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Effectiveness and Efficiency of Mediation in Out-of-Court Dispute Settlement as an Alternative Legal Protection for Disputing Parties

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Abstract: Mediation as an alternative form of dispute resolution outside the court is increasingly gaining attention in the Indonesian legal system. This study aims to analyze the effectiveness and efficiency of mediation in providing legal protection for disputing parties without going through a long, expensive litigation process that often causes prolonged conflict. Through a normative legal approach with literature studies and analysis of mediation regulations and practices in various institutions, it was found that mediation offers faster, more flexible solutions that pay attention to common interests. The results find that the success of mediation is highly dependent on the mediator's quality, the willingness of the parties, and adequate regulatory support. Thus, mediation can be an effective and efficient means of resolving disputes while strengthening access to justice for the community.

Keyword: Mediation, Dispute Resolution, Effectiveness, Efficiency

Abstrak: Mediasi sebagai salah satu bentuk alternatif penyelesaian sengketa di luar pengadilan semakin mendapat perhatian dalam sistem hukum di Indonesia. Penelitian ini bertujuan untuk menganalisis efektivitas dan efisiensi mediasi dalam memberikan perlindungan hukum bagi para pihak yang bersengketa tanpa melalui proses litigasi yang panjang dan mahal serta seringkali menimbulkan konflik yang berkepanjangan. Melalui pendekatan hukum normatif dengan studi literatur dan analisis terhadap peraturan dan praktik mediasi di berbagai lembaga, ditemukan bahwa mediasi menawarkan penyelesaian yang lebih cepat, lebih fleksibel, dan memperhatikan kepentingan bersama. Hasil penelitian menemukan bahwa keberhasilan mediasi sangat bergantung pada kualitas mediator, kesediaan para pihak, dan dukungan regulasi yang memadai. Dengan demikian, mediasi dapat menjadi sarana yang efektif dan efisien untuk menyelesaikan sengketa sekaligus memperkuat akses keadilan bagi masyarakat.

Kata Kunci: Mediasi, Penyelesaian Sengketa, Efektivitas, Efisiensi

INTRODUCTION

In the development of the modern legal system, non-litigation dispute resolution is increasingly becoming an urgent need. The complexity of legal relations in society, economic growth, and social dynamics have led to an increase in the number of disputes that arise in various areas of life (Dewi, 2022). If all these disputes are resolved through formal litigation in court, there will be a backlog of cases, increasing the burden on the judicial institution and hindering public access to fast and effective justice. Non-litigation dispute resolution, especially through alternative mechanisms such as mediation, offers a solution that is more adaptive to the needs of the parties, is faster in resolution, and still provides space to pay attention to common interests and maintain good relations between the disputing parties (Saragih, 2021). Therefore, in the current legal context, mediation and other forms of alternative resolution are critical means to strengthen the effectiveness of the justice system as a whole and fulfill the principles of simple, fast, and low-cost justice.

The litigation process in formal courts often provides rise to various problems that hinder the achievement of substantive justice. Litigation is known as a complicated process, requiring a long time because it must go through procedural stages and demanding a lot of money, ranging from administrative costs, and legal services, to other operational costs (Muten Nuna, 2021). In addition, the nature of litigation that places the parties in an adversarial position often exacerbates conflicts, worsens social relations, and can even lead to new, more prolonged conflicts after the verdict is rendered. This condition is certainly not ideal for many parties who need a peaceful and sustainable resolution. (Adnantara, 2024) Considering this reality, the existence of out-of-court dispute resolution is an alternative that is more efficient in terms of time and cost and more effective in creating peace, restorative justice, and protecting relations between parties in the future.

Mediation in the context of Indonesian positive law is defined in the Regulation of the Supreme Court of the Republic of Indonesia (PERMA) No. 1 of 2016 concerning Mediation Procedures in Court. In Article 1 number 1 of PERMA No. 1 of 2016, mediation is mentioned as "a method of resolving disputes through a negotiation process to obtain an agreement between the parties assisted by a mediator." (Ma'rifah, 2023). The mediator himself is a neutral and impartial third party, tasked with facilitating the negotiation process without making a decision. Mediation aims to reach a mutually beneficial peace agreement (win-win solution) and maintain good relations between the disputing parties. The existence of mediation both inside and outside the court emphasizes the principle that dispute resolution should prioritize deliberation and consensus by the values that live in Indonesian society (Rahmi, 2022).

