

# ALTERNATIVE DISPUTE RESOLUTION OF CIVIL CASES AT COURT

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## Abstract

Every legal issue has two alternative dispute resolution methods: litigation and non-litigation. People tend to prefer litigation over non-litigation methods, even though resolving disputes through mediation with certified mediators outside the court is more efficient, cost-effective, and equitable. To understand the role of mediators as neutral parties who assist negotiating parties in identifying specific options for conflict resolution without bias or coercion to reach an agreement. The study employs a non-doxtrinal legal research method, focusing on research about law. The data used include primary data, which is directly obtained from research subjects through interviews, and secondary data from literature and legislation, analyzed qualitatively. Alternative Dispute Resolution (ADR) is a civil dispute resolution technique that provides parties with flexibility and self-control to return to a mutually beneficial resolution while ending hostilities. The success of mediation, concluded with a peaceful resolution, represents a high-quality, fair, and dignified outcome. Peaceful resolution is the best, most mutually beneficial, and fair option. Mediators, in resolving conflicts, must first build trust among the parties, particularly in terms of fairness and impartiality. They should facilitate and always provide open access to information for all parties to ensure the success of achieving peace.

**Keyword:** *Mediation, Mediator, Resolution, Civil, Dispute*

## Abstrak

Setiap masalah hukum memiliki dua metode alternatif penyelesaian sengketa: litigasi dan non-litigasi. Orang cenderung lebih memilih litigasi daripada metode non-litigasi, meskipun menyelesaikan sengketa melalui mediasi dengan mediator bersertifikat di luar pengadilan lebih efisien, hemat biaya, dan adil. Untuk memahami peran mediator sebagai pihak netral yang membantu pihak-pihak yang bernegosiasi dalam mengidentifikasi opsi khusus untuk penyelesaian konflik tanpa bias atau paksaan untuk mencapai kesepakatan. Penelitian ini menggunakan metode penelitian hukum non-doktrinal, yang berfokus pada penelitian tentang hukum. Data yang digunakan meliputi data primer yang diperoleh langsung dari subjek penelitian melalui wawancara, dan data sekunder dari literatur dan perundang-undangan, yang dianalisis secara kualitatif. Alternatif Penyelesaian Sengketa (APS) adalah teknik penyelesaian sengketa sipil yang memberikan fleksibilitas dan kendali diri kepada pihak-pihak untuk kembali ke resolusi yang saling menguntungkan sambil mengakhiri permusuhan. Keberhasilan mediasi, yang disimpulkan dengan resolusi damai, mewakili hasil berkualitas tinggi, adil, dan bermartabat. Penyelesaian damai adalah pilihan terbaik, paling saling menguntungkan, dan adil. Mediator, dalam menyelesaikan konflik, harus terlebih dahulu membangun kepercayaan di antara pihak-pihak, terutama dalam hal keadilan dan ketidakberpihakan. Mereka harus memfasilitasi dan selalu memberikan akses terbuka terhadap informasi bagi semua pihak untuk memastikan keberhasilan mencapai perdamaian.

**Kata kunci:** *Mediasi, Mediator, Resolusi, Sipil, Sengketa*

## INTRODUCTION

Every legal issue inevitably requires resolution, either through litigation (court proceedings) or non-litigation methods. Most individuals tend to favor litigation over non-litigation methods, even though resolving legal disputes through mediation—utilizing certified mediators or specialized institutions that handle and resolve civil disputes outside the court—is more efficient, cost-effective, and equitable (Jaidun, Agustus 2024, Vol.16 No.2).

There are two alternative dispute resolution methods: litigation and non-litigation. Dissatisfaction with court processes often leads disputing parties to seek alternatives outside the court. Non-litigation resolutions are often referred to as a *win-win solution* since the agreements are based on mutually accepted decisions by the involved parties. Disputing parties should recognize that resolving issues through litigation is often more detrimental, as it involves lengthy and expensive proceedings. Even if a case has been filed and assigned a case number in court, it can still be resolved through a certified mediator or intermediary appointed by the parties to explore alternative solutions through compromise, deliberation, or consensus. Moreover, courts allow opportunities for amicable settlements, even when cases are already underway or nearing judgment (Mahmudah, Vol.1 No.1 July-Desember 2022).

According to Article 1, paragraph (2) of Supreme Court Regulation of the Republic of Indonesia (PERMA) No. 1 of 2016, mediation mechanisms in court govern the resolution of civil disputes through neutral mediators (judicial mediators). This regulation defines a mediator (judge or certified third party) as a neutral facilitator who assists parties in negotiations to explore various settlement possibilities. Courts allow disputing parties to resolve civil cases through alternative dispute resolution (ADR) to achieve mutually satisfying agreements that benefit all and eliminate hostilities. A successful mediation, concluded with a peaceful agreement, represents a resolution that is fair, dignified, and satisfying.

