produce final and binding decisions. Both mechanisms are projected as efficient alternatives to maintain long-term relationships between parties and reduce the burden on the courts. However, this ideal can only be realized if the state guarantees legal certainty both in

<sup>1</sup> Prayuti, Y. et al., "Efektivitas Mediasi dan Arbitrase dalam Penyelesaian Sengketa Konsumen Kesehatan," *Syntax Idea* 6, no. 3 (2024): 1533–1544.



the process and in the implementation of the dispute resolution results. Without an adequate normative foundation, alternative dispute resolution will not function as effective and fair legal protection.<sup>2</sup>

In practice, there are serious issues related to mediation agreements that do not always have executory power. If one party fails to fulfill its post-mediation obligations, the other party must file a lawsuit in court, thereby defeating the purpose of expediting dispute resolution. This issue highlights a legal vacuum regarding the status and standard of enforceability of settlement agreements in out-of-court mediation.<sup>3</sup> Without a clear enforcement mechanism, mediation is prone to failing to provide legal certainty, especially in disputes of economic, commercial, and medical value where performance is essential to protecting the rights of the parties. Not only is there a legal vacuum, but another problem arises in the form of ambiguity of norms regarding the position of mediation agreements and arbitration awards in the legal system hierarchy.

Mediation agreements are doctrinally positioned as civil contracts, but in some legal regimes they are treated as deeds of settlement. Similarly, arbitration awards are final and binding, but at the normative level they still depend on the existence of courts for exequatur and the possibility of annulment. The ambiguity regarding the limits of the legal power of these two instruments creates uncertainty for business actors, legal representatives, and enforcement officials in identifying the standards of enforcement that are valid under Indonesian positive law.<sup>4</sup> On the other hand, there is a conflict of norms between the character of mediation and arbitration as independent dispute resolution institutions and the role of the court as the highest judicial institution. In arbitration, the principle of finality is regulated as the main pillar for ending disputes. However, in Indonesia, arbitration awards can be annulled by district courts, making the finality of arbitration relative rather than absolute. A similar situation occurs in mediation, where settlement agreements must be reinforced by a court order to obtain executory power. This conflict shows the tension between the autonomy of private dispute resolution and state control through the judiciary, creating a vulnerable point that determines the level of legal certainty outside the courts.<sup>5</sup>

This issue of legal certainty becomes even more crucial when dispute resolution through mediation and arbitration is used as a means of legal protection for civil and public health industries that require fast and certain mechanisms. In the context of medical dispute resolution, for example, mediation is considered more appropriate than litigation because of its restorative and dialogical nature. However, without certainty regarding the implementation of the agreement, patients, medical personnel, or health facilities do not obtain legal certainty regarding their rights and obligations. The same occurs in the business and construction sectors, where arbitration is chosen precisely for the sake of fast and certain investment

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<sup>2</sup> Simanjuntak, A. T. B., & Hoesein, Z. A., "The Position of Agreements and Arbitration Awards as A Legal Protection in Out-Of-Court Dispute Resolution," *Journal of Multidisciplinary Sustainability ASEAN* 1, no. 6 (2024): 451–464

<sup>3</sup> Nasution, I. Z., & Redi, A., "Effectiveness and Efficiency of Mediation in Out-of-Court Dispute Settlement as an Alternative Legal Protection for Disputing Parties," *Jurnal Greenation Sosial dan Politik* 3, no. 2 (2025): 100–112

<sup>4</sup> Lastikayasa, I. W., & Kurniawan, I. G. A., "Legal Philosophy in Construction Contract Dispute Resolution: Between Arbitration and Litigation," *Pena Justisia* 24, no. 1 (2025): 6202–6219

<sup>5</sup> Fitriani, R. et al., "Tinjauan Kepastian Hukum terhadap Hasil Kesepakatan Perdamaian dalam Mediasi di Luar Pengadilan," *Recht Studiosum Law Review* 3, no. 1 (2024): 50–57

protection. If the finality of an arbitration award can be overturned through annulment, then the guarantee of legal certainty becomes illusory and contrary to the principle of *pacta sunt servanda*.<sup>6</sup>