Unlike mediation, other dispute resolution methods, such as arbitration and litigation have more formal and binding characteristics. Arbitration, as regulated in Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, is a dispute resolution outside the court whose decision is binding and final (Article 1 number 1 of Law No. 30 of 1999). The arbitration process resembles a trial but is done by an arbitrator chosen by the parties or appointed by an arbitration institution (Salsabilla, 2025). Meanwhile, litigation is a formal process in a district court or related court, with all forms of rigid procedural law procedures, mandatory decisions, and relying on state power for their implementation. In mediation, neither party is "defeated" or "won," but both parties try to reach a voluntary agreement without coercion (Zakia, 2025) .

The development of regulations and policies on mediation in Indonesia shows the increasing commitment of the state to encouraging peaceful and efficient dispute resolution outside the litigation path. One of the important milestones in mediation regulation is the issuance of the Regulation of the Supreme Court of the Republic of Indonesia (PERMA) No.

1 of 2016 concerning Mediation Procedures in Court, which replaces the previous PERMA and regulates mandatory mediation procedures in civil cases before proceeding to the evidentiary stage in court. Article 2 paragraph (1) of PERMA No. 1 of 2016 stipulates that "Every civil case submitted to the first instance court must first be resolved through mediation," indicating an obligation to first try to resolve the dispute through peaceful means (Hanifah, 2016). In addition, support for the implementation of mediation outside the court is also strengthened through Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, where Article 1 number 10 states that dispute resolution through other alternatives, including mediation, is carried out based on the good faith of the parties without court intervention. Further support is reflected in various sector-specific policies, such as in the banking sector through the Financial Services Authority (OJK) regulations and the industrial relations sector through the industrial relations dispute resolution mechanism based on Law No. 2 of 2004 concerning the Settlement of Industrial Relations Disputes, which in Article 3 encourages bipartite and mediation settlements before proceeding to the industrial relations court (Puspitaningrum, 2018).

Although mediation is recognized as an effective and efficient alternative dispute resolution, in practice there are still various obstacles that reduce the optimization of the role of mediation in Indonesia. One of the main obstacles is the low voluntary participation of the parties. Many parties involved in the dispute still view mediation as a mere formality before proceeding to the litigation process, thus ignoring the substance of the peace negotiations. In addition, the quality of the mediator is also a challenge. Not all mediators have adequate facilitation skills, effective communication skills, and a deep understanding of the legal and psychological aspects of the dispute. This affects the parties' trust in the mediation process itself. In addition, the unclear and inconsistent regulations on out-of-court mediation, such as the absence of comprehensive national standards for mediator certification and mediator professional supervision mechanisms, also hamper the consistency and credibility of mediation implementation in various sectors. These obstacles often result in less than optimal mediation results, and even failure to reach a peace agreement.

On the other hand, several important factors determine the success of a mediation process. One of the main factors is the independence and impartiality of the mediator. A mediator who is impartial and maintains neutrality will more easily gain the trust of the parties so that the negotiation process can run more openly and honestly. In addition, the success of mediation is highly dependent on the level of trust of the parties in the process and the mediator himself; if the parties feel appreciated and heard, they tend to be more willing to seek a joint solution. The speed in processing mediation is also a crucial factor, considering that protracted mediation may worsen the conflict and increase costs. In this case, a mediator who can direct the negotiation process effectively and maintain focus on the goal of peace will increase the likelihood of reaching an agreement.

Mediation as an Alternative Dispute Resolution not only to reach a peaceful agreement but also to maintain and fulfill the legal rights of the disputing parties (Abdurrasyid, 2018). In the mediation process, the rights of the parties are respected because the agreement reached is based on the principles of voluntariness, good faith, and openness. There is no coercion or pressure from the mediator so each party remains free to determine whether to accept or reject a proposed settlement. In addition, during the mediation process, the parties can still be accompanied by legal counsel to ensure that the agreement drafted remains by the principles of justice, balance of rights and obligations, and does not conflict with law and public order (Nugroho, 2019). Thus, mediation maintains the basic rights of the parties to obtain justice according to their respective needs and interests, while supplying creative space for more flexible solutions than rigid court decisions.

