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International Commercial Mediation: Towards a Harmonized Legal Framework for Cross-Border Business Dispute Resolution

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ABSTRACT
Globalization has expanded cross-border trade while also increasing the number of international commercial disputes. Litigation, though authoritative, is often expensive, time-consuming, and complicated by different jurisdictional rules, which weakens legal certainty for businesses. Mediation provides a more efficient and flexible alternative that helps maintain business relationships. However, its effectiveness is still limited by fragmented national regulations, the voluntary nature of the UNCITRAL Model Law (2002), and limited ratification of the Singapore Convention on Mediation (2019). This study employs a normative legal approach, incorporating a comparative analysis of selected jurisdictions (the United States, the European Union, Singapore, and Indonesia), and is supported by secondary literature and institutional reports. Findings indicate that while Singapore has aligned its domestic law with international standards, most jurisdictions still treat international mediation ambiguously, weakening enforceability. Additional barriers include the shortage of qualified mediators, cultural biases toward litigation, and low business awareness. The novelty of this research lies in its integration of normative, socio-cultural, and institutional dimensions. Theoretically, it reinforces the transnational legal process framework; practically, it proposes a roadmap to strengthen mediation's legitimacy through wider ratification, legal alignment, and capacity-building for mediators. The study concludes that a harmonized legal framework for international commercial mediation is not merely aspirational but a pressing necessity for global economic stability.
Keywords: *Constitutional Pluralism, International Norms, Global South, Monism and Dualism, Transnational Constitutional Law, Sovereignty,*

Introduction

Conflict is an inevitable part of human interaction, including in the realm of the global economy. In every business relationship, especially those involving various transnational actors, the potential for dispute always exists alongside opportunity. As stated by Fuller (1971), conflict is not merely an obstacle, but also a means to clarify interests, negotiate positions, and find new common ground (Fisher, 1994; Warren & Mansbridge, 2013). From this perspective, dispute resolution is not just an effort to resolve conflicts, but also an essential instrument for maintaining the continuity of international economic relations.

Classical thinkers have long debated the idea of order in international relations. Hugo Grotius (1625), in his work De Jure Belli ac Pacis, emphasized the importance of international law as a means of creating order and justice in global interactions (Koskenniemi, 2019). Meanwhile, Montesquieu (1748), through L'Esprit des Lois, emphasized that the law must be able to adapt to the nature of society, including in economic interactions (Bandoch, 2017; Samuel, 2009). Similarly, Adam Smith (1776) in The Wealth of Nations reminded us that cross-border trade is not only a matter of financial gain, but also requires rules that can ensure fairness between parties (Sisson & Marginson, 2002). Thus, the thinking of these classical philosophers provides a philosophical basis that dispute resolution in the context of international trade is a prerequisite for the creation of global order.

This classical view resonates in modern international legal thinking. Thomas Franck (1990), for example, emphasizes the importance of legitimacy and fairness as the foundation

of state compliance with international law (Franck, 2006; Scobbie, 2002; Thomas, 2014). Meanwhile, Harold Koh (1997) asserts, through his theory of transnational legal process, that the success of international law depends not only on the existence of normative instruments but also on the dynamic interaction between international and domestic actors (Koh, 2001). Furthermore, Laurence Boisson de Chazournes (2012) emphasizes the importance of institutional interplay in harmonizing international norms with national practices to create global legal certainty (de Chazournes, 2017). Thus, in the context of international commercial mediation, the views of these contemporary thinkers emphasize that cross-border legal harmonization is not merely a technical issue, but also a matter of legitimacy, normative interaction, and institutional coordination (Berman, 2006; Erie, 2019; Gopalan, 2004; Harahap, 2025; Shaffer, 2012; Wai, 2001).

Cross-border trade has experienced rapid growth over the past two decades in line with the intensification of globalization. Data from the World Trade Organization (WTO, 2023) shows that global trade volume has grown by an average of 4.5% per year. Meanwhile, a report by the United Nations Conference on Trade and Development (UNCTAD, 2022) notes that the value of cross-border transactions has exceeded USD 30 trillion. This increase in trade activity has clearly contributed positively to global economic growth; however, it has also led to an increase in the potential for business disputes. The International Chamber of Commerce (ICC, 2021), for example, reports that more than 70% of multinational companies have been involved in cross-border disputes, whether related to contracts, distribution, or investment. This fact demonstrates that the dynamics of global business cannot be separated from the risk of conflict, which necessitates an effective dispute resolution mechanism.

