

## The Role and Legal Strength of Mediation in Providing Legal Certainty for Song Creators

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### ARTICLE INFO

Received: 15 March 2026

Accepted: 14 April 2026

Available Online: 23 April 2026

#### Keywords:

Mediation; Legal Certainty; Copyright;  
Songwriter; Alternative Dispute Resolution  
(ADR);

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### ABSTRACT

This study aims to analyze the legal status and effectiveness of mediation in ensuring legal certainty for songwriters in copyright dispute resolution within Indonesia's digital music industry. The research employs a normative juridical method with statutory and conceptual approaches, focusing on relevant regulations and legal doctrines. The findings indicate that mediation is legally recognized as an alternative dispute resolution mechanism and possesses binding force based on the principle of *pacta sunt servanda*. However, its effectiveness in ensuring legal certainty is conditional. Mediation agreements formalized as court-approved settlement deeds (peace acts) provide stronger legal certainty due to their executorial force, whereas informal agreements lack enforceability. From the perspective of Gustav Radbruch's theory of legal certainty, mediation fulfills the normative aspect but remains limited in terms of predictability and enforceability. Furthermore, the study reveals that disparities in bargaining power between songwriters and industry actors often result in less equitable agreements, raising concerns from the standpoint of proportionality. Despite its advantages in efficiency, flexibility, and relationship preservation, mediation has not fully guaranteed substantive justice and legal protection. Therefore, strengthening the legal framework and institutional implementation of mediation is necessary to ensure balanced, reliable, and effective protection of songwriters' economic and moral rights in copyright disputes.

## Introduction

The rapid development of the digital music industry has significantly increased the potential for copyright infringement, including the use of unlicensed music works and the unfair distribution of royalties. At the same time, dispute resolution through litigation is often considered ineffective due to its time-consuming and costly procedures (MAULUDIN, 2020; Praja et al., 2021). Mediation emerged as an alternative dispute resolution mechanism that was faster, more flexible, and oriented towards mutual agreement between the parties (Zalfa'na et al., 2024). However, from a normative perspective, the regulation of the legal force of the mediation results is still incomplete, thus causing legal uncertainty for song creators.

Litigation is often seen as inefficient not only because of the complexity of the procedure, but also because of its adversarial nature, which has the potential to damage the relationship between the parties. In addition, the cross-jurisdictional character of digital platforms further complicates law enforcement. Although Law No. 28 of 2014 on Copyright has provided a legal framework for protection, normative and operational gaps still remain, especially in the use of works on digital platforms (Abrahams & Azis, 2019; Sudjiarto, 2022).

In practice, copyright disputes in the music sector are often influenced by the inequality of

bargaining positions between songwriters and music industry players, such as producers, record labels, and digital distribution platforms. This inequality is generally caused by differences in access to information, negotiation capacity, and mastery of legal and business aspects, which ultimately puts songwriters in a weaker position (Disemadi & Kang, 2021; Indarsen, 2023; Simbolon, 2023). As a result, songwriters are often bound by disproportionate agreements, especially regarding the transfer of rights, distribution of royalties, and control over the use of works, thereby reducing the fulfillment of their economic and moral rights.

The complexity of legal relationships in the modern music industry involving many parties with different interests further increases the potential for disputes. This condition is exacerbated by the limited understanding of songwriters regarding legal protection mechanisms and their relatively weak position in upholding rights (Fafitrasari et al., 2021; Mantra et al., 2022). In such situations, litigation often fails to provide an effective solution because it is formalistic, time-consuming, and tends to put the parties in a position of confrontation.

Normatively, mediation in Indonesia has been recognized, especially through Supreme Court Regulation Number 1 of 2016, which emphasizes the resolution of disputes in a simple, fast, and low-cost manner. In the context of copyright disputes, mediation offers a win-win solution approach and helps maintain an ongoing relationship between the parties. In addition, Article 95 of the Copyright Law explicitly recognizes mediation as an important mechanism in dispute resolution (Ivana & Nugroho, 2022; Makka, 2019).