In the context of guaranteeing legal certainty, the results of mediation in Indonesia can be given executorial power through a peace deed. Based on the provisions of Article 130 of the Herziene Indonesisch Reglement (HIR) and Article 154 of the Rechtsreglement voor de Buitengewesten (RBg), if the parties succeed in reaching an agreement in the mediation process in court, then the agreement is stated in the form of a peace deed (deed van dading) which is ratified by the judge. The peace deed has the same legal force as a court decision with a permanent legal force so that it can be immediately executed if one party violates the agreement contents. Outside the court, the results of mediation can also be stated in the form of an authentic deed through a notary so that it obtains perfect evidentiary force as regulated in Article 1868 of the Civil Code (KUHPerdata). With this mechanism, mediation is not just a moral agreement but has real legal protection that can be enforced through the judicial institution, providing a sense of security and legal certainty to the parties who have reached peace.

METHOD

This study uses a normative legal research method, namely legal research conducted by examining primary, secondary, and tertiary legal materials through an approach to applicable legal norms (Muhaimin, 2020). In this study, two main approaches were applied, namely the statute approach and the conceptual approach. The statutory approach is used to study and interpret positive legal provisions related to mediation, such as PERMA No. 1 of 2016, Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, as well as related provisions in HIR, RBg, and the Civil Code. Meanwhile, the conceptual approach is used to understand the basic concepts of effectiveness, efficiency, and legal protection in resolving disputes through mediation based on legal doctrine and the views of experts.

Data sources in this study include primary legal materials (relevant laws and regulations), secondary legal materials (books, scientific journals, previous research results, and opinions of legal experts), and tertiary legal materials (legal dictionaries, legal encyclopedias, and other supporting sources). Data collection techniques are carried out through library research, namely by collecting, reading, and analyzing legal documents and related literature. The data obtained are then analyzed using qualitative analysis techniques, namely by reviewing the content (content analysis) to identify legal principles, norms, and theories that are relevant to the research topic, then concluding systematically to answer the formulation of the problems that have been set.

RESULT AND DISCUSSION

The Urgency of Out-of-Court Dispute Resolution in the Current Indonesian Legal System

In the current Indonesian legal system, out-of-court dispute resolution (Alternative Dispute Resolution/ADR) is becoming increasingly important along with the increasing public need for a fast, inexpensive settlement mechanism that maintains good relations between parties (Syukur, 2019). The litigation process that takes place in court often takes a long time, incurs high costs, and worsens relations between the parties due to its adversarial nature. Procedural complexity, limited resources in judicial institutions, and the high caseload in court also contribute to the need to find more efficient alternative methods (Luhulima, 2021) Out-of-court dispute resolution, such as mediation, offers a more flexible approach, emphasizes consensus, and is more tailored to the specific needs of the parties than a judge's decision which is rigid and final.

In line with this, national law has recognized the importance of out-of-court dispute resolution. It is reflected in several laws and regulations, such as Law No. 30 of 1999

concerning Arbitration and Alternative Dispute Resolution, which in Article 1 number 10 states that alternative dispute resolution includes consultation, negotiation, mediation, conciliation, or expert assessment. Likewise, Supreme Court Regulation (PERMA) No. 1 of 2016 concerning Mediation Procedures in Court requires every civil case filed in court to first be resolved through mediation (Marni, 2021). The presence of this regulation reflects the commitment of Indonesian law to provide ample space for peaceful efforts outside of formal litigation. Dispute resolution outside the court is also in line with the values of Pancasila and the principle of family, which prioritizes deliberation to reach a consensus in resolving social conflicts.

However, the implementation of out-of-court dispute resolution in Indonesia still faces a number of challenges. Low public awareness of the existence and benefits of the ADR method, the perception that the litigation path is more prestigious or "certain," and the lack of professional mediators are real obstacles to mechanism development. In addition, the uneven distribution of infrastructure and supporting facilities for mediation in various regions also worsens the situation (Muryati, 2011). Therefore, to strengthen the urgency and effectiveness of out-of-court dispute resolution, concrete steps are needed, such as improving the quality of mediator resources, wider socialization of the benefits of ADR, and harmonization of regulations so that mediation and other alternative methods can develop optimally as a means of legal protection and fulfillment of access to justice for the community.