In this context, the need for an effective cross-border dispute resolution mechanism is becoming increasingly apparent. Although legally valid, dispute resolution through litigation is often considered inefficient due to high costs, lengthy processes, and the complexity of differences in legal systems between countries (Cappelletti, 1993; Guzman, 2002; Menkel-Meadow, 2004; Petersmann, 2006). This situation has led international businesses to seek alternative, more practical, and profitable options, one of which is international commercial mediation. Mediation is seen as capable of providing faster, more flexible solutions while maintaining long-term business relationships. However, despite its great potential, the practice of cross-border mediation is not yet fully optimized. One of the reasons for this is the continuing disparity in regulations between jurisdictions, particularly in terms of the recognition and enforcement of mediation outcomes.

This is where the research gap that needs to be bridged lies. There have been several academic studies on international dispute resolution. Still, most of them focus more on the effectiveness of specific instruments, such as the UNCITRAL Model Law on International Commercial Conciliation (2002) or the Singapore Convention on Mediation (2019). Unfortunately, these studies have not fully discussed how these international instruments can be integrated into the domestic legal systems of various countries. In addition, there are still limited cross-jurisdictional comparative studies that can provide a comprehensive picture of legal harmonization strategies. As a result, the discourse on legal harmonization in the context of international commercial mediation still lacks a solid foundation.

Based on the above description, this study aims to fill an academic gap while addressing practical challenges. Specifically, this study seeks to identify weaknesses in cross-border mediation practices stemming from legal disparities, assess the effectiveness of existing international instruments, and develop a harmonious legal framework that can enhance the role of mediation in international business dispute resolution. Thus, this study is expected to contribute theoretically by expanding the discourse on legal harmonization, as well as practically by providing policy recommendations for regulators, mediation

institutions, and legal practitioners in building a more conducive international business ecosystem.

This research aims to make a substantive contribution to the understanding and development of the legal framework for international commercial mediation. Given that cross-border business disputes are becoming increasingly complex with the intensification of globalization, this research aims to explore in depth how mediation can function as a more effective dispute resolution mechanism than litigation or arbitration.

More specifically, this study aims to identify weaknesses that arise in cross-border mediation practices, particularly those resulting from differences in national legal systems. This analysis is essential because regulatory disparities often lead to uncertainty in the recognition and enforcement of mediation outcomes, thereby weakening the appeal of mediation as a dispute resolution instrument. Through a comparative approach, this study also seeks to assess the extent to which existing international instruments—such as the UNCITRAL Model Law on International Commercial Conciliation (2002) and the Singapore Convention on Mediation (2019)—have been consistently implemented in various jurisdictions.

Furthermore, this study aims to formulate a harmonious legal framework that is not only conceptual but also has practical relevance for countries with diverse legal systems. By presenting an integrative analysis of international norms and domestic practices, this study aims to enrich the academic discourse on legal harmonization in international dispute resolution, while providing concrete recommendations that policymakers, mediation institutions, and global business actors can apply.Thus, the main objective of this research is to build a bridge between the practical needs of cross-border business dispute resolution and a legal framework that can support it sustainably. The resulting contribution is expected not only to be theoretical but also to have a direct impact on international legal practice and global trade relations.

Research Methods

This study employs a normative legal approach (Negara, 2023), combined with comparative analysis methods (Komesar, 1981; Michaels, 2006), to examine the dynamics of international commercial mediation. The normative legal approach was chosen because the issues under study are rooted in legal norms, both global and domestic. In the tradition of legal research, this approach enables researchers to examine legal texts, international instruments, and national regulations as a conceptual basis for identifying similarities, differences, and potential areas for harmonization.

Operationally, this research was conducted in three main stages. The first stage was the collection of legal materials. Primary sources used included relevant international instruments, such as the UNCITRAL Model Law on International Commercial Conciliation (2002) and the Singapore Convention on Mediation (2019), as well as national regulations from representative jurisdictions, including the United States, the European Union, Singapore, and Indonesia. Secondary sources consisted of academic publications in reputable journals, reports from international institutions such as the ICC and UNCITRAL, and relevant policy documents. To supplement these, tertiary sources were also utilized in the form of legal encyclopedias and legislative commentaries, which provided interpretive perspectives.