However, the regulation of mediation at the legal level is still not comprehensive enough, thus raising problems related to the legal position and its binding force. Although mediation agreements can be enshrined in peace deeds that have executory powers, in practice they tend to emphasize pragmatic settlement rather than comprehensive copyright enforcement (Baisuni et al., 2024; Husin, 2019).

This phenomenon is reflected in judicial practice, where copyright disputes are sometimes filed as lawsuits for unlawful acts in the District Court, even though they are absolutely under the authority of the Commercial Court. This inconsistency in the application of procedural law creates ambiguity regarding the appropriate dispute resolution forum (Kalisa, 2024; Rahmanissa et al., 2023). As a result, legal certainty for songwriters has been reduced, both in choosing dispute resolution mechanisms and in enforcing their economic and moral rights.

Based on these problems, this study aims to analyze the legal position and effectiveness of mediation in providing legal certainty for song creators, especially in resolving copyright disputes. The main focus of this research is to comprehensively examine the legal force of mediation results in ensuring legal certainty, including examining the juridical position of mediation agreements in the Indonesian legal system and its relationship with the principle of legal certainty in protecting the economic and moral rights of creators, as stated by Gustav Radbruch.

This research is based on several main theories and concepts, namely the theory of legal certainty, the principle of proportionality, the principle of treaty law (*pacta sunt servanda*), and the theory of *alternative dispute resolution* (ADR). The theoretical framework is used to critically analyze the legal position, effectiveness, and binding power of the mediation results, so that it can be assessed to what extent mediation is able to provide balanced, fair, and reliable legal protection for

songwriters in the broader context of copyright law.

## Method

This study uses a normative juridical method with a legislative approach (*statutory approach*) and conceptual approaches (*conceptual approach*) (Country, 2023). The legal materials used consist of primary, secondary, and non-legal legal materials, which are analyzed qualitatively.

The data collection process in this study is carried out through a literature study of relevant legal materials. Primary legal materials include laws and regulations, such as Law Number 28 of 2014 concerning Copyright and Supreme Court Regulation Number 1 of 2016 (Nyaman et al., 2021). Secondary legal materials consist of legal doctrines, scientific articles, textbooks, and the results of previous research related to copyright law and mediation. In addition, non-legal materials, such as reports and publications related to the music industry, are also used to support the analysis.

The data analysis process is carried out using qualitative juridical analysis, namely by systematically examining legal norms, principles, and doctrines that are relevant to the research problem. The legal materials that have been collected are then interpreted through a conceptual approach to understand the legal position and binding power of the outcome of mediation, as well as through a legislative approach to assess the consistency and adequacy of existing regulations. This analysis aims to build coherent legal arguments and produce prescriptive conclusions about the role of mediation in ensuring legal certainty.

To ensure the validity of the data, this study uses a triangulation approach by comparing various sources of legal materials, both in the form of laws and regulations, legal doctrines, and expert opinions. The consistency of legal arguments is also maintained by referring to established legal theories and principles, such as the theory of legal certainty and the principle of proportionality. In addition, the use of credible and authoritative sources further strengthens the reliability and accountability of research results.

## Results and Discussion

### Legal Position and Binding Power of Mediation in Copyright Disputes

Mediation as a form of mediation *Alternative Dispute Resolution* (ADR) has gained recognition in the Indonesian legal system, including in the settlement of copyright disputes. The legal position of mediation is no longer seen as a mere informal mechanism, but as an integral part of the civil justice system that has normative and practical legitimacy. This recognition is reflected in various regulations, especially Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in Courts, which requires every civil case to first be resolved through mediation. In addition, Law Number 28 of 2014 concerning Copyright also implicitly and explicitly provides space for dispute resolution through mediation as an alternative to litigation (Nyaman et al., 2021; Soemarsono & Dirkareshza, 2021).