Previous literature has emphasized the urgency of effective out-of-court dispute resolution, but has not addressed the issue of legal certainty holistically. Prayuti et al. (2024) assess mediation and arbitration as effective in resolving health disputes but do not review the issue of the validity and implementation of the settlement results. Simanjuntak & Hoesein (2024) examine the position of mediation agreements and arbitration awards as legal protection but do not discuss the conflict of norms in the execution stage. Meanwhile, Nasution & Redi (2025) highlight the efficiency of mediation as an alternative legal protection but have not examined the need for normative reform to ensure certainty of executability. Thus, there are still gaps that have not been mapped from the perspective of legal certainty as the foundation for the effectiveness of non-litigation dispute resolution in Indonesia.<sup>7</sup> Departing from this problem, this article presents a critical review of legal certainty in out-of-court dispute resolution mechanisms through mediation and arbitration, with a focus on normative clarity, finality of settlement outcomes, and certainty of implementation. The aim is to provide a comprehensive analysis of how normative design and implementation practices can be modified to ensure that mediation and arbitration can provide substantive legal protection, finality of settlement, and access to justice for disputing parties effectively in Indonesia.

## METHOD

This study uses a normative juridical method, namely legal research conducted by examining written norms in legislation and legal doctrine to address the issue of legal certainty in dispute resolution through mediation and arbitration outside of court. The normative legal method was chosen because the main focus of the study is the coherence of norms, the effectiveness of regulations, and the position of legal certainty in non-litigation dispute resolution mechanisms. The research data consists of primary legal materials such as Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, Supreme Court Regulations on Mediation, and other relevant regulations, which are analyzed using a statutory approach, a conceptual approach, and a case approach to see the extent to which legal certainty is guaranteed in the implementation of mediation and arbitration in Indonesia.

In addition to analyzing written norms, this study also uses secondary legal materials in the form of academic literature, previous research results, and expert opinions on the effectiveness and legal certainty of non-litigious dispute resolution. This approach is in line with the orientation of normative legal research, which emphasizes that legal issues are not only measured by the existence of rules, but also by the systemic coherence between norms, doctrines, and their practical application in reality. The normative analysis in this study focuses on evaluating the suitability between the objectives of establishing mediation and arbitration mechanisms to provide rapid dispute resolution and legal certainty, with the reality of implementation that still shows legal gaps, ambiguity of norms, and unresolved conflicts of norms.

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<sup>6</sup> Rohaini, S. H. et al., *Masa Depan Arbitrase Indonesia: Efektivitas dan Kepastian Hukum* (Uwais Inspirasi Indonesia, 2024)

<sup>7</sup> Prayuti, Y. et al., "Efektivitas Mediasi dan Arbitrase dalam Penyelesaian Sengketa Konsumen Kesehatan," *Syntax Idea* 6, no. 3 (2024): 1533–1544; Simanjuntak & Hoesein 2024; Nasution & Redi 2025.



This study does not collect field data, but rather analyzes legal data qualitatively to produce legal arguments that can provide recommendations for regulatory reform. An argumentative approach is used to formulate legal propositions regarding the need to strengthen legal certainty in out-of-court dispute resolution, both through the harmonization of norms and the improvement of the enforceability of mediation and arbitration outcomes. Thus, the normative legal method in this study not only aims to describe the prevailing legal situation, but also to provide a scientific basis for the formulation of legal policies in order to optimize non-litigation dispute resolution mechanisms in Indonesia.

## RESULTS AND DISCUSSION

### Legal Void in the Certainty of Mediation and Arbitration Implementation Outside the Court

Legal certainty is the main foundation for dispute resolution, both through litigation and alternative dispute resolution outside of court. In the context of mediation and arbitration, legal certainty is not only needed in the resolution process, but especially in the implementation stage of the resolution. A fundamental problem arises when the results of mediation agreements and arbitration awards do not have the same enforcement guarantees as court decisions. This condition reflects a legal vacuum in the enforcement mechanisms for non-litigation dispute resolution, creating legal vulnerability for the parties, especially when one party reneges on its promises. This shows that even though the public's preference for out-of-court dispute resolution is increasing, without a guarantee of certainty of enforcement, mediation and arbitration have the potential to lose their usefulness and effectiveness as modern dispute resolution forums.<sup>8</sup>