Mediation is one form of alternative dispute resolution (Alternative Dispute Resolution/ADR) that emphasizes efforts to resolve peacefully by involving a neutral third party as a mediator. According to the provisions in Article 1 number 7 of the Regulation of the Supreme Court of the Republic of Indonesia (PERMA) No. 1 of 2016 concerning Mediation Procedures in Court, mediation is defined as "a method of resolving disputes through a negotiation process to obtain an agreement between the parties assisted by a mediator." The mediator here plays an active role in facilitating dialogue, reducing tension, and helping the parties to find solutions that benefit both parties but are not authorized to decide or enforce the results. The main characteristic of mediation is the parties' voluntary and good faith in seeking a mutually beneficial solution so that the mediation results reflect the common will, not a unilateral decision by the mediator (Nurhadi, 2020)

Conceptually, mediation has fundamental differences compared to other dispute resolution methods such as arbitration or litigation. In arbitration, as regulated in Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, specifically Article 1 number 1, arbitration is "a method of resolving civil disputes outside the general courts based on a written arbitration agreement by the parties to the dispute." Arbitration produces a binding decision like a court decision. While in litigation, the decision is entirely in the hands of the judge based on the formal trial process in the general court, as regulated in Law No. 48 of 2009 concerning Judicial Power (Setiawan, 2022). Different from both, mediation is participatory, and flexible, and maintains control of the parties over the outcome of the settlement. If an agreement is reached in mediation in court, then the agreement is stated in the form of a peace deed as regulated in Article 130 of the *Herziene Indonesisch Reglement* (HIR) or Article 154 of the *Rechtsreglement voor de Buitengewesten* (RBg), which has permanent legal force and can be executed like a judge's decision.

In addition, in the practice of resolving disputes outside the court, the results of mediation carried out independently (non-litigation) can be stated in an authentic deed as stipulated in Article 1868 of the Civil Code (KUHPerdata), which states that an authentic deed is a deed made by or before a public official authorized to do so according to statutory regulations. Thus, mediation results outside the court can also obtain perfect evidentiary force if stated in a notarial deed. It proves that mediation is not only an informal process without legal guarantees, but is a means of resolving disputes that is recognized and protected by

positive Indonesian law (Suhartono, 2021). With its various advantages, mediation offers a more humane, economical, and effective alternative in maintaining good relations between parties, while still providing a strong guarantee of legal certainty.

The legal basis for out-of-court dispute resolution in Indonesia is regulated in several laws and regulations that support the implementation of alternative dispute resolution (ADR). One of the main regulations is Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, which provides a legal basis for the implementation of arbitration and mediation as a method of resolving disputes outside the court, where Article 1 number 10 defines alternative dispute resolution as including mediation, conciliation, and negotiation. In addition, Supreme Court Regulation (PERMA) No. 1 of 2016 concerning Mediation Procedures in Court specifically regulates the implementation of mediation in court, which requires every civil case to first undergo mediation before the trial process is continued, with a mediator appointed by the court or proposed by the parties. Article 130 of the *Herziene Indonesisch Reglement* (HIR) and Article 154 of the *Rechtsreglement voor de Buitengewesten* (RBg) also provide a legal basis for the recognition and execution of mediation results outlined in the form of a peace deed that can have executory power. In addition, the Civil Code (KUHPerdata) in Article 1868 provides recognition of authentic deeds that can be used for mediation results agreed upon by the parties outside the court (Surbakti, 2019).

Out-of-court dispute resolution has several advantages that make it more attractive than litigation. One of the main benefits is the speed of the settlement process. In mediation, for example, disputes can be resolved in a relatively short time compared to the court process which can take months, even years. This shorter time also allows the parties to immediately resume their activities without being burdened by a protracted legal process. In addition, out-of-court dispute resolution is much more cost-effective. Without the need for large costs for lawyers, court costs, and court operational costs, settlement through mediation or other ADR methods is a very financially efficient alternative. It is very beneficial for parties who may not have the financial ability to take the litigation route.

Another advantage is flexibility in dispute resolution. Mediation, for example, allows the parties to design a solution that is more in line with their respective needs and interests, without being tied to rigid legal procedures or decisions as in litigation. This process also allows the parties to communicate directly in a more open and non-adversarial atmosphere, which is very useful for maintaining good relations between the parties, especially in business or family disputes that require the continuation of the relationship after the dispute is resolved. In addition, out-of-court dispute resolution can speed up access to justice, because the parties do not have to wait for a long court process. Mediation and ADR offer solutions that are faster and more accessible to the community, allowing more people to obtain justice without complicated administrative obstacles. Thus, out-of-court dispute resolution is not only more efficient but also more just and humane, giving space for the parties to resolve their problems more constructively.

