

BUSINESS DISPUTES AND THEIR RESOLUTION THROUGH MEDIATION: A QUALITATIVE APPROACH

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ABSTRACT

Mediation, despite its intended purpose, often fails to yield consistent results due to unequal power dynamics among parties involved, and not all mediation processes achieve agreement. The study explores the limitations of mediation in resolving business disputes and suggests strategies to enhance its effectiveness as an alternative. Data collection in this research were observation and documentation. Data analyses were using 3 steps, which were data reduction, data display and data verification refer to the interactive model. The research findings, based on the analysis of documentation and observation data, reveal the following themes. Theme 1- Effectiveness of Resolving Business Disputes Through Mediation. Theme 2 - Mediator Quality and Mediation Infrastructure. Theme 3 - Sustainability and Collaboration between Stakeholders. Theme 4 - Encouraging Active Involvement from Business Leaders and Theme 5 - Expanding the Footprint of Mediation through Partnership and Socialization. The implication in this study.

Keywords: Mediation, Business Disputes, Sustainability, Partnership, Engagement.

1. INTRODUCTION

In an increasingly competitive business climate, disputes between companies often occur and can have a significant impact on business continuity. Various types of business disputes can arise, ranging from contract disputes, unfair competition, to disputes regarding intellectual property rights [1], [2], [3]. To resolve these disputes, mediation is a business law approach that is increasingly being used [4], [5], [6], [7].

Business disputes that often occur are disputes related to contracts, such as clause errors or differences in interpretation of contract provisions [8]. Apart from that, unhealthy competition between companies also often triggers disputes, for example accusations of monopolistic practices or making exclusive agreements that limit competition. Another common dispute is one related to intellectual property rights, such as infringement of patents, trademarks, or trade secrets [9]. In resolving various types of disputes, mediation offers advantages over settlement through litigation. Mediation allows parties to maintain good business relationships, while achieving mutually beneficial solutions. Apart from that, the mediation process also tends to be faster and cheaper than the complicated and expensive court process [10].

In practice, resolving business disputes through mediation is also not free from challenges, such as unequal bargaining positions between the parties or the inability to reach an agreement [11]. However, with the correct application of contract law principles and the role of a professional mediator, mediation remains an effective and efficient business dispute resolution option [12].

Meanwhile, mediation may often occur between companies, including contract disputes, unfair competition, and violations of intellectual property rights. To resolve these disputes, mediation is one of the business law approaches that is increasingly being used because it allows parties to maintain good business relationships and reach mutually beneficial solutions.

When compared with conventional litigation procedures, mediation has been recognized as an alternative dispute resolution strategy that has several benefits [13]. The ability of the parties to reach a mutually beneficial agreement, flexibility, and reduced costs are some of the main benefits

of mediation. However, mediation has certain drawbacks that must be taken into account, just like any other strategy. Unequal bargaining positions, ambiguity in reaching a settlement, and limitations in resolving cases with significant legal complexity are some of the weaknesses of mediation [14], [15].

While mediation offers a variety of benefits, including lower costs, flexibility, and the opportunity to reach a mutually beneficial solution, it is important to consider some of its drawbacks [16]. Unequal bargaining positions, uncertainty in reaching an agreement, and limitations in dealing with high legal complexity are factors that can influence the effectiveness of mediation [17]. Therefore, the choice of mediation as a dispute resolution method must be based on a careful analysis of the characteristics of the dispute and the needs of the parties involved [18].

One of the weaknesses of mediation is the potential for an unequal bargaining position between the parties to the dispute [11]. This inequality can occur for various reasons, such as differences in resources, financial strength, or legal knowledge. Parties who are financially stronger or have better access to legal knowledge may be able to manipulate the mediation process to their advantage, thereby reducing the fairness of the mediation outcome [19].