In the context of mediation, a legal vacuum is apparent due to the absence of norms that explicitly grant automatic executory power to peace agreements reached by the parties. When the results of the agreement are not stated in the form of a peace agreement or are not ordered by the court to be implemented, the agreement is only treated as a regular civil contract. Thus, when one party defaults, the other party must return to court to demand the performance of obligations, which in turn gives rise to a new cycle of litigation. This situation contradicts the main objective of mediation, which is to provide a quick, informal, and economical resolution for the parties, because mediation that cannot be enforced is unable to provide maximum legal certainty.<sup>9</sup>

Legal vacuums also arise in arbitration, even though it appears to be stronger because its decisions are final and binding. In the ideal concept of arbitration, the finality of a decision means that the dispute ends after the arbitrator has issued a decision and its implementation is immediate. However, in Indonesian practice, the implementation of an arbitration decision still requires an enforcement order from a district court (exequatur), making the finality of arbitration relative. This situation is exacerbated by the mechanism for annulment of arbitration awards, which can be filed by dissatisfied parties, thus creating room for parties to delay and avoid the enforcement of arbitration awards through available legal loopholes. As a result,

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<sup>8</sup> Prayuti, Y. et al., "Efektivitas Mediasi dan Arbitrase dalam Penyelesaian Sengketa Konsumen Kesehatan," *Syntax Idea* 6, no. 3 (2024): 1533–1544

<sup>9</sup> Nasution, I. Z., & Redi, A., "Effectiveness and Efficiency of Mediation in Out-of-Court Dispute Settlement as an Alternative Legal Protection for Disputing Parties," *Jurnal Greenation Sosial dan Politik* 3, no. 2 (2025): 100–112.

arbitration, which was designed as a forum for rapid dispute resolution, is instead trapped in dependence on the courts.<sup>10</sup>

From the perspective of national legal system development, the absence of executory norms resulting from non-litigious dispute resolution should be a serious concern. Regulations on mediation and arbitration have detailed procedural mechanisms, but do not provide strong legal instruments to ensure the unimpeded implementation of dispute resolution outcomes. If the implementation of mediation agreements and arbitration awards is uncertain, the effectiveness of both as means of dispute resolution will decline. In addition, interested parties will return to choosing the courts as the main avenue because only court decisions have full enforcement guarantees. This systemic failure not only undermines the aspirations for judicial reform but also hinders the development of the business and investment world, which requires legal certainty and finality of settlement as instruments of legal protection.<sup>11</sup>

The legal vacuum in extrajudicial dispute resolution also creates the risk of injustice. In mediation, cooperative parties will be disadvantaged if the other party easily avoids fulfilling their obligations without binding legal sanctions. Meanwhile, in arbitration, the disputing parties need additional time and costs to fight for the enforcement of the decision, even though arbitration was chosen to avoid returning to court. This imbalance shows that a regulatory system that does not provide certainty in the enforcement of dispute resolution results actually opens up room for structural injustice that is contrary to the principle of protecting the rights of the parties. This legal vacuum not only affects the effectiveness of dispute resolution, but also undermines public confidence in the legal system as a means of achieving certainty and justice.<sup>12</sup>

Furthermore, this legal vacuum signals that the state has not yet completed the development of a modern dispute resolution system. Out-of-court dispute resolution should serve as a supplement to the litigation system, not merely an administrative alternative. To that end, the legal system must ensure that arbitration awards and mediation agreements can be enforced without hindrance, based on clear normative grounds that do not depend on court assessments. The state has a constitutional responsibility to ensure that every dispute resolution instrument, whether litigious or non-litigious, provides equal legal protection. In the paradigm of legal development, executorial certainty is not merely a technical procedural matter, but an indicator of the maturity of the legal system in accommodating the evolving needs of modern society.<sup>13</sup>

