

ISRG Journal of Multidisciplinary Studies (ISRGJMS)



ISRG PUBLISHERS

Abbreviated Key Title: isrg j. multidiscip. Stud.

ISSN: 2584-0452 (Online)

Journal homepage: <https://isrgpublishers.com/isrgjms/>

Volume – III, Issue -II (February) 2025

Frequency: Monthly



Business Dispute Resolution through Mediation and Its Level of Effectiveness in Indonesia

Roni Pandiangan^{1*}, Nur Hakim²

^{1,2} Postgraduate Program Doctoral Study Program, Law Science - Jayabaya University

| Received: 23.01.2025 | Accepted: 27.01.2025 | Published: 05.02.2025

*Corresponding author: Roni Pandiangan

Postgraduate Program Doctoral Study Program, Law Science - Jayabaya University

Abstract

Study This to study efficiency settlement dispute business through mediation in Indonesia. Research This aiming For evaluate how far is mediation effective as alternative settlement dispute, identify challenges faced in its implementation, as well as analyze implications his findings in context practice international. Through approach analysis qualitative, research This find that mediation can speed up the completion process dispute as well as help repair connection between the parties involved. However, the research This also identifies a number of challenges, such as lack of understanding about mediation, differences culture, and support institutions that are still limited to this process. In addition, the results study show that mediation own potential big For give benefit significant, especially in create mutually beneficial solutions profitable for second disputing parties.

Keywords: Mediation Effectiveness, Business Disputes, Alternative Dispute Resolution

1. BACKGROUND

Completion dispute through court often times only nature procedural or formalities (Triana, 2019). The parties involved in dispute must accept decision court, okay Like and also no, although decision the Possible considered No fair by one parties. As a result, there appeared solution *win-lose* where one party win and party other lose, which can trigger hostility between both of

them. In addition, the court process also takes quite a long time. However, the solution dispute No must always carried out in court (litigation), but rather can completed outside out of court (Mamudji, 2004). Problems This become base importance alternative settlement dispute, which aims to For reduce losses of each party, or even give profit for second split disputing parties.

According to Triana in work he wrote entitled *Alternative Dispute Resolution*, ADR (Alternative Dispute Resolution) is access going to access to justice. Meanwhile that, Dedy Mulyana defines ADR as settlement dispute outside court (non-litigation), which can be done through arbitration, conciliation, negotiation, or mediation (Mulyana, 2019). Basically, ADR is the first thing to do taken when there is a dispute or conflict between the parties. Completion through new court (litigation) done if mediation failed. Although draft settlement dispute outside court has there is since grandma's time ancestors, formally, the regulations governing ADR in Indonesia are new there is since publication Law no. 30 of 1999 concerning Alternative Completion Dispute (Nazora & Martana, 2021), which became guidelines for finish dispute outside court (Ariasa & Yogantara, 2023).

One of the forms of ADR is mediation, which involves a party, the third neutral, for help disputing parties reach agreement together. The mediator has a very important role, because they expected can facilitate achievement of a solution accepted by both disputing parties (Fadhilah & Putri, 2021). Mediation offers lots of benefits, including providing access to justice as well as an agreed solution together, with a more process fast and more cost low (Hanifah, 2016). Apart from having a strong base law, settlement dispute through ADR, in particular mediation, increasingly in demand by the Indonesian people, especially perpetrator business. Settlement kind of this considered more closed and more focus on compromise, without must look for who is right or wrong (Varida, 2012).

The complexity of the growing business world rapid increase potential the occurrence of a dispute between partner business or perpetrator business. Disputes that arise can damage connection good between the parties involved. In modern business which is full of with challenges, non-litigation approach like mediation can become more solutions efficient. However, even though non-litigation paradigm this already accepted among perpetrator business, its application not yet fully effective (Ariani, 2012). Research this aiming for evaluate effectiveness mediation as alternative settlement dispute business outside court. One of the factors important in success mediation is time required for complete the process. Ideally, mediation should can completed in relative time short, with results that prioritize compromise so that second party feel benefited and not there is the injured party. Research this focus for describe effectiveness mediation as alternative settlement dispute in the context of the business world outside court.