Although mediation is intended to be used as a form of adulation, it often fails to produce consistent results due to the unequal power relationships between the affected parties. Not all mediation processes are successful in reaching an agreement. This uncertainty is one of the weaknesses of mediation [20]. In contrast to litigation which provides a binding decision from the court, mediation relies on the parties' willingness to work together and reach an agreement that satisfies both parties [21].

Even though the mediation settlement rate is quite high, there is still a proportion of cases that do not reach an agreement and have to return to the litigation process [22]. This uncertainty can result in additional time and costs if mediation fails. The success of mediation depends greatly on the skills of the mediator and the dynamics of the relationship between the parties, which are sometimes difficult to predict [23].

Mediation may be less effective in resolving disputes involving highly complex or technical legal issues. In cases like this, a mediator's expertise may not be enough to handle all the complex legal aspects [22]. Litigation, with the support of formal legal procedures and the presence of a judge who has decision-making authority, is often more appropriate for cases with high legal complexity [24]. Mediation is often unable to resolve disputes that require a deep understanding of substantive and procedural law. In situations where legal rules and complex facts dominate, litigation is often a more effective route than mediation.

In the context of increasing the efficiency of the industrial and trade sectors, mediation can be a very effective instrument in handling business disputes that develop along with increasingly complex business dynamics [25]. By proactively utilizing mediation, companies can avoid the chaos that can result from time-consuming and costly disputes, while maintaining mutually beneficial business relationships [26]. However, to ensure the effectiveness of mediation, it is important to involve a highly trained and qualified mediator. Mediators who are able to manage unequal bargaining positions, overcome uncertainty, and understand the legal complexities involved can be the key to success in achieving a sustainable agreement [27].

The application of mediation in resolving business disputes requires collaboration between the parties involved, competent mediators, and supportive regulations. Concrete steps are needed to ensure that mediation can be an effective means of resolving business disputes [28]. Companies need to increase their understanding of the benefits of mediation and the importance of

collaborative dispute resolution. This can be done through internal counseling and training for employees to understand the potential of mediation in minimizing the negative impact of business disputes on the company [29].

The government also has an important role in creating an environment that supports mediation. Clear regulatory support and incentives for companies that utilize mediation can encourage independent resolution of business disputes before entering more complicated litigation processes [30]. The availability of quality mediators is also a key factor in implementing mediation. Training and certification for professional mediators can ensure that the mediation process runs fairly and effectively. With integrated efforts from business actors, legal institutions, financial institutions and the government, mediation can be a strong foundation for resolving business disputes. The principles of fairness, propriety and collaborative resolution can guide companies in upholding integrity and building trust in an increasingly complex business environment.

Based on explanations from previous research, two research questions can be raised: why does mediation still not provide maximum results in resolving business disputes between companies? How to maximize mediation as an alternative for resolving business disputes between companies?

2. METHOD

The qualitative approach was chosen because it is in accordance with the aims of the research to describe and understand the phenomena, events, social activities, attitudes, beliefs, and perceptions of people. Qualitative research can be applied when research problems need to be explored deeper due to a previous theory or concept that is still considered unable to capture the complexity of the problem under study. A qualitative research approach produces descriptive data in the form of words or writings and behaviors that can be observed from the subject and object of the study itself [31].

Data collection in this research were observation and documentation. Related documentation was gathered from many sources such as internet media and library documents. Data analysis were using 3 steps, which were data reduction, data display and data verification refer to the interactive model. Data reduction is to sort out the main data, data display is to present the data, and data verification is to conclude the main themes of the results [32].

Validity and reliability used triangulation based on the observation and documentation analysis to obtain valid and reliable data coping credibility, transferability, auditability, and confirmability. Credibility was related to the truth aspect by means of triangulation to compare the results. Transferability shows the applicability of research to other studies that readers can understand the results of qualitative research. The report is made in a detailed, clear, and systematic manner. Auditability means that it can be tested by examining the entire research process, since designing case studies, determining data sources, data collection, data analysis, make conclusions, can be traced and showing the processes and results. Confirmability relates to the objectivity that the research results are agreed and accepted [33].

