



Legal Aspects of Business Dispute Resolution through Alternative Out of Court Settlements

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Abstract: Legal aspects in business dispute resolution through alternative dispute resolution (ADR) play an essential role as they offer a more efficient, flexible, and lower-cost solution compared to litigation processes in court. Various ADR methods, such as mediation, arbitration, and negotiation, are governed by legal regulations aimed at ensuring fairness for all parties involved. Key legal aspects of ADR in Indonesia include the legal foundations in the Civil Code, Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution, and other related regulations. Mediation and arbitration have become preferred choices for business dispute resolution due to their time and cost efficiency, as well as their ability to preserve relationships between the parties involved. However, challenges in its implementation, such as the lack of public awareness, inconsistent application of legal provisions, and limited professional capacity of mediators or arbitrators, continue to hinder the optimal utilization of ADR mechanisms. Furthermore, the enforceability of ADR outcomes particularly arbitral awards often faces procedural barriers and resistance from parties unfamiliar with non-litigation solutions. Despite these obstacles, the development of ADR in Indonesia continues to show promise, supported by judicial encouragement and increasing inclusion in contractual clauses. In conclusion, strengthening the legal framework, enhancing professional standards, and promoting ADR literacy among stakeholders are crucial steps in advancing effective business dispute resolution outside the courtroom.

Keywords: Dispute Resolution, Alternative Dispute Resolution (ADR), Arbitration.

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1. Introduction

The legal aspect in the resolution of business disputes through Alternative Dispute Resolution (ADR) is highly significant, as it offers more efficient, flexible, and cost-effective solutions compared to litigation in court. ADR encompasses various methods such as mediation, arbitration, and negotiation, which are regulated by legal provisions aimed at ensuring justice for all parties involved. One of the crucial legal aspects in ADR is the legal foundation that supports the implementation of these methods. In Indonesia, the legal basis for alternative dispute resolution can be found in the Indonesian Civil Code (Kitab Undang-Undang Hukum Perdata), Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, as well as other relevant regulations. This law provides legitimacy for parties who wish to use arbitration or mediation as methods of dispute resolution.¹

The term "dispute" frequently appears in everyday life. It is derived from the English words *conflict* and *dispute*, both of which refer to a disagreement or clash. These two terms reflect a divergence of interests between two or more parties; however, they carry distinct meanings. In general, disputes can arise in various settings, particularly in interactions between individuals or groups. It is important to understand that conflict is not inherently a positive occurrence; rather, it represents a disruption. Conflicts often indicate the presence of error or disorder, which, if left unresolved, may lead to destructive consequences with far-reaching impacts. Business law refers to a set of legal rules governing the conduct of commercial, industrial, or financial activities related to the production or exchange of goods or services. These activities typically involve capital investment by entrepreneurs who assume certain risks with the aim of generating profit. The term "business law" is broader in scope and more applicable to contemporary contexts conceptually, practically, and in terms of real-world application than similar terms such as commercial law, trade law, or economic law.²

In the realm of business relationships, disputes are often unavoidable. Even when the contractual agreements governing such relationships are carefully drafted, in practice, the fulfillment of each party's rights and obligations may not proceed as anticipated. Disputes emerge when one or both parties commit a breach of contract, which may involve failing to fulfill obligations altogether, failing to fulfill them on time, delaying performance, or performing them incorrectly. Litigation, as a formal legal process, positions the disputing parties in adversarial roles. It is generally regarded as a last resort, pursued only when other alternative dispute resolution methods have failed.³

¹ Dion Amando Sihombing And Heru Suyanto, "*Mediasi Sebagai Salah Satu Alternatif Penyelesaian Sengketa Kontrak Showbiz Diluar Pengadilan,*" *Justitia: Jurnal Ilmu Hukum dan Humaniora* 8, no. 2 (2021): 1-10, <http://jurnal.um-tapsel.ac.id/index.php/Justitia>.

² Rengga Kusuma Putra Et Al., "*Efektivitas Penyelesaian Sengketa Secara Non Litigasi,*" *Jurnal Kolaboratif Sains* 7, No. 6 (June 21, 2024): 2200-2206, <https://doi.org/10.56338/Jks.V7i6.5548>.