2. THEORETICAL STUDY

Dispute is difference of opinion or the conflict that arises between parties who have connection mutual work and interests conflict. Dispute this can happen between family, friends, or even between partner business (Hutagalung, 2019). Every dispute need completed, and the solution no always must through track litigation. As alternative, solution dispute outside court can become more choices well, one of them with involving party the third one plays a role in help finish dispute. Presence party third this facilitate the settlement process dispute with approach compromise, which allows second split party find mutual agreement profitable.

Completion dispute can taken without must through track litigation. One of the ways it develops is with use alternative settlement dispute outside court. The concept of Alternative Dispute Resolution (ADR) first appeared in the United States in

1976, thanks to initiative Chairman Supreme Court Justice Warren Burger introduced this idea. In a conference in Saint Paul. As it goes on time, ADR is increasing popular because give lots of benefits. Settlement process dispute outside court this more fast, efficient and maintain confidentiality of the parties involved (confidentiality). ADR also provides opportunity for creation satisfactory solution for second split parties, without must determine who is right or wrong. In contrast, ADR emphasizes the achievement of compromise that can produce decision accepted together (Winarta, 2012).

3. MEDIATION

One of the methods alternative settlement dispute is mediation. Mediation is a resolution process in which a mediator plays a role for facilitate communication between the parties to the dispute, so difference interests and views they can understood and resolved in a way peace. In the mediation process, the appointed mediator will become the mediator, and the selection of the mediator must done with careful and full consideration by the parties involved, considering role important mediator in smoothness settlement dispute (Winarta, 2012).

Mediation own a number of the basis that becomes base in implementation of the settlement process dispute. Principles this important for ensure success and smoothness mediation, and explained as follows (Cahyani, 2022):

1. Principle of Good Faith

Every party must own intention for find settlement good dispute, good for ongoing dispute faced and also for possibility future disputes.

2. Contractual Principle

There is agreement written between disputing parties about ways and methods settlement agreed dispute together.

3. Binding Principles

All parties involved required for comply results the agreement that has been achieved during the mediation process.

4. Principle of Freedom Under Contract

Every party free for determine things to want they set in agreement settlement dispute, with notes that contents agreement the no may contradictory with moral norms and regulations applicable laws and regulations.

5. Principle of Confidentiality

Only the parties involved in permissible disputes for present during the mediation process ongoing, for guard confidentiality related information with dispute the.

Principles this important for noticed by everyone the party that chooses mediation as track settlement dispute they, use ensure fair, effective and appropriate processes with applicable law.

4. RESEARCH METHODS

Success or failure a research is very dependent on the methods used. Research this adopt method studies literature, which is a series activities that include collection, learning, and recording of data from various source. With learn relevant literature, researchers can to obtain outlook about findings, theories, and materials study

others contained in works that become base for activity academic (Huda, Costa, Tasrif, & Sari, 2023). In the research this, the data used related with alternative settlement dispute (Alternative Dispute Resolution) outside court. The main purpose from studies literature This is For analyze effectiveness of ADR as method settlement non- litigation disputes in the business world, with grouping, processing, and using relevant literature. Data analysis techniques applied in study This is analysis content analysis, where the data collected is secondary data obtained from article relevant journals available in the Google Scholar database, which has been written by researchers previously.

5. RESULTS AND DISCUSSION

Based on results studies literature conducted, found various study relevant to discuss various form disputes and ways settlement alternatives, including mediation as method settlement dispute outside court. Here is a number of findings important related mediation as alternative settlement dispute in various field.

