

Effectiveness of Formal Mediation in Resolving Business Disputes

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Abstract: *This study aims to analyze the implementation of formal mediation in resolving business disputes and to examine its effectiveness in practice. The research uses a normative legal method with statutory and conceptual approaches through library research. The novelty of this study lies in the analysis of the operational procedures of formal mediation, including the registration process and implementation stages, as well as identifying the gap between legal norms and practical implementation. The results show that formal mediation has advantages such as faster resolution, lower costs, confidentiality, and the ability to maintain business relationships. However, its effectiveness is still limited due to low trust among parties, lack of legal awareness, and mediator competency issues. It is concluded that although formal mediation has strong legal foundations and high potential, its implementation is not yet optimal. Therefore, strengthening mediator capacity and increasing legal awareness are necessary to improve the effectiveness of mediation in business dispute resolution.*

Keywords: *Business disputes; Effectiveness Formal mediation; Legal analysis.*

1. Introduction

The growth of business and trade activities in the era of globalization has increased the intensity of legal relations between business people, both nationally and internationally. These interactions often lead to conflicts of interest that lead to business disputes. Business disputes may arise as a result of breach of contract, differences in the interpretation of agreements, failure to perform obligations, or acts that are detrimental to either party in a commercial relationship (Aini et al., 2018).

In this context, the legal system plays an important role in providing effective, efficient, and legally definite mechanism to resolve such disputes. Traditionally, dispute resolution has been done through litigation in court (Winarta & Frans, 2022). However, litigation mechanisms often face a variety of challenges, such as lengthy procedures, relatively high costs, and their open-to-the-public nature, which have the potential to damage the business reputation of the parties involved. These conditions have encouraged the development of various forms of Alternative Dispute Resolution (ADR), such as negotiation, mediation, conciliation, and arbitration, as an alternative to dispute resolution through the courts (Astiti & Tarantang, 2019).

In Indonesia, the regulation regarding out-of-court dispute resolution is formally regulated in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. This law provides a legal basis for the parties to resolve disputes amicably through various ADR methods, including mediation. Mediation is seen as a more flexible dispute resolution mechanism because it involves a neutral third party (mediator) to help the parties reach an agreement voluntarily (Sonata, 2014). In practice, mediation has a number of advantages compared to litigation mechanisms. The mediation process is confidential, faster, relatively lower cost, and provides an opportunity for the parties to maintain a sustainable business relationship (Golovko & Druz, 2020). In addition, developments in international law also show the increasing role of mediation in the settlement of business disputes, especially with the birth of the Singapore Convention on Mediation which provides a legal framework for the recognition and enforcement of agreements resulting from cross-border mediation (Alexander, 2018). Theoretically, Mediation is a dispute resolution process that emphasizes a consensus approach through dialogue and deliberation. This concept is in line with the values of conflict resolution in Indonesian legal culture which prioritizes the principle of deliberation for consensus (Arliman S, 2018). Therefore, mediation not only has positive legal legitimacy, but also has sociological roots in the value system of Indonesian society.

In practice, formal mediation is carried out through certain procedures involving mediators and parties to the dispute. Based on the guidelines of the P4M Formal Mediation Process, the formal mediation registration flow begins when the applicant contacts the mediator to apply for mediation. The first stage is the delivery of education to the applicant about the purpose and mechanism of formal mediation. After that, confirmation of the applicant's willingness and voluntariness to participate in the mediation process was confirmed. If the applicant states that he or she is willing, the mediator will submit a mediation request to the respondent.

The next stage is the delivery of education to the respondent regarding the purpose and procedure of mediation. After obtaining the explanation, the respondent was asked to provide confirmation of his willingness to participate in the mediation process. If both parties express their willingness, the mediator, the applicant, and the respondent sign an agreement to mediate before entering the negotiation preparation stage. On the other hand, if one of the parties refuses, then the formal mediation process cannot be carried out. The flow shows that the principle of voluntariness is an important element in the implementation of mediation.

Although normatively mediation has been regulated in various regulations and has clear procedures, its implementation in resolving business disputes in Indonesia still faces various challenges. In the perspective of *das sollen*, Law Number 30 of 1999 hopes that dispute resolution through ADR mechanisms, including mediation, can be an effective alternative to reduce the burden of cases in court and provide a faster solution for the parties (Tutojo, 2015). However, in the perspective of *das sein*, the practice of resolving business disputes in Indonesia is still dominated by litigation mechanisms in court or arbitration. This shows that the use of mediation as a means of resolving business disputes is not optimal.