³ Isdian Anggraeny et al., "*Pendampingan Hukum Pengusaha UMKM Dalam Penyelesaian Sengketa Kontrak Bisnis,*" *CARADDE: Jurnal Pengabdian Kepada Masyarakat* 3, no. 3 (May 5, 2021): 527-36, <https://doi.org/10.31960/caradde.v3i3.731>.

Mediation is a widely recognized form of Alternative Dispute Resolution (ADR) in the business sector. In this process, a neutral mediator facilitates communication between the disputing parties to help them reach a mutually acceptable resolution. The legal aspects of mediation include the voluntary agreement of the parties to participate and the mediator's non binding role, as they do not have the authority to impose a decision. If an agreement is reached, it is typically documented in a written settlement that may be legally enforceable if both parties agree to make it binding. Alongside mediation, arbitration is also a prominent option for resolving business disputes. Arbitration involves one or more arbitrators, chosen by the parties, who are granted the authority to resolve the dispute based on mutually agreed rules. The resulting arbitral award is final and binding, and it may be enforced through legal procedures established by the prevailing laws, including enforcement through the courts.⁴

Negotiation is another commonly used method for resolving disputes in the business world. In negotiation, the parties meet directly or through their representatives to reach an agreement without involving a third party. The legal aspect of negotiation lies in the freedom of the parties to determine the terms and conditions for resolving the dispute. Although negotiation does not always involve a formal process, the agreements reached can be legally enforced if they meet the legal requirements of a valid contract. Another important legal aspect of Alternative Dispute Resolution (ADR) is the trust in confidentiality and privacy. In many cases, parties involved in business disputes prefer to keep their matters confidential, and ADR provides better privacy guarantees compared to open court proceedings. For this reason, many business contracts include clauses that require disputes to be resolved through ADR, as it helps maintain harmonious business relationships and avoids the negative impacts of public litigation.⁵

Furthermore, the recognition and enforcement of decisions resulting from ADR are also critical legal aspects. In arbitration, for instance, the award issued by the arbitrator can be submitted to the court for enforcement. The court may grant an execution order for the arbitral award based on applicable laws, provided that the process complies with established legal requirements and procedures. In mediation, if the settlement agreement reached carries legal force, the court can also ratify the agreement. However, challenges exist in the implementation of ADR, particularly regarding oversight and regulation. While ADR offers flexibility, there is a risk of power imbalances between the parties involved, especially in business relationships characterized by hierarchical structures or economic disparities. The legal concern

⁴ Imelda Martinelli Et Al., "Tinjauan Yuridis Terhadap Efektivitas Lembaga Alternatif Penyelesaian Sengketa Arbitrase Dalam Penyelesaian Sengketa Perdagangan Dibandingkan Lembaga Pengadilan Niaga," *Jurnal Pendidikan Sejarah Dan Riset Sosial Humaniora* 4, No. 3 (October 31, 2024): 212-18, <https://ejournal.penerbitjurnal.com/index.php/humaniora/article/view/962>.

⁵ Nurul Mahmudah, "Menelusuri Penyelesaian Sengketa Di Luar Pengadilan," *Journal Of Islamic Family Law* 1, No. 1 (December 31, 2022): 34-45, <https://ejournal.laingorontalo.ac.id/index.php/jiflaw/article/view/358>.

here is to ensure that both parties hold a balanced position during the ADR process to prevent the abuse of power.⁶

In the context of business dispute resolution, Alternative Dispute Resolution (ADR) is considered to offer several advantages, such as time efficiency, cost savings, and greater control for the disputing parties. However, the effectiveness of ADR implementation heavily depends on the parties' understanding of the legal rules governing the process as well as oversight from relevant institutions. Therefore, the primary issue that needs to be examined is the extent to which the existing legal system can ensure the validity, fairness, and effectiveness of ADR mechanisms as instruments for resolving business disputes outside the court system.

