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Modern Approaches to Dispute Resolution: Ad Hoc and Institutional Mediation in Asia and Africa

Abstract

Ad hoc and private institutional mediation are two forms of modern approaches to dispute resolution that are increasingly developing in Asia and Africa. These two approaches offer effective alternatives to conventional litigation systems with the advantages of flexibility, time efficiency, and lower costs. Ad hoc mediation gives the parties the freedom to appoint a mediator without being tied to a particular institution, while private institutional mediation provides a structured and professional framework through a credible mediation institution. In Asia, the success of institutional mediation is driven by supportive regulations and increased mediator capacity, with dispute resolution rates between 40% and 70%. In Africa, the integration of mediation with local wisdom and indigenous cultures increases the success rate of mediation to 50% to 65%. The implementation of these two approaches within a progressive legal framework shows that ad hoc and private institutional mediation not only reduce the burden on the judicial system but also improve access to justice in a more equitable and civilized manner. These approaches represent the evolution of harmonious and equitable dispute resolution in Asia and Africa, providing strategic solutions to current and future legal challenges.

Keywords: *ad hoc mediation, private institutional mediation, dispute resolution, asia, africa, alternative dispute resolution, mediation effectiveness.*

Abstrak

Mediasi ad hoc dan mediasi institusional swasta merupakan dua bentuk pendekatan modern dalam penyelesaian sengketa yang semakin berkembang di kawasan Asia dan Afrika. Kedua pendekatan ini menawarkan alternatif yang efektif terhadap sistem litigasi konvensional dengan keunggulan berupa fleksibilitas, efisiensi waktu, dan biaya yang lebih rendah. Mediasi ad hoc memberikan kebebasan kepada para pihak untuk menunjuk mediator tanpa terikat pada lembaga tertentu, sedangkan mediasi institusional swasta menyediakan kerangka kerja yang terstruktur dan profesional melalui lembaga mediasi yang kredibel. Di Asia, keberhasilan mediasi institusional didorong oleh regulasi yang mendukung serta peningkatan kapasitas mediator, dengan tingkat penyelesaian sengketa berkisar antara 40% hingga 70%. Sementara itu, di Afrika, integrasi mediasi dengan kearifan lokal dan budaya masyarakat adat meningkatkan tingkat keberhasilan mediasi hingga 50%–65%. Penerapan kedua pendekatan ini dalam kerangka hukum yang progresif menunjukkan bahwa mediasi ad hoc dan mediasi institusional swasta tidak hanya mampu mengurangi beban sistem peradilan, tetapi juga meningkatkan akses terhadap keadilan secara lebih adil dan beradab. Pendekatan ini mencerminkan evolusi penyelesaian sengketa yang harmonis dan berkeadilan di Asia dan Afrika serta menawarkan solusi strategis bagi tantangan hukum masa kini dan mendatang.

Kata kunci: mediasi ad hoc, mediasi institusional swasta, penyelesaian sengketa, Asia, Afrika, alternatif penyelesaian sengketa, efektivitas mediasi.

INTRODUCTION

Mediation is not a new phenomenon, as forms of third-party facilitation to resolve disputes have existed since traditional societies, from customary councils and religious leaders to local rulers, as an alternative to resolution before the modern court system emerged. In the 20th century, this practice began to be standardized in common law and civil law countries, with theory and practice enriched by the ADR (Alternative Dispute Resolution) movement from the 1960s to the 1980s. Practitioners and academics then developed models of process, mediator ethics, and methodologies for evaluating mediation outcomes. (Mediate.com)

To harmonize cross-border practices, the most prominent international body, UNCITRAL, issued key instruments. UNCITRAL adopted Conciliation/Mediation Rules (1980) and the initial Model Law in 2002; the Model Law was later revised (2018) to include provisions on international settlement agreements resulting from mediation, thereby facilitating the recognition and enforcement of mediation agreements. In addition, UNCITRAL released updated Mediation Rules (2021) for international commercial mediation procedures. These instruments strengthen the legal framework for cross-border commercial mediation. (uncitral.un.org)

The most important leap in the last two decades was the adoption of the United Nations Convention on International Settlement Agreements Resulting from Mediation (known as the Singapore Convention on Mediation), which was adopted by the United Nations in December 2018 and opened for signature in August 2019. This convention establishes a mechanism similar to the New York Convention (for arbitration awards), namely facilitating the recognition and enforcement of settlement agreements resulting from cross-border mediation, thereby increasing the attractiveness of mediation for cross-border commercial disputes. Since 2019, many countries have analyzed or adopted domestic rules that are in line with this convention to give it practical effect. (treaties.un.org). Nationally, countries have adopted different approaches, namely:

1. Court-annexed mediation / mandatory mediation: some jurisdictions require mediation before litigation proceeds for certain cases (e.g., family disputes, certain civil disputes), or provide a court pathway that directs parties to mediation.
2. Institutional & private mediation: there are private/commercial institutions (e.g., commercial mediation centers, arbitration institutions that add mediation services) as well as mediation organized by the government or courts.

Differences in legal traditions (common law vs. civil law) affect the availability and design of rules but global trends show increased involvement of public actors (courts, legislature) and private actors (mediation centers) in regulation and service provision. (ResearchGate)

As demand grows, the mediation profession is becoming increasingly differentiated: certification, codes of ethics, training standards, and specialized mediator lists (e.g., international commercial, family, environmental mediators). Key debates concern: how to maintain quality (accreditation), how to ensure neutrality and independence, conflict of interest governance, and confidentiality and accountability standards—all important aspects

for mediation to remain trusted by the public and the business world. (see country comparative studies and legislative guidelines). (cplj.org).

