



EFFECTIVENESS OF BUSINESS DISPUTE RESOLUTION THROUGH MEDIATION IN INDONESIA

Bintang Al¹, Yuhelson², Supaphorn Akkapin³

^{1,2}Doctor of Law Studies Program

Postgraduate Program - Jayabaya University

³Rajamangala University of Technology Krungthep - Thailand

E-mail: ¹bintang.star7109@gmail.com, ²yuhelson2870@gmail.com, ³supaporn.a@mail.rmutk.ac.th

Abstract

This study investigates the effectiveness of mediation as a mechanism for resolving business disputes in Indonesia, focusing on its procedural efficiency and impact on the relationships between disputing parties. Employing a qualitative research approach with descriptive normative analysis, the research highlights the legal foundations of mediation established by laws such as Law No. 30 of 1999 and Supreme Court Regulation No. 1 of 2016, which mandate mediation prior to litigation. The findings reveal that while mediation presents significant benefits, including faster resolution times and cost savings, its effectiveness is contingent on several factors: public awareness, the quality of mediators, and the parties' willingness to engage collaboratively. The study emphasizes the importance of confidentiality, neutrality, and mutual interest as key principles in ensuring a fair mediation process. Despite the challenges faced, such as a preference for litigation and uncertainties regarding the enforcement of mediated agreements, the research indicates that mediation has the potential to enhance business relationships and streamline dispute resolution processes. The insights gleaned from this study not only contribute to the understanding of mediation within the Indonesian legal context but also offer valuable lessons for other jurisdictions aiming to develop their alternative dispute resolution frameworks.

Keywords: Mediation, Business Disputes, Alternative Dispute Resolution (ADR), Indonesia, Procedural Efficiency

1. INTRODUCTION

Disputes, arising from conflicting interests among parties, are a common aspect of human interaction in various relationships, including family, friendship, and business. While traditional litigation is often seen as the primary means of resolving disputes, it can be inefficient and lead to adversarial outcomes that may exacerbate conflicts (Sholihah & Syakirin, 2024; Firdaus, 2024). As a result, alternative dispute resolution (ADR) has gained popularity due to its benefits, such as speed, confidentiality, and the potential for win-win solutions. Mediation, a prevalent ADR method, involves a mediator who assists the parties in reaching an agreement without resorting to lengthy and expensive court processes (Samosir, et al, 2023). In Indonesia, cultural values that emphasize kinship and deliberation foster a preference for out-of-court resolutions. Given the increasing globalization and competitiveness in business, disputes can arise even from well-crafted contracts. An effective and efficient dispute resolution system that is acceptable to all parties is crucial. ADR, especially mediation and arbitration, is seen as a promising approach to achieve satisfactory resolutions and reduce the likelihood of future conflicts (Perwitasari, et al, 2023).

The theory of legal effectiveness emphasizes that the law's success is not solely dependent on written regulations but also on several interconnected factors, including law enforcement quality, available resources, community compliance, and cultural values (Wijaya, et al, 2023). Soerjono Soekanto identifies five key factors influencing legal effectiveness: legal factors, which address the balance between legal certainty and justice; law enforcement factors, highlighting the integrity and

**EFFECTIVENESS OF BUSINESS DISPUTE RESOLUTION
THROUGH MEDIATION IN INDONESIA**

Al et al.

competence of enforcers; facilities and infrastructure, essential for efficient law enforcement; community factors, reflecting the populace's legal awareness and adherence; and cultural factors, which align legal norms with societal values (Disemadi, 2022). The interplay of these factors forms a comprehensive legal system where the role of law enforcers is particularly critical, as their actions shape public perceptions of the law's legitimacy and effectiveness. Therefore, achieving effective legal resolution, especially in contexts like business dispute resolution through mediation, requires a holistic understanding of these elements to foster compliance and justice within society (Wibawa, Putri & Kharismawati, 2024) .