2. Method

The descriptive-analytical method applied in this research aligns well with the examination of legal aspects in resolving business disputes through Alternative Dispute Resolution (ADR), particularly in a transnational context. By integrating normative and empirical approaches, the study is positioned to explore both the theoretical foundations and the practical implementation of ADR mechanisms such as mediation, arbitration, and negotiation. The normative dimension enables a thorough investigation of international legal instruments and national laws—such as Indonesia's Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution—as well as relevant provisions in civil codes and international conventions that legitimize and regulate the use of ADR in commercial disputes. On the other hand, the empirical approach allows the researcher to observe how these legal frameworks are operationalized across different jurisdictions. By analyzing real-world practices of ADR in various countries, the study highlights how legal norms are applied, identifies recurring challenges, and evaluates their overall effectiveness in cross-border business conflict resolution.

Data is gathered through literature reviews, legal texts, treaties, and case studies, complemented by expert interviews. This comprehensive data collection supports a qualitative analysis that compares international standards with actual enforcement and dispute resolution practices. Such analysis uncovers both the strengths and limitations of the global legal architecture supporting ADR. Ultimately, the research presented in the form of a scientific report—offers a well-rounded understanding of how international law contributes to the settlement of business disputes outside of court. It emphasizes the role of ADR as a practical, confidential, and cost-efficient

⁶ Hasyim Sofyan Lahilote And Moh Fitri Adam, "Eksistensi Basyarnas Dalam Penyelesaian Sengketa Perbankan Syariah Di Indonesia," *Al-'Aqdu: Journal Of Islamic Economics Law* 1, No. 2 (December 10, 2021): 96-103, <https://doi.org/10.30984/Ajiel.V1i2.1808>.

alternative to litigation, while also assessing whether the current legal mechanisms ensure fairness and enforceability across borders.

3. Analysis and Discussion

Business disputes frequently arise in commercial relationships between parties engaged in economic activities, often stemming from breaches of contract, differing interpretations of agreements, or unmet expectations in business dealings. Traditionally, such conflicts have been resolved through litigation in the courts, a process that tends to be time-consuming, costly, and adversarial in nature. This formal process not only imposes financial and administrative burdens but also risks deteriorating or permanently severing business relationships. In response to these challenges, alternative dispute resolution (ADR) mechanisms have gained prominence as a more practical and constructive means of resolving disputes. ADR offers significant advantages, including faster resolution times, reduced legal expenses, greater confidentiality, and the preservation of business partnerships. Within the framework of Indonesia's legal system, ADR is supported and regulated by statutory instruments, with mediation and arbitration being the two most prominent forms. Mediation involves the assistance of a neutral third party to facilitate mutual agreement, while arbitration entrusts dispute resolution to one or more arbitrators whose binding decisions can be enforced under the law. Both methods are formally recognized and governed by Indonesian legislation, particularly Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. As such, understanding the legal foundation, procedures, and enforceability of ADR mechanisms is essential for business actors seeking effective, amicable, and legally sound means of resolving commercial disputes.⁷

1. Mediation

Mediation represents a collaborative dispute resolution method in which conflicting parties attempt to reach a mutually agreeable settlement with the help of an impartial third party, referred to as the mediator. Unlike judges or arbitrators, mediators do not have the authority to render binding decisions; rather, their role is to facilitate constructive communication and help the parties identify common ground. This voluntary and non-adversarial approach distinguishes mediation from other legal proceedings such as litigation or arbitration.⁸

In the Indonesian legal system, the legitimacy and procedural guidance for mediation are enshrined in two key legal instruments. First is Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, which outlines the broader

⁷ I. Made Bangbang Agus Sindu, I. Nyoman Putu Budiarta, and I. Gusti Agung Ayu Gita Pritayanti Dinar, "Azas Proporsionalitas Dalam Kontrak Bisnis Franchise," *Jurnal Preferensi Hukum* 3, no. 3 (December 6, 2022): 599–607, <https://doi.org/10.22225/jph.3.3.5575.599-607>.