The second stage is comparative analysis. The national legal instruments and practices that have been collected are compared to identify patterns of similarity and difference. This analysis aims to map the extent to which international norms have been internalized into domestic law. The comparative technique was chosen because it can reveal contextual factors,

including both legal culture and regulatory politics, that influence the acceptance of an international instrument in various countries.

The third stage is data analysis, which is conducted descriptively-analytically and prescriptively. Descriptive analysis is used to describe the prevailing favorable legal conditions, both at the international and domestic levels. Meanwhile, prescriptive analysis is used to formulate recommendations in the form of a harmonious legal framework that can be applied across jurisdictions. By combining these two types of analysis, the research is expected to go beyond normative description and also provide practical contributions in the form of conceptual solutions.

To maintain the reliability and validity of the research, jurisdictions were selected purposefully by considering three factors: (1) representation of different legal systems (common law, civil law, and mixed), (2) level of involvement in international trade, and (3) the country's position on the ratification or adoption of international instruments related to mediation. Thus, the results of this study can be replicated in other contexts using the same analytical framework and serve as a reference for further comparative studies.

Results and Discussion

National Regulatory Fragmentation

The results of the analysis confirm that the legal framework for international commercial mediation remains highly fragmented, creating an uneven regulatory landscape at the global level (Burmester et al., 2019; Carruthers & Halliday, 2006; Schultz, 2008; Singh, 2023; Wagner, 2014). As a paradigmatic example, Singapore has taken a progressive step by fully adopting the Singapore Convention on Mediation (2019) into the Singapore Mediation Act. This adoption not only binds Singapore to an international convention but also establishes a comprehensive legal regime that provides substantial legal certainty for the enforcement of cross-border mediation agreements. In contrast, a contrasting situation is found in many other jurisdictions, including Indonesia. In these countries, the legal status of international mediation remains ambiguous, trapped in a "gray area." Existing regulations, such as various regulations on mediation in Indonesia, are still focused on domestic mediation and do not provide any explicit mechanisms for validating or executing the results of international mediation (Al et al., 2024; Kairupan, 2023). The direct impact of this legal vacuum is a high level of uncertainty for the parties, which in turn significantly undermines the attractiveness and effectiveness of mediation as a method of resolving cross-border commercial disputes.

Furthermore, these findings on fragmentation do not merely reflect technical and legislative differences but reveal more profound paradigmatic differences in legal traditions. Common law jurisdictions, such as Singapore, show greater openness to integrating international norms into their domestic legal systems (Ng & Jacobson, 2017). Meanwhile, civil law countries such as Indonesia often place greater emphasis on regulatory sovereignty and the rigidity of national legal codification, making them more cautious in adopting international treaties (Agustina et al., 2025; Butt, 2014; Lin, 2017; Pereira & Gough, 2013; Picker, 2008). This dynamic of legal resistance and adaptation is given a solid theoretical framework in Harold Koh's (1997) theory of transnational legal process. This theory posits that the interaction between international norms and national legal systems is dynamic and nonlinear, often encountering resistance from domestic actors before it is fully internalized. Thus, the observed fragmentation of regulations is a consistent empirical manifestation of this complex and multi-layered transnational process.

Limitations of the UNCITRAL Model Law (2002) in Bridging Fragmentation

In response to regulatory fragmentation, the UNCITRAL Model Law on International Commercial Conciliation (2002) was introduced to provide a harmonized legal framework. However, analysis has revealed a fundamental weakness: its voluntary nature (soft law) removes any binding force for countries to adopt it. As a result, its implementation at the national level has been very partial and inconsistent. Only a small number of countries have adopted this model law comprehensively. Meanwhile, the majority of jurisdictions—including Indonesia—have only selected their general principles without fully integrating them into their domestic legal systems (Butt, 2010, 2014; Drake, 2019; Lev, 2013; Wardhani et al., 2022). As a result, the Model Law has inadvertently contributed to the widening diversity of regulations, rather than unifying the international mediation legal landscape.

