

Consensus Deliberation (*Musyawarah Mufakat*) as the Philosophical Foundation of Mediation in Dispute Resolution in Indonesia: A Pancasila Legal Philosophy Perspective

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Abstract. *This research aims to analyze the philosophical, juridical, and sociological foundations of musyawarah mufakat, evaluate its integration into Indonesia's mediation framework, identify the challenges encountered in its implementation, and formulate recommendations for strengthening mediation based on Pancasila values. This study employs normative legal research (doctrinal legal research) using statutory, conceptual, and philosophical approaches. The analysis is based on the 1945 Constitution of the Republic of Indonesia, Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, Law Number 48 of 2009 concerning Judicial Power, Supreme Court Regulation Number 1 of 2016 concerning Court-Annexed Mediation Procedures, and relevant legal doctrines and scholarly literature. The findings demonstrate that musyawarah mufakat possesses strong philosophical legitimacy as a manifestation of the Fourth Principle of Pancasila while also reflecting Indonesia's long-standing socio-cultural tradition of resolving disputes through deliberation and consensus. Existing legislation has incorporated the principle of deliberation into mediation procedures; however, significant challenges remain regarding the absence of substantive standards for implementing Pancasila values, limited mediator competencies, inadequate protection of vulnerable parties, and insufficient institutional oversight. The study concludes that strengthening mediation based on musyawarah mufakat would reinforce Indonesia's dispute resolution system by harmonizing legal certainty, substantive justice, social harmony, and the constitutional values embodied in Pancasila.*

Keywords: *Mediation; Musyawarah; Mufakat; Resolution.*

1. Introduction

Dispute resolution has become one of the fundamental pillars in establishing legal certainty, justice, and social harmony within modern legal systems. Although litigation remains the primary mechanism for resolving legal disputes, its formal, lengthy, and costly procedures often fail to accommodate the interests of disputing parties seeking peaceful and mutually beneficial outcomes (Mayastuti, n.d.). Consequently, Alternative Dispute Resolution (ADR), particularly mediation, has gained increasing recognition as an effective mechanism for promoting consensual settlements while reducing judicial workloads. In Indonesia, mediation is not merely a procedural instrument but also reflects the nation's cultural identity, emphasizing deliberation (*musyawarah mufakat*) as an essential value embedded in Pancasila and the 1945 Constitution (Safira Putri Zakia, 2025).

The principle of *musyawarah mufakat* represents the philosophical foundation of Indonesian democracy and legal culture. Rather than emphasizing adversarial competition, this principle encourages dialogue, consensus, mutual respect, and collective responsibility in resolving disputes. The institutionalization of mediation through Supreme Court Regulation (PERMA) No. 1 of 2016 demonstrates the Indonesian judiciary's commitment to integrating these philosophical values into formal legal procedures. Nevertheless, practical implementation often prioritizes procedural compliance over substantive realization of Pancasila values, resulting in mediation processes that focus more on administrative completion than meaningful consensus-building among disputing parties (Salinding, n.d.).

Previous studies have extensively discussed mediation from legal, procedural, and institutional perspectives, including its effectiveness in reducing court congestion and promoting efficient dispute resolution. Other scholars have examined the implementation of court-annexed mediation under PERMA No. 1 of 2016 and evaluated the roles of mediators in facilitating negotiations. However, most existing studies primarily concentrate on procedural effectiveness or regulatory compliance, while limited attention has been devoted to comprehensively examining *musyawarah mufakat* as the philosophical and normative foundation underlying Indonesia's mediation system. Consequently, the integration between Pancasila values and mediation practices remains insufficiently explored within contemporary legal scholarship (Atma & Massi, n.d.-a).

This research addresses the identified gap by providing a comprehensive review of mediation through the philosophical perspective of *musyawarah mufakat* as the embodiment of Pancasila values in Indonesian dispute resolution. Unlike previous studies that predominantly evaluate mediation based on procedural success or legal effectiveness, this study critically analyzes the relationship between philosophical principles, legal norms, and practical implementation. By

integrating statutory analysis, legal doctrines, and recent scholarly literature, this review offers a broader understanding of how consensus-based justice contributes to strengthening mediation as a culturally responsive and constitutionally grounded dispute resolution mechanism (Mawaddah Nurul Fitri, 2025).