⁸ Irvan Zidny Arifin et al., "Mediation as an Alternative to Resolving Inherited Disputes of Congenital Children: Juridical and Economic Perspectives," *Jurnal Mediasas: Media Ilmu Syari'ah Dan Ahwal Al-Syakhsiyyah* 7, no. 1 (July 16, 2024): 136–50, <https://doi.org/10.58824/mediasas.v7i1.107>.

framework for out-of-court dispute resolution mechanisms, including mediation. This statute establishes the legal basis for parties to settle civil disputes through alternative means without resorting to formal court proceedings. Second is the Supreme Court Regulation (PERMA) No. 1 of 2016 on Court-Annexed Mediation, which governs the mediation process conducted within the judicial system. This regulation mandates that civil cases filed in court must first go through mediation before proceeding to trial, emphasizing the judiciary's preference for amicable settlement whenever feasible. One of the fundamental principles of mediation is that it is consensual in nature. The mediator facilitates dialogue and guides the process, but does not impose any resolution upon the parties. The outcome is entirely dependent on the willingness of both sides to reach a compromise. If an agreement is reached, it is usually formalized in a written document signed by both parties, and in some cases, this agreement may be submitted to the court for validation, giving it legal enforceability. If no agreement is achieved, the parties are free to pursue other legal remedies, including litigation.⁹

Mediation presents several distinct advantages when compared to traditional dispute resolution methods like litigation. One of the most significant benefits is cost efficiency. Court proceedings often involve substantial legal fees, administrative costs, and other expenses that can place a heavy financial burden on the parties involved. Mediation, on the other hand, tends to be far less expensive, primarily because it requires fewer procedural formalities and usually concludes more quickly.¹⁰

In addition to being more economical, mediation is also time-efficient. Litigation can take months or even years to reach a final verdict due to the complexity of legal procedures, the need for multiple hearings, and potential appeals. In contrast, mediation sessions can often be arranged and concluded within a much shorter period, enabling parties to resolve their disputes promptly and return to their normal affairs without prolonged disruption. Another notable advantage is that mediation allows for greater control and flexibility. Unlike in litigation, where a judge determines the outcome based on strict legal interpretations, mediation empowers the parties themselves to craft a solution that best suits their unique circumstances. This often leads to more creative and personalized agreements that go beyond the binary win-lose outcomes typical of court decisions. Mediation also fosters a less adversarial environment, which can be particularly important in disputes involving ongoing relationships, such as between business partners, family members, or colleagues. By

⁹ Baitur Rohman and Mochammad Agus Rachmatulloh, "Effectiveness Of Mediation In Preventing Divorce In The Land Of Papua," *Jurnal Ilmiah Ahwal Syakhshiyah (JAS)* 4, no. 2 (December 30, 2022): 229–48, <https://doi.org/10.33474/jas.v4i2.17607>.

¹⁰ Hafid Zakariya and Suparwi Suparwi, "Mediasi Komunal Sebagai Wujud Keadilan Komunal: (Transformasi Dari Hukum Sistemik Ke Hukum Non Sistemik)," *SULTAN ADAM: Jurnal Hukum Dan Sosial* 3, no. 1 (January 31, 2025): 90–96, <https://doi.org/10.71456/sultan.v3i1.1165>.

promoting dialogue and mutual respect, mediation helps preserve relationships that might otherwise be damaged by confrontational litigation processes. This conciliatory atmosphere often contributes to higher levels of satisfaction with the outcome and greater compliance with the terms of the agreement. Moreover, mediation offers confidentiality, which is often lacking in public court proceedings. The private nature of mediation ensures that sensitive information disclosed during the sessions remains protected and does not become part of the public record. This is especially valuable in commercial disputes, where protecting trade secrets or reputational concerns may be a priority.¹¹

Despite these benefits, mediation is not without its challenges. One potential limitation is that it relies heavily on the good faith and cooperation of both parties. If one side is unwilling to negotiate sincerely or is seeking to delay resolution, the process may fail. Furthermore, mediation is generally not suitable for disputes where legal precedent is required, or where one party seeks a public declaration of rights. Nonetheless, the role of mediation in the Indonesian legal landscape continues to expand, particularly with the judiciary's active promotion of this method through PERMA No. 1 of 2016. As legal systems worldwide evolve to address the growing demand for efficient, humane, and cost-effective dispute resolution, mediation stands out as a promising avenue that aligns legal integrity with social harmony.