This limitation leads us to a critical conclusion: that the presence of a model law alone is not sufficient to create proper legal harmonization. This finding is strongly supported by Thomas Franck's (1990) theoretical framework on legitimacy and fairness. Franck argues that an international legal norm will only be effectively obeyed if it is perceived as having legitimacy (procedural validity) and fairness (substantive justice) by its recipients. In this context, the UNCITRAL Model Law has very weak legitimacy due to its voluntary nature. In other words, without a binding force and an uneven adoption process, the Model Law fails to fulfill the element of procedural legitimacy suggested by Franck. Therefore, the norm is not considered "valid" or "mandatory" to be followed by many countries, thus ultimately failing to provide the legal certainty expected in cross-jurisdictional practice.

The Role and Challenges of the Singapore Convention on Mediation (2019)

Fundamentally different from the soft law approach of the UNCITRAL Model Law, the Singapore Convention on Mediation (2019) is a breakthrough in that it offers a binding legal instrument (complex law) for ratifying countries. The main strength of this convention lies in its clear and direct mechanisms for the recognition and enforcement of international settlement agreements (Abbott & Snidal, 1998; Guzman, 2005; Oxman, 2001; Raustiala, 2005). Thus, this convention strategically places mediation on an equal footing with arbitration, which has long benefited from the New York Convention (1958). However, ratification data reveal a significant obstacle: the effectiveness of this convention is still minimal. To date, only 11 countries have ratified it, while the majority of other countries—including Indonesia—are still adopting a wait-and-see approach. The primary concern underlying this caution is the perception that ratification could erode the sovereignty of domestic courts in resolving commercial disputes.

The reality of this low adoption rate is not merely a technical legal issue, but rather reflects the complex political-economic dynamics of each country. This finding is solidly grounded in the concept of institutional interplay proposed by Laurence Boisson de Chazournes (2012). According to her, the effectiveness of an international norm cannot be separated from the interaction and coordination between the global institutions that created the norm and domestic legal and political institutions. In the context of the Singapore Convention, this interaction is still weak. In other words, the convention has not yet succeeded in creating sufficient coordination with domestic stakeholders (such as governments, parliaments, and legal practitioner communities) in many countries to convince them that the benefits of legal harmonization outweigh the threats to regulatory sovereignty. Therefore, unless concrete, sustained, and inclusive efforts to build institutional coordination are undertaken now, the convention risks remaining an elitist instrument that applies only to a handful of jurisdictions. Stakeholders must prioritize collaboration and proactively engage to broaden the convention's impact.

Discussion

The findings of this study reveal that behind regulatory challenges, there are significant practical obstacles to the implementation of international commercial mediation (Alexander, 2019; Cai & Godwin, 2019; Strong, 2016). First, the number of mediators with international competence to manage the complexities of cross-cultural disputes and legal systems is still very limited. Second, there is a low level of awareness among business actors regarding the benefits and procedures of mediation, which results in the continued dominance of arbitration or litigation. Third, the study identifies a strong legal cultural bias that influences the preferences of disputing parties. For example, in some Asian jurisdictions, litigation is still viewed as a symbol of formal legitimacy and power, while mediation is often regarded as a less prestigious and inferior option.

Collectively, these obstacles show that the effectiveness of mediation as a dispute resolution mechanism is not solely determined by the presence of a formal legal framework, but also depends heavily on social, cultural, and institutional factors that shape the behavior of the parties. Therefore, legal harmonization efforts will not achieve optimal results if they focus only on normative aspects. Such efforts must be accompanied by comprehensive strategies that include strengthening the capacity of mediators, promotional campaigns to raise awareness in the business world, and cultural approaches to change the old paradigm in viewing dispute resolution.

Furthermore, these findings have broad implications both theoretically and practically. Theoretically, the results of this study reinforce and sharpen the theory of transnational legal process by emphasizing that normative interaction between international and domestic law is a dynamic process involving not only legal rules but also actors and culture. Harmonization, in this perspective, is not rigid, complete unification, but rather a process of aligning international principles with unique national socio-legal contexts so that their implementation can be effective and accepted. Practically, this research provides a clear prescription: the ratification of the Singapore Convention must be encouraged more widely and, more importantly, must be followed by holistic national legal reforms and massive socialization programs. Without this consistent and multidimensional integration, cross-border mediation will remain confined to a subordinate position and will never be able to rival the dominance of international arbitration.