Although out-of-court dispute resolution offers many advantages, its implementation in the field still faces various challenges that need to be overcome. One of the main obstacles is the low public awareness of the existence and benefits of alternative dispute resolution such as mediation. Many people still prefer to take the litigation route because it is considered more legally valid and has enforceable power. In addition, there is an assumption that mediation or the process of resolving disputes outside the court does not have the same legal force as a court decision, although legally the agreed mediation results can be recognized and have permanent legal force. It shows that there needs to be more intensive socialization efforts to increase public understanding of the importance of ADR as a more efficient and effective way to resolve disputes.

In addition, the quality of mediators is a major challenge in mediation practices. Although the number of registered mediators is increasing, the quality and competence of mediators still vary greatly. Inexperienced or poorly trained mediators can fail to facilitate the mediation process properly so that they cannot achieve adequate results or even cause mediation failure. The success of mediation is highly dependent on the mediator's ability to manage the dynamics between the disputing parties, build effective communication, and help the disputing parties reach a fair agreement. Therefore, increasing the capacity and quality of mediators through ongoing training is very important to increase public trust in the mediation process.

Finally, trust in non-litigation results is also a significant obstacle in mediation implementation and out-of-court dispute resolution. Many parties feel that decisions made through mediation are less reliable or not as strong as court decisions. Uncertainty about the recognition and implementation of mediation results can reduce public interest in using this method. In addition, the lack of understanding of the legal mechanisms that can provide exceptional power to mediation results, such as peace deeds that can be used as a basis for execution requests, is another inhibiting factor. Therefore, a deeper understanding is needed about the legal validity of mediation results and stronger regulatory pressure to ensure that mediation results are respected and implemented properly so that the public increasingly believes that dispute resolution outside the courts is a legitimate and just alternative.

Effectiveness and Efficiency of Mediation as an Alternative Dispute Resolution Compared to Litigation and Arbitration

One of the advantages of mediation compared to litigation and arbitration lies in the speed of dispute resolution. The mediation process can generally be completed in a much shorter time, even within a few days or weeks, depending on the complexity of the dispute and the willingness of the parties to negotiate. Mediation focuses on reaching a quick and efficient agreement, without requiring many formal stages. In contrast, the litigation process in court tends to take a long time, often months or even years, because it must go through various fairly long procedural stages, such as registering a lawsuit, examining witnesses, and reading out a decision by a judge. Even in less complicated cases, litigation takes a long time, and this process is often filled with delays that can prolong the dispute. Arbitration, although faster than litigation because it does not go through a district court, still takes longer than mediation, especially because of the evidence process, the formulation of a decision by the arbitrator, and more formal procedures. Therefore, mediation is an effective choice for those who want quick and efficient dispute resolution.

In addition to speed, lower costs are the factors that make mediation superior to litigation and arbitration. The mediation process generally requires much more economical costs because it does not require high attorney fees or court administration costs. The main costs incurred in mediation are the fee for the neutral mediator and the cost of meeting facilities. This process can be done at a very minimal cost, and this is an excellent choice for parties who want to avoid large expenses. On the other hand, litigation in court requires the disputing parties to spend more money, such as attorney fees, high administrative costs in court, and the costs of witnesses and other evidence. Especially in cases involving many witnesses and evidence, the costs of litigation can be very large. Arbitration, although often faster than litigation, still involves higher costs due to the costs of the arbitrator and more formal administrative costs. Therefore, mediation offers a much more economical solution for parties who want to resolve disputes at a lower cost.

In financial benefits, mediation is more profitable compared to litigation and arbitration, especially for parties who do not want to be involved in very large expenses. The relatively low cost of mediation is very important for the parties involved in the dispute because they

can save money that would otherwise be used for lawyers or complicated court procedures. In addition, mediation provides flexibility in terms of cost settlement, because the parties can agree on the fees that are considered reasonable and acceptable to both parties. On the other hand, litigation and arbitration often involve unexpected costs that can escalate over time. Mediation also provides more benefits in ongoing cost reduction, because this process encourages a quick resolution without the large additional costs as in litigation and arbitration. Therefore, mediation is a more financially efficient option, providing immediate benefits for parties who want to resolve disputes without having to bear the cost burden.