In the context of copyright disputes, the existence of mediation is becoming increasingly relevant as the complexity of legal relations in the creative industry, especially digital music, increases. Disputes involving songwriters, producers, record labels, and digital distribution platforms often have economic and relational dimensions that are not simple. Therefore, mediation

is seen as a mechanism that is able to answer the need for more flexible, efficient, and interest-oriented dispute resolution.

Juridically, the position of mediation in the Indonesian legal system can be seen from two aspects, namely as part of the judicial process (court-annexed mediation) and as a mechanism for resolving disputes outside the court (non-litigation mediation). In the context of justice, mediation has a strong position because it is a mandatory stage before the examination of the subject matter is continued. This shows that mediation serves not only as a complement, but also as a key instrument in efforts to resolve disputes peacefully.

The binding power of mediation is basically derived from the law of the agreement, especially the principle of *pacta sunt servanda*, which states that every legally made agreement is valid as law for the parties. Thus, the agreement produced through mediation has binding force as long as it meets the conditions for the validity of the agreement, namely the agreement of the parties, legal competence, certain objects, and *causa* that is *halal*. In this context, the outcome of mediation can be seen as a concrete form of agreement born from the voluntary agreement of the parties.

However, the binding power of the outcome of mediation is not singular, but depends on its form and formalization process. The results of the study show that there is a significant difference between mediation agreements that are outlined in the form of a peace deed and those that are only in the form of an agreement under hand. A peace deed passed by the court has executory power, so it can be implemented immediately without the need for a new lawsuit in the event of a violation. This position makes the peace act equivalent to a court decision that has permanent legal force.

In contrast, a mediation agreement that is not formalized through the courts only has the force of an ordinary agreement. In this case, if one of the parties does not carry out the content of the agreement, the aggrieved party must file a new lawsuit with the court to demand the implementation of the agreement. This condition shows that although normatively the mediation agreement is recognized and binding, in practice the power still has limitations, especially in the aspect of law enforcement.

This phenomenon can be analyzed through the theory of legal certainty put forward by Gustav Radbruch, who emphasized that law must provide clarity, consistency, and certainty in its application. In the context of mediation, the recognition of the outcome of mediation as a valid agreement indicates the existence of legal certainty in a formal sense. However, this certainty has not been fully fulfilled substantively, because not all mediation results have the power to be effectively enforced.

Legal certainty in a broader sense requires predictability of legal consequences and assurance that applicable norms can be implemented consistently. In this case, only a mediation agreement formalized through a peace deed is able to meet these elements optimally. This is due to the existence of executive power that allows the implementation of the agreement to be carried out by force through available legal mechanisms.

Thus, it can be said that the legal position of mediation in the Indonesian legal system has been recognized normatively, but its binding force is still graduated binding force. At the first level, a mediation agreement has the binding power of an agreement. At the second level, if formalized through the courts, the agreement acquires executory power that provides a guarantee of greater

legal certainty.

In the context of copyright disputes, this condition has significant implications for legal protection for song creators. Songwriters as parties who are often in a weaker bargaining position need assurance that their rights are not only recognized, but can also be effectively enforced. If the outcome of mediation does not have executive power, then there is a risk that the agreement that has been reached will not be implemented, so that the goal of resolving the dispute will not be achieved optimally.

In addition, the dualism of binding power in mediation also raises problems in practice, especially related to the choice of dispute resolution mechanisms. Parties are often faced with a dilemma between choosing a quicker and more flexible mediation, or litigation that provides stronger legal certainty. This condition shows that although mediation has many advantages, its effectiveness in providing legal protection still depends on external factors, especially the support of the legal and institutional systems.

Therefore, it is necessary to strengthen the legal position of mediation, both through improving regulations and improving their implementation practices. One of the steps that can be taken is to encourage the formalization of the results of mediation through the courts, so that the resulting agreement has executory power. In addition, it is also necessary to increase the understanding of the parties regarding the importance of legal aspects in mediation, so that it focuses not only on pragmatic settlements, but also on guaranteeing long-term legal protection.