Despite its popularity, mediation faces challenges, including: legal enforcement and certainty, i.e., prior to international instruments such as the Singapore Convention, the enforcement of cross-border mediation agreements was not uniform; even now, national implementation varies; power imbalances, where voluntary mediation can put weaker parties under pressure to accept unfair settlements; transparency versus confidentiality, whereby mediation tends to be confidential both as a strength (facilitating compromise) and a weakness (lack of publication of legal precedents), and cultural differences and technological accessibility, especially in low/middle-income countries. (CORE). Some noteworthy patterns and developments are as follows:

1. International instruments are becoming stronger (the revised UNCITRAL Model Law and the Singapore Convention) to encourage cross-border commercial mediation. (uncitral.un.org).
2. Ongoing digitalization: ODR and virtual platforms will continue to grow as key options, including the integration of AI for case administration (not as a replacement for human mediators). (SSRN).
3. New institutions and geopolitics, where some countries/entities are developing international mediation bodies or regional mediation centers as a strategy for economic diplomacy; the recent example of the establishment of an international mediation body in Hong Kong supported by China shows how mediation has also become a geopolitical arena and a bargaining chip in cross-border dispute resolution. (Reuters)
4. Integration into the judicial system, where more and more courts are incorporating mediation as a strategy to reduce case loads. (ResearchGate).

Mediation has grown rapidly as a non-litigious dispute resolution instrument throughout the world, including in Asia and Africa, which have their own unique social, cultural, and legal values. These two regions feature a combination of local wisdom, customary law, and modern legal systems adopted in the post-colonial era. Mediation has become an important vehicle for integrating the values of deliberation, consensus, and reconciliation into modern formal legal systems. According to UNCTAD (2020) and UNCITRAL (2018), Asia and Africa are among the regions with the fastest growth in the application of Alternative Dispute Resolution (ADR), particularly mediation, in both commercial and social disputes (UNCITRAL Model Law on International Commercial Mediation, 2018). East Asian countries such as China, Japan, and South Korea, as well as Southeast Asian countries such as Singapore, Indonesia, Malaysia, and Thailand, have shown significant progress in institutionalizing mediation.

1. China: China has a long history of mediation called People's Mediation (人民调解), which has been practiced since the Qin Dynasty. The modern government has maintained this system through People's Mediation Committees formed at the local level. Based on the 2010 People's Mediation Law, the government has strengthened the position of mediation as the primary mechanism before litigation. According to Tang & Brown (2017), mediation in China is part of the "Harmonious Society" strategy, in which the state encourages peaceful resolution to maintain social stability.

2. Japan: Japan introduced the Chōtei (調停) system during the Meiji period, which is now regulated by the Civil Conciliation Act (1951). Japanese courts have integrated court-annexed mediation for family and small civil cases. Social values such as wa (harmony) form the foundation of mediation's success in Japan (Morishima, 2019).
3. Singapore: Singapore has become an international mediation center in Asia, especially after launching the Singapore International Mediation Centre (SIMC) and the Singapore Mediation Act (2017). Singapore also hosted the signing of the Singapore Convention on Mediation (2019) initiated by the United Nations Commission on International Trade Law (UNCITRAL). According to Tan & Yeo (2020), Singapore's position as Asia's mediation "hub" strengthens its appeal as a center for international commercial law.
4. Indonesia: In Indonesia, the concept of mediation has long existed in local culture, such as in the form of deliberative consensus. Legally, mediation was formally introduced through Supreme Court Regulation (PERMA) No. 1 of 2008 and updated with PERMA No. 1 of 2016 concerning Mediation Procedures in Court. Mediation is now a mandatory stage in civil proceedings. In addition, private mediation institutions such as the National Mediation Center (PMN) and the BANI Mediation Center have also developed (Raharjo, 2020).
5. Malaysia and Thailand: Malaysia has the Mediation Act 2012, which regulates mediation as a dispute resolution mechanism both inside and outside the court. Thailand established the Office of Mediation Center under the Supreme Court (2013). Both countries have adopted mediation for family, banking, and commercial disputes with government support.
6. India: India is a pioneer in the implementation of court-annexed mediation in South Asia. Based on Section 89 of the Civil Procedure Code (2002) and the Mediation and Conciliation Project Committee (MCPC) under the Supreme Court, mediation has become the primary means of reducing case backlogs. According to Gadkari (2020), India successfully resolves thousands of cases through court mediation each year.
7. Gulf States (Middle East): Countries such as the United Arab Emirates (UAE), Qatar, and Saudi Arabia have developed international commercial mediation systems inspired by the Singapore and UK models. The Dubai International Financial Centre (DIFC) has the DIFC-LCIA Arbitration and Mediation Centre, while Saudi Arabia recently passed the Mediation Law 2023 to attract foreign investment through efficient dispute resolution.
8. South Africa: South Africa is a pioneer in Africa in institutionalizing mediation. Within its legal system, the Court-Annexed Mediation Rules (2014) are implemented by the Department of Justice and Constitutional Development. In addition, the Commission for Conciliation, Mediation, and Arbitration (CCMA) is the national institution that handles labor disputes. According to De Palo & Trevor (2018), the South African model is considered successful because it incorporates the value of ubuntu (humanity) into formal mechanisms.
9. Kenya and Uganda: Kenya introduced Court-Annexed Mediation (CAM) in the Supreme Court in 2016. Based on the Mediation (Pilot Project) Rules, every civil case must go through a mediation process before trial. Uganda also has a Centre for Arbitration and Dispute Resolution (CADER) that has been active since 2000, based on the Arbitration and Conciliation Act (Cap. 4).