Mediation As Alternative Completion Property Rights Dispute Intellectual Property (IPR)

Dispute business, for one, can related with right riches intellectual property (IPR), which is increasingly often happen along with development global trade (Pelu & Tarantang, 2019). In the research Yuniar The Curious about alternative settlement IPR dispute, found that IPR disputes are influenced by the rapid development world trade (Kurniawaty, 2017). Her research motivated by desire For finish dispute with a more informal and responsive way to need the parties involved. Kurniawaty to argue that settlement IPR disputes more effective If done through a non-litigation process like mediation, because more responsive, efficient, and effective. Although thus, many the party that chooses track litigation For finish their IPR disputes. Another study by Sugianto (2022) shows that mediation can become step first good for disputing parties For reach profitable deal second split parties. Mediation in settlement IPR disputes more recommended Because put forward principle *win-win solution*, where no There is the party who feels harmed.

Mediation As Alternative Completion Dispute Business and Commerce

In the business world, disputes commerce often occurs and can often be completed with mediation, which is an alternative preferred by many perpetrator business. This is due to nature more mediation closed, guarded privacy, and not become consumption public, which in turn can guard reputation parties involved. Research Nevey Varida (2012) regarding alternative settlement dispute outside court (ADR) in dispute business conclude that mediation through deliberation consensus walk effective and provide benefits that are not found in the litigation process. Mediation can completed with fast, no complicated, and more put forward values existing justice in culture society, while comply regulation applicable laws and regulations such as Law No. 30 of 1999 and PERMA No. 1 of 2008. In the research In addition, Andi Ardhillah Albar (2019) revealed that mediation in context business international the more popular Because relative cost low, fast process, and results that prioritize compromise and work same. Although Thus, success mediation also depends on the existence of agreement between disputing parties For Work The same in term long.

Mediation As Alternative Completion Dispute Banking

Dispute banking is also one of the type dispute frequent business occurs, and mediation can become solution effective alternative in settlement dispute kind of This. Research conducted by Nahdhah (2016) shows that dispute between bank and customer often happen when agreement or agreement No filled in accordance with the deed that has been agreed. Considering role important sector banking in economy, settlement disputes in the sector This need a cautious approach so as not to damage connection between bank and customer. This show that mediation as form alternative settlement disputes are very necessary for the relationship second split party can awake. This is also reflected in existing regulations, such as Bank Indonesia Regulation Number 10/1/PBI/2006, which regulates settlement dispute through mediation. While that, research Salfutra (2017) highlights importance mediation as non-litigation solution in dispute banking. According to him, the open litigation process For general can damage image customers and the bank's reputation. Therefore that, mediation banking that is done in a way closed and secret can become more choices effective and fair, and guard connection between disputing parties. In general overall, mediation as alternative settlement dispute, good in matters of intellectual property rights, trade, and banking, shows that method This own superiority compared to with the litigation process, especially in matter efficiency cost, time, and confidentiality. Although thus, still There is challenges that need to be overcome overcome, such as lack of understanding about ADR and the need for it socialization more carry on about method settlement dispute this in various sector.

6. CONCLUSION

Mediation is one of form of Alternative Dispute Resolution (ADR) or settlement dispute non - litigation alternatives (outside of court). In Indonesia, the process of resolving dispute This has set up formally in PERMA No. 1 of 2008 and Law no. 30 of 1999, which became guidelines For finish dispute outside court. Different with a litigation process that relies on court For determine who is right and who is wrong, who tends to produce *win-lose solution* (where no all party feel benefited), mediation offer approach *win-win solution*. In mediation, the focus the main thing is about compromise and achievement profitable deal second split party, not just determine who is wrong or Correct. Outside mediation court own level high effectiveness Because the process done in a way closed, without open For public, which guards credibility and reputation the parties involved. In addition, compared with litigation, mediation more cheap, more simple, and more fast. This process is also more prioritize continuity connection term long between party to the dispute, who becomes reason main Why circles business more choose non- litigation mediation as solution settlement dispute they. Although however, even though effective and abundant chosen by the perpetrators business, usage external mediation court Still relatively low in society. Many more parties tend direct choose track litigation without moreover formerly try mediation through authorized institutions, such as police. In fact, it should be track litigation only taken after effort settlement through mediation No bear fruit agreement.

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