Thus, the discussion in this section emphasizes that the root of the problem of legal certainty in the settlement of non-litigation disputes lies in the legal vacuum regarding the executory status of the results of mediation and the implementation of arbitration awards. Future legal reforms are not enough to focus only on improving mediation and arbitration procedures, but must touch on the most fundamental aspects: the guarantee of certainty of implementation as a form of protection of the rights of legal subjects and the affirmation of the finality of dispute resolution. As long as this legal vacuum has not been resolved,

<sup>10</sup> Simanjuntak, A. T. B., & Hoesein, Z. A., "The Position of Agreements and Arbitration Awards as A Legal Protection in Out-Of-Court Dispute Resolution," *Journal of Multidisciplinary Sustainability ASEAN* 1, no. 6 (2024): 451–464

<sup>11</sup> Lastikayasa, I. W., & Kurniawan, I. G. A., "Legal Philosophy in Construction Contract Dispute Resolution: Between Arbitration and Litigation," *Pena Justisia* 24, no. 1 (2025): 6202–6219

<sup>12</sup> Fitriani, R. et al., "Tinjauan Kepastian Hukum terhadap Hasil Kesepakatan Perdamaian dalam Mediasi di Luar Pengadilan," *Recht Studiosum Law Review* 3, no. 1 (2024): 50–57

<sup>13</sup> Rohaini, S. H. et al., *Masa Depan Arbitrase Indonesia: Efektivitas dan Kepastian Hukum* (Uwais Inspirasi Indonesia, 2024)



mediation and arbitration will not be able to function optimally as an effective, efficient, and out-of-court dispute resolution instrument that is effective, efficient, and provides legal certainty equivalent to litigation.

## Legal Uncertainty in the Legal Position of Mediation and Arbitration

Legal certainty in the settlement of disputes outside of court is not only determined by the existence or absence of an executory mechanism, but also depends on the clarity of norms regarding the legal position of the dispute settlement. In the context of mediation and arbitration, there is a fundamental problem in the form of ambiguity in the norms regarding the position of mediation agreements and arbitration awards in the Indonesian legal structure. This ambiguity is caused by the lack of synchronization between the legal regimes governing the two, giving rise to varying interpretations regarding the status, evidentiary value, and enforceability of each instrument. This lack of clarity discourages parties from choosing non-litigation dispute resolution because they do not have full confidence that the results of mediation or arbitration will be truly effective and protect their rights.<sup>14</sup>

The ambiguity of the first norm is evident in the status of mediation agreements. Doctrinally, settlement agreements are a form of civil contract that binds the parties based on the principle of *pacta sunt servanda*. However, from a procedural perspective, the enforcement of settlement agreements through court rulings is necessary to obtain executory power. This situation gives rise to a dualism in the character of mediation agreements: whether they are contracts that are only binding on the parties or instruments equivalent to court decisions after being strengthened by the court. This dualism is a source of uncertainty for the parties, especially in business, health, and construction disputes, which require certainty in the performance of obligations without additional conditions.<sup>15</sup>

The ambiguity of the second norm arises in arbitration related to the principle of *final and binding*. Normatively, arbitration awards cannot be appealed, cassated, or reviewed like litigation decisions. However, this norm is not entirely synchronous with the provisions for the annulment of arbitration awards by district courts in certain circumstances. This provision for annulment obscures the finality of arbitration because the losing party has a loophole to delay or negate the enforcement of the award by filing a petition for annulment. The ambiguity of the court's authority in annulment, whether it is administrative oversight or substantive control, is both a theoretical and practical reason why arbitration does not yet provide complete legal certainty in Indonesia.<sup>16</sup>

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<sup>14</sup> Simanjuntak, A. T. B., & Hoesein, Z. A., "The Position of Agreements and Arbitration Awards as A Legal Protection in Out-Of-Court Dispute Resolution," *Journal of Multidisciplinary Sustainability ASEAN* 1, no. 6 (2024): 451–464

<sup>15</sup> Fitriani, R. et al., "Tinjauan Kepastian Hukum terhadap Hasil Kesepakatan Perdamaian dalam Mediasi di Luar Pengadilan," *Recht Studiosum Law Review* 3, no. 1 (2024): 50–57