Several previous studies have examined various aspects of out-of-court dispute resolution. Research conducted by Astiti and Tarantang emphasizes that arbitration is one of the effective business dispute resolution mechanisms because it provides legal

certainty through final and binding decisions (Astiti & Tarantang, 2019). Meanwhile, research by Radha and Fadlian shows that arbitration has an important role in resolving business disputes quickly outside of court (Radha & Fadlian, 2022). On the other hand, many studies on mediation in the context of international dispute resolution have also been carried out. Schnabel highlighted the importance of the Singapore Convention on Mediation as a legal framework for the international recognition and implementation of mediation agreements (Jeong, 2020). Chua also stated that the convention opens up great opportunities for the development of mediation as a mechanism for resolving commercial disputes in the Asian region (CHUA, 2019).

However, most previous studies have focused more on arbitration or the development of mediation in an international context. Research that specifically examines the implementation of formal mediation in the Indonesian legal system, based on Law Number 30 of 1999, is still relatively limited. Therefore, further in-depth studies are needed on how formal mediation mechanisms are implemented in business dispute resolution in Indonesia, as well as how effective they are in practice.

Based on the above, the novelty of this research lies in the legal analysis of the implementation of formal mediation in resolving business disputes based on Law Number 30 of 1999, by examining the operational procedures of formal mediation,

including the registration process and its implementation stages. This research not only addresses the normative aspects of mediation regulations, but also investigates the gap between ideal legal provisions and their actual implementation in business dispute resolution.

Thus, this study aims to analyze the implementation of formal mediation in the settlement of business disputes in the Indonesian legal system and examine the effectiveness of the implementation of the provisions of Law Number 30 of 1999 in supporting a fast, efficient, and fair dispute resolution mechanism for the parties.

However, previous studies have mostly focused on arbitration or mediation in an international context. There is still limited research that specifically examines the implementation of formal mediation in Indonesia, particularly in relation to its procedural aspects and practical effectiveness. This gap highlights the need for further analysis to evaluate how formal mediation is applied and how effective it is in resolving business disputes.

2. Research Methods

This research used a normative legal method with a descriptive analytical approach to examine the implementation of formal mediation in business dispute resolution. The study applied statutory and conceptual approaches to analyze relevant legal norms and principles. Data were collected through library research, including primary, secondary, and tertiary legal materials. The analysis was conducted qualitatively by interpreting legal provisions and concepts. In addition, this study applied legal effectiveness theory to examine the gap between normative expectations and actual implementation.

3. Results and Discussion

Business dispute resolution is one of the important aspects in ensuring legal certainty in economic activities. Business relationships involving various interests often cause

conflicts due to differences in interpretation of agreements, breach of contract, or actions that cause harm to one of the parties. In this context, the law provides various dispute resolution mechanisms that can be pursued by the parties, both through litigation and non-litigation channels. Alternative dispute resolution outside of court is one of the most widely used options because it is considered more efficient, flexible, and able to maintain business relationships between the parties to the dispute (Winarta & Frans, 2022).

Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution provides a legal basis for out-of-court dispute resolution through various mechanisms known as Alternative Dispute Resolution (ADR). Mediation is a form of ADR that provides space for parties to resolve disputes through a dialogue process with the help of a neutral third party, namely a mediator. In this process, the mediator acts as a facilitator who helps the parties find common ground without imposing decisions as the judge has authority in the judicial process (Astiti & Tarantang, 2019).

The Gospel of Jesus ChristThe main characteristic of mediation lies in its voluntary, confidential, and interest-oriented nature. The mediation process can only run if the parties have the will to resolve the dispute peacefully through a negotiation process. This voluntary nature makes mediation different from the litigation process which is coercive and results in a decision that must be complied with by the parties. Thus, the success of mediation is highly determined by the good faith of the parties in seeking mutually beneficial solutions (Golovko & Druz, 2020).

The Gospel of Jesus Christ In the context of business dispute resolution, mediation has an important role because it is able to provide a faster and more efficient solution compared to the judicial process. In addition, mediation also provides an opportunity for the parties to maintain business relationships that have been established before. This is important considering that business relationships are often long-term and involve significant economic interests. Therefore, the use of mediation as a business dispute resolution mechanism is increasingly developing in modern legal practice(Alexander, 2018)

3.1. Formal Mediation Procedure in Business Dispute Resolution

The implementation of formal mediation in business dispute resolution is carried out through a series of systematic and structured stages. This stage aims to ensure that the mediation process runs transparently and provides a balanced opportunity for the parties to express their interests and views.