The novelty of this study lies in its interdisciplinary approach, combining legal philosophy, normative legal analysis, and Alternative Dispute Resolution theory to examine mediation beyond procedural dimensions. Rather than merely reviewing mediation regulations, this study evaluates whether the implementation of mediation genuinely reflects the philosophical essence of *musyawarah mufakat* and identifies challenges that hinder its realization in contemporary judicial practice (Arliman, 2018). Accordingly, the research contributes both theoretically, by enriching the discourse on Pancasila-based legal philosophy, and practically, by offering insights for improving mediation policies and practices in Indonesia.

The primary objective of this study is to analyze the philosophical foundation of *musyawarah mufakat* within Indonesia's mediation framework and evaluate its implementation in achieving fair, effective, and consensus-oriented dispute resolution. Furthermore, this study seeks to identify the consistency between mediation practices and Pancasila values, examine existing legal regulations governing mediation, and formulate recommendations for strengthening mediation as an integral component of Indonesia's justice system.

The remainder of this article is organized into four main sections. Following this Introduction, the Research Method section explains the normative legal research design, research materials, and analytical approaches employed in this study. The Results and Discussion section critically examines the implementation of *musyawarah mufakat* in mediation by integrating statutory provisions, legal doctrines, and relevant scholarly findings. Finally, the Conclusion summarizes the principal findings, highlights the theoretical and practical contributions of the study, and provides recommendations for future legal development and subsequent research.

2. Research Methods

This study employed a normative legal research design because the primary objective was to analyze legal norms, philosophical principles, and statutory regulations governing mediation within the Indonesian legal system (Hakim, 2017). Normative legal research was selected as the most appropriate approach since this study focuses on examining the consistency between legal provisions and the philosophical values of *musyawarah mufakat* embodied in Pancasila, rather than measuring social behavior through empirical observation. This

approach enables a comprehensive evaluation of legal concepts, doctrines, and regulations that form the foundation of mediation practices in Indonesia.

The research subject of this study consisted of legal norms and legal instruments governing mediation and dispute resolution in Indonesia. These included the 1945 Constitution of the Republic of Indonesia, Pancasila as the state's philosophical foundation, Supreme Court Regulation (PERMA) No. 1 of 2016 concerning Mediation Procedures in Courts, Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, Law No. 48 of 2009 concerning Judicial Power, as well as relevant legal doctrines and scholarly discussions regarding mediation, consensus-building, and alternative dispute resolution.

This study utilized three categories of legal materials. Primary legal materials comprised statutory regulations, constitutional provisions, Supreme Court regulations, and other official legal instruments related to mediation. Secondary legal materials included peer-reviewed journal articles, legal textbooks, conference proceedings, commentaries, and previous studies discussing mediation, Pancasila legal philosophy, and dispute resolution (Benuf et al., 2019). Tertiary legal materials consisted of legal dictionaries, encyclopedias, official government publications, and other supporting documents that facilitated the interpretation and clarification of legal concepts.

The data collection technique employed in this study was library research combined with document analysis. Legal materials were systematically collected from legislation databases, accredited national and international journals, academic books, government publications, and official judicial documents. The collected materials were selected based on their relevance, credibility, and contribution to the research objectives. Subsequently, all legal sources were classified according to their legal authority and thematic relevance to facilitate systematic analysis (Nurul Qamar, 2020).

The collected legal materials were analyzed using qualitative legal analysis through statutory, conceptual, philosophical, and comparative approaches. The statutory approach was used to examine the consistency among legal regulations governing mediation, while the conceptual approach explored legal doctrines and theories related to consensus-based dispute resolution. The philosophical approach analyzed the implementation of *musyawarah mufakat* as a manifestation of Pancasila values, whereas the comparative approach was employed to compare previous scholarly findings and identify similarities, differences, and potential legal developments. Data interpretation was conducted descriptively and prescriptively to formulate recommendations for strengthening mediation practices in Indonesia.

The operational variables in this study consisted of one independent variable and one dependent variable. The independent variable was the implementation of *musyawarah mufakat* as the philosophical foundation of mediation, operationally defined as the application of consensus-building principles, deliberation, equality, mutual respect, and peaceful settlement in dispute resolution. The dependent variable was the effectiveness of mediation, operationally defined as the ability of mediation procedures to achieve voluntary agreements, promote justice, preserve social harmony, and resolve disputes efficiently in accordance with Indonesian legal principles.