<sup>16</sup> Lastikayasa, I. W., & Kurniawan, I. G. A., "Legal Philosophy in Construction Contract Dispute Resolution: Between Arbitration and Litigation," *Pena Justisia* 24, no. 1 (2025): 6202–6219

To illustrate the difference in the legal status of mediation and arbitration, the following table provides an explanation:

**Table 1. Legal Status Comparison of Mediation Settlement Agreements and Arbitration Awards in Indonesia**

Component	Mediation Settlement Agreement	Arbitration Award
Legal Nature	Private agreement between parties	Final and binding adjudicative decision
Legal Force	Binding as a civil contract	Binding and enforceable
Execution	Executory power only after court ratification ( <i>akta perdamaian</i> )	Executory power after <i>exequatur</i> issuance by District Court
Requirement	Breach of agreement without immediate sanction	Judicial annulment request may delay or cancel enforcement
Vulnerability	Medium — depends on willingness of parties and court ratification	Medium-High — depends on opportunity for annulment and court discretion

The table shows that the legal status of both instruments does not yet provide absolute legal certainty for the parties. On the one hand, mediation requires court reinforcement in order to be enforceable; on the other hand, arbitration requires court approval and is still vulnerable to cancellation. This shows that the Indonesian legal system has not yet positioned non-litigation dispute resolution mechanisms as independent institutions in terms of executory authority. This condition is contrary to the needs of the business and investment world, which demands fast and final dispute resolution as a condition for economic turnover and contract sustainability.<sup>17</sup>

The lack of clarity regarding the legal status of mediation and arbitration outcomes also creates uncertainty for law enforcement officials themselves. It is not uncommon for court officials or enforcement agencies to feel hesitant in executing mediation agreements or arbitration awards because there is no single normative standard governing the limits of enforcement. This situation opens up opportunities for forum shopping, whereby non-compliant parties use legal loopholes to transfer the forum of resolution to the courts in order to delay their obligations. In other words, as long as the position of mediation and arbitration is not clearly defined in the national legal structure, out-of-court dispute resolution will always be overshadowed by litigation rather than becoming a substitute for it.<sup>18</sup>

The long-term implication of this ambiguity is that public confidence in out-of-court dispute resolution will be undermined. Parties who were previously encouraged to choose mediation or arbitration will ultimately return to litigation because only court decisions are considered to be enforceable. If this condition is allowed to continue, the reform of the non-litigation dispute resolution system will lose its direction and purpose,

<sup>17</sup> Prayuti, Y. et al., “Efektivitas Mediasi dan Arbitrase dalam Penyelesaian Sengketa Konsumen Kesehatan,” *Syntax Idea* 6, no. 3 (2024): 1533–1544

<sup>18</sup> Ferdiansyah, A., Wahyono, B. A. W., & Harahap, A., “Efektivitas Mediasi sebagai Alternatif Penyelesaian Sengketa Perdana dalam Meningkatkan Akses Keadilan di Indonesia,” *Jurnal Kajian Hukum dan Pendidikan Kewarganegaraan* 1, no. 4 (2025): 471–480

and have a negative impact on economic development, investment, and legal certainty for citizens. Therefore, it is necessary to harmonize legal norms that clearly position mediation and arbitration, including affirming their executory power so that they do not depend on court interpretations. Thus, the discussion in this section shows that the root cause of legal uncertainty in non-litigious dispute resolution is not solely due to a lack of regulation, but also due to the ambiguity of norms regarding the legal status of dispute resolution outcomes. If legal certainty is a prerequisite for the effectiveness of dispute resolution, then the structuring of norms regarding the position of mediation agreements and arbitration awards in the national legal system is a fundamental step to ensure certainty of implementation, finality of resolution, and legal protection for the parties.<sup>19</sup>

### Normative Conflict between Non-Litigious Dispute Resolution and the Judicial System

The normative conflict between non-litigious dispute resolution mechanisms and the judicial system is one of the biggest factors hindering legal certainty in the implementation of mediation and arbitration in Indonesia. Conceptually, mediation and arbitration are designed as alternative channels outside the court that provide quick, flexible, and efficient solutions, while the court is a state institution that performs judicial functions based on the principle of *ius curia novit*. When these two mechanisms interact, there is a tug of war between the finality of private dispute resolution and the control authority of the court as a state institution. This conflict creates structural uncertainty because there are regulations that give independence to non-litigious dispute resolution, but on the other hand, position the court as an institution that can still assess, cancel, or postpone the implementation of the dispute resolution results.<sup>20</sup>