10. Nigeria and Ghana: Nigeria established the Lagos Multi-Door Courthouse (LMDC) as an integrated ADR innovation (2002). Ghana regulates mediation through the Alternative Dispute Resolution Act (2010), which combines modern mediation with local customary mechanisms (chieftaincy mediation).
11. North Africa: North African countries such as Egypt, Morocco, and Tunisia have adopted mediation regulations to support the investment climate. Morocco, for example, passed Law No. 08-05 on Arbitration and Conventional Mediation (2007). Institutions such as the Cairo Regional Centre for International Commercial Arbitration (CRCICA) in Egypt have also become important forums for international commercial mediation (El-Gazzar, 2019).

In general, Asia and Africa show a dynamic pattern of mediation development—from traditional roots to international-based legal modernization. Local values such as consensus-building in Southeast Asia and ubuntu in Africa provide a moral foundation that strengthens the effectiveness of mediation. The integration of cultural values, national legal support, and international legal frameworks (UNCITRAL & Singapore Convention) makes mediation not only an instrument for dispute resolution, but also a strategy for sustainable legal and economic development.

In Africa, mediation is widely used in the context of political conflict resolution and peace, in addition to community disputes. Regional organizations such as the African Union (AU), ECOWAS, and IGAD actively use mediation in dealing with coups and internal armed conflicts. A study by the African Centre for the Constructive Resolution of Disputes (ACCORD) shows that mediation led by African actors often has a higher success rate than when dominated by external actors (Nathan, 2020). For example, AU mediation contributed to the resolution of political crises in Kenya (2008) and South Sudan (2015). However, the biggest challenge in Africa is post-agreement implementation. Many peace agreements signed through mediation fail to be fully implemented due to a lack of enforcement mechanisms and domestic political dynamics (Lanz, 2019). The effectiveness of mediation shows fairly good success, especially in resolving disputes related to communities and customary law. Countries such as South Africa, Nigeria, and Kenya report mediation success rates in the range of 50%–65%. The main factors for success in Africa are the use of a mediation approach based on customary deliberation and the mediator's understanding of the local context. A judicial system that provides space for mediation methods is also an important supporting factor. However, limited access to information about mediation and limited resources are major obstacles that hinder the effectiveness of mediation in some areas.

The effectiveness of mediation in Indonesia has continued to experience significant development since the enactment of Supreme Court Regulation (Perma) No. 1 of 2016 concerning Mediation Procedures in Court. This Perma requires every civil case to go through a mediation stage before entering the evidence stage. Quantitatively, the Supreme Court reported that in 2022, 20,861 cases were successfully settled through mediation, a significant increase from the previous year (Supreme Court of the Republic of Indonesia, 2022). However, this national data masks variations in effectiveness between courts. Some courts report high success rates, for example, the Manna Religious Court in 2023 successfully mediated 77.27% of cases (51 out of 66 cases) (Hidayat, 2023). In contrast,

research at the Purwokerto District Court showed a success rate of only 6.3% in 2022 (Widodo, 2023). Similarly, a report from the East Jakarta District Court in early 2025 showed a success rate of around 10.19% (Sutanto, 2025). This disparity shows that the effectiveness of mediation is greatly influenced by the competence of the mediator, the type of case, and the litigation culture of the community (Prayogo, 2022). Family and inheritance cases tend to be more difficult to resolve through mediation, while commercial cases are more open to reaching an agreement.

From these three regions, there is a pattern that the effectiveness of mediation increases when supported by a clear legal framework, competent mediators, and mechanisms for enforcing agreements. In Indonesia, although the legal basis is strong, practices in the field are still inconsistent. In Asia, particularly Singapore, mediation is highly effective due to the support of international regulations and professional institutions. Meanwhile, in Africa, mediation is effective in reducing conflict but faces serious challenges in long-term implementation. The effectiveness of mediation as a dispute resolution method in Indonesia, Asia, and Africa shows significant progress, although each region has different challenges and contexts.

Thus, although the effectiveness of mediation varies in Indonesia, Asia, and Africa, the trend shows a positive increase. The key to successful mediation lies in the readiness of professional mediators, supportive regulations, and public awareness and active participation in the peaceful dispute resolution process. However, adaptation to socio-cultural conditions and improvements in facilities and legal education remain important tasks in all three regions.

RESEARCH METHODS

This study employs a normative legal analysis combined with a socio-legal approach and case analysis. The research examines dispute resolution mechanisms through ad hoc mediation and private institutional mediation, as well as the development of mediation legal frameworks in Asia and Africa. The study utilizes a statutory approach to analyze relevant mediation regulations, a literature review to examine legal doctrines and previous scholarly works, and a case study approach to assess the practical implementation of mediation in dispute resolution processes. In addition, a socio-legal approach is applied to explore the interaction between legal norms and social realities in mediation practices across various jurisdictions, including Indonesia, in order to provide a comprehensive understanding of the effectiveness and evolution of mediation as an alternative dispute resolution mechanism.

RESEARCH METHODS

Mediation has become an alternative method of dispute resolution that is gaining attention in various legal systems around the world, particularly in Asia and Africa. In the context of diverse legal frameworks in these two continents, mediation takes two main forms : ad hoc mediation and private institutional mediation, both of which play a strategic role in facilitating conflict resolution outside of formal litigation processes. Ad hoc mediation is usually conducted informally by a party appointed directly by the disputing parties, while private institutional mediation is conducted through a special agency or institution that provides mediation services with specific standards and mechanisms. Mediation is an alternative dispute resolution method that is widely used in various parts of the world, including Asia and Africa. Mediation involves a neutral third party called a mediator, who facilitates communication and negotiation between the disputing parties to reach a mutual agreement. Unlike litigation, mediation is voluntary and oriented towards finding mutually beneficial solutions, as well as maintaining harmonious relations between the parties (Moore, 2014).