The measurement tools for the operational variables did not involve statistical instruments because this study adopted a normative legal research design. Instead, the variables were examined through legal interpretation, doctrinal analysis, statutory analysis, philosophical reasoning, and comparative legal analysis. These analytical tools enabled the researcher to evaluate the relationship between the philosophical values of *musyawarah mufakat* and the effectiveness of mediation within Indonesia's legal framework, while also assessing the coherence between legal regulations, judicial practices, and contemporary legal scholarship.

3. Results and Discussion

3.1. Consensus Deliberation (*Musyawarah Mufakat*) as the Philosophical and Sociological Foundation of Mediation

Consensus deliberation (*musyawarah mufakat*) as the philosophical and sociological foundation of mediation in Indonesia cannot be separated from the value system embodied in Pancasila and various positive legal provisions that explicitly affirm the principle of deliberation in dispute resolution. From a philosophical perspective, the Fourth Principle of Pancasila "*Democracy Guided by the Inner Wisdom in the Unanimity Arising out of Deliberations Among Representatives*" embodies the notion that decision-making and problem-solving processes, including the resolution of disputes, should ideally be conducted through deliberation guided by wisdom and directed toward consensus. This principle positions *musyawarah* not merely as a technical decision-making procedure but as a fundamental value that shapes legal reasoning and promotes the peaceful, participatory, and equitable resolution of conflicts for all parties involved (Atma & Massi, n.d.-b).

From a normative perspective, the principle of deliberation leading to consensus is reinforced by the classical rules of Indonesian civil procedure, which are widely regarded as the earliest legal foundation for court-annexed mediation. Article 130 of the *Herziene Indonesisch Reglement* (HIR) requires judges, before examining a civil case, to make every effort to reconcile the disputing parties by encouraging

negotiation or deliberation aimed at reaching an agreement. The provision further stipulates that when the parties successfully reach a settlement, the agreement shall be recorded in a deed of settlement (*akta perdamaian*), which possesses the same legal force as a judicial decision. This provision demonstrates that the Indonesian judicial system has, from its inception, incorporated the logic of *musyawarah mufakat* into formal legal procedures, making mediation and amicable settlement integral components of judicial proceedings rather than mechanisms separate from the legal system.

More recent legislation reflects the same normative orientation, although it employs more technical terminology and legal formulations. Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution does not expressly employ the term *musyawarah mufakat*; nevertheless, it recognizes out-of-court dispute resolution mechanisms through negotiation, mediation, and other consensual methods that fundamentally rely upon voluntary deliberation. The law further provides that agreements resulting from mediation or negotiation are legally binding, provided they are embodied in a written settlement agreement. Substantively, this affirms the importance of consensus as a source of legal legitimacy. Accordingly, the spirit of *musyawarah mufakat* is reflected in the emphasis placed on agreements that arise from the free will of the parties as the legal basis for dispute resolution (Hariyono, 2021).

The reinforcement of the deliberative principle within mediation is explicitly reflected in Supreme Court Regulation (PERMA) Number 1 of 2016 concerning Court-Annexed Mediation Procedures. This regulation requires that, in principle, every civil dispute be submitted to mediation before judicial examination proceeds, with the mediator facilitating discussions in which the parties communicate their interests, positions, and proposed solutions until an agreement is reached. The provisions governing the stages of mediation, mandatory attendance, confidentiality, and the form of settlement agreements effectively institutionalize the process of *musyawarah mufakat* within the framework of the modern judiciary. Once an agreement has been achieved, the mediator and the judge record it in a deed of settlement possessing the same legal force as a court judgment, thereby reaffirming the legal construction established under Article 130 of the HIR while providing a more systematic and structured procedural framework. Consequently, this regulation transforms *musyawarah mufakat* from a merely social practice into a normative and institutionalized component of Indonesia's legal system (ZTF, 2021).

From a sociological perspective, *musyawarah mufakat* as the foundation of mediation reflects the cultural orientation of Indonesian society, which generally prefers to avoid confrontational methods of dispute resolution in favor of approaches that preserve long-term social relationships. In many customary

(*adat*) and local communities, disputes are resolved through open deliberative meetings involving the disputing parties, community leaders, and, in some instances, religious leaders, with the objective of achieving a consensus regarded as fair and mutually acceptable. These long-established practices provide the sociological context for the legal norms embodied in Article 130 of the HIR and Supreme Court Regulation Number 1 of 2016, both of which essentially adopt patterns of dispute resolution that have long existed within Indonesian society. Accordingly, mediation in Indonesia is not merely an adaptation of techniques derived from foreign legal systems but rather an institutional integration of Indonesia's indigenous deliberative tradition into the framework of positive law. This integration creates continuity between the philosophical foundation of Pancasila and the sociological foundation represented by Indonesia's enduring culture of deliberation in the practice of dispute resolution (Mayastuti, n.d.).