The term *Alternative Dispute Resolution* (ADR) first emerged in the United States. The ADR concept was developed in response to public dissatisfaction with the judicial system, which was characterized by prolonged case durations due to court backlogs, high costs, and doubts about judges' ability to resolve complex issues requiring specific expertise. These complexities often stem from scientifically intricate cases or the

involvement of numerous stakeholders. To address these challenges, legal practitioners and academics developed ADR to bridge the gap in meeting public needs for justice in dispute resolution (Mahmudah, Vol.1 No.1 July-Desember 2022).

The most effective way to resolve civil conflicts fairly and satisfyingly for all parties is through mediation. Mediation, facilitated by a neutral third party, often leads to safer and more satisfying outcomes compared to litigation, which is public and may harm the parties' reputations.

Dispute resolution can be conducted both inside and outside the court (litigation and non-litigation), with mediation being one method. Mediation involves resolving disputes between parties by engaging a neutral and impartial third party. This aligns with Article 1, paragraph (1) of the Mediation Regulation (PERMA), which defines mediation as "a dispute resolution method through negotiation to reach an agreement between the parties, facilitated by a mediator" (Mulyana, Vol.8 No.1 Januari-Juni 2022).

Civil dispute resolution through litigation is public and lacks the confidentiality inherent in mediation. Mediators are neutral parties who assist disputing parties in negotiations, helping them explore various settlement options without imposing or enforcing solutions. Mediators are characterized by their neutrality, assistance to parties, and lack of decision-making or enforcement authority. Mediators are divided into two categories: court-appointed mediators and external mediators. Under PERMA No. 1 of 2016, the scope of eligible mediators was expanded, allowing court employees, including registrars, secretaries, deputy registrars, bailiffs, substitute bailiffs, judicial candidates, and other staff, to act as mediators (Musadad, 2020).

As stipulated in the Supreme Court Regulation on Mediation Procedures in Court, every registered case must first undergo mediation efforts. Failure to mediate renders a court decision legally void, as it violates Article 130 of the Indonesian Civil Procedure Code (HIR) and/or Article 154 of the Rules of Procedure for Civil Code (Rbg). Given the issues outlined above, it is essential to study alternative civil dispute resolution methods at court, particularly regarding the role of mediators in resolving civil disputes and the obstacles faced in mediation efforts within the judicial process.

## **RESEARCH METHODOLOGY**

This study employs a non-doctrinal legal research method, focusing on the study of law (*research about law*). The data utilized comprises primary data, directly obtained from research subjects through methods such as interviews. Additionally, secondary data is gathered from literature and statutory regulations. The data is then analyzed qualitatively to derive meaningful insights.

## **FINDINGS AND DISCUSSION**

### **The Role of Mediators in Civil Dispute Resolution in Court**

Dispute resolution carried out outside the court, known as non-litigation, is regulated by Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution (UU No. 30/1999). Non-litigation dispute resolution is conducted through deliberation to reach a consensus, and the outcomes of the conflict or dispute resolution are achieved amicably. The advantages of non-litigation include the confidentiality of the parties' dispute, the ability to avoid delays caused by procedural and administrative matters, and the option for the parties to choose third parties with experience relevant to the issue at hand. However, a limitation of non-litigation is that the agreement made by the parties is not of an executory nature. Within non-litigation dispute resolution, several forms of resolution exist, one of which is mediation.

Any alternative dispute resolution in civil conflicts involving a neutral third party (mediator) requires that every case registered in court must first undergo mediation. The mediator in this case is either a judge mediator or a certified mediator appointed by the parties to assist and facilitate negotiations to reach the best, fair, mutually beneficial, and dignified resolution.

The Regulation of the Supreme Court of the Republic of Indonesia No. 1 of 2016, Article (3), defines mediation as a method of dispute resolution through negotiations to reach an agreement between the parties involved, with the help of a mediator. The effort to reach an agreement between the disputing parties and a neutral third party is known as mediation. The mediator does not have the authority to decide the dispute but helps the parties find a solution.

The mediation mechanism in the court is as follows:

1. Every civil case submitted to the court must undergo mediation, with the panel of judges recording that mediation efforts have been made but failed to reach an agreement between the parties.
2. Civil disputes that do not undergo mediation are considered to violate the legal provisions regulating the mediation process in the court. If the case is appealed or goes to cassation, the Court of Appeal and the Supreme Court of the Republic of Indonesia will request the first-instance court to initiate mediation.
3. The mediator judge appointed by the court coordinator is not the judge handling and adjudicating the case.