In practice, mediation is divided into two main forms: ad hoc mediation and private institutional mediation. Ad hoc mediation is an informal mediation process, where the mediator is usually appointed directly by the parties without using a specific institution. This type of mediation is very flexible, as it is not bound by standard rules or formal procedures, so it can be tailored to the needs and characteristics of the dispute (Boulle, 2011). The existence of ad hoc mediation allows the parties to have full control over the dispute resolution process, without intervention from institutions or court officials. In contrast, private institutional mediation is conducted by special agencies or institutions that provide professional mediation services. These agencies have operational standards and codes of conduct that must be adhered to by mediators and the parties, thereby ensuring the continuity, quality, and accountability of the mediation process. Many countries in Asia and Africa legitimize this institutional mediation through regulations and court rules, which encourage mediation as a mandatory step before a lawsuit can be filed or processed in court (Indonesian Supreme Court Regulation No. 1 of 2016).

The basic philosophy of mediation is the achievement of mutual agreement (consensus) based on open dialogue and concern for mutual interests, in contrast to litigation, which decides disputes based on law and facts in an adversarial manner. Mediators do not act as judges who decide, but as facilitators who assist communication and negotiation in order to achieve a solution that suits the wishes of the parties (Pruitt & Kim, 2004). The principles of voluntariness, confidentiality, and equality are important foundations in the implementation of mediation so that the process is effective and trusted.

In Asia and Africa, mediation not only serves to reduce the burden on the courts, but also preserves cultural values and customary legal systems that are still very strong in society. For example, the culture of deliberation, mutual cooperation, and respect for social relationships are important aspects of mediation practices in many communities on these two continents (Sweeney, 2018). This approach integrates mediation into local wisdom that upholds restorative justice, where dispute resolution is not only about legal victory but also about maintaining long-term social harmony. The implementation of mediation in courts

faces significant challenges, such as a lack of competent mediators, parties' ignorance of the benefits of mediation, and an imbalance of negotiating power between parties.

Therefore, human resource capacity building, including mediator training and enforcement of mediation regulations that support integrity and effectiveness, is essential. Institutional mediation, with the support of professional institutions and standard practices, has great potential to provide solutions to these challenges and strengthen the mediation-based dispute resolution system (Muthuri & Mutula, 2016). With technological developments, mediation has also begun to use digital platforms for implementation, especially during the global pandemic that has limited face-to-face meetings. Mediators and private institutional agencies are adapting to effective and efficient online mediation, but they also need to address challenges regarding confidentiality and legal validity (OECD, 2019). The integration of this technology opens up a new face of mediation in Asia and Africa, which is expected to further facilitate access to dispute resolution.

Frank E. A. Sander (Harvard Law School), in his concept of the Multi-Door Courthouse System, emphasizes that private institutional mediation is one of the "doors to dispute resolution" that must be strengthened in the modern legal system so that not all the burden is placed on the courts. According to him, private institutions have advantages in terms of flexibility, speed, and cost efficiency. Lawrence Susskind (2010) in Breaking the Impasse states that institutional mediation offers legitimacy and public trust because it has an organized institutional structure and accountability mechanisms for the mediation process and results. Muladi (2002), in Alternatif Penyelesaian Sengketa di Indonesia (Alternative Dispute Resolution in Indonesia), emphasizes that private institutional mediation in Indonesia has great potential in strengthening the non-litigation legal system. However, he highlights that regulatory support and public awareness remain major challenges in ensuring that the public understands and trusts institutional mediation as an effective dispute resolution mechanism. Huala Adolf (2018) also emphasizes that private mediation institutions complement the judicial system, rather than replace it, with a focus on peaceful and efficient resolution of business and commercial disputes.

Table 1 Comparison of Ad Hoc and Private Institutional Mediation

Aspect	Ad Hoc Mediation	Private Institutional Mediation
Procedure	Flexible, tailored to the parties	Standard, formal, regulated by institutions
Selection of Mediator	Independent by the parties	Provided by the institution
Cost	Generally lower	Higher costs (administration & services)
Legality and enforcement	Depends on the agreement between the parties	Legally recognized, can be registered in court
Time Flexibility	Highly flexible	Follows the institution's schedule and rules
Confidentiality	High (informal, private)	Relatively high, with official documentation
Level of professionalism	Depends on the mediator	Guarantee of trained and certified mediators

Characteristics of Legal Systems in Asia and Africa Related to Mediation

Legal systems in Asia are very diverse, ranging from civil law and common law systems to customary law traditions that still have a strong influence in society. However, mediation practices and regulations are beginning to develop rapidly in line with the increasing need for efficient and peaceful alternative dispute resolution. In many Asian countries, mediation is not only viewed as an out-of-court mechanism, but also an integral part of the litigation process, especially in civil and commercial cases. For example, in Indonesia, mediation is explicitly regulated in Supreme Court Regulation No. 1 of 2008, which mandates mediation in the settlement of civil disputes in court. The government also regulates alternative dispute resolution through Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution. In Malaysia and Singapore, mediation is also an important part of the judicial system with strong mediation institutions at both the court and private institution levels (Lestari, 2024).