3.2. Pancasila Values in Mediation Practice in Indonesia

The values embodied in Pancasila serve as the normative framework guiding the objectives, procedures, and ethical standards of mediation practices in Indonesia, encompassing both civil and criminal dispute resolution, to ensure their alignment with the nation's ideals and the principle of civilized justice. Pancasila functions not only as the philosophical foundation of the Indonesian state but also as a paradigm for conflict resolution that emphasizes dialogue, deliberation (*musyawarah*), and a familial approach to preventing and peacefully resolving conflicts. Within the context of mediation, each of the five principles of Pancasila provides a distinct normative orientation: the First Principle requires respect for human dignity and moral integrity throughout the mediation process; the Second Principle demands fair and civilized treatment of all parties; the Third Principle identifies national unity as the long-term objective of dispute resolution; the Fourth Principle institutionalizes deliberation as the preferred method of resolving disputes; and the Fifth Principle directs mediation outcomes toward the realization of substantive social justice. Accordingly, mediation grounded in Pancasila must extend beyond the achievement of formal compromise to ensure that both the process and its outcomes genuinely reflect justice, peace, and social integration (Yusuf et al., 2024).

From a practical perspective, the Fourth Principle of Pancasila—"Democracy Guided by the Inner Wisdom in the Unanimity Arising out of Deliberations Among Representatives" constitutes the central point of convergence between mediation and *musyawarah mufakat*. In Indonesia, mediation is understood as the institutional manifestation of the nation's deliberative culture, whereby disputing parties are facilitated by a neutral mediator to engage in dialogue, express their respective interests, and formulate mutually acceptable solutions. Studies on Pancasila-based penal mediation emphasize that deliberation must function as the

primary method of dispute resolution, with particular emphasis on restoring social relationships, promoting reconciliation, and re-establishing balance within the community (Mulyani et al., 2022). Consequently, *musyawarah mufakat* in mediation should not be regarded merely as a technical negotiation process but rather as an expression of Pancasila democracy that recognizes the voices and interests of all parties while preventing domination and violence in conflict resolution.

The Second Principle of Pancasila, *Just and Civilized Humanity*, establishes the ethical standard requiring mediation to respect the dignity of all participants and safeguard their rights throughout the mediation process. The literature on Pancasila-based penal mediation emphasizes that offenders, victims, and the community should be treated as subjects possessing inherent dignity rather than merely as objects of legal proceedings. This principle is reflected in the application of restorative justice, whereby mediation seeks to acknowledge the harm suffered by victims, recognize the responsibility of offenders, and address the broader social consequences of conflict while simultaneously pursuing humane and proportionate forms of restoration. In this respect, the implementation of the Second Principle corrects the tendency of adversarial legal systems to focus predominantly on punishment by replacing it with a more humane, restorative, and rehabilitative approach.

The Third Principle, *The Unity of Indonesia*, together with the Fifth Principle, *Social Justice for All the People of Indonesia*, functions as the normative objective directing mediation outcomes. As a paradigm of conflict resolution, Pancasila maintains that dispute resolution should contribute to the preservation of national unity and social integration rather than merely bringing disputes to a formal conclusion. Studies examining the implementation of penal mediation as an expression of Pancasila values emphasize that successful mediation should simultaneously reduce social tensions, prevent social fragmentation, and provide a genuine sense of justice for victims, offenders, and society as a whole. In this context, social justice is understood as the equitable distribution of rights, responsibilities, burdens, and benefits through mechanisms such as appropriate compensation, sincere apologies, or other forms of reconciliation recognized by the community, thereby ensuring that mediation does not create new victims or perpetuate new forms of inequality (Fajar & Subekti, 2021).