3. RESULT AND DISCUSSION

Based on the analysis of documentation and observation data, the following themes of research findings can be found.

Theme 1- Effectiveness of Resolving Business Disputes Through Mediation

Today, many countries have noticed the need for increased efficiency in resolving business disputes. This is reflected in real efforts to realize concrete reform programs in the industrial and trade sectors, as part of agreements with international financial institutions. One of the main focuses of this reform is increasing efficiency and competitiveness, as well as reducing monopoly in the industrial sector. It is hoped that these steps will bring significant and sustainable improvements in the industrial and trade sectors, which in turn can address various business disputes between companies that arise as business activity increases.

Although mediation offers many advantages in resolving business disputes, it is important to consider its potential drawbacks. Unequal bargaining positions, uncertainty in reaching an agreement, and limitations in resolving high legal complexity are some of the challenges that need to be overcome. Therefore, a balanced approach between mediation and litigation is needed to ensure effective and comprehensive resolution of business disputes.

With various types of business disputes between companies that can be resolved through a business law approach, increasingly prioritizing mediation but still considering the role of litigation for certain cases, a holistic and progressive approach is needed in handling business disputes. A commitment is required to support the effectiveness of resolving business disputes through mediation, while recognizing the complexity and dynamics involved in the context of modern business law. It is important to emphasize that mediation as an approach to resolving business disputes places the principles of justice and propriety as the main foundation in reaching mutually beneficial agreements for both parties. By considering mutual interests and allowing the formation of fair solutions, mediation is able to create a more harmonious and sustainable conflict resolution environment.

By recognizing the complexity and dynamics in resolving business disputes, concrete efforts to support the effectiveness of mediation are important. This will not only support increased fairness in business relationships, but also strengthen the foundations for sustainable conflict resolution in the modern business context. In the context of increasing the effectiveness of mediation, the involvement of related parties in strengthening mediation infrastructure, both in terms of human resources and technology, is crucial. This includes the development of information systems that support the mediation process, training for mediators in handling complex disputes, as well as increasing accessibility to mediation services for small and medium companies.

Theme 2 - Mediator Quality and Mediation Infrastructure

Increasing the effectiveness of mediation as an approach to resolving business disputes also requires investment in improving the quality of mediators and mediation infrastructure. The establishment of an institution or body responsible for the certification and supervision of mediators could be a fundamental step. With this institution, mediators can undergo a rigorous and continuous assessment process to ensure that they remain highly trained and qualified in accordance with the development of business dispute dynamics.

Apart from that, the development of special information technology to support the mediation process is also crucial in increasing the efficiency and accessibility of mediation services. An adequate information system will enable parties involved in mediation to monitor case progress, share documents and evidence securely, and communicate efficiently, even if they are in remote locations. Along with the need for trained and qualified mediators, efforts are also needed to build awareness of the benefits of mediation and collaboration between companies. This can be done

through training programs and skill development in conflict resolution, so that companies can proactively integrate mediation approaches in their organizational culture.

In addition, it is important to consider the role of legal institutions, financial institutions and the government in providing adequate support for resolving business disputes through mediation. This support can take the form of incentives, facilities and regulations that support the implementation of mediation as the main option before entering the time-consuming and expensive litigation process. Apart from that, efforts to promote a culture of mediation in the business world also need to be the main focus. This can start from training programs and skills development in conflict resolution for business people and professionals at various levels in a company. Through a deeper understanding of the benefits of mediation, companies can proactively create an environment that supports collaborative dispute resolution. The involvement of company leaders in supporting a culture of mediation is also very important. With support from top leadership, mediation values can be integrated into company conflict management policies and become an integral part of a sustainable work culture.