2. Arbitration

Arbitration represents a formalized method of alternative dispute resolution wherein parties involved in a conflict agree to submit their dispute to one or more impartial arbitrators whose decision, known as an arbitral award, is final and legally binding. Unlike mediation, which relies on voluntary settlement and mutual consensus, arbitration produces a conclusive determination that is enforceable under national and, in many cases, international law. This characteristic aligns arbitration more closely with litigation in terms of legal authority, while maintaining the efficiency and privacy typical of out-of-court mechanisms.¹²

In Indonesia, arbitration is governed by Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution, a statute that provides a comprehensive legal framework for the conduct of arbitration proceedings. The law sets out the requirements for valid arbitration agreements, procedures for selecting arbitrators, the

¹¹ Yusuf Hamdan, Anne Ratnasari, and Aziz Taufik Hirzi, "Kemampuan Negosiasi Pengusaha dalam Meningkatkan Kesepakatan Bisnis," *MIMBAR: Jurnal Sosial dan Pembangunan* 31, no. 1 (June 8, 2015): 21–30, <https://doi.org/10.29313/mimbar.v31i1.854>.

¹² Tarisa Wulandari, "Resolusi Konflik Sengketa Lahan Hutan Tanaman Industri (Hti) Di Kampung Mandiangin Kecamatan Minas Kabupaten Siak," *Jurnal Administrasi Politik Dan Sosial* 3, no. 2 (August 1, 2022): 19–29, <https://doi.org/10.46730/japs.v3i2.77>.

conduct of hearings, and the enforcement of arbitral awards. It also distinguishes clearly between domestic and international arbitration, thus allowing for foreign parties to engage in legally recognized arbitration within Indonesian jurisdiction or for Indonesian parties to participate in international arbitration proceedings.¹³

A fundamental aspect of arbitration is the principle of party autonomy. This principle allows disputing parties to design many elements of the arbitration process themselves, including the number of arbitrators, their qualifications, the rules of procedure, the applicable substantive law, and even the location of the arbitration. Such flexibility is rarely available in litigation, where procedures are rigidly set by procedural codes and judicial systems. Party autonomy not only enhances efficiency but also instills a greater sense of ownership and satisfaction in the dispute resolution process.¹⁴

Another key advantage of arbitration is its confidential nature. Unlike court trials, which are typically open to the public and subject to media scrutiny, arbitration proceedings are private. This confidentiality can be crucial in commercial disputes, particularly those involving trade secrets, intellectual property, or sensitive financial information. For businesses seeking to protect their reputation and avoid the reputational risks associated with public litigation, arbitration offers a safer and more discreet avenue for dispute resolution.¹⁵

In terms of speed and efficiency, arbitration generally outpaces traditional court processes. Courts are often burdened with heavy caseloads and lengthy procedural formalities, which can cause delays. Arbitration, by contrast, allows for tailored schedules and streamlined procedures, potentially leading to faster resolutions. Moreover, the absence of multiple layers of appeal since arbitral decisions are typically final further shortens the overall timeline of dispute resolution.¹⁶

Despite these strengths, arbitration is not without its drawbacks. One significant concern is the cost. Although arbitration is often faster, it can be more expensive than other forms of alternative dispute resolution, such as mediation. This is primarily due

¹³ Memmy Fatiyanti Deri Ramdhany, "Implementasi Undang-Undang Nomor 30 Tahun 1999 Tentang Arbitrase Dan ADR," *Indonesia Berdaya* 4, no. 4 (June 1, 2023): 1263–70, <https://doi.org/10.47679/ib.2023549>.

¹⁴ Aditya Gandotra, "Judicial Intervention in Granting Interim Measures in International Arbitration," *Conflict Resolution Quarterly* 38, no. 4 (June 2021): 349–69, <https://doi.org/10.1002/crq.21301>.

¹⁵ Nabila Zulfa and Dita Oktaviani, "Peran Negosiasi Terhadap Konflik," *Jurnal Tips Jurnal Riset, Pendidikan Dan Ilmu Sosial* 1, no. 2 (December 25, 2023): 127–31, <https://jurnaltarbiyah.uinsu.ac.id/index.php/jurnaltips/article/view/3269>.

