

# The Urgency and Significance of a Mediation Application in Court

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# The Urgency and Significance of a Mediation Application in Court

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In principle, the settlement of a case is undertaken to serve justice to all parties. However, obtained justice does not necessarily offer satisfaction to the parties. The settlement of disputes in the civilian sector tends to be settled by consensus because it will provide a sense of justice that each is met. In the restorative justice approach, civil cases must be resolved by deliberation or together before they are examined by the judges. This is intended to provide the parties to the dispute a more tangible sense of justice, and the number of cases in court will be reduced.

**Keywords:** *Urgency, Mediation, Court.*

## Introduction

The social dynamics which take place today continue to develop so rapidly that it involves the formation of fierce competition arrangements, and in all aspects of life, involving gambling, and social forces (Kapoor et al., 2018). The harder it is for people to meet the needs of life, then the greater the emergence of conflicts in the social system, which in the next phase, will birth certain insights, such as the understanding of selfishness, materialism, and individualism within the structure of the global society (Condorelli, 2016). Such social conditions will become one of the causes of conflicts and tensions as a result of the disruption of social balance, and a loss of wisdom values, within the context of interactions between individuals.

Disagreements, disputes, and argumentative discussions are one of a person's efforts to maintain their position, and recognition in the process of achieving an interest. Disputes arise because there are various conflicting interests. Counterproductive behaviour increasingly leads to a tendency for every person to fight for survival and try to control each other with diplomatic efforts, negotiations, and the use of formal legal procedures provided by the State through litigation forums (Hanifah, 2016).



The increasingly complex human interests within a civilisation lead to the greater potential for disputes which arise between individuals, and between groups within a particular social population. The occurrence of disputes is difficult to avoid, as even the level of probability cannot be eliminated to zero. The law and its supporters, as part of social institutions that have the nature to regulate and create order, cannot suppress the expansion of social phenomena which indicate the potential for conflict. People's efforts to maintain social harmony are achieved by speeding up the resolution of disputes through simpler, more accurate, and focussed methods.

The provisions regarding mediation in court are governed by Regulation No. 1 of 2008 on mediation proceeding<sup>4</sup> in court. This places mediation as part of the process settlement procedure submitted by the parties to the Court (Regulation of the Supreme Court of the Republic of Indonesia, 2008). Judges do not resolve cases directly through a lawsuit, but must first seek mediation. Mediation is an obligation that the court must enter into when deciding upon cases at the Court (Anthony Clarke, 2009; Bondy & Doyle, 2011).

In view of the above background, the importance of mediation in the settlement of civil disputes rests in achieving simple, rapid, and inexpensive judicial objectives, and eliminating the factors affecting the implementation of mediation in the settlement of civil disputes in court.

#### <sup>5</sup> **Research Method**

The method used in this study is a normative legal writing method, in which the authors investigate with the help of legal theory, literature research, and legislation (Taekema, 2018). The approach used is the legislative approach, which is also known as the conceptual approach. The authors used two data processing techniques for analysis, namely the descriptive, and legal interpretation techniques.

#### **Discussion**

##### *The Importance of Mediation as a Form of Civil Settlement in the Realisation of Judicial Objectives*

Consumer protection must be given more attention, as foreign investment has become part of Indonesia's economic development, with the Indonesian economy also linked to the world economy.<sup>8</sup> For decades, consumers have always been viewed as weak, unable to do anything, cornered, and always lost in disputes with producers. Even if a good legal system should avoid gaps in any case.



The problems often encountered by consumers today includes the unbalanced negotiating position of the parties due to the neglect of the principle of contractual freedom, alongside substandard goods and services. The problem that consumers often face is seeing the attitudes of business actors who often act fraudulently when concluding the purchase and sale contract, such as unclear standard contracts, defective products, and dissatisfaction with the services provided (Barkatullah, 2007). The position of weak consumers is handed over to those who provide services. For example, consumers surrender to sellers to get what they want. According to Brown, (1992) this is one of the reasons why consumers should be provided protection: "...That due to the technical development of consumer goods, the ordinary consumer can not be expected to know if goods are fit for the purpose for which they were brought, or if they good or bad quality".

