

EFFECTIVENESS OF MEDIATION AS A DISPUTE RESOLUTION METHOD IN IMPLEMENTATION OF ALTERNATIVE DISPUTE RESOLUTION IN INDONESIA

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Abstract

This research explores mediation as an effective tool for resolving business disputes in Indonesia, with particular attention to its procedural efficiency and its influence on the dynamics between conflicting parties. Using a qualitative research approach and descriptive normative analysis, the study examines the legal basis of mediation, grounded in regulations like Law No. 30 of 1999 and Supreme Court Regulation No. 1 of 2016, which require mediation before proceeding to litigation. The findings highlight that mediation offers notable advantages, such as quicker resolutions and reduced costs. However, its success depends on factors such as public awareness, the expertise of mediators, and the willingness of parties to engage constructively. The research underscores the significance of principles like confidentiality, impartiality, and alignment of interests in ensuring a fair and effective mediation process. While challenges remain, including a societal preference for litigation and questions about enforcing mediated agreements, the study concludes that mediation holds great potential to improve business relationships and optimize dispute resolution. Additionally, the insights gained contribute to a deeper understanding of mediation within Indonesia's legal framework and provide valuable guidance for other nations seeking to strengthen their alternative dispute resolution systems.

Keywords: *Alternative Dispute Resolution; Indonesia; Mediation.*

Abstrak

Penelitian ini mengeksplorasi mediasi sebagai alat efektif untuk menyelesaikan sengketa bisnis di Indonesia, dengan perhatian khusus pada efisiensi proseduralnya dan pengaruhnya terhadap dinamika antara pihak yang bersengketa. Menggunakan pendekatan penelitian kualitatif dan analisis normatif deskriptif, studi ini mengkaji dasar hukum mediasi, yang didasarkan pada peraturan seperti Undang-Undang No. 30 Tahun 1999 dan Peraturan Mahkamah Agung No. 1 Tahun 2016, yang mengharuskan mediasi sebelum melanjutkan ke litigasi. Temuan menunjukkan bahwa mediasi menawarkan keuntungan yang signifikan, seperti penyelesaian yang lebih cepat dan biaya yang lebih rendah. Namun, keberhasilannya tergantung pada faktor-faktor seperti kesadaran publik, keahlian mediator, dan kesediaan pihak-pihak untuk terlibat secara konstruktif. Penelitian ini menyoroti pentingnya prinsip-prinsip seperti kerahasiaan, ketidakberpihakan, dan keselarasan kepentingan dalam memastikan proses mediasi yang adil dan efektif. Meskipun tantangan masih ada, termasuk preferensi masyarakat untuk litigasi dan pertanyaan tentang penegakan perjanjian yang dimediasi, studi ini menyimpulkan bahwa mediasi memiliki potensi besar untuk meningkatkan hubungan bisnis dan mengoptimalkan penyelesaian sengketa. Selain itu, wawasan yang diperoleh memberikan pemahaman yang lebih mendalam tentang mediasi dalam kerangka hukum Indonesia dan memberikan panduan berharga bagi negara lain yang berupaya memperkuat sistem penyelesaian sengketa alternatif mereka.

Kata Kunci: *Resolusi Distribusi Alternatif; Indonesia; Mediasi.*

INTRODUCTION

According to the Merriam-Webster dictionary, a dispute refers to a verbal controversy or debate. Disputes frequently occur in various settings, particularly in the business world, where they are often unavoidable despite the existence of contractual clauses. In Indonesia, deliberation is commonly chosen as a method of out-of-court dispute resolution. However, this approach is not always effective, especially when one or both parties involved are from different jurisdictions. To address such situations, **Alternative Dispute Resolution (ADR)** has become a widely adopted method due to its advantages in saving time and costs.