The First Principle of Pancasila, *Belief in the One and Only God*, provides an ethical and spiritual dimension to mediation practice, particularly within the religious context of Indonesian society. Several studies have observed that mediators and disputing parties frequently associate their commitment to mediation agreements with moral consciousness and accountability before God, such that violating a settlement agreement is regarded not only as a legal breach but also as a violation

of religious and ethical obligations. This moral foundation strengthens the legitimacy of mediation outcomes and enhances the likelihood that parties will voluntarily comply with the agreements they have reached. Accordingly, the implementation of the First Principle in mediation does not imply transforming mediation into a dogmatic religious process; rather, it acknowledges that the moral effectiveness of mediation in Indonesia is substantially supported by religious values that are deeply integrated with the nation's local cultural traditions(Yusriando, 2015).

3.3. Integration of the Principle of *Musyawarah Mufakat* into the National Mediation Legal Framework

The integration of the principle of *musyawarah mufakat* (deliberation to achieve consensus) into Indonesia's national mediation legal framework has acquired a strong constitutional foundation through Article 28D(1) of the 1945 Constitution of the Republic of Indonesia, which provides that "*Every person shall have the right to recognition, guarantees, protection, and legal certainty that is just, as well as equal treatment before the law.*" This constitutional provision serves as the philosophical basis for all dispute resolution mechanisms, including mediation, by ensuring that the process is conducted fairly and equally for all parties involved in a dispute. The constitutional principle of just legal certainty is consistent with the spirit of *musyawarah mufakat*, which regards collective consensus as the source of legitimacy for social decision-making while ensuring that mediation outcomes represent not merely pragmatic compromises but also the realization of substantive justice for the disputing parties(Nufus et al., 2025).

The recognition of mediation as an integral component of Indonesia's national dispute resolution system is explicitly provided under Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. Article 1(10) of the Law defines Alternative Dispute Resolution (ADR) as "*an institution for resolving disputes or differences of opinion through procedures agreed upon by the parties, namely settlement outside the court through consultation, negotiation, mediation, conciliation, or expert appraisal.*" This provision expressly recognizes mediation as a legitimate mechanism for out-of-court dispute resolution based upon the mutual agreement of the parties a principle that closely reflects the values of *musyawarah mufakat*, which emphasize voluntary participation and consensus. Further regulation is found in Article 6 paragraphs (3), (4), and (5), which stipulate that, upon the parties' written agreement, disputes or differences of opinion may be resolved with the assistance of one or more expert advisers or a mediator. These provisions confirm that mediation may only be conducted where the parties voluntarily consent to the process, thereby embodying the deliberative principle of freedom from coercion.

The incorporation of the values of *musyawarah mufakat* into mediation is further reinforced by Law Number 48 of 2009 concerning Judicial Power, which declares that judicial power constitutes an independent state authority exercised to administer justice and uphold law based upon Pancasila and the 1945 Constitution of the Republic of Indonesia. This philosophical foundation provides moral legitimacy for all judicial processes, including mediation, to operate within the normative framework established by Pancasila. Article 60(1) of the Law further recognizes out-of-court dispute resolution through procedures agreed upon by the parties, including mediation, conciliation, and expert appraisal. This provision strengthens the position of mediation as an integral part of Indonesia's national justice system founded upon the principle of deliberation, while simultaneously ensuring that dispute resolution through mediation remains within the constitutional framework for the protection of the parties' fundamental rights.

The most comprehensive regulation governing court-annexed mediation is Supreme Court Regulation (PERMA) Number 1 of 2016 concerning Court-Annexed Mediation Procedures. Article 1(1) defines mediation as *"a method of dispute resolution through a negotiation process to obtain an agreement between the parties with the assistance of a mediator."* This definition explicitly identifies the parties' agreement as the ultimate objective of mediation, thereby directly reflecting the principle of *musyawarah mufakat*. Furthermore, Article 3(1) provides that *"Every Judge, Mediator, Party, and/or legal counsel shall comply with the dispute resolution procedure through Mediation."* This provision requires all participants in civil litigation to undertake mediation before judicial proceedings continue, demonstrating that deliberation has become an inseparable component of Indonesian civil procedural law (Suwignyo & Yuliantri, 2023).

PERMA Number 1 of 2016 also requires the parties to attend mediation sessions in person. Article 6 stipulates that *"the parties shall personally attend mediation meetings, with or without legal counsel."* This requirement ensures that mediation remains genuinely participatory, allowing each party an equal opportunity to present their interests and engage directly in negotiations, consistent with the spirit of *musyawarah mufakat*, which demands the active participation of all parties in collective decision-making. Moreover, Article 4 of the Regulation requires that all civil disputes submitted to the courts undergo mediation, except for those specifically exempted by law. This mandatory requirement demonstrates the State's institutional recognition of deliberation as an effective and equitable mechanism for achieving peaceful dispute resolution (Kaidah et al., n.d.).

