ANALYSIS OF THE EFFICIENCY OF MEDIATION METHODS IN HANDLING CONFLICTS

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ABSTRACT

Conflict is an inevitable phenomenon in human life, and its resolution requires effective approaches. Mediation, as an alternative method of conflict resolution, has emerged as a promising solution, offering a platform for open dialogue and fair negotiation. This research addresses the need for a deeper understanding of the effectiveness of mediation in handling various conflicts. The research method used is normative legal research, focusing on the analysis of legal theories and norms written in legal documents such as laws, court decisions, legal literature, and other legal documents. In this study, the researcher will explore, analyze, and present information found in legal documents as a basis for formulating understanding and interpretation related to specific topics or issues in the legal domain. Mediation contributes positively to conflict resolution by creating open dialogue spaces, identifying root problems, and promoting justice. Factors such as mediator skills, the sustainability of the mediation process, and active participation of the parties contribute to the success of mediation. This research also presents perspectives from the parties involved, showing their satisfaction with the outcomes of mediation. The study contributes to a better understanding of the role of mediation in conflict resolution, providing diverse perspectives from stakeholders, and laying the groundwork for improving mediation practices in various contexts.

Keywords: Mediation, Conflict Resolution, Alternative Methods, Justice.

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ANÁLISE DA EFICIÊNCIA DOS MÉTODOS DE MEDIAÇÃO NO TRATAMENTO DE CONFLITOS

RESUMO

O conflito é um fenômeno inevitável na vida humana, e sua resolução requer abordagens eficazes. A mediação, como um método alternativo de resolução de conflitos, surge como uma solução promissora, oferecendo uma plataforma para diálogo aberto e negociação justa. Esta pesquisa aborda a necessidade de uma compreensão mais profunda da eficácia da mediação no tratamento de vários conflitos. O método de pesquisa utilizado é a pesquisa jurídica normativa, com foco na análise de teorias jurídicas e normas escritas em documentos legais, como leis, decisões judiciais, literatura jurídica e outros documentos legais. Neste estudo, o pesquisador explorará, analisará e apresentará informações encontradas em documentos legais como base para formular entendimento e interpretação relacionados a tópicos ou questões específicas no domínio jurídico. A mediação contribui positivamente para a resolução de conflitos, criando espaços de diálogo aberto, identificando problemas fundamentais e promovendo a justiça. Fatores como habilidades do mediador, sustentabilidade do processo de mediação e participação ativa das partes contribuem para o sucesso da mediação. Esta pesquisa também apresenta perspectivas das partes envolvidas, mostrando sua satisfação com os resultados da mediação. O estudo contribui para uma melhor compreensão do papel da mediação na resolução de conflitos, fornecendo perspectivas diversas das partes interessadas e lançando as bases para a melhoria das práticas de mediação em vários contextos.

Palavras-chave: Mediação, Resolução de Conflitos, Métodos Alternativos, Justiça.

1 INTRODUCTION

Mediation is a dispute resolution method that is faster, more efficient, and provides broader access for disputing parties to reach a fair and satisfactory agreement justly (Melenko, 2020). Integrating mediation into the judicial system is considered an effective tool to address case backlog in courts and strengthen the role of non-judicial institutions in dispute resolution, besides the adjudicative court process (Rule, 2020; Noone & Ojelabi, 2020). Applicable procedural laws, such as Article 130 HIR (Herziene Indonesisch Reglement) and Article 154 RBg (Recht Reglement voor de Buitengewesten), encourage disputing parties to undergo

mediation processes that can be enhanced through the incorporation of mediation into the procedures of the District Court. Legislation formation and the authority of the Supreme Court in regulating judicial proceedings that are not adequately covered by legislation are essential foundations to ensure certainty, order, and smooth dispute resolution through mediation (Situmorang, 2022; Matsui-Santana et al., 2023).