Theme 3 - Sustainability and Collaboration between Stakeholders

It is important to strengthen cooperation between various stakeholders, including legal institutions, financial institutions, government, and business and industry associations. With close collaboration, various parties can support each other in ensuring that mediation not only becomes the main choice in resolving business disputes but can also develop as a sustainable and integrated practice in various aspects of business life. Thus, through concrete steps and collaboration between various related parties, mediation can become a strong basis for resolving business disputes in a fair, effective and sustainable manner. By continuing to encourage improvements in the quality of mediators, investing in mediation infrastructure, and developing a culture of mediation in the business world, companies and industry can jointly develop a harmonious and mutually beneficial business environment for all parties.

In implementing mediation as the main approach in resolving business disputes, there are several concrete steps that need to be taken. First of all, companies can start by building awareness of the benefits of mediation through holding seminars and workshops that educate stakeholders about the principles of mediation and how to implement it in the business environment. Furthermore, companies can consider building an internal team trained in mediation, which is responsible for handling disputes that may arise within the company. This team can consist of individuals who have special knowledge and skills in mediation, so that the company has internal resources that can manage disputes effectively and collaboratively.

Additionally, companies may also consider adopting mediation clauses in their business agreements, which require parties involved in a dispute to undergo a mediation process before entering the litigation process. This can also be a way to promote a culture of mediation and demonstrate the company's commitment to resolving disputes collaboratively. Furthermore, companies can take proactive steps by participating in training programs for mediators and promoting the development of skills in conflict resolution among employees. In this way, the company not only has the internal skills to handle disputes, but also strengthens the culture of mediation in the work environment.

With proactive and integrated implementation steps, companies can create a business environment that supports collaborative dispute resolution and build a solid foundation for long-term business sustainability. Apart from direct benefits in resolving business disputes, mediation can also play a

role in supporting broader economic growth. By providing an efficient and low-cost resolution pathway, mediation can help maintain economic stability by reducing the potential for distortion and uncertainty resulting from protracted business disputes. The success of mediation in resolving business disputes can also create a more attractive business environment for local and foreign investment. When, business people feel confident that disputes can be resolved fairly and efficiently through mediation, this can help build trust and stability that supports sustainable economic growth.

In developing the implementation of mediation, it is important to strengthen the understanding that mediation is not just another alternative in resolving disputes but is the main option that can provide satisfactory results for all parties. By building awareness of the advantages of mediation in resolving disputes by considering mutual interests, companies can strengthen the foundation of a strong mediation culture. Apart from that, the adoption of mediation clauses in business agreements also needs to be supported by awareness of the long-term benefits it has. By understanding that mediation is not only a process of approaching a dispute, but also an investment in a sustainable business relationship, business people can see the long-term value contained in implementing mediation as the first step in resolving disputes.

Theme 4 - Encourage Active Engagement from Business Leaders

In addition to the presence of an internal team trained in mediation, the active involvement of business leaders will also play an important role in strengthening the mediation culture. When company leaders actively support mediation as a company-driven approach, it not only creates trust for employees and business partners, but also forms a strong foundation for sustainable dispute resolution. By engaging company leaders in training programs for mediation and conflict management skills, companies can create an integrated mediation culture at every level of the company hierarchy. This will help in ensuring that the values of mediation are not only upheld as principles, but also implemented in every aspect of decision making and conflict resolution.

With these steps, mediation can not only become a primary approach in resolving business disputes, but also become the foundation upon which economic growth, sustainable business relationships and a collaborative corporate culture are based. With continuous support in developing mediation as an integrated practice in the business world, companies can create a harmonious business environment for all parties involved. In developing steps to implement mediation in resolving business disputes, it is important to ensure that the company has a comprehensive and integrated framework. In addition to organizing seminars and workshops, companies can also develop practical guides that describe mediation procedures in detail, as well as provide resources that support the implementation of mediation in various business contexts.

In addition, companies can explore collaboration with leading mediation institutions and utilize technology to facilitate access to the mediation process. In this way, companies can make mediation more accessible and effective in resolving disputes, both at the internal and external levels. Apart from initial steps, companies also need to consider ongoing evaluation of mediation implementation. By collecting data and feedback from each mediation process carried out, companies can continuously improve their mediation practices to increase effectiveness and fairness.