ADR encompasses several methods that are extensively utilized, such as mediation, arbitration, and negotiation. Mediation, for example, involves a neutral mediator who assists disputing parties in reaching an agreement without resorting to lengthy and costly court proceedings (Samosir et al., 2023). ADR, particularly mediation and arbitration, is considered a promising approach for achieving mutually satisfactory outcomes while reducing the potential for future conflicts (Perwitasari et al., 2023)

ADR serves as a legal mechanism that allows disputing parties to settle conflicts outside of a courtroom, offering win-win solutions where the interests of all parties are addressed (Md. Nazmul Haq, et.al., 2021). In the business context, litigation is often viewed as a last resort due to its time-consuming and costly nature, making mediation a preferred alternative. Mediation in Indonesia is governed by **Law No. 30 of 1999** and **Supreme Court Regulation No. 1 of 2016**, which mandate mediation as a preliminary step before civil trials. Key principles of mediation include confidentiality, neutrality, voluntary withdrawal, and a focus on mutual interests. (Bintang Al et al., 2024).

The existing research has not adequately explored the unique challenges faced by Indonesian businesses in adopting mediation practices, particularly regarding the legal framework and public awareness. Their study provides empirical insights to address this gap, offering a deeper understanding of how mediation can enhance business relationships and strengthen its integration into Indonesia's dispute resolution system. (Wijaya et al., 2023).

This research evaluates the effectiveness of mediation as a dispute resolution method in Indonesia, with a focus on its impact on business relationships. It analyzes the

challenges and barriers disputing parties may encounter, including legal, cultural, and institutional factors. By enriching the literature on dispute resolution in developing countries, this study aims to provide practical guidance for legal practitioners, businesses, and policymakers in Indonesia, fostering a more effective and widely accepted use of mediation. (Bintang Al et al., 2024).

METHOD

The research uses a literature study of existing legal materials.

RESULT AND DISCUSSION

In Indonesia, mediation is well-established as a mechanism for resolving business disputes. **Article 6 of Law No. 30 of 1999** on Arbitration and Alternative Dispute Resolution (ADR) defines mediation as a method of resolving conflicts outside the courtroom. Additionally, **Supreme Court Regulation (Perma) No. 1 of 2016** requires that all civil disputes filed in court first undergo mediation, promoting amicable resolutions and reducing court congestion. **Law No. 48 of 2009 on Judicial Power** further ensures that the public has access to timely and equitable dispute resolution methods, including mediation, while **Law No. 5 of 2004 on the Supreme Court** recognizes mediation as a valid means of resolving civil disputes.

The mediation process begins when the parties agree to seek resolution through mediation. They then select a mediator, and a session is scheduled where both sides present their perspectives. The mediator helps identify the core interests of both parties and guides them toward a mutually acceptable solution. If mediation is successful, a written agreement is created, which becomes legally binding. If mediation fails, the parties may pursue litigation or arbitration. Mediation can be done in court or outside it. For court-based mediation, the process begins after filing a lawsuit, and mediation must take place before the trial. According to **Perma No. 1 Year 2016**, judges must propose mediation to the parties, with the mediation process to be completed within 30 working days, extendable for another 30 days if necessary. In contrast, out-of-court mediation is more flexible and informal, taking place at any time through mutual agreement (Al, Bintang et.al, 2024).

This research explores the effectiveness of mediation as a method for resolving business disputes in Indonesia, focusing on procedural efficiency and its impact on the relationship between disputing parties. The qualitative analysis shows that mediation, as a form of ADR, offers significant potential to improve business dispute resolution efficiency (Fadillah et.al., 2021; Nurlani, 2022). One of the key findings reveals that the success of mediation in Indonesia depends on several factors, including the parties' understanding of the mediation process, the qualifications of the mediator, and the willingness to collaborate in negotiations. Mediation has been shown to provide faster and more cost-effective solutions to business disputes compared to traditional litigation (Wissler et. Al., 2021). Moreover, mediation offers flexible outcomes that can be tailored to the needs of the parties, unlike the rigid decisions of court rulings.