Accordingly, Indonesia's national legal framework governing mediation has systematically incorporated the principle of *musyawarah mufakat* through multiple levels of legislation, ranging from the Constitution and statutory law to Supreme Court regulations. Article 28D(1) of the 1945 Constitution establishes the

constitutional foundation for just legal certainty; Law Number 30 of 1999 recognizes mediation as a legitimate form of alternative dispute resolution outside the courts; Law Number 48 of 2009 affirms that judicial power must be exercised in accordance with the values of Pancasila; and Supreme Court Regulation Number 1 of 2016 provides detailed procedural rules requiring the direct participation of disputing parties in mediation. This normative integration demonstrates that *musyawarah mufakat* has evolved beyond a merely cultural tradition into a binding and operational principle of positive law within Indonesia's dispute resolution system. Nevertheless, significant challenges remain in ensuring that mediation is implemented in a manner that genuinely reflects the values of voluntary participation, procedural equality, and substantive justice (Kaidah et al., n.d.). Addressing these challenges requires effective institutional oversight, continuous enhancement of mediator competence, and greater public understanding of the procedural rights of parties participating in mediation.

3.4. Challenges and Recommendations for Reformulating Mediation Based on *Musyawarah Mufakat*

The implementation of *musyawarah mufakat* (deliberation to achieve consensus) as the philosophical foundation of mediation within Indonesia's national legal system encounters a number of complex normative, institutional, and socio-cultural challenges. From a normative perspective, there is an inherent tension between the principle of deliberation, which prioritizes collective consensus, and the formal legal system, which emphasizes legal certainty and the protection of individual rights. Positive law, characterized by its procedural and binding nature, often conflicts with the flexibility and informality that distinguish traditional deliberative practices. This challenge is further compounded by the reality that deliberative processes within society do not always function ideally. In many cases, economically, socially, or politically dominant parties exert influence over weaker parties, resulting in agreements that reflect the interests of the powerful rather than the realization of substantive justice.

Institutional challenges arise from the limited capacity of the supporting infrastructure for mediation, particularly regarding the availability of competent and ethically qualified mediators. Mediators are expected not only to possess technical mediation skills but also to understand the values underlying *musyawarah mufakat* and to translate those values into mediation practices that guarantee procedural equality. Although **Supreme** Court Regulation (PERMA) Number 1 of 2016 concerning Court-Annexed Mediation Procedures establishes the qualifications required of mediators, the competency standards remain relatively general and do not explicitly incorporate the cultural competencies necessary to facilitate fair and inclusive deliberation. Furthermore, the absence of effective oversight mechanisms for mediation proceedings and the insufficient legal protection afforded to vulnerable parties create opportunities for abuses of

authority and the formation of settlement agreements that fail to uphold justice. Limited public awareness of procedural rights within mediation also constitutes a significant obstacle to achieving genuinely equal and participatory deliberative processes (Kaidah et al., n.d.).

Socio-cultural challenges stem from the complexity of reconciling local cultural values with the demands of an increasingly globalized legal order. As a product of Indonesia's indigenous culture, *musyawarah mufakat* embodies communitarian values that may, in certain circumstances, conflict with universal human rights principles, particularly those concerning individual autonomy and freedom of choice. In some traditional deliberative practices, social pressure and collective obligations may compel individuals to sacrifice their personal interests in favor of achieving communal consensus. Such circumstances have the potential to undermine the principles of voluntary participation and procedural equality as recognized by both national and international legal instruments. At the same time, the modernization and globalization of legal systems also threaten to erode the values of *musyawarah mufakat* through the increasing dominance of adversarial and litigation-oriented approaches derived from both Continental European and Anglo-American legal traditions, which have been adopted in varying degrees within Indonesia's legal system.

