



## Legal Analysis of the Legal Force of Mediation Results as a Dispute Resolution Method in Business Contracts (Based on Law Number 30 of 1999 Concerning Alternative Dispute Resolution)

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### ABSTRACT

Based on Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, this study examines the legality of mediation outcomes as a dispute resolution procedure in business contracts. Mediation is one alternative dispute resolution technique. By using a mediator as an impartial third party, the two parties to the dispute hope to come to a peaceful resolution. In commercial negotiations, mediation offers benefits since it saves time and money while preserving positive relationships between the parties. This study combines a qualitative analytical method of statutory regulations, legal documents, and related literature with a normative juridical approach. According to the research findings, if the mediation judgment specified in the agreement satisfies specific requirements outlined in Law Number 30 of 1999, it has bonding legal force for both parties. In addition to being signed by the mediator and the parties, the mediation agreement may be presented to a court for approval, or homologation, which grants it executory powers. In addition, this study found a number of elements that affect how well mediation works to settle disputes involving commercial contracts, such as the mediator's skill and reputation, the transparency of the mediation process, and the parties' openness in sharing information and communicating with one another. The analysis's findings led to the conclusion that mediation, when used to settle conflicts in commercial contracts, has a great deal of potential to be an effective and efficient solution, with adequate legal force in accordance with applicable regulations.

## **INTRODUCTION**

### **Background**

Disputes and conflicts are inevitable in the business world. Various reasons can cause disputes in business contracts, such as misunderstandings, breach of contract, or mismatch of interests between the parties involved. To maintain business continuity and good relations between the parties, dispute resolution is very important. Disputes between various parties involved in business always exist. When the parties disagree on certain matters, such as implementing a business contract, then this disagreement does not cause conflict, which can even lead to violence or abuse; however, this problem must be handled immediately so that it does not drag on.

Contracts are one of the important components in the business world that regulates the relationship between the parties involved. However, it is not uncommon for disputes or disagreements to occur due to misunderstanding, violation, or mismatch in understanding the contents of the contract. To maintain company relations and performance, dispute resolution must be carried out quickly and effectively.

Alternative Dispute Resolution (APS) is a method of dispute resolution outside the court that aims to resolve conflicts in a faster, more efficient, and less confrontational manner compared to litigation in court. Dispute resolution outside the court is regulated in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. APS includes various methods of dispute resolution such as:

- **Arbitration:** Arbitration is a process in which one or more arbitrators (referees) chosen by the disputing parties decide the dispute. The arbitration decision is binding and has the same executive power as a court decision.
- **Negotiation:** Negotiation is a process in which the disputing parties directly negotiate to reach an agreement without the assistance of a third party. Negotiations can be conducted informally and flexibly.
- **Conciliation:** Conciliation is a process in which a conciliator helps the disputing parties to reach an agreement. Unlike mediation, the conciliator can provide suggestions or proposals for resolution to the parties.
- **Mediation:** Mediation is one of the alternative dispute resolution methods (ADR) used to resolve disputes, including in the context of business contracts. In Indonesia, legal provisions governing the implementation of mediation in dispute resolution can be found in several laws and general principles.

One method of dispute resolution that can be separated is mediation, which involves a third party who is not involved in the dispute with the aim of helping both parties reach an agreement. Mediation is a popular choice, because it has many advantages compared to the method of dispute resolution through litigation, because it is faster, cheaper, more flexible, and maintains confidentiality and good relations between the two parties.

However, mediation has many advantages, doing it in resolving business disputes in Indonesia often faces many problems. Some of these problems include the lack of understanding and awareness of business actors about mediation, the lack of trained mediators, and the legal framework that needs to be strengthened to support its implementation.

This study aims to explore and analyze how the implementation of mediation as a method of dispute resolution in business contracts is regulated. Considering the importance of understanding the legal provisions governing mediation, this study is expected to help optimize dispute resolution.

## **LITERATURE REVIEW**

### **1. Legal Analysis**

Legal analysis is a method or approach used to study and understand legal regulations, legal principles, and their application in certain cases. The purpose of legal analysis is to provide an in-depth understanding of how the law functions in a specific context and how the law is applied to resolve legal problems that arise.