¹⁶ Rizkisyabana Yulistiyaputri and Ratih Lestarini, "Consumer Empowerment: Safeguarding Consumer Rights Through BPSK's Arbitration Post the Constitutional Court Decision: Pemberdayaan Konsumen: Melindungi Hak Konsumen Melalui Proses Arbitrase Di BPSK Pasca Putusan Mahkamah Konstitusi," *Jurnal Konstitusi* 20, no. 3 (September 1, 2023): 406–22, <https://doi.org/10.31078/jk2033>.

to the administrative fees charged by arbitration institutions, compensation for arbitrators, and costs associated with legal representation, especially in complex commercial disputes. For small businesses or individual parties with limited financial resources, these expenses may present a considerable barrier. Additionally, while the finality of arbitral awards is often seen as an advantage, it may also pose legal challenges. The limited scope for appeal or review means that errors in the arbitral decision—whether factual or legal—are generally not subject to correction. This can be problematic if the arbitrator misapplies the law or overlooks critical evidence. Moreover, concerns about impartiality and potential bias may arise, particularly in cases where arbitrators are selected from a small pool of experts with close ties to specific industries or institutions.¹⁷

The enforceability of arbitral awards is another crucial aspect regulated by the 1999 Law. In Indonesia, a domestic arbitral award can be enforced through the District Court upon registration, provided that the award does not conflict with public order. International arbitral awards, on the other hand, must meet the criteria established under the New York Convention of 1958, to which Indonesia is a signatory. This framework enhances the global credibility of arbitration and provides parties with legal assurance that awards will be recognized and enforced across jurisdictions.

3. Negotiation

Negotiation is widely recognized as one of the most fundamental and frequently utilized methods of resolving disputes, characterized by direct communication and dialogue between the disputing parties. It is a non-adjudicative, informal process where both parties attempt to reach a mutually acceptable resolution without involving any third party such as a mediator or arbitrator. The core principle of negotiation lies in self-determination: each party retains complete control over both the process and the outcome, making it one of the most flexible and autonomous forms of dispute settlement.¹⁸

In the context of legal dispute resolution, negotiation often serves as the preliminary or default mechanism before more structured alternatives like mediation, arbitration, or litigation are considered. Particularly in commercial, contractual, or interpersonal disputes, negotiation allows parties to clarify their interests, address

¹⁷ Esther Emmanuella Wijaya, “Penerapan Konsep Public Policy Sebagai Alasan Penolakan Pengakuan Dan Eksekusi Putusan Arbitrase Internasional Di Indonesia Dan Singapura [Implementation of the Concept of Public Policy as Ground to Refuse Recognition and Execution of International Arbitration Awards in Indonesia and Singapore],” *Jurnal Hukum Visio Justisia* 1, no. 1 (July 31, 2021): 51, <https://doi.org/10.19166/vj.v1i1.3778>.

¹⁸ Universitas Muhammadiyah Ponorogo et al., “Pendidikan Kewarganegaraan Global Sebagai Resolusi Konflik Sosial,” *Jurnal Pancasila Dan Kewarganegaraan* 6, no. 2 (July 25, 2021): 43–54, <https://doi.org/10.24269/jpk.v6.n2.2021.pp43-54>.

misunderstandings, and explore potential compromises in a non-confrontational manner. It provides an opportunity to resolve issues efficiently and privately, often preserving relationships that might otherwise be strained or destroyed by adversarial legal proceedings.¹⁹

Although negotiation lacks formal procedural requirements, it is not devoid of legal significance. Any agreement produced through negotiation can acquire binding legal force if certain conditions are met. Most importantly, the outcome must be formalized in a written contract that adheres to the legal standards of enforceability under the applicable law. In Indonesia, for instance, such contracts must satisfy the requirements set forth in Article 1320 of the Indonesian Civil Code, which includes mutual consent, legal capacity of the parties, a clear object, and a lawful cause. One of the most notable advantages of negotiation is its cost-effectiveness. Since the process does not require legal representation, third-party facilitators, or court filings, it is far less expensive than mediation, arbitration, or litigation. This makes negotiation particularly attractive for parties seeking a swift and low-cost resolution, especially in cases involving limited stakes or straightforward factual disputes. Moreover, negotiation is typically less time-consuming, as parties can arrange meetings and reach consensus without being subject to institutional delays or procedural timelines imposed by formal dispute resolution bodies.²⁰

In addition to cost and efficiency, confidentiality is another significant advantage of negotiation. Since discussions occur in private settings and are controlled solely by the parties involved, sensitive information and business interests can be protected from public exposure. This is particularly important in commercial disputes where reputational concerns or proprietary data may be at stake. The ability to control the flow of information and avoid formal disclosure obligations is often a key motivation for choosing negotiation over litigation.

