

Effectiveness of Mediation as an Alternative for International Business Dispute Resolution

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Abstract. *Mediation as an alternative dispute resolution is considered to have beneficial power. Mediation can produce a win-win solution for the parties. Mediation is a relatively inexpensive and time-consuming segregative dispute resolution process; dispute resolution through mediation efforts has also been known in the culture of Indigenous peoples in Indonesia for a long time. This study aims to describe and analyze the effectiveness of Mediation as an alternative to resolving business disputes outside the court. This study was conducted using a literature study method. The study results indicate that using Mediation as an alternative to resolving disputes outside the court is effective because, in implementing non-litigation Mediation, both parties are examined in private (not open to the public). That way, the positive impact on the credibility and reputation of the disputing parties is maintained. In addition, compared to the litigation process, out-of-court Mediation is cheaper, less complicated, and does not take long. On the other hand, out-of-court Mediation pays close attention to the continuity of the future relationship between the parties. This is why businesses prefer out-of-court Mediation as an alternative to resolving their business disputes.*

Keywords: *Business; International; Mediation; Resolution.*

1. Introduction

Sometimes, the settlement of cases is only a formality through the courts. (Edo Arya Prabowo, 2023). The disputing parties, willingly or unwillingly, must accept the court's decision. However, the court's decision does not fulfill the sense of justice for one of the parties. In other words, a win-lose solution occurs (a winning party and a losing party). The existence of this win-lose solution creates hostility between the two parties involved.

On the other hand, the court process takes a long time. Meanwhile, dispute resolution does not have to be carried out in court; it can be done in court. (Sopamena, 2022). This problem is the background to the importance of alternative dispute resolution. For this reason, alternative dispute resolution is needed to minimize the losses of each party or even provide benefits for both parties to the dispute. According to Triana, in her article entitled Alternative Dispute Resolution, alternative dispute resolution argues that ADR is access to justice.

Meanwhile, (Tjandra, 2021) Defines ADR as non-litigation dispute resolution, namely disputes whose processes are resolved outside the court. In addition to arbitration, it can be taken through conciliation, negotiation, and Mediation. ADR is the first step that must be taken by the parties when there is a dispute or conflict between them. In other

words, dispute resolution in court (litigation) is the final step if Mediation is unsuccessful. The nation's ancestors have already taught the spirit of alternative dispute resolution outside the court. (Syaroni & Widyaningrum, 2024). Although relatively new, formally, the law regulating alternative dispute resolution in Indonesia has existed since 1999. As indicated by Law No. 30 of 1999 concerning Alternative Dispute Resolution. These laws and regulations serve as alternative guidelines for resolving disputes outside the court. Dispute resolution through non-litigation (ADR), one of which is by conducting Mediation. Dispute resolution using an alternative, Mediation, is a process carried out outside the court by bringing in a neutral third party. (Zakia, 2025). A mediator is the neutral party who attends the mediation process between the disputing parties. The mediator has a reasonably significant role in Mediation. Because the mediator is required to help the disputing parties reach an acceptable solution for both parties. (Atma, 2021). In addition to providing access to justice and acceptable solutions between the parties, Mediation is an alternative to resolving disputes outside the court through an inexpensive and fast settlement process. (Yussytya Wulandari & Nengah Adiyaryani, 2024).

In addition to having a strong legal basis, alternative dispute resolution outside the court is favored by the Indonesian people, especially the business community. This is because this type of resolution is considered more closed and tends not to look for the right and wrong parties. Business people prefer Mediation because it prioritizes compromise. The complexity and rapid development of the business world provide a projection of the potential for conflict or disputes for business partners and actors. Disputes arising from business turmoil will create a bad relationship for the related business actors. Modern business today contains many complications. The non-litigation paradigm in society, especially business people, has not been developed effectively in its implementation. (Sudjana, 2018). This literature review research will review the effectiveness of alternative dispute resolution (ADR) in the business world. The problem is that Mediation as an alternative resolution of business disputes takes a long time and is complicated. This is one of the determining factors for the effectiveness of out-of-court Mediation. Mediation can be carried out without taking a long time, and the mediation results tend to prioritize compromise, so both parties should feel mutually benefited, and no party feels disadvantaged. This study aims to describe the effectiveness of Mediation as an alternative resolution to business disputes outside the court.