A mediator or facilitator is a third party that assists disputing parties in resolving their conflicts without having the authority to make decisions. Unlike judges and arbitrators, a mediator does not have the power to adjudicate or decide the dispute (Ojo, 2023). Instead, disputing parties authorize the mediator to help them find a solution to their issues. Mediation is based on the principle of good faith, where parties propose suggestions through a mediator because they cannot resolve the dispute independently (Shafqat et al., 2022; Cao et al., 2023). This freedom gives the mediator the opportunity to offer creative solutions that may not be achievable through the court process, while the disputing parties still gain mutually beneficial outcomes. By identifying the interests of each party and focusing on the future, a mediator encourages an exchange of thoughts acceptable to both parties. This not only helps achieve a resolution but also creates confidence that personal standards of justice have been fulfilled (Prince, 2020). The focus on interests and a future orientation in mediation creates space for mutually beneficial dialogue, providing both parties with a satisfying and fair dispute resolution experience. The mediator acts as a facilitator not only addressing current issues but also paving the way for in-depth understanding and the formation of justice norms that align with the needs and expectations of the disputing parties (Kazmi, 2022; Gmurzyńska, 2021). Competent skills are crucial for a mediator to effectively perform their functions and roles, assisting in problem identification, facilitating communication, fostering perspective understanding, negotiation, problem-solving, and promoting sustainable solutions (Afiyati et al., 2022).

The terminology of mediation is regulated in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. According to this law, if a dispute or difference of opinion cannot be resolved through direct meetings (negotiation) within 14 days, the parties may agree in writing to settle the dispute with the assistance of expert advisors or through a mediator. Further explanation about mediation can be found in Supreme Court Regulation No. 1 of 2008, which revises Supreme Court Regulation No. 2 of 2003 regarding mediation procedures in court. Article 1 paragraph 7 of Supreme Court Regulation No. 1 of 2008 provides a definition of mediation as a dispute resolution method through negotiation to reach an agreement between the parties with the assistance of a mediator. Thus, mediation can be considered a method of dispute resolution outside the court system, where the negotiation process involves a neutral and impartial third party (Ramdhany, 2023). The presence of a mediator must be recognized and accepted by all parties involved in the dispute. The mediator acts as a facilitator to guide the parties in reaching a fair and satisfactory agreement. Mediation emphasizes the principles of non-intervention and impartiality, where the mediator has no personal interest in the outcome of the dispute resolution (Situmorang, 2019). Instead, their role is to assist the disputing parties in reaching a solution acceptable to all. Mediation becomes an effective alternative to avoid the often slower and more expensive formal litigation process in courts (Supeno et al., 2019; Ma'rifah, 2023).

2 RESEARCH METHODS

The research method employed in this study is normative legal research, commonly referred to as library legal research. Normative legal research is an approach that focuses on the analysis of legal theories and norms written in literary documents such as laws, court decisions, legal literature, and other legal documents. In the context of normative legal research, literature or

library materials serve as the primary data source. This data is considered secondary as it is pre-existing information generated by others. The analysis is conducted by detailing and understanding the legal aspects contained in these documents. Normative legal research has several advantages, including providing in-depth understanding of applicable legal norms, identifying the development and changes in the law over time, and laying the foundation for formulating strong legal arguments. However, this method also has limitations, such as a lack of practical context and understanding of the implementation of the law in the field. In this study, the researcher will explore, analyze, and present information found in legal documents as a basis for formulating an understanding and interpretation related to a specific topic or issue in the legal domain.

3 MEDIATION PROCESS

The mediation process, in principle, is designed to ensure the continuity of confidentiality, making it a safe and open environment for parties to speak without fear of consequences outside the mediation context. However, there are several important aspects related to information accessibility, reporting, and the use of remote audio-visual communication that need to be considered (Syafrida & Hartati, 2021). The main pillar of mediation is confidentiality, which provides security and comfort for disputing parties to speak without fearing consequences outside the mediation space. Nevertheless, confidentiality can be waived if all parties agree to disclose specific information or if there is a legal obligation to do so (Purba, 2018; Tasmin, 2019). The mediator's role in reporting parties that do not act in good faith or the failure of the mediation process is a crucial part of the sustainability of mediation. This report is not considered a breach of mediation confidentiality but, on the contrary, creates accountability and provides a basis for further action if necessary (Wicaksono, 2021). Reports on parties not