Furthermore, negotiation offers maximum procedural flexibility, allowing parties to shape the process according to their preferences and needs. Unlike court or arbitral procedures, which are governed by codified rules and institutional protocols, negotiation can proceed informally, at the time and place of the parties' choosing, and with discussion topics and negotiation styles tailored to the nature of the dispute. This

¹⁹ Bambang Sugeng Rukmono et al., "The Urgency of the Principle of Public Policy as a Basis for Refusing the Execution of Commercial Arbitration Awards Submitted for Execution in Indonesia," *Migration Letters* 20, no. 6 (September 2, 2023): 525–36, <https://doi.org/10.59670/ml.v20i6.3502>.

²⁰ Murad Idris Omar Nayed, "Standards of Distinctions between National and Foreign Arbitral Awards: A Discussion in The Light of Libyan Current Legislation," *South Asian Journal of Social Sciences and Humanities* 4, no. 3 (June 1, 2023): 69–76, <https://doi.org/10.48165/sajssh.2023.4306>.

adaptability often contributes to greater satisfaction with the outcome and promotes a spirit of collaboration, rather than contention.

Despite its many strengths, negotiation also presents certain challenges and limitations, particularly in terms of power dynamics and enforceability. Because the process is unregulated and voluntary, an imbalance in bargaining power may lead to unfair outcomes, especially when one party dominates the discussion or applies coercive tactics. In such scenarios, the absence of a neutral facilitator, such as in mediation, can make it difficult to ensure fairness and equity in the process. Additionally, if negotiations fail, there is no enforceable resolution, and the parties must turn to more formal mechanisms to settle the dispute, often at increased cost and with greater emotional and financial investment.²¹

From a legal standpoint, it is important to note that the content of negotiated agreements can be subject to judicial review, particularly when issues of legality, public policy, or capacity are in question. Courts may refuse to enforce an agreement if it violates statutory provisions or public order, even if it was reached voluntarily through negotiation. Therefore, while the process itself is informal, the legal consequences of a negotiated agreement are formal and significant, requiring that parties act in good faith and ensure that the terms of their settlement comply with legal norms.²²

In Indonesia, negotiation plays a critical role not only in private dispute resolution but also in public and commercial sectors. Many business contracts include negotiation clauses requiring parties to attempt resolution through direct dialogue before resorting to litigation or arbitration. This reflects a broader trend toward alternative dispute resolution frameworks, which prioritize efficiency, autonomy, and decongestion of the court system.²³

3.1 Advantages of Resolving Business Disputes Through Out of Court Alternatives

Business Dispute Resolution Outside the Court Offers Several Advantages That Make It an Attractive Option for Business Actors, Including:

²¹ Wandu Adiansah, Nurliana Cipta Apsari, and Santoso Tri Raharjo, "Resolusi Konflik Agraria Di Desa Genteng Kecamatan Sukasari Kabupaten Sumedang," *Jurnal Kolaborasi Resolusi Konflik* 1, no. 1 (February 13, 2019): 1, <https://doi.org/10.24198/jkrk.v1i1.20887>.

²² Almadina Rakhmaniar, "Analisis Kuantitatif Tentang Pengaruh Komunikasi Verbal Dan Nonverbal Dalam Proses Negosiasi Bisnis," *SOSIAL: Jurnal Ilmiah Pendidikan IPS* 2, no. 1 (July 1, 2024): 1-10, <https://doi.org/10.62383/sosial.v2i1.251>.