In mediation, a conflict of norms arises when a peace agreement is positioned as a private agreement, but the performance of the agreement depends on a court ruling to obtain executory power. This position creates a discrepancy between the principle of freedom of contract and the dominance of the court in the enforcement of legal obligations. On the normative side, mediation supports consensus-based settlements without the intervention of state institutions. However, in terms of enforcement, the court is present as the only gateway for legal authorization of implementation. The clash between the independence of mediation and the supremacy of the court means that mediation cannot stand as an independent forum for dispute resolution, because the validity of implementation remains within the authority of the state through the judicial institution. In this position, the effectiveness of mediation is only optimal if the parties voluntarily implement the agreement, not because of the existence of a strong normative guarantee of enforcement.<sup>21</sup>

A conflict of norms also arises in arbitration, which in theory provides full finality with *final and binding* decisions. The doctrine of international arbitration emphasizes that absolute finality is the main attraction of arbitration institutions because it guarantees fast and certain dispute resolution. However, in Indonesian practice, the court still has the authority to annul arbitration awards for certain reasons as stipulated in the legislation. This loophole for annulment creates an internal contradiction between the finality of arbitration awards as a key principle and the authority of the courts as an instrument for assessing the validity of such

1. <sup>19</sup> Simanjuntak & Hoesein 2024.

<sup>20</sup> Salim, B. et al., "Legal Certainty That is Fair to Individual Rights in Land Dispute Resolution in Realizing Justice and Welfare," *The Seybold Report* 19, no. 2 (2024): 107–119

<sup>21</sup> Jauhani, M. A., Supianto, S., & Hariandja, T. R., "Kepastian Hukum Penyelesaian Sengketa Medis Melalui Mediasi di Luar Pengadilan," *Welfare State Jurnal Hukum* 1, no. 1 (2022): 29–58





awards. Thus, arbitration, which should be a normative instrument for independent dispute resolution, is placed in a subordinate position to the courts because its implementation and finality remain dependent on judicial control.<sup>22</sup>

The impact of this conflict of norms is enormous on the confidence of business actors and the public in choosing non-litigation dispute resolution channels. When mediation and arbitration, which in principle are chosen to avoid litigation, still have the potential to end up in court, the goal of accelerating dispute resolution loses its meaning. The costs and time that should be minimized actually increase because court involvement is unavoidable. In addition, the conflict of norms increases the scope for delay tactics, whereby the party at fault or the uncooperative party uses court intervention to delay the enforcement of legal obligations. This shows that although non-litigation dispute resolution is intended to strengthen access to justice, in practice the process is still very vulnerable to abuse of legal procedures.<sup>23</sup>

In addition, conflicting norms also have an impact on the legal culture of law enforcement officials and society. Expectations regarding the role of the courts as the only institution with executive authority have been established in the Indonesian legal system, so that non-litigious dispute resolution institutions are not positioned as the primary institutions for dispute resolution. This view influences the willingness of parties to comply with the results of mediation agreements or arbitration awards because the implementation of both is perceived not as a strong legal obligation but as a contractual obligation that depends on the confirmation of the court. As long as this legal culture does not change and legal norms do not support the finality of non-litigious dispute resolution, out-of-court dispute resolution will continue to be viewed as secondary to litigation.<sup>24</sup>

When taken to a conceptual level, this conflict of norms reveals systemic ambiguity in the design of dispute resolution law in Indonesia. On the one hand, the state wants to reduce the burden on judicial institutions, accelerate access to justice, strengthen the business world, and increase market confidence through non-litigation dispute resolution instruments. On the other hand, however, regulatory designs that leave the final decision to the courts undermine these very objectives. The normative compromise between the independence of non-litigation dispute resolution institutions and court control not only creates uncertainty in implementation but also contradicts the direction of national legal system reforms, which should support the diversification of dispute resolution mechanisms.<sup>25</sup>