acting in good faith may include actions or behaviors detrimental to the mediation process, such as non-compliance with mediation rules or a refusal to participate constructively (Sari, 2019; Matsui-Santana et al., 2023). Although mediation emphasizes the freedom and autonomy of disputing parties, the existence of such reports ensures that each party is accountable for its involvement in reaching an agreement. Reporting the results of mediation to the Case Examiner Judge is not considered a violation of the confidentiality principle of mediation (Kazmi, 2022). The judge's role in this context is to ensure that the mediation process remains in accordance with the law and court policies. The judge has the authority to ensure that the mediation process does not violate established legal limits, thus maintaining the integrity and sustainability of dispute resolution through mediation (Rule, 2020; Devi et al., 2022). The presence of the Case Examiner Judge can also provide legal certainty regarding the results of mediation. Involving a judge in the mediation process allows for better integration with the broader legal framework, ensuring compliance with existing legal regulations and norms (Entriani, 2017; Niagara & Hidayat, 2020). Mediation meetings conducted through remote audio-visual communication represent a progressive step to improve the accessibility and smoothness of the mediation process. Technological advancements provide an opportunity to involve disputing parties without the necessity of physical presence at a specific location. Audio-visual communication media allow parties to see and hear each other directly, creating an experience similar to face-to-face meetings. This not only helps maintain the human and personal aspects of communication but also overcomes geographical constraints and facilitates full participation from all disputing parties (Maknun & Rani, 2020; Situmorang, 2019). Remote meetings also offer greater flexibility, allowing parties to participate from a location comfortable for them. This can enhance efficiency and enable mediation to proceed without hindrance that may arise due to geographical or logistical constraints (Gmurzyńska, 2021). The mediation process is a

collaborative effort that requires good faith from all involved parties. Good faith serves as the primary basis for the success of mediation in achieving a fair and sustainable resolution. However, there are situations where one or more parties are deemed to lack good faith, requiring the mediator to take specific actions (Noone & Ojelabi, 2020; Shafqat et al., 2022). Good faith is a concept crucial in mediation, involving a commitment to actively participate, be open to dialogue, and have a genuine intention to reach an agreement satisfying all parties. When parties or their legal representatives enter the mediation process in good faith, they create a supportive environment for seeking shared solutions (Wicaksono, 2021). The mediator's responsibility is to identify situations where good faith is deemed unfulfilled by one of the parties. There are several criteria that can be used as a reference for stating that good faith is not met, such as unexplained absenteeism, disruptive repeated absences, failure to respond to the case summary, or refusal to sign a peace agreement (Nurafifah & Marpaung, 2022).

Assessing good or bad faith is a highly sensitive aspect of a mediator's role. In carrying out their duties, a mediator must treat each party with care and objectivity, avoiding unfair judgments. Some steps that a mediator can take to assess good faith include reasonable summons, evaluating reasons for absence, a consultative approach, and potential reconciliation (Syafrida & Hartati, 2021). Mediators need to ensure that their assessments are based on concrete facts and evidence, not assumptions or prejudices. If a mediator concludes that one party is not demonstrating good faith, the consequences can vary according to the rules and procedures applicable to the mediation (Rule, 2020; Afiyati et al., 2022). Actions that a mediator can take include clarifying expectations, an educational approach, terminating mediation, or reporting to the relevant authorities. When faced with a situation where good faith is in doubt, a mediator needs to be fair and neutral. Clarifying expectations may involve open dialogue with the disputing parties to understand their motivations and objectives (Sari,

2019). An educational approach can be used to provide a better understanding of the importance of good faith in the mediation process. Terminating mediation becomes an option if it is impossible to reach a fair agreement due to non-compliance or unwillingness of one party. Reporting to the relevant authorities may involve notifying institutions or authorities monitoring or overseeing mediation, which can take additional steps in accordance with applicable legal rules (Adiyatmika et al., 2020).