Political and institutional challenges are reflected in the limited commitment and inconsistent policy direction of lawmakers and government institutions in strengthening mediation based on *musyawarah mufakat* as a national strategy for dispute resolution. Although Pancasila is constitutionally recognized as the fundamental source of national values, its implementation in public policy often remains largely symbolic and is not accompanied by concrete regulatory reforms. The growing preference of government institutions and the judiciary for more formalized and measurable litigation mechanisms has resulted in mediation being treated merely as a supplementary procedural requirement rather than as a primary method of dispute resolution. This condition is further reinforced by the continuing skepticism among some legal practitioners regarding the effectiveness of culturally grounded mediation in resolving complex disputes involving substantial economic and political interests. Nevertheless, recognizing and strengthening mediation based on *musyawarah mufakat* is essential for the development of a dispute resolution system that reflects Indonesia's national identity while promoting substantive social justice.

a. Challenges in Reformulating Mediation Based on *Musyawarah Mufakat*

The normative-juridical challenge arises from the absence of clear legal provisions requiring mediators to apply the substantive principles of *musyawarah mufakat* throughout the mediation process. Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution and Supreme Court Regulation (PERMA) Number 1 of 2016 concerning Court-Annexed Mediation Procedures regulate mediation primarily from a procedural perspective without providing binding normative guidance on

how the values of *musyawarah mufakat* should be internalized at every stage of the mediation process. Article 5 of PERMA Number 1 of 2016 stipulates that "A Mediator shall understand and comply with the mediation procedures stipulated in this Supreme Court Regulation." However, this provision remains procedural in nature and does not address the ethical and philosophical dimensions that constitute the essence of *musyawarah mufakat*. Second, the institutional and capacity-related challenge concerns the availability of mediators who possess interdisciplinary competencies combining mediation skills, legal expertise, and cultural literacy necessary to navigate the dynamics of deliberation within Indonesian society. The competency standards established by the Supreme Court remain insufficient to assess mediators' capacity to ensure substantive justice and to safeguard the rights of vulnerable parties throughout the deliberative process(Wibowo, 2023).

The challenge of legal protection arises from the absence of comprehensive mechanisms for monitoring and verifying both the mediation process and the settlement agreements ultimately reached by the parties. Article 7(1) of PERMA Number 1 of 2016 provides that "The settlement agreement reached by the Parties through deliberation shall be embodied in a Deed of Settlement Agreement." Nevertheless, the Regulation does not explicitly require courts to examine whether such agreements were achieved through a process characterized by procedural equality, voluntary participation, and substantive justice. Consequently, there is a risk that settlement agreements may satisfy procedural requirements while remaining materially unjust, particularly where one party occupies a significantly weaker bargaining position than the other(Kaidah et al., n.d.).

The socio-cultural challenge relates to the transformation of social relationships within Indonesian society resulting from modernization and urbanization, which have fostered increasingly individualistic and heterogeneous social structures. The traditional values of *gotong royong* (mutual cooperation) and familial solidarity that historically underpin *musyawarah mufakat* have gradually eroded, creating obstacles for mediation models that rely upon collective deliberation and social cohesion. As a result, mediation grounded in the spirit of consensus increasingly encounters resistance from parties who prefer litigation, perceiving judicial proceedings as offering stronger protection of individual rights and greater legal certainty.

- b. Recommendations for the Reformulation of Mediation Based on *Musyawarah Mufakat*

A normative and regulatory reform is necessary through the amendment or refinement of Supreme Court Regulation (PERMA) Number 1 of 2016 concerning Court-Annexed Mediation Procedures by incorporating explicit provisions that integrate the principles of *musyawarah mufakat* derived from Pancasila into the procedural standards governing mediation. New provisions should require mediators to ensure freedom of participation, procedural equality, process transparency, and outcome accountability throughout the mediation process. In addition, the Regulation should establish substantive justice criteria applicable to settlement agreements, requiring courts to conduct a substantive review of mediation outcomes to ensure that agreements are free from coercion, bargaining power imbalances, and violations of the fundamental rights of vulnerable parties. This regulatory reform should also include the formulation of a Pancasila-based Code of Ethics for Mediators, emphasizing the Second Principle (Just and Civilized Humanity) and the Fifth Principle (Social Justice for All the People of Indonesia) as the moral foundations guiding mediators in facilitating deliberative processes.

Institutional reform should focus on developing an integrated certification and training system emphasizing cultural competency. The Supreme Court, in collaboration with the Ministry of Law and Human Rights and professional training institutions, should design a mediator training curriculum that extends beyond technical mediation skills to include comprehensive instruction in Pancasila legal philosophy, Indonesian legal anthropology, and the socio-cultural dynamics of Indonesia's pluralistic society. Mediator certification should incorporate competency assessments evaluating the mediator's ability to identify and manage power imbalances, protect the interests of vulnerable parties, and facilitate deliberative processes capable of producing substantively just agreements. Furthermore, an independent supervisory institution should be established to monitor and evaluate mediation practices both within and outside the judiciary, with the authority to issue recommendations for institutional improvement and to impose disciplinary sanctions upon mediators who violate ethical or procedural standards.