Overall, it can be concluded that mediation has a strong legal standing in the Indonesian legal system and is recognized as a legitimate dispute resolution mechanism in copyright cases. However, the binding power of the outcome of mediation is still relative and depends on the level of formalization. To ensure that mediation can function optimally in providing legal certainty, stronger integration between mediation mechanisms and the judicial system is needed, so that mediation outcomes are not only normatively binding, but can also be effectively enforced in practice.

### The Effectiveness of Mediation in Ensuring Justice and Protection of Songwriters

The effectiveness of mediation in resolving copyright disputes is not only measured by its ability to resolve disputes quickly and efficiently, but also by the extent to which it is able to provide proportionate justice and adequate legal protection for songwriters. In the context of the complex digital music industry, mediation is often seen as a more adaptive alternative to litigation, as it is able to accommodate the interests of the parties more flexibly and maintain an ongoing professional relationship (Asril et al., 2021; Dirkareshza, 2024; Willis et al., 2022). However, the results of the study show that this effectiveness still faces various challenges, especially in ensuring a balance of rights and obligations as well as substantive protection for the weaker parties.

From the perspective of *alternative dispute resolution* (ADR) theory, mediation has the main characteristics of flexibility, active participation of the parties, and orientation to *interest-based resolution*. This characteristic makes mediation an ideal mechanism for resolving disputes involving long-term relationships, such as in the music industry, where songwriters, producers, and digital distributors are interdependent in a sustainable ecosystem. Mediation allows the parties to

formulate solutions that are not only oriented to legal aspects, but also consider aspects of economics, reputation, and business relationships.

However, flexibility, which is the advantage of mediation, is also a source of weakness in the context of legal protection. The absence of a standard standard in determining the outcome of an agreement opens up space for imbalances, especially when there is a difference in bargaining power between the parties. In this case, the principle of proportionality becomes relevant to assess whether the resulting agreement has reflected balanced fairness. This principle demands that every right and obligation be distributed fairly in accordance with the position and contribution of each party.

The results of the study show that in the practice of copyright disputes, especially in the digital music sector, there is often an inequality of bargaining position between songwriters and industry players. Songwriters are generally in a weaker position due to limited access to information, lack of legal understanding, and low negotiation capacity compared to industries with greater resources. This condition has an impact on the mediation process, where the resulting agreement does not always reflect a fair balance, but is more inclined to the interests of the more dominant party.

In such a situation, the effectiveness of mediation as a dispute resolution mechanism becomes questionable. Although mediation succeeds in producing an agreement, if the substance of the agreement is disproportionate, then the goal of providing substantive justice is not achieved. This shows that the success of mediation cannot only be measured by the achievement of an agreement, but must also be seen from the quality and fairness of the content of the agreement.

In addition, the principle of *pacta sunt servanda*, which is the basis of the binding power of the agreement, also has complex implications in the context of mediation. On the one hand, this principle provides certainty that every agreement that has been made must be respected and implemented by the parties. But on the other hand, if the agreement is born from unbalanced conditions, then its enforceability can actually strengthen injustice. Thus, this principle needs to be understood not only formally, but also in relation to the principles of justice and proportionality.

Furthermore, the effectiveness of mediation is also influenced by the quality of the mediation process itself, especially the role of the mediator. Mediators have a strategic function in ensuring that the negotiation process takes place in a fair and balanced manner. In this case, the mediator not only acts as a neutral facilitator, but also as a process guardian who is able to identify inequality and encourage the creation of more proportionate agreements. Without the role of a competent mediator, mediation risks becoming a negotiation space dominated by a stronger party.