In Asia, ad hoc mediation is widely adopted as a model that suits local cultural characteristics and needs. In Japan, for example, ad hoc mediation is often practiced in the context of family and community disputes, where mediators are selected by agreement between the parties and with due regard to local social norms. In India, ad hoc mediation is increasingly encouraged by Supreme Court regulations that require disputes to be resolved through mediation outside of litigation (Usman, 2012). Meanwhile, in China, ad hoc mediation, known as "people's mediation," is widely practiced through locally selected community mediators, providing easy and quick access to dispute resolution without the formalities of court. Regulations related to ad hoc mediation in the Asian region reflect the adaptation of the formal legal system to existing social and cultural values and structures, making mediation an effective instrument for improving access to justice (Rahardjo, 2006).

Private institutions play a central role in developing formal mediation in Asia, particularly in the resolution of business and international trade disputes. Institutions such as the Singapore Mediation Centre (SMC), Hong Kong International Arbitration Centre (HKIAC), and Indonesia National Board of Arbitration (BANI) provide professional mediation services with certified mediators and internationally standardized procedures. These institutions not only help make the mediation process more structured and credible, but also play a role in building market confidence and a conducive legal system (Sweeney, 2018). In the corporate and international trade sectors, private institutional mediation is an important alternative given its ability to provide quick resolutions and maintain business confidentiality. They also often organize mediator training and certification to improve the quality and credibility of the mediation industry in Asia.

One notable case study is the implementation of Integrated Court Mediation in Indonesia, where mediation is mandatory before a court decides on a case. This has accelerated the resolution of civil disputes, reduced the burden on the courts, and increased the rate of amicable settlements. Studies show that with mediation, many cases are successfully resolved without having to go through lengthy trials (Usman, 2012). In Singapore, innovative breakthroughs in court mediation programs have succeeded in increasing the transparency and efficiency of commercial dispute resolution. This system integrates mediation into the court process with the support of information technology

(Lestari, 2024). Meanwhile, in Japan, ad hoc mediation in family disputes has helped reduce social conflict and strengthen social bonds through a deliberation mechanism involving traditional mediators and local community officials.

Ad hoc and private institutional mediation have been accommodated in various laws and court rules in Asia and Africa. Countries on these two continents have begun to mandate or provide incentives for the use of mediation to resolve business, civil, and social disputes. As public and judicial confidence in mediation grows, institutional mediation agencies are also developing significantly. However, the culture of ad hoc mediation, which is deeply rooted in cultural and customary systems, still plays a major role in dispute resolution, especially in rural areas and traditional communities (Muthuri & Mutula, 2016). Ad hoc mediation faces challenges regarding standards and quality process , while institutional mediation needs to continue to improve accessibility and cost efficiency. The integration of digital technology is an important opportunity to address the need for affordability and speed of the mediation process in this modern era.

Africa is a continent rich in cultural diversity and unique legal systems, encompassing a combination of customary law, religious law, and positive law that often interact in complex ways in dispute resolution. The legal framework for mediation in Africa is evolving to accommodate these various systems, as well as to increasingly align with international legal norms and standards in an effort to improve access to justice and the effectiveness of dispute resolution. The legal systems in many African countries are traditionally pluralistic, where customary law and community practices play a central role in resolving everyday conflicts. Dispute resolution processes are often conducted informally through deliberation and mediation by trusted community leaders, traditional elders, or religious leaders. This approach emphasizes values such as reconciliation, restoration, and the maintenance of social harmony, which are the basic principles of the African customary law system (Kuncihukum, 2024). In addition to customary law, positive legal systems, which largely adopt the common law or civil law traditions, have also begun to integrate mediation as part of the judicial process. Countries such as South Africa, Kenya, Nigeria, and Ghana have implemented regulations that support mediation, both as a supporting measure prior to court proceedings and as an alternative to formal dispute resolution (Muthuri & Mutula, 2016). This culture of dispute resolution, rooted in deliberation and mediation, has encouraged the development of a unique mediation system with local characteristics in Africa.

Ad hoc mediation in Africa is heavily influenced by the tradition of community-based dispute resolution. In this form, mediation is conducted by mediators who are directly selected by the parties or the surrounding community, and is often held in a social or community setting without the formal involvement of institutional bodies (Muthuri & Mutula, 2016). Formal regulations related to ad hoc mediation in various African countries are still in the development stage and vary in their implementation. Several countries, such as Kenya and South Africa, have issued regulations that encourage the use of ad hoc mediation in civil and commercial dispute resolution with the aim of reducing the burden on the courts and speeding up case resolution. However, ad hoc mediation in Africa remains largely dependent on local social capital such as trust, social networks, and cultural values as key factors in the success of the mediation process (Kuncihukum, 2024).

Private institutions also play a crucial role in the development of formal mediation in Africa. Various private mediation and arbitration institutions with international and regional standards, such as the Nairobi Centre for International Arbitration (NCIA) and the African Arbitration Association, provide professional mediation services with certified and experienced mediators (Muthuri & Mutula, 2016). Private institutional mediation is particularly important in cross-border business and trade disputes because it provides a structured, professional, and trustworthy resolution mechanism. With the support of standard procedures and legal legitimacy, these institutions help create a fair and transparent resolution environment, while strengthening the investment and business climate in Africa. However, the challenges of cost and limited access, especially in rural areas, remain obstacles that need to be overcome.

One example of successful mediation in Africa is South Africa's Truth and Reconciliation Commission program, which uses mediation and reconciliation as key tools in resolving social disputes and human rights violations in the post-apartheid era. This approach is not merely a means of dispute resolution, but also an innovative effort at social recovery and restorative justice (Dharmasisya, 2024). In Nigeria, ad hoc mediation carried out by indigenous communities and community leaders often successfully resolves land and family disputes peacefully without having to go through lengthy and costly litigation processes (Muthuri & Mutula, 2016). In Kenya, institutional mediation managed by the Nairobi Centre for International Arbitration has been widely used in the resolution of international commercial disputes, increasing investor confidence and improving the business climate in the country.