Based on the guidelines of the P4M formal mediation process, the mediation registration flow begins when interested parties contact the mediator to submit a mediation request. At the initial stage, the mediator provides an explanation to the applicant about the purpose and mechanism of formal mediation to be implemented. The explanation includes the basic principles of mediation, the stages of the mediation process, and the role of the mediator in facilitating communication between the parties to the dispute.

After obtaining the explanation, the applicant was asked to provide confirmation of his willingness to voluntarily participate in the mediation process. This willingness is an important condition in the implementation of mediation because this process can only take place if the parties are willing to resolve disputes through dialogue and

deliberation. If the applicant expresses his or her willingness, the mediator will continue the process by submitting a mediation request to the respondent.

The next stage is to provide education to the respondent about the purpose and mechanism of formal mediation. In this stage, the mediator explains the basic principles of mediation as well as the possible outcomes that can be achieved through the process. After obtaining the explanation, the respondent was asked to provide confirmation of his willingness to participate in the mediation process. If one of the parties is not willing to follow the process, then formal mediation cannot be carried out because the principle of voluntariness is a fundamental element in the mediation mechanism.¹⁷ The Gospel of Jesus Christ

If both parties express their willingness to participate in mediation, the mediator, the applicant, and the respondent will sign a document known as an agreement to mediate. This document serves as the legal basis for the implementation of the mediation process and binds the parties to follow all stages of mediation in good faith. After the signing of the agreement, the mediation process enters the negotiation preparation stage which aims to identify the subject matter of the dispute and the interests of each party.

Based on the flow of formal mediation, it can be understood that the mediation process basically consists of several main stages which include submitting a mediation request, providing education about the mediation mechanism to the parties, confirming the parties' willingness to participate in mediation, and signing an agreement to mediate as the basis for the implementation of the negotiation process. These stages show that mediation places agreement and active participation of the parties as the main elements in dispute resolution.

3.2. Juridical Analysis of The Effectiveness of Formal Mediation in Business Dispute Resolution

From a juridical perspective, mediation is a dispute resolution mechanism that has a strong legal basis in the Indonesian legal system. The recognition of the out-of-court dispute resolution mechanism in Law No. 30 of 1999 shows that the state provides space for peaceful conflict resolution through a more flexible mechanism than the judicial process.¹⁸ The Gospel of Jesus Christ (Sonata, 2014)

However, the effectiveness of mediation in practice is still influenced by a variety of factors. One of the factors that affect the success of mediation is the level of trust of the parties in the mediation process itself. If the parties have confidence that mediation can produce a fair and mutually beneficial solution, then the likelihood of reaching an agreement will be greater. On the other hand, if the parties rely more on the litigation or arbitration mechanism, then the use of mediation tends to be the last resort in dispute resolution (Goodale et al., 2019).

The Gospel of Jesus Christ In addition, the success of mediation is also greatly influenced by the competence of the mediator. Mediators who have good communication, negotiation, and legal understanding skills will be better able to facilitate dialogue between the parties so that an agreement that can be mutually acceptable is reached. Therefore, improving the quality of mediators is one of the important factors in increasing the effectiveness of mediation as a mechanism for resolving business disputes.

Another factor that affects the effectiveness of mediation is the level of legal awareness of business actors regarding the benefits of resolving disputes through mediation. Many business actors still view that resolving disputes through the courts is the only way that can provide legal certainty. In fact, mediation has the advantages of a faster process, lower costs, and the ability to maintain business relationships between the parties (Tilome, 2022).

Based on this analysis, it can be concluded that formal mediation has great potential in resolving business disputes effectively and efficiently. However, optimizing the implementation of mediation in the Indonesian legal system still requires various strengthening efforts, both through increasing public understanding of the benefits of mediation, developing the capacity of mediators, and strengthening regulations that encourage the use of mediation as a more effective and equitable dispute resolution mechanism.

4. Conclusion

Based on the results of the research and discussion, it can be concluded that the settlement of business disputes through formal mediation in the Indonesian legal system has a clear legal basis as stipulated in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. Formal mediation provides a more flexible, efficient, and agreement-oriented dispute resolution mechanism for the parties compared to settlement through litigation. The implementation of formal mediation is carried out through systematic stages, starting from submitting a mediation request, providing education to the parties about the mediation process, confirming the willingness of the parties to participate voluntarily, to signing an agreement to mediate as the basis for the implementation of negotiations. The success of mediation is greatly influenced by the good faith of the parties, the competence of the mediator, and the understanding of business actors regarding the benefits of peaceful dispute resolution. Therefore, the optimization of the implementation of formal mediation in business dispute resolution needs to continue to be encouraged through increasing public legal awareness, strengthening the capacity of mediators, and developing legal policies that support the effectiveness of alternative dispute resolution in the Indonesian legal system.

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