In the context of copyright protection, the effectiveness of mediation is also closely related to the ability of this mechanism to ensure the fulfillment of the economic and moral rights of song creators. Economic rights, such as royalties, as well as moral rights, such as recognition of works, are fundamental aspects that must be protected in any dispute resolution. However, the results of the study show that in the practice of mediation, these aspects are not always the top priority. Agreements are often more focused on resolving conflicts quickly, without ensuring that all copyright rights are optimally protected.

On the other hand, mediation still has a significant advantage over litigation. The faster process, lower costs, and non-adversarial nature make mediation a more rational option in most

cases. In addition, mediation also provides space for the parties to maintain good relations, which is very important in the creative industry. Therefore, mediation still has strategic value in the dispute resolution system, although improvements need to be made in its implementation aspect.

To increase the effectiveness of mediation, efforts are needed to strengthen both in terms of regulation and practice. In terms of regulation, there needs to be a more comprehensive regulation regarding the standards for the implementation of mediation, including protection for weak parties and a mechanism for monitoring the outcome of the agreement. From a practical perspective, increasing the capacity of mediators is crucial, so that mediators are able to carry out their role optimally in maintaining balance and justice.

In addition, it is also important to encourage legal awareness of song creators to better understand their rights and the mediation process undergone. Thus, songwriters can participate more actively and not be in a passive position during the negotiation process. This legal education is an important part of strengthening the bargaining position of songwriters, so that the results of mediation can better reflect the principle of proportionality.

By considering these various aspects, it can be concluded that the effectiveness of mediation in resolving copyright disputes is still relative and contextual. Mediation has great potential to provide fast and flexible justice, but it is not yet fully able to guarantee optimal legal protection for songwriters. The main challenges lie in the inequality of bargaining positions, weaknesses in the enforcement aspect, and the non-optimal role of mediators in maintaining balance.

Therefore, strengthening mediation as a dispute resolution mechanism must be carried out comprehensively, not only from the normative side, but also from the implementation side. Mediation should be directed not only as an efficient dispute resolution tool, but also as an instrument capable of realizing substantive justice and proportionate legal protection. Thus, mediation can function optimally in supporting the copyright protection system in Indonesia, especially in facing the challenges posed by the development of the digital music industry.

## Conclusion

This research shows that mediation has a recognized legal standing in the Indonesian legal system and serves as an alternative to resolving legitimate copyright disputes, especially in the digital music industry. The results of the study confirm that the binding power of mediation is basically derived from the law of the agreement through the principle of *pacta sunt servanda*, but its effectiveness in ensuring legal certainty depends on the level of formalization of the mediation results. The agreements outlined in the peace deed have executory power and are able to meet the elements of legal certainty as stated by Gustav Radbruch, especially in the aspect of predictability and legal enforceability. On the other hand, non-formalized agreements are still weak in terms of enforcement. In addition, from the perspective of proportionality, mediation has not been able to fully guarantee substantive justice due to the imbalance of bargaining positions between songwriters and industry players.

However, this study has some limitations. First, the approach used is normative juridical, so the analysis focuses more on aspects of laws and regulations and legal concepts, without being supported by empirical data on the practice of mediation directly in the field. Second, this study has

not explored in depth the variation in mediation practices in various institutions or jurisdictions, so the generalization of the findings is still limited. Third, the complexity of relationships in the ever-growing digital music industry has also not been fully accommodated, especially related to the dynamics of global digital platforms and cross-border royalty distribution mechanisms.

Based on these findings and limitations, this study recommends the need to strengthen the legal framework and implementation of mediation in the resolution of copyright disputes in Indonesia. This strengthening can be done through improving regulations that provide clarity on the position and binding power of mediation results, as well as encouraging the formalization of agreements through the mechanism of peace deeds. In addition, increasing the capacity of mediators and legal education for songwriters is important to ensure the creation of a more proportionate and fair agreement. The next research is expected to use an empirical approach to examine the effectiveness of mediation more comprehensively, so as to be able to provide a more complete picture of the practice of resolving copyright disputes in the digital era.

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