To solve this problem, the Government is working with the DPR to create regulations that are expected to protect consumers, and business actors. Mediation is the process of negotiating a dispute resolution or problem solving, in which impartial third parties work with the disputing parties to help reach a satisfactory agreement. Campbell defines mediation as a "private informal dispute resolution process where a neutral third party, the mediator, helps the parties to the dispute to reach an agreement. The mediator is not authorized to impose a decision on the parties" (Putera, 2013).

The mediator does not have the power to settle disputes. The mediator only assists the parties in solving the problems presented to them. In disputes where one party is stronger and tends to show power, the third party plays an important role in equalising them. An agreement can be reached through mediation, if the parties to the dispute succeed in achieving a mutual understanding, and jointly formulate a dispute resolution with concrete directions from the mediator (Rusli, 2012). Dispute resolution through mediation is carried out by the parties to the dispute, accompanied by a mediator. The mediator submits the dispute resolution process fully to the parties, both in terms of the form, and amount of the damages or certain actions to ensure that consumer losses do not recur (Mahardikoe, 2020). Compared to the dispute resolution process through mediation, the mediator acts more actively through advice, guidance, suggestions, and other efforts to resolve disputes.

Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution further strengthens the existence of mediation as an alternative dispute resolution institution. The Article 1 (10) states that "alternative dispute resolution is an institution for dispute resolution or a disagreement through a procedure agreed by the parties, namely the settlement of disputes out of court through consultation, negotiation, mediation, mediation and expert advice". However, this law does not regulate and does not provide a more detailed definition of these alternative institutions, such as the arbitration scheme.



The Article 1 number 1 of the Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in the Court declares that mediation is a means of resolving disputes through a negotiation process to obtain the consent of the parties, with the help of the mediator (Regulation of the Supreme Court of the Republic of Indonesia, 2016). Mediation is a settlement method that is included in the tripartite category because it involves help or services from third parties (Gould, King, & Britton, 2011). Meanwhile, the concept of peace under positive law, as stated in Article 1851 of the Criminal Code, promises or holds an item, terminates a case that is dependent on or prevents the emergence of a subsequent case (Subekti & Tjitrosudibio, 1985).

The settlement of a lawsuit is often compared to the term “losses of ash gains charcoal”, which means that winners and losers will both suffer losses. This condition is a difficult assumption to refute because, in general, people have the same opinion about the dynamics of a trial that is currently going on. This is especially the case for those who have gone through a court case directly, and will certainly feel how the process takes considerable time, energy, and thought, all of which are difficult to assess materially. In addition, a substantial amount is needed at almost every stage of the process, especially for those who are claimants because they must pay an initial fee for the process of holding a session.

The Regulation No. 1 of the Supreme Court of 2008 did not regulate the obligation of the judge to explain the existence of mediation, but Regulation No. 1 of the Court of 2016 obliges judges to follow the mediation path that must be performed in every court dealing with civil cases (Regulation of the Supreme Court of the Republic of Indonesia, 2008). The Article 30 paragraph (1) In the event that the Parties reach agreement on part of all cases or legal proceedings of the case, the Mediator submits the Partial Peace Agreement with due observance of the provisions of article 27 paragraph (2) as an annex to the Mediator report. Paragraph (2) the examining magistrate continues to investigate the subject matter of the case or lawsuits that have not been successfully agreed by the parties. Paragraph (3) In the event that mediation partially reaches agreement on the subject matter of the case or legal claim, the examiner must consider and decide the partial peace agreement. Furthermore, in paragraph (4) the Partial Peace Agreement as referred to in paragraph (1), paragraph (2) and paragraph (3) applies to the voluntary peace phase of the investigation of the case and the level of appeal, cassation or reconsideration (Peraturan Mahkamah Agung Republik Indonesia Peraturan Mahkamah Agung Republik Indonesia, 2008).