Ultimately, this study arrives at one key conclusion: harmonizing international commercial mediation law is not merely a normative aspiration, but rather a pragmatic and urgent necessity to ensure the stability and predictability of global trade. A harmonized legal framework not only provides legal certainty for business actors but also serves as a foundation for creating a more conducive and efficient investment climate. Thus, this study confirms that establishing such a legal framework is a necessary practical prerequisite for supporting the sustainability of the global economy in the future.

Scientific Novelty and Research Contribution

This study offers scientific novelty in its attempt to integrate normative analysis with a comparative approach to formulate a harmonious legal framework for international commercial mediation. Most previous studies have only highlighted the effectiveness of specific legal instruments, such as the UNCITRAL Model Law on International Commercial Conciliation (2002) and the Singapore Convention on Mediation (2019), separately. However, this study emphasizes the importance of viewing both instruments integratively within the broader framework of international and domestic legal harmonization. Thus, the main novelty of this study lies in its perspective, which is not merely normative-descriptive, but also prescriptive and integrative.

Furthermore, this study highlights an aspect that is often overlooked in academic discourse: the role of social, cultural, and institutional factors in the success of cross-border mediation. By emphasizing that implementation barriers stem not only from legal disparities but also from limitations in mediator capacity, legal cultural bias, and low business awareness of the advantages of mediation, this study presents a more comprehensive analysis. This multidimensional approach broadens the horizons of international legal research, which often focuses solely on normative aspects.

From a scientific contribution perspective, this research reinforces the theory of transnational legal process by providing empirical evidence that the interaction between international law and domestic law cannot be understood as a linear process, but rather as a dialectic influenced by legitimacy, legal culture, and institutions. By combining classical perspectives on global order (Grotius, Montesquieu, Smith) with contemporary theories (Franck, Koh, Boisson de Chazournes), this study also enriches the theoretical framework in international law studies, particularly in the field of cross-border business dispute resolution.

In practical terms, this research makes a significant contribution by offering recommendations that policymakers and legal practitioners can apply. First, there is a need to accelerate the ratification of the Singapore Convention as the basis for global recognition of mediation outcomes. Second, it is essential to reform national laws so that cross-border mediation outcomes have the same legal certainty as arbitration awards. Third, the need to strengthen the capacity of international mediators through cross-cultural and legal system training. This contribution offers clear policy guidance for countries seeking to enhance the effectiveness of mediation as an alternative to commercial dispute resolution.

Thus, this study not only closes the existing academic gap but also provides a concrete roadmap for the formation of a harmonious legal framework that supports global trade stability. The novelty and contribution offered make this study relevant to both the development of international law and the practice of cross-border business dispute resolution.

Conclusion

This study shows that international commercial mediation has excellent potential as a more efficient, flexible, and business relationship-oriented mechanism for resolving cross-border business disputes. However, its effectiveness is still hampered by regulatory fragmentation between jurisdictions, the limited binding force of the UNCITRAL Model Law (2002), and the low level of ratification of the Singapore Convention on Mediation (2019). Practical obstacles in the form of limited capacity of international mediators, legal and cultural bias, and low business awareness also weaken the position of mediation compared to international arbitration.

Reflectively, this study confirms that cross-border legal harmonization is not merely a normative discourse but an urgent need to ensure legal certainty and global trade stability. A harmonious legal framework can be achieved through the integration of international instruments with domestic regulations, supported by a strong institutional capacity and a high level of business awareness. With this integrative approach, mediation can gain legitimacy equivalent to arbitration, while creating a more conducive international business climate.

The scientific contribution of this research lies in its efforts to broaden academic discourse by combining normative, comparative, and multidimensional analysis, as well as strengthening the theory of transnational legal processes with empirical evidence from cross-border mediation practices. In practical terms, this research offers a roadmap that can be used by policymakers, mediation institutions, and legal practitioners in developing international commercial mediation as a key instrument for global dispute resolution.

Thus, this research not only fills existing academic gaps but also makes a tangible contribution to the development of an international legal framework that is more harmonious and responsive to the dynamics of world trade.

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