In flexibility, mediation offers significant advantages compared to litigation and arbitration. In mediation, the parties have the freedom to design the dispute resolution process according to their needs. The mediation process is not tied to strict formal rules, allowing the parties to adjust the steps to better suit the conditions and goals they wish to achieve. In mediation, the mediator acts as a facilitator who helps open communication between the disputing parties, so that the parties can directly negotiate and find a mutually beneficial solution. It is different from litigation, which is bound by very standard legal procedures, such as strict rules of evidence, trial stages that must be followed sequentially, and a long time to resolve the case. Arbitration, although more flexible than litigation, still has rules and procedures that require the parties to choose an arbitrator and follow applicable provisions, which can limit freedom in the dispute resolution process. Mediation provides more space for the parties to be actively involved and adjust the process and results according to their needs.

The success rate of mediation in resolving disputes is often higher than in litigation and arbitration. One of the main reasons is that mediation involves the active participation of both parties in designing a mutually acceptable solution. The parties have more control over the outcome, so they are more likely to accept a mutually agreed solution. The success of mediation is also greatly influenced by the quality of the mediator, who serves to keep communication open and objective and encourages the parties to compromise and find common ground. On the other hand, litigation in court often ends with a decision in favor of one party, leaving the other party dissatisfied with the outcome, because the final decision is entirely in the hands of the judge who cannot always satisfy both parties. Arbitration, although more flexible than litigation, still tends to produce decisions that are less customizable to the wishes of both parties. Arbitration has a more formal procedure than mediation, so while the outcome may be fairer than litigation, the parties still do not have complete control over the dispute resolution process.

Mediation has a major advantage in resolving disputes amicably, which creates space for mutual agreement. Because mediation allows both parties to negotiate directly, satisfaction with the outcome of mediation tends to be higher. This provides an opportunity to create more creative solutions that are more in line with the needs and interests of each party, something that is difficult to achieve in the legal constraints of litigation or more formal and structured arbitration. The success of mediation is also determined by the willingness of the parties to compromise. If both parties have good intentions and are committed to reaching a fair resolution, mediation can produce an agreement that is not only beneficial but also improves the relationship between them. Therefore, mediation tends to produce a more satisfactory and peaceful resolution of disputes than litigation or arbitration, which often focus more on the win or loss of one party, without considering the long-term relationship between the parties involved.

One of the main advantages of mediation is its impact on maintaining relationships between the parties. Mediation is designed to create a constructive and respectful atmosphere, to allow the parties to continue to interact after the dispute is resolved. In many cases, mediation allows the parties to maintain good relationships, both in a personal and business context. Unlike litigation, which often leads to sharper conflicts and worsens relations

between parties due to the adversarial process, and often ends with a decision that favors one party. Arbitration, although more private, still involves decisions that cannot be influenced by the parties once the process has begun, so that relations between the parties can be affected, although not as badly as in litigation. Therefore, mediation is preferred in disputes that require maintaining long-term relationships between the parties, such as in family or business disputes.

Although mediation is often seen as a more flexible and informal process, the results of dispute resolution achieved through mediation still have valid legal force. In Indonesia, for example, the results of mediation achieved in court can be stated in the form of a peace deed that has executory power, as regulated in Article 130 HIR and Article 154 RBg, which allows the aggrieved party to directly request execution if one party does not fulfill the agreement. Meanwhile, court decisions in litigation have direct binding legal force and can be executed by the court. Arbitration also produces binding decisions, and arbitral awards can be enforced directly or through a request for ratification to a court. While all three methods have legal force, mediation offers a more involved and flexible process without sacrificing legal certainty, as long as the results are ratified through a legitimate mechanism.

Legal Protection for Disputing Parties Through Mediation Agreement Results

In the Indonesian legal system, mediation is regulated through several regulations that provide a legal basis for the peaceful dispute resolution process. One of the main regulations is PERMA No. 1 of 2016 concerning Mediation Procedures in Court, which regulates the procedures and procedures for mediation carried out in court. This PERMA aims to encourage dispute resolution through mediation before continuing with the litigation process. In addition, Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution also provides a clear legal framework regarding alternative dispute resolution outside the court, including mediation. Mediation is regulated as a method that can be used by disputing parties to reach an agreement voluntarily and without involving complicated court procedures.