The Article 33 paragraph (1) at every stage of the investigation of the case, the examining magistrate continues to strive to encourage peace or to work until the decision is delivered. Paragraph (2) the parties may submit applications to the examining magistrate on the basis of the agreement in order to make peace at the stage of the case inspection. Paragraph (3) After accepting the parties' request for peace as referred to in paragraph (2), the chairperson of the



panel of judges with the determination to immediately appoint one of the examining magistrates to perform the mediation function by prioritize a certified judge. Paragraph (4) <sup>18</sup> examiner is obliged to postpone the trial <sup>15</sup> within 14 (fourteen) days at the latest from <sup>18</sup> the provision as referred to in paragraph (3) (Peraturan Mahkamah Agung Republik Indonesia Peraturan Mahkamah Agung Republik Indonesia, 2008).

The integration of intermediary institutions in court cases is sufficient to offer hope for the creation of services for justice seekers to resolve their disputes quickly, easily, and cheaply. By bringing the concept of mediation into the process, it offers opportunities for mediation of professionals with special expertise in the field of negotiation and conflict resolution. This will certainly help the parties in question to find the best solution to the dispute.

Business settlement through mediation contains several substantial and psychological benefits, the most important being: informal settlement, the dispute resolution of own parties, a short settlement period, low costs, proof rules are not required, the settlement process is confidential, relations between the parties are cooperative, communication and focus of the settlement, the intended outcome is the same as winning, and is free from emotions and revenge (Harahap, 2011).

As dispute resolution through mediation offers benefits for each party, and without feeling there are winners and losers, the resolution of mediation disputes will reduce the cases that go to court.

#### <sup>6</sup> **Implementation of the Consumer Dispute Settlement Agency's Decision**

<sup>2</sup> The decisions of consumer dispute settlement bodies can be divided into two types. Firstly, decisions by mediation, where decisions by mediation actually only confirm the content of the peace agreement, which has been approved by both parties, and signed disagreement. Secondly, award by arbitration. The Consumer Dispute Resolution Agency (In Indonesian called BPSK) decisions by arbitration, such as civil decisions only, contains the seat of the case, and its legal considerations (Ambaranti & Marjo, 2016).

The decision of the Consumer Dispute Settlement Panel should be based as much as possible on deliberation to reach a consensus. However, if it is really tried, and consensus is found to be unsuccessful, the decision will be made based on the most votes. The results of the resolution of consumer disputes through mediation are laid down in a written agreement signed by the consumer, and the business actor, and is <sup>2</sup> then confirmed by a panel decision. The decision of the board in mediation and conciliation does not contain any administrative sanctions, while the results of the settlement of consumer disputes through arbitration are



2 taken by the decision of the panel and signed by the chair, and members of the meeting. The decision of the arbitration panel may include administrative sanctions (Rahman, 2018).

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The decisions of consumer dispute resolution bodies can take the form of peace, the claim is rejected or the claim is upheld. Business actors are responsible for compensating for damage and pollution from consuming traded goods and/or consumer losses for services produced. If the consumer's lawsuit is upheld, in the judgment, the obligations to be fulfilled by the business actor may take several forms. Firstly, compensation as referred to in the judgment. The form of compensation may take the following forms: (a) refund or replacement of goods and/or services of comparable or equivalent value or maintenance; (b) offering compensation, in accordance with applicable laws and regulations; and (c) such compensation may also be intended to offset benefits that would have been obtained without an accident or temporary or lifelong loss of employment or income as a result of a physical loss suffered, and so on. Secondly, administrative sanctions, in the form of determining the maximum loss of 200 million IDR. Administrative sanctions can be imposed on business actors who commit violations against: (a) business actors do not provide compensation to consumers in the form of refund or replacement of similar goods and/or services or healthcare or compensation for losses suffered by customer; (b) there is a loss due to the advertising production activities performed by the advertising business actor; and (c) business operators who are unable to provide after-sales warranty facilities, both in the form of spare parts and maintenance, and the provision of guarantees or warranties that are predetermined. This provision applies both to business actors who trade in goods and/or services.