One form of ADR (Alternative Dispute Resolution) is Mediation. The birth of Mediation is an alternative dispute resolution through institutions other than the judiciary. Compared to dispute resolution through litigation, Mediation as a form of dispute resolution has strengths so that Mediation becomes one of the options that can be utilized by those in dispute, including:

- 1) Dispute resolution through the mediation process is not trapped in forms of formalism.
- 2) In general, Mediation is held in a closed and confidential manner, so dispute resolution through conciliation becomes attractive to certain parties, especially entrepreneurs who do not want the problems they face to be known by many people.
- 3) In the implementation of Mediation, the parties are flexible in finding solutions to their problems without being confined by legal languages or terms.
- 4) The parties can discuss various aspects or sides of their dispute through the mediation process, including legal and other elements.

5) Mediation can produce a win-win solution for the parties.

6) Mediation is a dispute resolution process that is relatively inexpensive and does not take time when compared to the litigation process or going to court.

A dispute is a dispute that occurs and takes place between parties (who have a working relationship) who have different interests. Disputes can occur between families, friends, and business partners. (Edo Arya Prabowo, 2023). A dispute needs to be resolved. Dispute resolution does not have to be done through litigation. Alternative dispute resolution outside the court can be one of the best ways to do it, namely by involving a third party in resolving the dispute. The involvement of a third party in dispute resolution helps the disputing parties resolve their conflicts through compromise.

Dispute resolution does not have to be through litigation. Dispute resolution can be taken by taking alternative dispute resolution outside the court. Alternative Dispute Resolution was first developed in the United States in 1976, when the Supreme Court Chief Justice, Warren Burger, pioneered this idea at a conference in Saint Paul. ADR is growing because it brings many benefits. Dispute resolution outside the court process is fast and efficient, and confidentiality is guaranteed. ADR provides an opportunity for the creation of decisions that satisfy the disputing parties without presenting the right and wrong parties or, in other words, prioritizing compromise in the process until deciding the results (Yussytya Wulandari & Nengah Adiyaryani, 2024).

One of the types of alternative dispute resolution is Mediation. Mediation is a mediation procedure where a person acts as a mediator to communicate between the disputing parties so that the differences in interests and views can be understood and reconciled. One or more mediators always mediate the mediation process. The selection of mediators is carried out by the disputing parties with caution and full consideration. Given that mediators have an essential role in the progress of dispute resolution. In dispute resolution, Mediation has principles that must be upheld in the continuity of the dispute resolution process. The tenets of Mediation are explained as follows (Sudjana, 2018). The principles above should be considered by the parties who want to resolve their problems through Mediation.

2. Research Methods

The success or failure of a study depends mainly on the research method used. This research was conducted using the literature study method. The literature study method is a series of activities that involve managing research materials by collecting, studying, and recording data. Studying literature can provide knowledge about findings, theories, and other research materials obtained in each work that forms the basis for academic efforts. (Zakia, 2025). This study's data was about alternative dispute resolution outside the courts. Researchers conducted a literature study to analyze the effectiveness of ADR as a type of non-litigation dispute resolution in the business world, so researchers grouped, processed, and used only various relevant literature. The data analysis technique used in this study was content analysis. The data collected is secondary data from related journal articles in the Google Scholar database that previous researchers have created. The problem approach used in this study is an empirical or sociological approach with the nature of exploratory prescriptive research. Primary data were obtained through interviews; in addition, the data in this study also came from library materials on how Mediation is regulated in resolving consumer disputes according to laws and regulations, literature, or law books related to Mediation in resolving disputes.