Thus, the analysis in this discussion shows that the root of the problem of legal certainty in dispute resolution outside the courts lies not only in legal vacuums or legal ambiguities, but also in the conflict

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<sup>22</sup> Rohaini, S. H. et al., *Masa Depan Arbitrase Indonesia: Efektivitas dan Kepastian Hukum* (Uwais Inspirasi Indonesia, 2024)

<sup>23</sup> Prayuti, Y. et al., "Efektivitas Mediasi dan Arbitrase dalam Penyelesaian Sengketa Konsumen Kesehatan," *Syntax Idea* 6, no. 3 (2024): 1533–1544

<sup>24</sup> Ferdiansyah, A., Wahyono, B. A. W., & Harahap, A., "Efektivitas Mediasi sebagai Alternatif Penyelesaian Sengketa Perdata dalam Meningkatkan Akses Keadilan di Indonesia," *Jurnal Kajian Hukum dan Pendidikan Kewarganegaraan* 1, no. 4 (2025): 471–480

<sup>25</sup> Simanjuntak, A. T. B., & Hoesein, Z. A., "The Position of Agreements and Arbitration Awards as A Legal Protection in Out-Of-Court Dispute Resolution," *Journal of Multidisciplinary Sustainability ASEAN* 1, no. 6 (2024): 451–464.



between the principle of independence of non-litigious dispute resolution and the authority of the courts to control the implementation of decisions. As long as this dualism of authority remains unresolved, non-litigious dispute resolution will not be able to provide legally guaranteed finality. Therefore, future legal reforms need to address this fundamental issue through the harmonization of regulations and the affirmation of the limits of court intervention, so that mediation and arbitration can function as dispute resolution mechanisms that are not only alternative but also equal and independent in providing legal certainty.

## CONCLUSIONS

A review of legal certainty in out-of-court dispute resolution mechanisms shows that the most prominent uncertainties stem from three core issues: a legal vacuum regarding the executory mechanism of mediation agreements and arbitration awards, ambiguity in the norms regarding the legal status of dispute resolution outcomes, and a conflict between the principle of finality of non-litigation institutions and the court's authority of control. These three issues have implications for the low effectiveness of mediation and arbitration in providing legal protection and finality of settlement for the parties. Under these conditions, mediation and arbitration cannot yet function optimally as dispute resolution mechanisms that offer efficiency, certainty, and justice in their entirety, especially in the context of commercial, medical, and construction disputes that require urgent performance guarantees. Considering these normative gaps, legal reform efforts need to be directed at giving automatic executory power to mediation agreements and arbitration awards so that they no longer depend on additional judicial processes to be enforced. In addition, harmonization of norms between regulations is necessary to confirm the limits of court intervention in non-litigation dispute resolution in order to create legal certainty and finality. A practical suggestion for regulators is to design legal instruments that not only regulate dispute resolution procedures but also affirm the model for implementing the results of the resolution. The structural recommendation for the government is to ensure the sustainability of the institutional development of mediation and arbitration so that they can stand independently but remain compatible with the national legal system, so that the non-litigation dispute resolution system can truly become an effective and reliable pillar of justice in Indonesia.

## REFERENCES

- Alexander, N. (2022). Mediation and appropriate dispute resolution. *Singapore Academy of Law Annual Review of Singapore Cases*, 670-709.
- Britz, S. (2018). Mandatory mediation as a dispute resolution mechanism in the civil justice system.
- Chabanol, D. (2017). Out-of-Court Dispute Resolution in French Administrative Law. *Zb. Radova*, 54, 13.
- Dinata, A. P., Khalimi, K., & Mustafa, M. E. (2025). Kepastian Hukum Badan Penyelesaian Sengketa Konsumen (BPSK) dengan Cara Arbitrase. *Blantika: Multidisciplinary Journal*, 3(4).
- Ferdiansyah, A., Wahyono, B. A. W., & Harahap, A. (2025). Efektivitas mediasi sebagai alternatif penyelesaian sengketa perdata dalam meningkatkan akses keadilan di Indonesia. *Jurnal Kajian Hukum Dan Pendidikan Kewarganegaraan*, 1(4), 471-480.
- Fitriani, R., Asnawi, M. I., Muis, A., & Mirfa, E. (2024). Tinjauan Kepastian Hukum Terhadap Hasil Kesepakatan Perdamaian dalam Mediasi di Luar Pengadilan. *Recht Studiosum Law Review*, 3(1), 50-57.
- Gamito, M. C. (2017). Dispute resolution in telecommunications: a commitment to out-of-court. *European Review of Private Law*, 25(2).