Claims for compensation in the form of administrative penalties differ from real compensation for consumers sued through consumer dispute resolution agencies. In addition to awarding the actual claim to compensation, the consumer is also authorised to add compensation based on the administrative sanction. The amount of the compensation depends on the value of the loss of the consumer, as a result of the use or use of goods and/or services of producers or business actors.

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The meeting is required to solve the consumer dispute within 21 business days from the time the lawsuit is received by the consumer dispute resolution body. After the decision has been communicated, and no later than seven working days after the reading of the decision, the consumer and/or business actor is obliged to declare that they accept or reject the decision.

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If the consumer and/or business actor accepts the judgment, the business actor is obliged to execute the decision no later than seven working days after he has declared that he has received the decision. The decision received by the business actor is requested from the court in the place of residence of the injured consumer for the establishment of the execution order.



Business actors who do not<sup>12</sup> accept the decision given, but do not object after the deadline for implementing the decision, are deemed to have accepted the decision.

<sup>11</sup> If it is no later than five working days after the deadline for submission of objection is<sup>6</sup> exceeded, and the business actor does not comply with the obligations as stated in the decision of the Consumer Dispute Settlement Office, this office shall submit the decision to the investigator for investigation in accordance with the provisions of the applicable law.

A court decision is meaningless if the decision cannot be enforced. In short,<sup>11</sup> a decision that already has legal force can be enforced. Therefore, the decision of a judicial authority must have executive power. That is, the power to carry out what is determined by force in the decision by government officials. As to what executive authority gives to a decision to be enforced by force, the existence of the order is “for righteousness based on the Supreme Lord”.

<sup>6</sup> Both the decision of the consumer dispute settlement body, and the decision on objection can be filed for enforcement. However, the Consumer Protection Act does not specify any further rules. The execution of the decision is submitted and becomes the full jurisdiction of the district court, which exercises<sup>23</sup> the function of the judiciary, and has legitimacy as a coercive institution. The manner in which the judge’s decision is to be implemented is regulated in Articles 195 to 208 HIR. These provisions include, among other things, that if the execution warrant signed by the head of the court is issued, the clerk of the court is assisted by a bailiff and two witnesses, in order to proceed to the place of confiscation. There, the registrar, and bailiff show an order to the parties or officials involved. For example, the village head or the local district head. By virtue of the order, the executive officer acts as a public officer who is required by law to hold public office. Therefore, those who oppose or obstruct with violence or threat of violence can be punished by the execution officers according to Articles 211–214 of the Criminal Code.

The execution of the decision is carried out by confiscating the assets of the losing party. According to the provisions of Article 197 HIR, the confiscation is carried out by the registrar or his deputy and assisted by two witnesses who meet the legal requirements. The registrar or his successor signs a confiscation record, which he and the witnesses have signed. The person whose property has been seized is informed of the purpose of the confiscation when he is present. The seizure of movable property can also take place on the property of a losing person who happens to be in the hands of another person, but the confiscation cannot be carried out on animals and objects used to run their business.

The provisions regarding the procedure for the application for enforcement are not regulated in detail or clearly in the Consumer Protection Act, except that they are regulated in only one





article, namely Article 57 of the Consumer Protection Act, which states that the decision of the panel referred to in Article 54 (3) requests the enforcement order at the court of the place of the injured consumer. Since the Consumer Dispute Settlement Office's decision did not include the order for Justice Based on almighty godliness, the execution of the enforcement request was somewhat limited.