In the business realm, disputes among parties are often inevitable, encompassing various issues such as contractual agreements and intellectual property rights. While litigation is typically viewed as a last resort due to its time-consuming and costly nature, mediation has emerged as a favored ADR method, offering a more effective and efficient means of resolving conflicts. Defined as a process in which a neutral third party, or mediator, assists the disputing parties in reaching a mutually beneficial agreement, mediation is governed by legal frameworks in Indonesia, including Law No. 30/1999 and Supreme Court Regulation No. 1 Year 2016, which mandate mediation before trial in civil disputes. Key principles of mediation include confidentiality, neutrality, the freedom of parties to withdraw, and a focus on mutual interests. Mediation presents several advantages over litigation and arbitration, such as time and cost efficiency, control over outcomes, preservation of business relationships, and procedural flexibility, making it a valuable approach for resolving disputes while maintaining constructive relationships in the business.

The phenomenon under investigation in this research revolves around the underutilization of mediation as a dispute resolution mechanism in Indonesia's business environment, despite its recognized advantages over traditional litigation. Many businesses continue to rely on litigation due to a lack of awareness, cultural perceptions, and institutional barriers that hinder the effective implementation of mediation. This results in prolonged conflicts, increased costs, and strained relationships between disputing parties. Additionally, the existing legal framework may not fully support or promote mediation practices, further exacerbating these challenges.

Despite the increasing acknowledgment of mediation as an effective alternative dispute resolution mechanism in various contexts, there remains a notable gap in the literature specifically addressing its application within Indonesia's business environment. Recent studies indicate that while mediation has demonstrated procedural efficiency and cost-effectiveness in other jurisdictions (Wibawa, Putri & Kharismawati, 2024; Firdaus, 2024), its implementation in Indonesia is still limited due to cultural perceptions and institutional barriers (Samosir et al., 2023; Perwitasari et al., 2023). Furthermore, the existing research does not adequately explore the unique challenges faced by Indonesian businesses in adopting mediation practices, particularly regarding legal frameworks and public awareness (Wijaya et al., 2023). To fill this gap by providing empirical insights into the effectiveness of mediation in enhancing business relationships and resolving disputes, contributing to a deeper understanding of how mediation can be better integrated into Indonesia's dispute resolution landscape.

The research aims to evaluate the effectiveness of mediation as a dispute resolution mechanism in Indonesia, particularly in terms of procedural efficiency and its impact on business relationships. It will analyze the challenges and barriers encountered by parties in utilizing mediation, including legal, cultural, and institutional factors that influence its implementation. Furthermore, the study seeks to identify the implications of these findings for international best



practices in mediation, offering insights that could benefit other jurisdictions looking to enhance their business dispute resolution frameworks. By contributing to the development of business law theory, this research will provide a fresh perspective on the efficiency of non-litigation mechanisms, enriching the literature on dispute resolution in developing countries and offering practical guidance for legal practitioners, companies, and policymakers in Indonesia. The findings are expected to promote the adoption of mediation as a primary option, thereby reducing litigation costs and time while fostering better relationships between parties involved in business disputes.

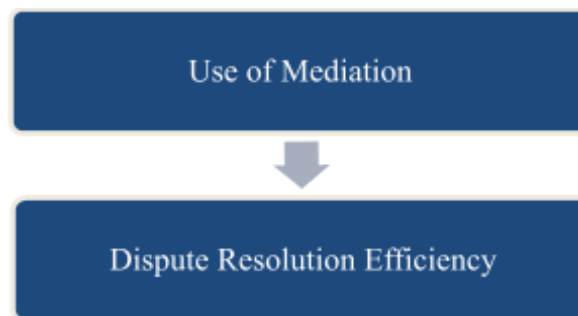


Figure 1. Conceptual Framework

The Use of Mediation variable encompasses multiple factors that affect how mediation is applied in resolving business disputes. Key aspects include the mediator's level of understanding and training, along with the willingness of the parties involved to engage in the mediation process. In contrast, the Dispute Resolution Efficiency variable indicates the results achieved through mediation, which can be assessed by evaluating the duration required to reach an agreement, the costs associated with the mediation process, and the satisfaction levels of the parties following the resolution of the dispute.

2. IMPLEMENTATION METHOD

This research employs a qualitative approach utilizing descriptive normative analysis to explore the effectiveness of mediation as a mechanism for resolving business disputes in Indonesia. By focusing on an in-depth understanding of the legal phenomena surrounding mediation, the study aims to provide a comprehensive picture of its implementation within the Indonesian legal context. The research employs a library research method to gather legal materials from secondary sources, including relevant laws, court decisions, and scientific articles, thus establishing a strong theoretical foundation regarding mediation in business dispute resolution. This normative legal research aligns with the objective of analyzing existing legal norms and policies, ultimately identifying factors influencing the success of mediation processes (Suyanto, 2023).