This regulation provides legal protection to disputing parties by providing an opportunity to resolve disputes more quickly, cheaply, and efficiently. Through this regulation, mediation is not only an option but is also required in several types of disputes, such as civil disputes in court. The results of mediation achieved through the court will be stated in the form of a peace deed, which has binding legal force and can be implemented as a court decision. Thus, this regulation guarantees legal protection to the parties, ensuring that the agreement reached in mediation is not only informal but has a legal standing and can be legally accounted for.

The results of the agreement reached through mediation have binding legal force if approved by the court. This process is regulated in Article 130 HIR and Article 154 RBg, which allows the mediation results in court to be stated in an executory peace deed. It means that if one party does not fulfill the agreement that has been reached, the other party can immediately apply to the court to execute the agreement, as befits a valid court decision. This peace deed provides legal certainty and protection for the disputing parties because the results of mediation that are legally approved have coercive power that cannot be ignored by either party.

In addition, although mediation is often considered an informal and non-binding process, this regulation ensures that agreements reached through mediation have the same legal force as court decisions. It is a guarantee for the parties that the mediation results are not just voluntary agreements, but also have a valid legal standing and can be enforced through the judicial system. This mechanism reduces the potential for violations of the agreement and

provides clear legal protection for parties who feel disadvantaged if there is a violation of the results of the mediation.

In the mediation process, there are several legal protections provided to the parties to ensure that the mediation takes place fairly and impartially. First, the parties involved in the mediation have the right not to be forced to reach an agreement. Mediation is voluntary, which means that if one party disagrees or feels pressured to accept an agreement, they have the right to stop the mediation process at any time without any negative legal consequences. This protection ensures that the mediation process continues in good faith and no party is disadvantaged or forced to accept an unwanted solution.

Protection of confidentiality of information in the mediation process is one of the fundamental aspects that make mediation an attractive option for parties involved in a dispute. To create a safe and open atmosphere, where each party can express their position and feelings without fear of legal consequences in the future, confidentiality is important. Article 4 of PERMA No. 1 of 2016 stated that information obtained during the mediation process is confidential and may not be used outside the mediation process, including in litigation or arbitration processes. The provision provides a sense of security for the disputing parties because they do not need to worry that the information they disclose to resolve the dispute through mediation will be used against them in court or other legal forums. This protection of confidentiality not only maintains the integrity of the mediation process but increases the parties' trust in the mediator and the mediation process itself.

In addition, this provision regarding confidentiality also strengthens the basic principles of mediation which prioritize open dialogue and openness in seeking joint solutions. The parties can speak honestly about their needs, hopes, and interests without fear that the information will be used as evidence in court. Article 4 of PERMA No. 1 of 2016 emphasizes that mediation secrets can only be disclosed if there is an agreement between the parties or an order from the court for a specific interest, such as for the execution of an agreement reached in mediation. Thus, this regulation not only supports the creation of an atmosphere of trust and mutual respect but also provides a clear legal basis to protect the rights of the parties participating in mediation. It speeds up the dispute resolution process because the disputing parties feel freer to express their views and solutions that they consider best without bothering about the disclosure of this information outside the mediation process.

After the mediation process is complete and an agreement is reached, the results can be implemented through the court process. As previously mentioned, the peace deed resulting from mediation in court will be submitted to the judge for ratification, and the decision issued after the ratification has binding legal force. This process provides legal certainty for the parties because they can rely on the ratified decision by the court to be implemented. If one party does not fulfill the agreement, the injured party can immediately request execution through the court, as with a regular court decision.

This ratification process also provides protection for parties who have committed to the mediation results. In this case, mediation is not only an alternative solution but becomes part of the justice system that provides guarantees for parties who have tried to resolve disputes peacefully. Thus, the mediation results that are ratified by the court have an equal position with court decisions and can be implemented without legal obstacles.

In the mediation process, legal certainty is provided to the parties through regulations that support the implementation of mediation as an alternative dispute resolution. Mediation, which is regulated in PERMA No. 1 of 2016 and Law No. 30 of 1999, provides a legal basis that ensures that the results of a valid mediation agreement can be accepted and implemented by applicable regulations. It means that the results of mediation that are stated in the form of a peace deed have a legal force that cannot be canceled or ignored. The parties can be

confident that the results of their mediation will be recognized by the legal system and can be implemented legally and fairly.