The data obtained were then analyzed qualitatively.

3. Results and Discussion

Several relevant research results were obtained and discussed based on the researcher's literature study.

3.1. Mediation as an Alternative to Resolving Intellectual Property Rights Disputes

In detail, one of the business disputes can be an IPR or Intellectual Property Rights dispute. (Syaroni & Widyaningrum, 2024). Through her research on alternative resolution of intellectual property disputes, Yuniar Kurniawaty argues that the potential for intellectual property disputes is also influenced by the development of world trade (Rochmani, Safik Faozi, 2020). The research was motivated by the researcher's desire to resolve disputes more informally and responsively to the needs of the disputing parties. For her, society also needs to be part of realizing justice, especially in dispute resolution. The study results show that resolving IPR disputes is better through a non-litigation process or Mediation. Because it is more responsive, effective, and efficient. However, according to her, many parties in disputes over intellectual property rights still take the litigation route. Meanwhile, (Atma, 2021) In his research on the effectiveness of the role of Mediation, he said that Mediation could be the first alternative method that can be taken by the disputing parties to conduct negotiation deliberations until an agreement is reached that is considered beneficial to both parties. The study focuses on problems related to the effectiveness of Mediation as an alternative resolution to intellectual property rights (IPR) disputes.

Then, the study resulted in Mediation by prioritizing the principle of a win-win solution (all parties benefit or no one is harmed). Instead of going through litigation, Mediation helps the disputing parties resolve their disputes through practical alternative efforts. Therefore, Mediation is effective as an alternative resolution of intellectual property disputes by choosing a non-litigation path. The criminal provisions contained in the intellectual property rights law clearly explain the obligation to conduct non-litigation Mediation before going to court (litigation). According to (Yuniarti, 2017), out-of-court Mediation can be carried out in coordination with the police. The mediator (in this case, the police) facilitates meetings between the disputing parties to resolve the case and reach a compromise. In line with the studies above, (Hukum & Pasundan, 2024) Indonesia is predicted to continue to experience an increase in intellectual property rights violations, especially copyright, amidst the rapid development of information technology. A copyrighted product can be easily distributed and shared or even imitated through the internet, thus potentially increasing violations and causing conflicts or disputes within it. This research is normative legal research. The researcher uses a conceptual approach and a legislative approach, concluding that the litigation process can affect and even damage the reputation of the disputing parties.

3.2. Mediation as an Alternative to Resolving Business and Commercial Disputes

In detail, business disputes can include commercial disputes. (Cahyani & Purba, 2023). As an alternative to resolving disputes outside the court (court), Mediation is one of the alternatives favored by business people. The underlying thing is that Mediation is not carried out publicly or consumed by the public. Because the public does not drink it, the

credibility of business actors can be maintained, and the individual is not easily hit by unpleasant issues related to their dispute. Based on research by (Yuniarti, 2017) Who studied ADR in business disputes outside the court, especially ADR in business disputes outside the court based on law and according to Indigenous peoples. The research was based on a small number of judges in Indonesia.

Sinclair is still vulnerable to bribery, so the decision is far from the values of justice. Nevey Varida, in the study, concluded that Mediation carried out by consensus as an alternative to resolving business disputes outside the court is effective and provides benefits not found in the court process (in court). By optimizing laws and regulations (in this case, Law No. 30 of 1999 and PERMA No. 1 of 2016) and re-prioritizing the traditions and culture of the community, the dispute resolution process is fast, uncomplicated, and by the values of justice. Meanwhile, based on research by (Rochmani, Safik Faozi, 2020), who examined the dynamics of the ADR mechanism in the context of international business law.