Based on the provisions of Article 52 letter f and letter k of the Consumer Protection Act, the tasks and powers of the consumer dispute resolution body include conducting investigations and investigating consumer disputes. As part of its task of investigating consumer disputes, the consumer dispute resolution body has the power to decide and determine whether or not there is harm to the consumer. The interpretation of the provision of Article 52 letter k of the consumer protection law must be linked to Articles 57, and 52 letter a of the consumer protection law. According to Article 57 of the Consumer Protection Act, the decision of the council of bodies for the settlement of consumer disputes, as referred to in Article 54 (3), is requested for an enforceable title at the court where the consumer is disadvantaged. This provision provides an indication that the decision taken and pronounced by the consumer dispute resolution body, if the lawsuit is upheld, must contain a conviction of the injunction or operative part to be executed. In order for amar's conviction to lapse, it must be based on a warning regarding the amount of lump sum, and lump sum damages. Thus, the authority of the consumer dispute settlement body referred to in Article 52 (k) is not declaratory, in the sense that it claims only that the actions of the business actor are to the detriment of the consumer, but at the same time, the exact amount of the damages is accompanied by a conviction that punishes the business actor for payment of the compensation. Thus, the decision of the consumer dispute resolution body, which can be enforced, is only the decision containing the amount of the compensation, and does not conflict with or exceed the ultra vires principle, as stipulated in Article 178 (3) of the HIR, namely that the decision may not exceed what is requested in the petition.

While the purpose of establishing a Consumer Dispute Settlement Office is to provide legal protection for consumers, this does not mean that the Consumer Dispute Settlement Office should seek enforcement in court, in an attempt for compensation. As compensation is provided in favour of the consumer, only the consumer can enforce the decision of the consumer dispute resolution body, and not the consumer dispute resolution body.

#### ***Obstacles to the Implementation of Media in the Settlement of Civil Cases at the Court***

The presence of Regulation No. Supreme Court 1 of 2016 details the procedure and procedural law for the mediation process. However, in practice, it is not always easy to apply a rule, as many realities are not in accordance with the heads of the legislators who formulate the Supreme Court Regulation. Thus, a revision and assessment of the standards contained



therein is necessary to find appropriate and accurate solutions in anticipation of the obstacles and difficulties encountered in the field. The peace process through mediation, which is regulated by Regulation No. 1 of the Supreme Court of 2008, of 17 fails. This failure was subsequently evaluated by the Supreme Court by issuing the latest Supreme Court regulation, namely Regulation No. 1 of the 17 Supreme Court concerning mediation at the Court. It was a follow-up to the improvement of the previous Supreme Court regulation, in the hope that it would improve the mediation process with a peaceful settlement that benefits both parties.

Mediation failure is strongly influenced by various inhibitory factors 13 during the mediation process. 16 The mediation process was considered unsuccessful for several reasons. Firstly, the 13 presence of the parties. The presence of the parties in the mediation process is crucial because the mediation process cannot be carried out if a party is not present at the planned meeting. The presence will also determine the good faith of the parties when undertaking the peace process, so that if the parties or one of the parties do not want to attend the planned meeting, it can be seen that the parties do not have good faith to settle the dispute peacefully. Secondly, it is beyond the deadline. According to Article 24 (2) Regulation No. Supreme Court 1 of 2016, "the mediation process takes place no longer than 30 days from the date of the mediation". Thirdly, the mediation process is undertaken with bad faith, which means that the parties may not smuggle bad intentions behind the ongoing mediation process. Fourthly, there are fewer parties. Fifth, and lastly, the terms of the peace agreement are not met (Witanto, 2011).

## Conclusion

In some respects, the settlement with a mediation process offers many benefits to the concerned parties. A shorter timeframe 13 will make the operational costs considerably cheaper, as the trial will be slow, and lengthy. To reduce the 13 accumulation of cases in court, some of the benefits of mediation are significant, including the process of dispute resolution through rapid mediation. The agreements that are made together, while from an emotional point of view, are the win-win solutions which offer convenience to the parties. The errors that occur in the mediation process can be used as learning material to achieve success.



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