Besides, the articles in PERMA No. 1 of 2016 guarantee that mediation is not just an informal process, but has clear regulations related to the sustainability and implementation of the agreement reached. With this guarantee, the parties involved in mediation have a sense of security that their dispute resolution process through mediation will not be in vain, and they can rely on the results of mediation to obtain justice quickly and effectively. It increases public trust in mediation as an alternative that can provide legal certainty.

Although mediation aims to create a mutually beneficial solution, sometimes some parties feel disadvantaged in the process. Therefore, legal protection for parties who feel disadvantaged is consequential. One of the protections available is the right of the parties to file an objection or application to the court if they feel the mediation results are unfair or not according to the principles of justice. In this case, the party who feels disadvantaged can ask the court to assess whether the results are valid and fair. If the court finds any discrepancy or injustice, the results can be canceled or revised.

Nevertheless, there is protection for the entire mediation process that ensures that the basic rights of the parties are maintained. If one party feels the mediation process is not running fairly or transparently, they have the right to file a claim for irregularities. This provides a control mechanism and ensures that mediation not only prioritizes quick agreements but also accountable justice so that no party feels disadvantaged in resolving disputes.

Strengthening regulations to make mediation the main foundation for resolving disputes outside the courts is significant to improve the efficiency and effectiveness of the legal system in Indonesia. Currently, litigation is still the main choice for many parties involved in disputes, although this process is often time-consuming, expensive, and has the potential to worsen relations between the disputing parties. Mediation, which offers a faster, more cost-effective, and more flexible solution, has the potential to replace litigation as the more dominant dispute-resolution method. However, to achieve this goal, deeper regulatory strengthening is needed, from regulations that facilitate public access to mediation, to providing mechanisms that guarantee the effectiveness and fairness of the mediation process.

One important step in strengthening regulation is to more firmly regulate the obligation to mediate before entering the litigation process, as stipulated in PERMA No. 1 of 2016. However, this regulation is still limited to several cases and has not been applied comprehensively to all disputes. Therefore, expanding mandatory mediation in various types of disputes, including commercial disputes, family disputes, and labor disputes, could be a strategic step in creating a more peaceful dispute resolution culture that is oriented towards win-win solutions. In addition, strengthening the quality standards of mediators and providing better training for them is also key to mediation being able to run more effectively and professionally, so that it can provide fair results that are acceptable to all parties.

Stronger regulations can also include guarantees of legal protection for mediation results, by strengthening the legal standing of peace deeds produced through mediation. For mediation to become the main foundation for dispute resolution, the results of mediation that have been agreed upon by the disputing parties need to receive wider legal recognition, with the same force as court decisions. It will increase public confidence in mediation as a legitimate and binding alternative. In this way, the public will be more interested in resolving their disputes through mediation, because they know that the process is not only more efficient and economical but also provides legal certainty that can be accounted for. Strengthening this regulation will pave the way for a transition to a more responsive legal system, which prioritizes peaceful dispute resolution, with mediation as the main alternative.

CONCLUSION

Mediation as an alternative dispute resolution outside the court has great potential to overcome various problems that arise in the litigation process, such as long duration, high costs, and the potential for prolonged conflict. Based on the analysis of the effectiveness and efficiency of mediation, it can be concluded that mediation offers a faster, more flexible solution that prioritizes the common interests of the disputing parties. With clear regulations, such as PERMA No. 1 of 2016 and Law No. 30 of 1999, mediation can be an effective instrument in dispute resolution. However, the success of mediation is highly dependent on factors such as the quality of the mediator, the willingness of the parties to compromise, and adequate regulatory support. However, there are many challenges in implementing mediation, such as low public awareness and less than optimal mediator quality, which need to be considered to improve the results and trust in mediation.

To improve the effectiveness of mediation, there needs to be a stronger regulation to make mediation the main foundation for dispute resolution, replacing the position of litigation which is often slow and expensive. One important step is to expand mandatory mediation to all types of disputes and improve the quality standards of mediators through stricter training and certification. In addition, regulations that strengthen the legal standing of mediation results, such as peace deeds that have executory power, need to be strengthened so that the parties feel confident that the mediation results can be legally accounted for. On the other hand, to increase public awareness, it is important to conduct socialization and education about the benefits of mediation, so that mediation can be accepted as the main choice in dispute resolution, and not just as a last alternative before litigation.

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