Comparison and Analysis of Ad Hoc and Institutional Mediation in Asia and Africa

Mediation as an alternative dispute resolution mechanism has become an important part of the legal systems in Asia and Africa. However, there are fundamental differences in the regulations, practices, advantages, disadvantages, and the influence of local cultures and legal systems on the application of ad hoc and institutional mediation in the two continents. In Asia, ad hoc mediation is generally not strictly regulated in legislation, but is recognized through practice and several indirect provisions in court regulations and alternative dispute resolution laws. Private institutional mediation, particularly in countries such as Singapore, Malaysia, and Indonesia, has been explicitly regulated with clear procedures and standards, serving as the backbone of business and commercial dispute resolution (Lestari, 2024). Institutions such as the Singapore Mediation Centre provide a structured framework, with certified mediators and operational standards that enhance the credibility and effectiveness of the mediation process.

Africa has a developing legal framework with pluralistic characteristics, where ad hoc mediation based on customary law and deliberation is still very dominant, especially in social and land contexts. However, formal regulation of institutional mediation is beginning to develop, particularly through private mediation institutions in countries such as Kenya and South Africa that accommodate modern commercial mediation (Muthuri & Mutula, 2016). Institutional mediation in Africa also has legal recognition that allows for the legal enforcement of mediation outcomes.

Ad hoc mediation has advantages in terms of flexibility, full control by the parties, relatively low costs, and a high level of confidentiality. This model is well suited to social and cultural contexts that emphasize deliberation and consensus, such as in many communities in Africa and Asia. However, its disadvantages include a lack of standardization of procedures, a potential shortage of professional mediators, and limitations in terms of legality and enforcement of agreements (Boulle, 2011). In contrast, institutional mediation offers standardized procedures and standards, certified professional mediators, comprehensive administrative facilities, and strong legal recognition of mediation outcomes. This model is more suitable for disputes with high legal and business complexity, where legal certainty and reputation are very important. Its disadvantages include relatively higher costs, more formal and sometimes less flexible procedures, and potential access limitations for remote communities (OECD, 2019).

Local culture and legal systems have a major impact on how mediation is implemented and accepted. In Asia, particularly in countries such as Indonesia, China, and Japan, values such as social harmony, mutual cooperation, and respect for authority play an important role in traditional ad hoc and institutional mediation. These values encourage consensus-based and restorative resolution processes (Sweeney, 2018). Meanwhile, in Africa, customary law remains the main foundation for dispute resolution, often through ad hoc mediation that emphasizes reconciliation and restoration of social relations. Formal legal systems have begun to adopt institutional mediation, but traditional cultures and values remain strong and influence the parties' preferences for dispute resolution models (Muthuri & Mutula, 2016). Adapting the mediation model to the local cultural and legal context is a key factor in the success of mediation. Ignoring this factor can lead to low participation rates, failure of the mediation process, and even rejection of the agreement.

The implementation of mediation, whether ad hoc or institutional, faces a number of significant legal and practical obstacles in various countries, especially in Asia and Africa. Legally, the uncertainty of the legal status of mediation agreements remains a major obstacle. Although mediation regulations have been established in many countries, the mechanisms for enforcing mediation agreements have not always been optimal. The absence of strict sanctions for parties who do not comply with agreements or frustration in the homologation of decisions leads to a lack of legal certainty, which ultimately reduces public trust in mediation (Daulay & Hakim, 2025). Practical obstacles also include an imbalance of negotiating power between the disputing parties, which can result in mediation being unfair and biased. A lack of transparency in the selection of mediators and a lack of professionalism on the part of mediators also contribute to the low effectiveness of the mediation process. In some cases, parties with greater economic or political power can influence mediators or the mediation process to their advantage, thereby harming other parties (Saragi et al., 2017). In addition, there are administrative and resource barriers, such as a shortage of trained professional mediators, a lack of supporting facilities, and the workload in courts, which affect the implementation of mediation. In some land dispute cases, the unclear status of certificates and documents further complicates the mediation process, creating uncertainty and distrust among the parties (Daulay & Hakim, 2025).

Amidst these challenges, mediation has great potential to develop as an effective and inclusive method of dispute resolution. Awareness of the importance of incorporating

mediation into the formal legal system is increasing in many countries, with various regulatory reforms being carried out to improve the quality and scope of mediation. These development opportunities include broader training and certification of mediators, strengthening of law enforcement mechanisms for mediation outcomes, and the development of stricter ethical and procedural standards for mediators (OECD, 2019). Increased cooperation between courts, mediation institutions, and law enforcement agencies also opens up space for the creation of a more integrated mediation system that is accessible to all levels of society. The development of mediation as an instrument of restorative justice has also received special attention because it can resolve conflicts in a way that cools tensions and improves long-term social relations.

Advances in information and communication technology have opened up great opportunities for innovation in the mediation process, especially in today's digital age. Electronic mediation (e-mediation) or online mediation is welcomed as a practical solution to reach parties who are geographically distant, speed up the process, and reduce costs (Abduh, 2025). Online mediation services also increase schedule flexibility and provide convenience, especially in the context of a global pandemic that limits physical meetings. However, this technology also poses new challenges such as data security, process confidentiality, and the need for comprehensive system integration with courts and other legal institutions (Lam, 2024). In addition, technology also provides space for the development of supporting systems such as mediator selection applications, structured communication platforms, and electronic documentation that enable transparency and accountability. These innovations open up the possibility of developing more inclusive and democratic mediation that is capable of bridging the complexity of future disputes without neglecting substantive justice.