Certified mediators are rarely used by the parties as independent mediators; instead, the parties tend to choose judge mediators rather than certified mediators. This is due to two factors, namely:

1. The parties do not want to incur costs for hiring or paying a certified mediator, while the Supreme Court of the Republic of Indonesia has been actively conducting mediation training to produce certified mediators to assist the courts in resolving legal conflicts quickly, effectively, without unnecessary procedures, and at a low cost.
2. There are no regulations that require the parties to use the services of a certified mediator, with the cost burden placed on the parties and included in the case deposit or court fees, so there is no reason for the parties not to use certified mediators to help resolve their legal conflicts.

### **Barriers in Efforts of Mediation in Court**

To handle civil matters such as free legal assistance, divorce, or inheritance, mediation is an alternative method for resolving disputes, both in and outside of court. Mediation is a way of communication between the parties in dispute with the help of a third party or mediator to resolve the issue. Mediation is not just a procedure in court; it is more important to understand the situation of the disputing parties so that a mutual agreement can be reached. Mediation is essential for understanding the conditions of the parties in dispute, so they can reach a resolution. Peace in civil conflict is one way to end a conflict between both parties wisely and civilly, where both parties feel satisfied by finding justice through mediation without going to court.

Mediation is a conflict resolution method through negotiation involving a third party who acts as an “intermediary” or “mediator.” This third party is neutral and does

not take sides but helps the parties involved in resolving the issue. They do not have the authority to make decisions. In other words, the mediator's role is only to facilitate. The main goal of mediation is to help both parties reach an agreement on how to resolve the issue or dispute. It is the parties in dispute who make the decision, not the mediator. The mediator plays an important role in bringing about peace by initially approaching the parties separately. Once there is a shared understanding to achieve peace, the mediator analyzes the desires of both parties to merge them into a joint wish (Mahmudah, Vol.1 No.1 July-Desember 2022).

Alternative dispute resolution outside of court involves mediators or intermediaries, which is not an easy task. The difficulty lies in reconciling the differing viewpoints and desires of the parties involved in the dispute, which are hard to unify. This is the main reason why mediation may fail. In other words, the failure of mediation is not solely due to the mediator's lack of professionalism, but rather the willingness of the parties involved. If the parties can unite their desires in a peace agreement, all the issues regarding the civil dispute can be resolved through mutual peace.

The common denotative term "peace" or "ishlah" is often used to describe peace in the context of property matters, peace in disputes and hostility, peace in family affairs, peace among Muslims, and so on. The parties who seek peace must entrust all their issues to a neutral third party (the mediator). In striving for peace, the parties must be willing to take risks, both gains and losses, and be prepared to give and take to achieve a win-win solution. Peace can be said to have no losers and no winners—both sides win.

The mediator helps the parties understand each other's perspectives and identify the things that are important to them. The mediator also assists in managing emotional expressions, exchanging information, perceptions, and interpretations of the situation and the main issue. The mediator often meets directly with the parties to help them prioritize the issues and emphasize the discussion of shared goals and interests. The mediator has more information about the dispute and the problems of the parties, allowing them to identify reasons for reaching an agreement. A trained and professional certified mediator will gather important information regarding the legal conflict between the parties, to use as references in resolving the conflict so that the parties can be easily directed and better understand the context of the issue and how to resolve it in a mutually beneficial and fair manner. A certified mediator must first build trust among the parties, especially in terms

of fairness and impartiality, providing ease and always keeping access to information open for the parties to ensure the success of the mediation process.

## CONCLUSION

Based on the discussion and analysis above, it can be concluded that the role of intermediaries in the process of resolving civil disputes in court is a hopeful avenue for achieving peace. Resolving conflicts peacefully is the best choice, mutually beneficial, and fair. Mediators must first build trust with the parties involved, especially in terms of fairness and impartiality, providing ease and always keeping access to information open to the parties to ensure the success of achieving peace.

Barriers in resolving civil disputes in court include:

1. The parties strongly desire to resolve the civil dispute through litigation (court proceedings), making it difficult to achieve reconciliation.
2. The parties find it difficult to trust the mediator to resolve their civil dispute, as they believe they are right and not at fault.
3. The parties still harbor grudges that are difficult to reconcile, as the legal conflict has been ongoing for a long time, and they feel they have rights that need to be defended.

It is hoped that the Supreme Court of the Republic of Indonesia will prepare legal frameworks that require the parties to use certified mediators to resolve civil conflicts, rather than relying on judges as mediators, as certified mediators are more focused on overcoming barriers to achieving peace between the parties.

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