The research further employs both normative juridical analysis techniques and content analysis to evaluate the regulatory framework governing mediation in Indonesia, specifically referencing Law Number 30 of 1999 and Supreme Court Regulation Number 1 of 2016. By applying both deductive and inductive approaches, the study examines the compatibility of practical mediation implementations with established theories of legal efficiency and negotiation. This dual approach enables the research to derive new insights from empirical findings while contributing to the development of broader legal theory. Ultimately, this study seeks to provide practical policy recommendations for optimizing the mediation system in Indonesia, with implications that extend to international contexts, thereby enhancing the discourse on business dispute resolution through mediation (Disemadi, 2022).



**EFFECTIVENESS OF BUSINESS DISPUTE RESOLUTION
THROUGH MEDIATION IN INDONESIA**

Al et al.

3. RESULTS AND DISCUSSION

A business dispute refers to a conflict arising from the legal relationships among two or more business entities, often resulting from disagreements about the fulfillment of rights and obligations defined in contracts. In civil law, such disputes are categorized as private disputes, necessitating a thorough understanding of contract law and legal responsibilities within a particular jurisdiction. To comprehend business disputes, it is essential to analyze applicable national and international laws guiding their resolution. These disputes can be categorized into contractual, where one party fails to adhere to the terms of an agreement, or non-contractual, concerning other legal responsibilities, such as product liability.

In Indonesia's legal framework, mediation is well-established as a mechanism for resolving business disputes. Article 6 of Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution identifies mediation as a form of alternative dispute resolution outside the courtroom. Furthermore, Supreme Court Regulation (Perma) No. 1 of 2016 mandates that all civil disputes filed in court must first undergo mediation, promoting amicable resolutions and alleviating court congestion. Additionally, Law No. 48 of 2009 on Judicial Power ensures public access to timely and equitable dispute resolution through ADR methods, including mediation. Law No. 5 of 2004 on the Supreme Court acknowledges mediation as a valid method for resolving civil cases in court.

The mediation process typically starts with the parties agreeing to seek resolution through mediation. They then jointly select a mediator, after which a mediation session is scheduled where both parties present their perspectives on the dispute. The mediator assists in identifying the fundamental interests of both parties and facilitates negotiations to achieve a mutually agreeable solution. If successful, a written agreement outlining the solution is drafted (Hidayat, 2016) and becomes legally binding. If mediation does not resolve the issue, parties may still pursue litigation or arbitration. Mediation can occur both in court and outside of it. In court mediation, the process follows a lawsuit filing, requiring the parties to attempt mediation prior to going to trial. Perma No. 1 Year 2016 dictates that judges must propose mediation to the parties, and the mediation should be completed within a maximum of 30 working days, extendable by another 30 days if necessary. In contrast, out-of-court mediation is more flexible and informal, occurring at any time with mutual agreement between the parties.

This study thoroughly investigates the effectiveness of mediation as a mechanism for resolving business disputes in Indonesia, emphasizing procedural efficiency and its impact on the relationships between the disputing parties. The qualitative analysis indicates that mediation, as a form of ADR, holds significant potential for enhancing efficiency in business dispute resolution (Fadillah & Putri, 2021; Nurlani, 2022). A key finding reveals that the success of mediation in Indonesia hinges on several factors, including the parties' understanding and awareness of the mediation process, the mediator's qualifications, and the willingness of the parties to engage in collaborative negotiation. In many instances, mediation provides a faster and more cost-effective resolution to business disputes compared to traditional litigation (Wissler & Hinshaw, 2021). Additionally, mediation offers flexible solutions tailored to the parties' needs, in contrast to the rigid outcomes often associated with court rulings.

The findings affirm the effectiveness of the existing legal framework in bolstering mediation as a tool for business dispute resolution in Indonesia. The qualitative analysis suggests that mediation can enhance procedural efficiency and strengthen relationships between parties. Essential mediation principles, including confidentiality, neutrality, impartiality, and mutual



interest, significantly contribute to ensuring fairness and effectiveness in the process. The confidentiality principle outlined in the Perma assures parties that information shared during mediation remains confidential, even if the mediation does not succeed and litigation ensues, thereby encouraging open communication about their needs.