The findings support the effectiveness of Indonesia's legal framework in promoting mediation as a tool for resolving business disputes. The analysis suggests that mediation can enhance procedural efficiency and strengthen relationships between parties. Essential principles of mediation—confidentiality, neutrality, impartiality, and mutual interest—are key to ensuring fairness and success in the process. Confidentiality, as outlined in **Perma**, guarantees that any information shared during mediation remains private, even if mediation fails and litigation follows, thus encouraging open communication. Neutrality is critical for creating a fair environment, as a neutral mediator fosters trust by ensuring that no bias exists. The principle of impartiality allows the parties the freedom to continue or terminate mediation, providing flexibility in decision-making. Emphasizing mutual interest facilitates win-win solutions, helping both sides identify common ground that addresses their needs while preserving business relationships.

However, despite mediation's potential for resolving disputes, challenges persist in its implementation in Indonesia. A significant barrier is the public's limited awareness of mediation and the scarcity of qualified mediators. Even though the legal framework mandates mediation before litigation, many still perceive litigation as the more legally valid option, due to insufficient understanding of mediation's benefits and the lack of competent mediators capable of handling complex business disputes.

The study emphasizes that mediation can significantly speed up the dispute resolution process, aligning with **Law No. 48 of 2009**, which prioritizes swift and fair access to dispute resolution. Mediation has been proven to dramatically reduce the time

needed for resolution compared to litigation, which can take years. Additionally, mediation leads to financial savings by avoiding the complex procedures of the court system.

Mediation also positively impacts the relationships between disputing parties. Participants in mediation report a higher likelihood of reaching amicable agreements, which not only resolve conflicts but also maintain ongoing business relationships. This is in stark contrast to litigation, which often deepens tensions. Mediation fosters win-win solutions, allowing both parties to define their interests and come to mutually satisfying agreements. The principle of mutual interest in mediation is key to achieving these beneficial outcomes.

Nevertheless, challenges remain in the widespread adoption of mediation in Indonesia. Many people still prefer litigation for its perceived certainty and formality (Melenko, 2020). Although mediation offers many advantages, parties are often reluctant to choose it due to uncertainties surrounding the enforceability of agreements reached through mediation. Additionally, the quality of mediators remains a critical issue. The study underscores the need for enhanced mediator training and certification in Indonesia to ensure effective mediation. Mediators who are inadequately skilled often struggle to facilitate the process, leading to less successful outcomes. While mediation provides a faster and more cost-effective solution, doubts about the enforceability of mediation agreements persist (Al-Khafaji, 2021).

International Implications: The study's findings have important implications for other countries developing mediation frameworks for business dispute resolution. Countries with similar legal systems can learn from Indonesia's challenges, especially regarding raising awareness of mediation and improving mediator quality. Additionally, the principles of confidentiality and neutrality, clearly outlined in Indonesia's legal framework, may serve as useful references for other nations building their own mediation systems. The research also highlights the need for institutional incentives to promote broader adoption of mediation as a business dispute resolution tool. Indonesia's experience demonstrates that despite legal recognition of mediation, a lack of clear incentives and public trust can lead parties to prefer litigation. This provides a valuable lesson for other countries looking to enhance the role of ADR in their legal systems. Supported by a strong legal framework, mediation in Indonesia has immense potential to

improve business dispute resolution efficiency. However, challenges related to public awareness, mediator quality, and institutional incentives must be addressed for mediation to reach its full potential.

CONCLUSION

This research highlights the role of mediation as an efficient approach to resolving business disputes in Indonesia, emphasizing its benefits in streamlining processes and fostering amicable relationships between conflicting parties. Supported by legislative measures such as Law No. 30 of 1999 and Supreme Court Regulation No. 1 of 2016, the legal system provides a robust foundation for mediation as an alternative dispute resolution (ADR) method. Nonetheless, the success of mediation depends on several critical factors, including public awareness, mediator competence, and the parties' willingness to pursue cooperative negotiations. Overcoming these obstacles is essential to fully harness mediation's potential to accelerate dispute resolution and enhance the overall efficiency of Indonesia's legal framework.

BIBLIORAPHY