Legal and Practical Barriers to the Implementation of Mediation

The implementation of mediation faces various legal and practical obstacles that limit its effectiveness in dispute resolution. One of the main obstacles is legal uncertainty regarding the status and enforcement of mediation decisions. Although regulations on mediation already exist in many countries, the enforcement of mediation outcomes often encounters obstacles, as there are no strict sanctions for parties who do not comply with mediation agreements. This has led to low public trust in mediation as a credible and legally binding dispute resolution mechanism. In addition, the lack of professional standards for mediators and the inconsistency of mediator selection procedures raise concerns about the neutrality and objectivity of mediators in facilitating mediation, especially in disputes involving parties with unequal power (Daulay & Hakim, 2025). Apart from legal barriers, several practical obstacles also arise, such as a lack of understanding among the public and law enforcement officials about the benefits and procedures of mediation, limited human resources for mediators, and unequal access to mediation in remote areas or among vulnerable groups. In some cases, cultural and language differences also hinder effective communication in the mediation process. In certain sectors, such as land disputes, administrative issues and overlapping documents are very complex and difficult to resolve through mediation without strong legal oversight (Daulay & Hakim, 2025).

Despite these challenges, mediation has great potential for significant growth. Awareness of the importance of mediation as a fast, inexpensive, and peaceful dispute resolution solution is driving regulatory reform and capacity building for mediators in many countries. Professional training and certification of mediators and the enforcement of rules binding mediation agreements are the main focus of development. In addition, the development of mediation mechanisms that are inclusive and adaptive to the local socio-cultural context has begun to receive attention, particularly in accommodating restorative justice (OECD, 2019). Collaboration between judicial institutions, private mediation institutions, and local communities can strengthen the mediation system to make it more integrative and accessible to the wider community. Increased socialization and education about mediation for the public and law enforcement officials is also key to expanding the acceptance and use of mediation as the primary method of dispute resolution.

Legal Framework for Mediation in Asia and Africa

Ad hoc mediation is more commonly found in personal, community, or simple commercial disputes. In Asia, this practice is heavily influenced by cultural traditions and local values, such as the concept of consensus-building in Indonesia, guanxi in China, or panchayat in India, which emphasize social harmony over formal resolution (Dezalay & Garth, 2010). This ad hoc model is relatively flexible because it is not bound by standard procedures, but its weakness is the lack of legal certainty and enforcement mechanisms for the agreed outcomes. In Africa, ad hoc mediation is also deeply rooted in local traditions, such as the Ubuntu system in South Africa, which emphasizes reconciliation and social cohesion (Murithi, 2009). This traditional form of mediation is often used to resolve community conflicts, land disputes, or family disputes. However, the challenge that arises is the difficulty of integrating these traditional practices with modern legal systems, especially in cross-border commercial disputes (Nolan-Haley, 2012).

Unlike ad hoc mediation, private institutional mediation is supported by official institutions that provide procedural rules, lists of professional mediators, and administrative support. In Asia, institutions such as the Singapore International Mediation Centre (SIMC) and the China International Economic and Trade Arbitration Commission (CIETAC) play an important role in strengthening the legitimacy of international commercial mediation. SIMC, for example, developed the Singapore Convention on Mediation (2019), which aims to strengthen cross-border recognition of mediation agreements (Strong, 2020). In Africa, there are similar initiatives undertaken by private institutions and arbitration associations, such as the Lagos Court of Arbitration (LCA) in Nigeria and the Cairo Regional Centre for International Commercial Arbitration (CRCICA) in Egypt. The presence of these institutions encourages the professionalization of mediation, especially in cross-border commercial and investment disputes. However, institutional mediation in Africa still faces challenges in the form of a lack of legal awareness, limited human resources, and the dominance of litigation-based dispute resolution (Abdalla, 2019).

The dynamics of the application of ad hoc and institutional mediation in Asia and Africa show quite striking differences. In Asia, the success of private institutions such as SIMC shows that there is strong encouragement from the government to make mediation an effective instrument for international dispute resolution. Meanwhile, in Africa, although

private institutions have developed, traditional ad hoc mediation practices are still very dominant in domestic dispute resolution, and integration into the formal legal system is slower. Thus, it can be concluded that in Asia, private institutional mediation is more developed and receives international regulatory support, while in Africa, ad hoc mediation based on local wisdom still plays a very important role, although the direction of its development is moving towards institutionalization.

Concrete Examples of Ad Hoc and Private Institutional Mediation

1. Case of Ad Hoc Mediation in Asia: Land Dispute in Indonesia
   In Indonesia, one concrete example of the application of ad hoc mediation is in the settlement of a land dispute between residents in West Java in 2018. The dispute was between two families over the boundaries of inherited land. The local community, through a deliberation mechanism facilitated by traditional leaders and the village head, successfully resolved the conflict without involving official institutions. This process was carried out flexibly, based on the value of deliberative consensus oriented towards social harmony. The agreement was set forth in a peace agreement letter and signed by both parties and witnesses. Although effective in reducing conflict, the weakness of this method is that the agreement does not have strong executory power if one of the parties later violates it (Sutiyoso, 2019).
2. Cases of Private Institutional Mediation in Asia: SIMC (Singapore)
   At the international level, the Singapore International Mediation Centre (SIMC) is one of the leading institutions in private institutional mediation. In 2017, SIMC handled a cross-border commercial dispute between a Japanese technology company and its distribution partner in India. The dispute was related to the distribution of software licenses worth millions of dollars. The mediation process was conducted by a professional mediator appointed by SIMC, and within three months the parties reached an amicable agreement that was ratified as a Settlement Agreement. Interestingly, this agreement was later recognized across borders thanks to the support of the Singapore Convention on Mediation (2019), thereby strengthening the effectiveness of mediation as an alternative to arbitration or litigation (Strong, 2020).
3. Ad Hoc Mediation Case in Africa: Ubuntu in South Africa
   In Africa, the practice of Ubuntu mediation is a well-known form of ad hoc mediation. One case occurred after apartheid, when local communities in KwaZulu-Natal experienced inter-group conflicts over agricultural land ownership. Instead of pursuing litigation, community leaders and traditional leaders initiated meetings based on the principle of Ubuntu—"I am because we are" to prioritize reconciliation. In the process, the parties were guided to acknowledge their mistakes, apologize, and share access to land fairly. This case not only resolved the land dispute, but also strengthened social relations that had been fractured by the conflict (Murithi, 2009).
4. Private Institutional Mediation Case in Africa: CRCICA (Egypt)
   Another example is the Cairo Regional Centre for International Commercial Arbitration (CRCICA), which also offers mediation services. In 2015, CRCICA handled an infrastructure construction contract dispute between a European construction company and the government of a North African country. The dispute was worth more than USD