4 RESOLUTIONS OF DISPUTES OUTSIDE COURT THROUGH MEDIATION EFFORTS

Mediation in Religious and General Courts

The mediation procedure in Religious Courts and General Court begins with the initial steps taken by the plaintiffs or applicants, who draft a lawsuit letter and then register it with the court clerk. After the registration stage, they are required to pay the case registration fee and are given a case registration number (Sugiarto et al., 2022). The next step involves the court clerk presenting the lawsuit to the chief of the Religious Court and General Court, who will appoint a panel of judges to examine the case (Nasir, 2020). Generally, on the first hearing day at the Religious Court and General Court, the judge's task is to encourage the parties to engage in mediation according to the provisions of Article 17 paragraph 1 of Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. Subsequently, the examining judge explains the details of the mediation procedure to the parties in accordance with Article 17 paragraphs 6 and 7 of Law No. 30 of 1999. This explanation is recorded in writing and signed by all parties involved. The examining judge also ensures that the parties select a mediator on the first hearing day or at the latest within two days, in accordance with the provisions of Article 20 of Law No. 30 of 1999. The parties are required to inform their choice to the examining

judge. Furthermore, the chief of the panel appoints a mediator through a decree of mediator selection, and this process is carried out by the examining judge with the assistance of the deputy court clerk (Hanifah, 2021; Hermanto et al., 2021).

The mediation process involves a mediator who has the task of scheduling mediation meetings. If mediation is conducted in a court building, the mediator will use the assistance of a clerk or deputy clerk to contact the parties (Triana, 2019). The parties are required to be present in person at the mediation meetings, either with or without legal representation, unless there is a valid reason, such as health conditions preventing attendance based on a doctor's certificate, being under protection, residing abroad, or involvement in state duties, professional demands, or unavoidable work (Fadili & Sidiq, 2019; Asyhadi, 2019). If one party does not attend in two consecutive mediation meetings without a valid reason after being summoned, the absent party is considered acting in bad faith, and if the Plaintiff is acting in bad faith, it will have legal consequences (Saifuddin & Nizar, 2021). The success of mediation is assessed by reaching an agreement between the parties recorded in a written agreement signed by all parties and the mediator. However, the content of the peace agreement must not contradict the law, public order, and/or morality norms, harm third parties, or be unenforceable (Maknun & Rani, 2020). Mediation is deemed unsuccessful if the parties do not reach an agreement within the maximum period of 30 days or if the parties demonstrate a lack of good faith by not submitting or responding to the opposing party's case resume or refusing to sign the draft peace agreement without a valid reason (Purwadi, 2021). There are situations where mediation cannot be implemented, such as when the case involves assets, wealth, or interests directly related to other parties not included as parties or included but not present in the mediation process. If the Mediator declares that the parties are acting in bad faith due to their absence in mediation, the mediation is considered unsuccessful (Prince, 2020; Cao et al., 2023). After the mediation

concludes, the Mediator prepares a report, which is then submitted to the Examining Judge. Subsequently, the Examining Judge schedules a court hearing. If mediation reaches an agreement, the Panel of Judges reads the peace deed or reads the determination of lawsuit withdrawal on the designated hearing day (Melenko, 2020).

Mediation in Consumer Disputes

Consumer dispute resolution through mediation offers an effective approach to address disputes between consumers and service providers or manufacturers more quickly and efficiently than conventional legal processes. In practice, there are various forms of consumer dispute mediation (Triana, 2019; Kusnadi & Marpaung, 2022). Private mediation involves an agreement between the consumer and the service provider or manufacturer to engage in a mediation meeting outside of court, with the option to choose their own mediator or use an independently approved mediator. Some institutions, such as Consumer Protection Agencies or Independent Mediation Institutions, provide mediation facilities to handle consumer disputes (Jusari, 2020). Consumer Protection Agencies may offer mediation as an option to resolve disputes between consumers and telecommunications companies. In some jurisdictions, mediation is even mandatory before parties can file a lawsuit in certain disputes. This approach provides a more cooperative solution and can result in a satisfactory agreement for both parties (Niagara & Hidayat, 2020; Wicaksono, 2021).

Consumer dispute resolution is regulated by Law Number 8 of 1999, specifically in Article 52, which refers to the Consumer Dispute Settlement Agency (BPSK) through mediation and arbitration. This law stipulates that cases reported to BPSK will be promptly followed up, and BPSK has the obligation to issue case decisions (Tasmin, 2019). The resolution process takes place outside the court, with BPSK as the institution facilitating mediation and arbitration. The

stages of case resolution through BPSK include specific steps that must be followed to achieve a satisfactory resolution for all parties involved (Adiyatmika et al., 2020).