3.3. Mediation as an Alternative to Resolving Banking Disputes

In detail, one of the business disputes can be a banking dispute (Atma, 2021). Based on research conducted by (Yussytya Wulandari & Nengah Adiyaryani, 2024) On Mediation as ADR in banking disputes. The research was motivated by a dispute between the bank and another party whose agreement was not implemented according to the agreement deed. Seeing this problem, banking problems need to be resolved to realize a strong banking system in the future. Given the significant influence of banking institutions, such as their three main functions: (1) a place to collect public funds, (2) trying to manage funds into productive assets, and (3) as a provider of transaction traffic services or asset transfers. Due to this complexity, banks have quite potential for disputes in the present and the future. The community, in this case, customers, always make transactions in their life activities. That is why banking disputes are vulnerable to occurring.

The research resulted in dispute resolution in banking according to its philosophical basis, namely that disputes that arise exist because of an agreement that can potentially damage the relationship between the two parties. As for the legal settlement, it can be done outside the court, and the mediation institution becomes a "guardian or supervisor" because the bank will mediate with its customers as proof of seriousness in resolving the dispute. Meanwhile, (Tjandra, 2021) In his research on Mediation (alternative dispute resolution) in banking, he said that the banking industry has a unique character as a business institution. With this character, banks gain public trust to collect and distribute funds from the public. In this regard, the increasing intensity of banking allows banking institutions to be open to disputes or disputes with their customers.

3.4. Discussion

The implementation of Mediation to resolve disputes between the parties according to its provisions is carried out based on the parties' free choice. Interestingly, the implementation of Mediation is not a free choice that is purely chosen by the parties but is a choice that the parties directly make. The direction effort tends to give the impression of intervention through one-on-one dialogues with the parties to choose (directed to select). Mediation is an effort to resolve disputes between the parties. The panel is confident that the results of the mediation decision can equalize the position of consumers who were previously in a weak position with the position of business actors. The panel assists in the implementation of Mediation. The period for resolving disputes

through mediation efforts consistently exceeds the provisions, namely 21 (twenty-one) days.

This time is stated to be inadequate for the success of Mediation. Mediation as one way to resolve consumer disputes can provide good results, in the sense that Mediation as a conscious choice of the parties can provide win-win solution results. Mediation must be mandatory in resolving consumer disputes, although this is still being debated. At least the study results show that Mediation in resolving consumer disputes can fix problems between business actors and consumers. For this reason, the government needs to review existing regulations and place consumer dispute resolution through mediation efforts as a mandatory choice. For the mediation process to run well and produce a final decision that is a win-win solution, Mediation should be carried out by a mediator who can act neutrally and professionally. One of the tools to measure a mediator's professionalism is a license's existence. However, a series of evaluations must be conducted to obtain this license, and special education for mediators must be designed.

4. Conclusion

Mediation can be used as an Alternative Dispute Resolution (ADR) or alternative non-litigation (outside the court) business dispute resolution. Alternative dispute resolution in Indonesia has been regulated in PERMA No. 1 of 2016 and Law No. 30 of 1999, as well as an alternative guideline for resolving disputes outside the court. This is different when dispute resolution is pursued through litigation (court); what happens is a court decision about who is right and who is wrong. This indicates a win-lose solution (not all parties feel they benefit). At the same time, non-litigation Mediation (outside the court) can facilitate the disputing parties to reach an agreement that benefits both parties (win-win solution) because Mediation prioritizes the principle of compromise in reaching an agreement, not about right and wrong. Mediation as an alternative dispute resolution outside the court is effective because, in implementing non-litigation Mediation, both parties are examined in private (not open to the public). In this way, the positive impact is that the credibility and reputation of the disputing parties are maintained. In addition, compared to the litigation process, out-of-court Mediation is cheaper, less complicated, and does not take long. On the other hand, out-of-court Mediation focuses on the continuity of the parties' relationship in the future. This is why business people like out-of-court Mediation as an alternative to resolving their business disputes. Although it is effective and preferred by business people, out-of-court Mediation does not have a high frequency of use in society. People in dispute tend not to prioritize Mediation through authorized institutions (such as the police) but immediately take the litigation route (court). The litigation route should be taken after alternative dispute resolution outside the court is deemed not to have reached an agreement.

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