Furthermore, companies can also openly share learnings from the mediation process by involving stakeholders. In this way, companies can not only improve internal mediation practices, but also contribute to the development of a mediation culture more broadly in business and society. With

this approach, companies can consistently strengthen the foundation of mediation as the main option in resolving business disputes, while continuing to encourage stable and sustainable economic growth. These steps not only strengthen the company's commitment to mediation, but also send a strong signal to the entire business ecosystem that mediation is a solid foundation for fair, effective and sustainable dispute resolution.

Theme 5 - Expanding the Footprint of Mediation through Partnerships and Outreach

In addition to internal efforts, companies can expand their mediation footprint by establishing partnerships with institutions that support mediation, such as alternative dispute resolution institutions or mediator professional organizations. These partnerships can provide access to additional resources, regulatory updates, and a broader network in the world of mediation. Apart from that, open outreach regarding the benefits of mediation and the success of mediation cases that have been carried out can also help expand the understanding and use of mediation outside the company environment. By involving the business community, industry associations and educational institutions, companies can build broader awareness of the role of mediation in creating a stable and sustainable business environment.

To strengthen a mediation culture, companies can consider introducing a reward and recognition system for workers who successfully implement mediation well. By providing rewards and recognition to those who successfully facilitate dispute resolution through mediation, companies can create incentives for employees to develop mediation skills and actively promote this approach to conflict resolution. Awards can also be given to business leaders who consistently support mediation and create a work culture that facilitates dispute resolution with a collaborative approach. This will form a strong foundation for strengthening the mediation culture in the long term.

To truly strengthen a mediation culture, companies need to integrate mediation values into every aspect of organizational culture. This can be done through the development of internal policies and procedures that explicitly recognize and encourage the use of mediation in conflict resolution. Additionally, training on communication, negotiation, and mediation skills can be integrated into employee development programs to ensure that each team member has the knowledge and skills necessary to support mediation practices in the work environment.

By integrating mediation into the organizational culture, companies can ensure that mediation practices are not just a separate initiative, but become an integral part of the way things work and conflict resolution in the company. With these steps, companies can strengthen their mediation culture in a more in-depth, comprehensive and sustainable form. Strong support and continuous commitment to strengthening mediation practices will have a positive impact in building a harmonious, productive and stable business environment for all parties involved.

4. CONCLUSION

Based on the results of the analysis and subsequent discussion, it can be concluded as follows. Theme 1- Effectiveness of Resolving Business Disputes Through Mediation. Theme 2 - Mediator Quality and Mediation Infrastructure. Theme 3 - Sustainability and Collaboration between Stakeholders. Theme 4 - Encouraging Active Involvement from Business Leaders and Theme 5 - Expanding the Footprint of Mediation through Partnership and Socialization.

With joint efforts from both the private sector and the government, the implementation of mediation in resolving business disputes will be able to support the realization of a sustainable and

mutually beneficial business environment for all parties concerned. Resolving business disputes through mediation is becoming increasingly relevant in the context of globalization and technological developments that accelerate interactions between companies. However, to understand the importance of mediation in the context of resolving business disputes, it is necessary to recognize that mediation offers more than just conflict resolution. Mediation creates opportunities for companies to improve their relationships, understand opposing perspectives, and reach solutions that are not only business-beneficial but also strengthen long-term collaboration. The limitation of this research was that it was carried out in just 1 country, namely in Indonesia, with the context of only 5 cases of business disputes between companies. The qualitative research method only involved documentation and observation, not yet conducting in-depth interviews with business people who experienced business disputes to be resolved through mediation. Future research can be carried out with a wider scope, namely in many countries and with many cases of business dispute mediation between companies. It is recommended that future research be carried out using the mixed method research method to produce more complete and clear findings.

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