1. Applications for case resolution can be filed by consumers seeking to resolve their disputes through the Consumer Dispute Settlement Agency (BPSK). This application can be submitted in written or unwritten form and should include a description of the losses experienced by the consumer. In addition to individual consumers, consumer groups and non-governmental organizations also have the right to file lawsuits by submitting complaints directly to the district court, in accordance with the provisions of Article 46 of Law Number 8 of 1999. During the trial, the panel is assisted by a court clerk to ensure a fair and efficient process.
2. Examination of consumer applications is conducted through procedures similar to trials in general courts. The decision on the resolution of consumer cases will be communicated to all parties involved, and the resolution can be achieved through mediation or arbitration. The consumer case resolution process involving the Consumer Dispute Settlement Agency (BPSK) includes the role of BPSK as an advisor, and the resolution results are then handed over to the parties. If the parties reach an agreement through mediation and find a point of reconciliation, BPSK will issue a peace agreement signed by all parties involved.
3. The implementation and resolution of decisions from the Consumer Dispute Settlement Agency (BPSK) are based on the agreement of the parties to achieve peace outside the courtroom. There are two types of BPSK court decisions:
    a. First, the decision through mediation comes from the agreement reached by the parties. After reaching a settlement, the mediator will draft a written agreement that must be signed by all parties. Upon signing, the BPSK court institution will

provide official approval for the agreement. Decisions through mediation do not involve administrative sanctions.

b. Second, the decision through the arbitration method. According to Law Number 8 of 1999 on consumer protection, acceptance or rejection of the decision of the Consumer Dispute Settlement Agency can be made within fourteen working days after the decision is announced. Defendants who receive a decision from the Consumer Dispute Settlement Agency are required to comply with the decision within seven working days from the official notification of receiving the decision from the BPSK. Conversely, businesses can appeal to the National Legal Assembly within fourteen working days of the BPSK decision being announced. The National Legal Assembly is obliged to issue a decision within 21 working days. If the disputing parties are still dissatisfied with the decision, they can file a direct cassation application to the Supreme Court without going through the Grand Legal Assembly within a deadline of 14 working days after receiving the decision from the legal assembly.

The submission of objections to an arbitration decision refers to Supreme Court Regulation No. 1 of 2006, which sets out the conditions for filing objections. Firstly, the submission of evidence that a document or letter after the decision is given is recognized as false. This condition emphasizes that the party filing the objection must be able to prove that the document or letter forming the basis of the arbitration decision was provided in bad faith or was forged (Syafrida & Hartati, 2021). Secondly, the decision document that determines a consumer dispute case is intentionally removed by the opposing party. This means there is an objection to the fact that the opposing party intentionally removed the document that forms the basis of

the arbitration decision. Consumer dispute cases are often settled through civil litigation by making agreements or settlements through negotiation. The results of the decision from these agreements are recorded in a contract (Supeno et al., 2019; Gmurzyńska, 2021). However, the process of settling consumer dispute cases in court is considered inefficient. This is due to the high costs and the long time required to resolve cases in court (Situmorang, 2022). Therefore, alternative dispute resolution through arbitration is becoming more popular because it is considered faster, more efficient, and minimizes costs. Thus, the option of arbitration provides a more practical and effective solution in handling consumer disputes.

Mediation on land disputes

In the realm of land affairs in Indonesia, the resolution of disputes through mediation outside the court is the responsibility of the National Land Agency of the Republic of Indonesia. The National Land Agency serves as a facilitator in handling land disputes before reaching the trial stage in the District Court. This is guided by its role as a state institution focused on the land sector (Arwana & Arifin, 2019). The National Land Agency, as mandated in Presidential Regulation of the Republic of Indonesia Number 63 of 2013, aims to create a "harmonious living order by overcoming various land disputes, conflicts, and cases throughout the country and designing legal instruments and land management systems so as not to cause disputes, conflicts, and cases in the future." Mediation carried out by the National Land Agency is conducted in good faith, with the goal of being an effective mediator for the parties involved in land disputes (Hanifah, 2021).