50 million and related to project delays. Through CRCICA's institutional mediation procedure, professional mediators successfully facilitated a partial agreement: the construction company agreed to accelerate construction in exchange for financial compensation from the government. This agreement was recorded in a written agreement that has contractual legal force, thereby reducing the risk of lengthy litigation that could hinder the project (Abdalla, 2019).

Table 2 Comparison of Ad Hoc and Institutional Mediation Cases in Asia and Africa

Category	**Asia (Ad Hoc)**	**Asia (Private Institutional)**	**Africa (Ad Hoc)**	**Africa (Private Institutional)**
Case Examples	Inheritance land dispute between families in West Java (2018).	Software license distribution dispute between Japanese and Indian companies at SIMC (2017).	Land dispute between communities in KwaZulu-Natal, South Africa (post-apartheid).	Infrastructure construction contract dispute (USD 50 million) at CRCICA, Egypt (2015).
Mediator	Traditional leaders & village chiefs.	Professional mediators appointed by SIMC.	Traditional leaders & community leaders (Ubuntu principle).	Professional mediator at CRCICA.
Characteristics	No fixed rules, based on consensus and cultural values.	Follows institutional rules, formal and professional procedures.	Ubuntu-based reconciliation: acknowledgment of mistakes and restoration of social relationships.	Formal procedures, administrative support, and legal enforceability.
Legal Force	The agreement is merely a statement of peace, without enforceable legal authority.	The Settlement Agreement is internationally recognized through the Singapore Convention on Mediation (2019).	The outcome of the agreement is binding morally and socially, not formally legally.	A written contractual agreement that has formal legal force.
Advantages	Cost-effective, swift, aligned with local values, and preserves social harmony.	Credible, enforceable, supports international trade.	Strengthens social cohesion, aligned with the cultural context of the community.	Professional, effective for high-value and cross-border business disputes.
Disadvantages	Weak in terms of legal certainty and enforcement.	Relatively high costs, more formal procedures.	Not always in sync with modern law, weak enforcement.	Limited to major commercial disputes, has not yet touched local communities.

Brief analysis: In Asia, ad hoc mediation is strong in community-based disputes (Indonesia, India, China), but in cross-border commercial disputes, institutional mediation (SIMC, CIETAC) is more effective, while in Africa, Ubuntu-based ad hoc mediation is still

dominant in social dispute resolution, while institutional mediation (CRCICA, LCA) is developing for international disputes.

CONCLUSION

Mediation, whether ad hoc or private institutional, has become an important instrument in dispute resolution in Asia and Africa, albeit with different dynamics and levels of development. First, ad hoc mediation in both regions still has strong relevance, especially in domestic, community, or culturally-based disputes. In Asia, the practice of deliberation in Indonesia or panchayat in India shows how social harmony is maintained through simple, flexible mechanisms. Meanwhile, in Africa, the Ubuntu tradition provides a moral foundation for resolving community disputes and social conflicts. Ad hoc mediation has proven effective in reducing conflict and strengthening social cohesion, but its weakness lies in the limited legal certainty and enforcement mechanisms for the results of agreements.

Second, private institutional mediation has developed more rapidly in the context of commercial and cross-border disputes. In Asia, institutions such as the Singapore International Mediation Centre (SIMC) and the China International Economic and Trade Arbitration Commission (CIETAC) have successfully positioned mediation as a credible alternative to arbitration and litigation. The support of international instruments such as the Singapore Convention on Mediation (2019) also strengthens the position of institutional mediation as an enforceable modern mechanism. In Africa, institutions such as the Cairo Regional Centre for International Commercial Arbitration (CRCICA) and the Lagos Court of Arbitration (LCA) have begun to promote the professionalization of mediation, particularly for high-value disputes, although challenges such as limited legal infrastructure and public awareness remain major obstacles.

Third, a comparison between Asia and Africa shows that Asia is more advanced in the institutionalization of mediation, while Africa is still dominated by ad hoc practices based on local traditions, although it is slowly moving towards institutional strengthening. Thus, the two mediation models have complementary functions: ad hoc mediation preserves social values and cultural proximity, while private institutional mediation ensures legal certainty and effectiveness in an international context.

Overall, it can be concluded that an effective modern approach to dispute resolution in Asia and Africa should integrate the strengths of both models. Ad hoc mediation needs to be preserved as a socio-cultural heritage, while private institutional mediation must be strengthened through regulation, government support, and active participation of private institutions in order to respond to the needs of global commercial disputes. This integration will make mediation not only an alternative dispute resolution instrument, but also a bridge between local traditions and modern legal systems.

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