Neutrality is crucial for fostering a fair mediation atmosphere, as a neutral mediator instills trust in the parties that no bias exists during the process. The principle of impartiality allows parties the autonomy to continue or terminate mediation, enhancing decision-making flexibility. Emphasizing mutual interest facilitates win-win solutions, helping parties identify common ground that satisfies both sides while preserving their business relationships.

However, the results indicate that despite mediation's potential for resolving business disputes, several challenges persist in its implementation in Indonesia. A significant challenge is the public's awareness and the limited availability of qualified mediators. Although the legal framework mandates mediation prior to litigation, many parties still consider litigation as their primary option, viewing it as more legally valid than mediation. This perception arises from inadequate awareness of mediation's benefits and the scarcity of competent mediators capable of addressing complex business disputes.

The study highlights that mediation can significantly expedite the dispute resolution process, aligning with Law No. 48 of 2009, which prioritizes access to prompt and fair dispute resolution. Mediation has been shown to drastically reduce resolution time compared to litigation, which can span years. Furthermore, parties experience financial savings due to mediation's streamlined process, which bypasses complicated court procedures.

The impact of mediation on the relationships between disputants is another crucial aspect of the findings. Participants in mediation report a higher likelihood of reaching amicable agreements that not only resolve disputes but also foster continued business relationships. This stands in stark contrast to litigation, which often exacerbates tensions between parties. Mediation prioritizes win-win settlements, allowing both parties to define their interests and develop mutually satisfying solutions. The principle of mutual interest in mediation strongly supports achieving these beneficial outcomes.

Nevertheless, structural challenges remain in mediation implementation in Indonesia. Many individuals still favor litigation for its perceived certainty and formality (Melenko, 2020). Although mediation offers numerous advantages, parties are often reluctant to choose it due to uncertainties regarding the enforcement of agreements reached. Moreover, the quality of mediators emerges as a critical concern. This study underscores the urgent need for enhanced training and certification for mediators in Indonesia to ensure effective mediation processes. Inadequately skilled mediators frequently struggle to facilitate the process effectively, leading to less successful outcomes. While mediation presents a faster and more economical solution, doubts about the enforceability of mediation agreements persist (Al-Khafaji, 2021).

International Implications: The study's findings have significant implications for other nations developing frameworks for business dispute resolution through mediation. Countries with similar legal systems can learn from Indonesia's challenges, particularly in terms of enhancing mediation awareness and improving mediator quality. Additionally, the principles of confidentiality and neutrality, explicitly articulated in Indonesia's legal framework, may serve as references for other countries striving to establish these concepts in their mediation systems. Furthermore, the research emphasizes the necessity for institutional incentives to encourage broader adoption of mediation as a solution for business disputes. Indonesia's experience illustrates that despite legal recognition of mediation, a lack of clear incentives and public confidence can lead parties to prefer



**EFFECTIVENESS OF BUSINESS DISPUTE RESOLUTION
THROUGH MEDIATION IN INDONESIA**

Al et al.

litigation. This serves as a crucial lesson for other nations aiming to reinforce ADR's role within their legal systems. Mediation in Indonesia, supported by a robust legal framework, possesses immense potential to enhance business dispute resolution efficiency. However, challenges related to public awareness, mediator quality, and institutional incentives must be addressed to fully realize mediation's capabilities.

4. CONCLUSION

In conclusion, this study demonstrates that mediation serves as an effective mechanism for resolving business disputes in Indonesia, offering significant advantages in terms of procedural efficiency and fostering positive relationships between disputing parties. The existing legal framework, reinforced by laws such as Law No. 30 of 1999 and Supreme Court Regulation No. 1 of 2016, provides a solid foundation for mediation as an alternative dispute resolution (ADR) method. However, the effectiveness of mediation is contingent upon various factors, including public awareness, the quality of mediators, and the willingness of parties to engage in collaborative negotiations. Addressing these challenges is crucial for maximizing the potential of mediation to expedite dispute resolution and enhance the overall effectiveness of the legal system in Indonesia. Additionally, the insights gained from this research offer valuable lessons for other countries seeking to develop or improve their mediation practices within their own legal frameworks.

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