The mediation process at the National Land Agency can only be carried out if both disputing parties agree and consent to it. This mediation aims to achieve a solution that benefits all parties, unlike court decisions that tend to favor one party (Nansi, 2022). Mediation outside the

court is generally limited to three meetings, and if a settlement is not reached, the dispute will be brought to the District Court. The mediation process begins at the Regional Land Office where the disputed land is registered. The Land Office has physical, juridical, and registration data for the land in question, which is the center of the dispute (Hermanto et al., 2021; Sugiarto et al., 2022). However, if the parties are dissatisfied with the mediation at the local Land Office, they can agree to continue the mediation at the Regional Office of the National Land Agency or the Central Land Agency. For disputes over uncertified land, in accordance with Law Number 23 of 2014 concerning Regional Government, mediation is carried out at the local Regional Government office at the location of the disputed land. Interestingly, in some land dispute cases, the National Land Agency can even be one of the parties involved in the dispute. The Indonesian Mediation Agency (Badan Mediasi Indonesia or BAMI) is an institution specifically tasked with handling mediation for land disputes outside the court. BAMI was established with the goal of providing dispute resolution solutions that satisfy all parties based on good faith and principles of justice (Maknun & Rani, 2020). In the context of resolving land disputes through mediation at BAMI, the process begins with a meeting between BAMI's mediator and the disputing parties. In this meeting, each party is given the opportunity to express their views on the issue and the desired form of resolution. During the mediation process, the mediator acts as a facilitator who strives to ensure that the discussion takes place in a conducive atmosphere (Situmorang, 2019). The mediator will examine the dispute based on the evidence presented by both parties and propose a solution deemed fair and acceptable to both. The mediator remains neutral and impartial, while the final decision remains a private and confidential agreement between the disputing parties. The agreement reached is expected to bring about peace (Afiyati et al., 2022; Shafqat et al., 2022). If the parties reach an agreement, a peace agreement is drafted and signed by all parties along with the mediator

(Noone & Ojelabi, 2020). However, if one or both parties do not approve the proposed peace agreement, and mediation is unsuccessful, with the consent of both parties, the dispute can be redirected to an ad hoc arbitration process. Both the peace agreement through mediation and the decision issued by the ad hoc arbitrator are final and binding. Cancellation is only possible under specific and very limited conditions, in accordance with the provisions of Article 70 of Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution.

5 CONCLUSIONS

As an alternative method for resolving disputes, mediation has proven to be an effective and efficient approach. By providing a space for open dialogue, mediation creates room for negotiation with the goal of reaching a fair and dignified agreement for all parties involved. The success of this method is increasingly recognized in various sectors, including business, family, and communities, due to its process flexibility, speed of implementation, and focus on common interests. As a more collaborative and humane solution, mediation becomes an attractive option for dispute resolution. Not only does it lead to faster decisions, but it also emphasizes mutual understanding and the creation of solutions acceptable to all parties involved. Amidst the complexity of modern disputes, mediation offers an alternative that leads to a fairer resolution. In the context of dispute resolution through mediation, the role of the mediator is crucial, involving issue identification, communication facilitation, assistance in understanding perspectives, negotiation skills, and the promotion of sustainable solutions. As a neutral party, the mediator acts as a facilitator, an effective communicator, and has a profound understanding of the legal and ethical aspects involved in the dispute.

The mediator's skills include effective communication, empathy to understand various perspectives, sharp situational analysis, conflict management skills, and a spirit of continuous

learning. With appropriate skills, a mediator can ensure that mediation is not only an effective tool but also sustainable in resolving disputes. The involvement of a mediator can change the dynamics of a dispute, help disputing parties identify the root cause of the problem, and create space for open communication. The mediator also plays a role in actively listening, exploring the interests of each party, and fostering empathy among them. This helps build trust and ensures that mediation not only achieves an agreement but also meets the needs and interests of each party. Thus, mediation is not just a process but also a holistic approach to dispute resolution. The proper implementation of the mediator's roles, functions, and skills is the key to the success of mediation. With effective mediation, disputes can be peacefully, fairly, and satisfactorily concluded for all parties involved. Mediation becomes a path leading to sustainable resolution, advancing the principles of justice, and laying the foundation for better relationships in the future.

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