- Gibran, F. R. (2021). Kepastian Hukum Penyelesaian Sengketa Bisnis Melalui Arbitrase. *Lex LATA*.
- Hendra, M. J., & Nefri, J. E. (2024). Mediasi Dan Arbitrase. *Hutanasyah: Jurnal Hukum Tata Negara*, 2(2), 83-94.
- Irayadi, M. (2023). Legal Certainty for Land Dispute Settlement in Regulation of the Minister of Agraria Number 21 of 2020 Regarding Handling and Settlement of Land Cases. *JILPR Journal Indonesia Law and Policy Review*, 4(3), 112-123.
- Jauhani, M. A. (2025). *Kepastian Hukum Penyelesaian Sengketa Medik Non Litigasi*. CV Eureka Media Aksara.
- Jauhani, M. A., Supianto, S., & Hariandja, T. R. (2022). Kepastian Hukum Penyelesaian Sengketa Medis Melalui Mediasi Di Luar Pengadilan. *WELFARE STATE Jurnal Hukum*, 1(1), 29-58.
- Lastikayasa, I. W., & Kurniawan, I. G. A. (2025). Legal Philosophy in Construction Contract Dispute Resolution: Between Arbitration and Litigation. *Pena Justisia: Media Komunikasi dan Kajian Hukum*, 24(1), 6202-6219.
- Muti'ah, D., Mufid, F. L., & Rusdiana, E. (2022). Legal Certainty in Settlement of Criminal Cases through Restorative Justice. In *SHS Web of Conferences* (Vol. 149, p. 03019). EDP Sciences.
- Nasution, I. Z., & Redi, A. (2025). Effectiveness and Efficiency of Mediation in Out-of-Court Dispute Settlement as an Alternative Legal Protection for Disputing Parties. *Jurnal Greenation Sosial dan Politik*, 3(2), 100-112.
- Nasution, I. Z., & Redi, A. (2025). Effectiveness and Efficiency of Mediation in Out-of-Court Dispute Settlement as an Alternative Legal Protection for Disputing Parties. *Jurnal Greenation Sosial dan Politik*, 3(2), 100-112.
- 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.
- 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.
- Rahayu, N. G. A. M. N. (2024). Pengaturan Honorarium Profesi Arbiter dan Mediator di Indonesia. *Jurnal Yusthima*, 4(02), 254-266.
- Rohaini, S. H., MH, P. D., SH, M., & Sepriyadi Adhnan, S. H. (2024). *Masa Depan Arbitrase Indonesia: Efektivitas dan Kepastian Hukum*. Uwais Inspirasi Indonesia.
- Rohaini, S. H., MH, P. D., SH, M., & Sepriyadi Adhnan, S. H. (2024). *Masa Depan Arbitrase Indonesia: Efektivitas dan Kepastian Hukum*. Uwais Inspirasi Indonesia.
- Salim, B., Tehupeoriy, A., Pieris, J., & Widiarty, W. S. (2024). Legal Certainty That is Fair to Individual Rights in Land Dispute Resolution in Realizing Justice and Welfare. *The Seybold Report*, 19(2), 107-119.
- Salmon, H. C. J., Saimima, J. M., Gaol, S. L., Ramadhan, M. S., Putra, Z., Rambe, I. I., & Orias, M. (2025). *Hukum Alternatif Penyelesaian Sengketa*. Penerbit Widina.
- Simanjuntak, A. T. B., & Hoesein, Z. A. (2024). The Position of Agreements and Arbitration Awards as A Legal Protection in Out-Of-Court Dispute Resolution. *Journal of Multidisciplinary Sustainability Asean*, 1(6), 451-464.