²³ Hairul Hasandi, Haerani Haerani, and Khairul Aswadi, "Efektifitas Mediasi Sebagai Alternatif Penyelesaian Sengketa Di Luar Pengadilan (Studi Di BPSK Kota Mataram)," *UNIZAR RECHT JOURNAL (URJ)* 1, no. 2 (July 29, 2022), <http://e-journal.unizar.ac.id/index.php/urj/article/view/660>.

1. **Time and Cost Efficiency:** Dispute resolution through out-of-court alternatives such as mediation and arbitration is significantly faster and more cost-effective than litigation. Arbitration and mediation processes can be completed within a few months, while court proceedings may take several years.
2. **Confidentiality:** Alternative dispute resolution processes are generally more private and closed, meaning that information disclosed during the proceedings is not made public. This is especially important for companies that wish to protect their reputation and sensitive business information.
3. **Flexibility:** In alternative dispute resolution methods such as mediation and negotiation, the parties have the freedom to determine solutions that best meet their needs. These solutions can be more creative and are not limited to what a court may impose.
4. **Reducing the Negative Impact on Business Relationships:** One of the main goals of out-of-court dispute resolution is to maintain good relations between the involved parties. Collaborative processes are more likely to result in mutually satisfactory agreements.²⁴

3.2 Challenges in Resolving Business Disputes Through Out-of-Court Mechanisms

Although alternative dispute resolution (ADR) offers many advantages, several challenges must be addressed, including:

1. **Lack of Compliance with Agreements:** In mediation and negotiation, decisions are only binding if both parties agree. Problems may arise if one party fails to honor the agreement reached.
2. **Limited Legal Authority:** Although arbitration outcomes are binding, not all disputes can be resolved through arbitration, especially when there is no arbitration clause in the business contract between the parties.
3. **Restricted Use of ADR:** Certain types of disputes, such as those involving public interest or human rights, may not be suitable for resolution through out-of-court mechanisms.²⁵

Business dispute resolution through ADR methods such as mediation and arbitration offers various advantages not found in litigation, including time and cost efficiency, confidentiality, flexibility, and the preservation of good relationships between parties. However, its implementation also faces challenges, such as issues of compliance and the limited legal enforceability of some agreements. Therefore, business actors must carefully consider the most appropriate dispute resolution mechanism for their situation, taking into account the applicable legal framework.

²⁴ Muhammad Yasril Ananta Baharuddin, "Peran Hukum Arbitrase Dalam Penyelesaian Sengketa Bisnis Nasional: Hukum Arbitrase," *Jurnal Risalah Kenotariatan* 5, no. 2 (August 27, 2024): 310-20, <https://doi.org/10.29303/risalahkenotariatan.v5i2.209>.

²⁵ Agnes Grace Aritonang, "Peran Alternatif Penyelesaian Sengketa Di Luar Pengadilan Dalam Perlindungan Dan Pengelolaan Lingkungan Hidup," *CREPIDO* 3, no. 1 (July 31, 2021): 1-12, <https://ejournal2.undip.ac.id/index.php/crepido/article/view/11772>.

4. Conclusion

This research makes a significant contribution to the development of international legal theory, particularly in the context of addressing transnational crime. The findings demonstrate that international law not only serves as a normative guideline but also plays a strategic role in strengthening cooperation among nations in facing increasingly complex global challenges. As such, international law is positioned as an effective instrument to promote global collaboration and to establish a legal order that is more responsive to cross-border criminal activities. On a practical level, the findings of this study can serve as a foundation for countries to enhance collaborative efforts by reinforcing international law enforcement mechanisms, thereby enabling more effective prevention and prosecution of transnational crimes that often exploit jurisdictional gaps between states.

Based on these theoretical and practical implications, several recommendations are proposed for the international community. First, countries should increase their active participation in ratifying and implementing relevant international conventions to strengthen the global legal network in combating transnational crime. Second, international law enforcement agencies must enhance cross-border cooperation and bolster the institutional capacity of organizations such as Interpol and the UNODC to more effectively address cross-national criminal activities. Third, countries are encouraged to formulate and enforce domestic policies that support the eradication of transnational crime, while aligning with internationally agreed-upon standards, in order to create a national legal system that harmonizes with the international legal framework.

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