According to Sudikno Mertokusumo, legal analysis is an activity of examining or reviewing applicable legal regulations to understand and explain the meaning of these regulations and their application in resolving legal problems faced.

Soerjono Soekanto stated that legal analysis is a way to study legal norms that apply in society, including laws and regulations, court decisions, and legal doctrines, in order to understand how the law should be applied to resolve a legal case.

Legal analysis provides a comprehensive understanding of how the law is applied in a particular context and helps in resolving legal problems fairly and effectively.

The Importance of Legal Analysis, Legal analysis is important because:

- Provides Legal Certainty: Helps explain how the law is applied in certain situations, thus providing legal certainty for the parties involved.
- Helps Resolve Disputes: Provides a clear legal basis for resolving disputes, either through mediation, arbitration, or litigation.
- Improves Legal Understanding: Helps legal practitioners, law students, and the general public understand legal regulations and their application in various contexts.

### **2. Legal Force of Out-of-Court Mediation Results**

Mediation is a method of resolving disputes outside the court in which a neutral third party (mediator) helps the disputing parties to reach an agreement peacefully. This study aims to determine, review, and analyze the provisions and legal force of mediation agreements implemented both inside and outside the court. This study uses a normative legal approach and secondary data obtained from literature and document studies. The results of the study indicate that agreements resulting from mediation in court have permanent legal force, while agreements resulting from mediation outside the court only function as ordinary contracts for the parties involved.

In addition, this study also aims to determine how the mediation process is in resolving business disputes and what obstacles are faced in the mediation process for resolving business disputes. Mediation is a method of resolving disputes through a negotiation process to obtain an agreement between the parties assisted by a mediator. Out-of-court mediation is carried out by the parties without any court proceedings, the results of the agreement obtained from the out-of-court mediation process can be submitted to the court to obtain confirmation as a peace deed that has the power like a Judge's Decision that has permanent legal force. Mediation carried out in court is a mediation process carried out as a result of a civil lawsuit to the court.

### **3. Analysis of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution**

Legislation is all types of written rules made by authorized institutions and have binding legal force. These regulations include laws, government regulations, presidential decrees, and so on. This study examines Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, with a focus on the legal force of mediation results.

#### **METHODOLOGY**

This research was conducted using a normative legal research approach. According to Ediwarman, "Monograph of Legal Research Methods", normative legal research is library legal research, where research is conducted by looking at library materials as secondary materials. This type of research is related to legal issues, and the focus of the research is the analysis of applicable laws and regulations. This technique collects data from a literature review, consisting of books, articles, doctrines, laws, and dictionaries, as well as the author's opinion. Then, compare interrelated variables to describe and explain the phenomenon of dispute resolution mediation.

#### **RESEARCH RESULT AND DISCUSSION**

##### **1. Legal analysis of the legal force of mediation results for dispute resolution in business contracts**

Mediation is one of the alternative dispute resolution (ADR) methods that involves a neutral third party to help the parties reach an agreement. In the context of business contracts, mediation is often used as an initial step before proceeding to the litigation process. Mediation is expected to reduce the costs and time required to resolve disputes.

The results of mediation can have different legal force depending on several factors, including:

- a. Agreement of the Parties: The results of mediation only have legal force if all parties involved agree to them, usually in the form of a written agreement.
- b. Legality of the Mediation Process: The process must be carried out in accordance with applicable legal provisions. For example, Supreme Court Regulation No. 1 of 2016 concerning Mediation Procedures in Court regulates mediation in Indonesia.

- c. **Registration of the Agreement:** In some cases, the agreement resulting from mediation must be registered to obtain stronger legal recognition, especially if it involves enforceable rights.

In analyzing the legal force of mediation results, several aspects that need to be considered are:

- a. **Substantive Aspect:** Does the content of the mediation agreement meet the requirements for a valid agreement according to law, such as an agreement, the capacity of the parties, and a clear object.
- b. **Procedural Aspect:** Is the mediation process carried out in accordance with the procedures established by law; an inappropriate process can cause the mediation results to not be legally recognized.
- c. **Execution Aspect:** Can the mediation results be legally enforced? If the other party does not fulfill the agreement, one party can file an execution application with the court.