Public education and legal awareness initiatives should be strengthened to improve public understanding of procedural rights in mediation and the values of *musyawarah mufakat* as an instrument of justice. The Ministry of Law and Human Rights, in cooperation with the Supreme Court and professional legal organizations, should develop comprehensive and sustainable public legal education programs promoting mediation based on *musyawarah mufakat* as a more humane, cost-effective, and relationship-oriented alternative to litigation. These initiatives may be

implemented by integrating mediation studies into legal education curricula at universities, expanding legal awareness programs at the village and community levels, and utilizing mass media as well as digital platforms to disseminate information concerning mediation procedures, the procedural rights of disputing parties, and the legal safeguards available during mediation. Greater public awareness regarding the importance of fair and equitable mediation will constitute valuable social capital for fostering mediation practices that genuinely reflect the spirit of *musyawarah mufakat*.

Greater emphasis should be placed on research and policy development through systematic empirical studies evaluating the effectiveness, fairness, and sustainability of mediation based on *musyawarah mufakat* across diverse sectors and communities. Empirical research examining land disputes, family disputes, commercial disputes, consumer disputes, and other categories of conflict should receive sustained support from government agencies and research institutions to generate reliable evidence concerning both best practices and potential abuses in the implementation of deliberative mediation. The findings of such research should serve as the foundation for evidence-based policymaking, informing regulatory reform, the refinement of mediator competency standards, and the development of training modules that are responsive to the evolving social dynamics of Indonesian society. Through this approach, the reformulation of mediation based on *musyawarah mufakat* will become not merely a normative or theoretical endeavor but a transformative legal initiative supported by empirical evidence and practical experience, thereby contributing to the continuous development of Indonesia's national dispute resolution system in accordance with the values of Pancasila (Agustin & Akmaluddin, 2024).

4. Conclusion

Musyawarah mufakat constitutes not merely a cultural tradition but also a fundamental philosophical principle underpinning Indonesia's legal system, particularly in the field of mediation and alternative dispute resolution. The values embodied in Pancasila especially the Fourth Principle concerning deliberation and consensus provide both moral legitimacy and normative direction for mediation as a participatory, peaceful, and justice-oriented mechanism for resolving disputes. Indonesia's legal framework, including the 1945 Constitution, Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, Law Number 48 of 2009 concerning Judicial Power, and Supreme Court Regulation Number 1 of 2016 concerning Court-Annexed Mediation Procedures, demonstrates that the principle of deliberation has been institutionally integrated into positive law. Nevertheless, the existing regulatory framework continues to

emphasize procedural compliance rather than the substantive internalization of Pancasila values within mediation practice. This study further reveals that the effective implementation of *musyawarah mufakat*-based mediation continues to face significant normative, institutional, socio-cultural, and political challenges, including the absence of explicit substantive standards for applying deliberative principles, insufficient cultural and ethical competencies among mediators, limited procedural safeguards for vulnerable parties, inadequate oversight mechanisms, and the gradual erosion of communal values resulting from legal modernization and the increasing reliance on adversarial dispute resolution. Unless these challenges are systematically addressed, mediation risks functioning merely as a procedural formality rather than as an effective instrument for achieving substantive justice and sustainable social reconciliation. Accordingly, strengthening mediation based on *musyawarah mufakat* requires comprehensive legal and institutional reform through the revision of Supreme Court Regulation Number 1 of 2016 to explicitly incorporate Pancasila values into mediation procedures, the enhancement of mediator education and certification through interdisciplinary and culturally informed training, the establishment of effective supervisory institutions, the expansion of public legal literacy regarding mediation, and the promotion of empirical research to support evidence-based policymaking. Through these reforms, *musyawarah mufakat* can evolve from a constitutional ideal and cultural heritage into an operational legal principle capable of reinforcing mediation as a dispute resolution mechanism that promotes legal certainty, substantive justice, and enduring social harmony, while demonstrating how indigenous legal values can be effectively harmonized with the principles of a modern rule-of-law framework.

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