It is very important to compare the legal force of mediation results and other dispute resolution methods, such as arbitration and litigation. Litigation is public and formal, while mediation tends to be more flexible and confidential. The arbitrator's decision, on the other hand, has stronger legal force because it is final and binding.

To maintain good business relationships and avoid future conflicts, valid and legally recognized mediation results can provide the parties to a business contract with legal certainty. In addition, the results of this mediation can also serve as a precedent for future dispute resolution.

Legal analysis of the legal force of mediation results in resolving business contract disputes shows that mediation results can have significant legal force if they meet certain requirements. Therefore, it is important for the parties to understand the mediation process and ensure that the agreement reached can be legally recognized and executed. Legal execution is the process of implementing a court decision or agreement that has been ratified and has executory power. This process involves the court and related parties to ensure that the decision or agreement is carried out in accordance with applicable provisions. The stages in the execution process include an execution request, execution notification, and execution implementation. The type of execution can be real execution, money execution, or compensation execution.

The agreement resulting from mediation has binding legal force and can be legally enforced, providing certainty and protection for the disputing parties. In order for the mediation decision to be executed, the agreement resulting from mediation must:

- Be written and signed by the parties and the mediator.
- Meet the requirements for a valid agreement according to the Civil Code.
- Be ratified by the court (homologation) to obtain executory power.
- Executed in good faith by the parties, and if not complied with, can be submitted for execution in court.

If the mediation decision is not complied with, there are several legal consequences that can occur, especially related to the litigation process and cost obligations. Legal Consequences of Not Complying with the Mediation Decision:

- **Inadmissible Lawsuit:** The judge may consider the lawsuit inadmissible if one of the parties is declared to be not acting in good faith during the mediation process. This is in accordance with Article 23 of PERMA No.1 of 2016, which states that plaintiffs who do not behave well will face significant legal consequences.
- **Obligation to Pay Mediation Fees:** Parties who are declared to be not acting in good faith must also pay mediation fees. The failure of the mediation will be reported to the judge by the mediator, who will also make a recommendation to pay the fees.
- **Decision Void by Law:** In some cases, if the mediation process is not carried out, the decision on the case can be considered void by law. This occurs when the judge does not order the parties to mediate, violating existing legal provisions.
- **Opportunity for Appeal:** Parties can appeal to a higher court if they feel aggrieved by the mediation decision.

Thus, it is important for parties to follow the mediation decision to avoid adverse legal consequences.

Several interrelated factors influence how effective mediation is in resolving business contract disputes. Here are some important components that influence the success of mediation:

**Competence and Credibility of the Mediator**  
**Competence:** A competent mediator understands the applicable law, the mediation process, and has good communication skills.

**Credibility:** A credible mediator is viewed favorably by the parties as a neutral and impartial person, and they are able to help the parties reach a fair agreement. Experience, training, and official certification increase credibility.

**Clarity of Mediation Procedures:**

- **Stages of Mediation:** All mediation processes, from introducing the mediator, negotiating, to drafting an agreement, must have clear stages. The parties gain a better understanding of the mediation process and their rights and obligations during the process. The use of official guidelines such as PERMA Number 1 of 2016 concerning Mediation Procedures in Court helps ensure that mediation is carried out in accordance with applicable provisions.
- **Transparency of Information and Communication between Parties:** Transparency means that all parties must inform each other of all information relating to the dispute. With this openness, the mediator can more easily understand the basis of the problem and find a fair solution.
- **Effective Communication:** The mediator must ensure that each party has an equal opportunity to voice their opinions and interests, and ensure that constructive communication is facilitated.

### **The Nature of Mediation Decisions and the Parties Participating in Mediation**

A mediation decision allows the parties to take control of their own dispute resolution, which is more flexible and participatory than a court decision or arbitration. It also allows the parties to reach a better agreement and maintain good relations between them. Here are some characteristics of a mediation decision:

- **Mutual Agreement:** The mediation decision is made after the disputing parties reach a consensus. A third party such as a judge or arbitrator cannot enforce the decision. The parties voluntarily reach an agreement that is beneficial to both parties.
- **Non-Adversarial Mediation:** The mediation process is non-confrontational and aims to reach an amicable solution. Decisions made during the mediation process do not determine who wins or loses; instead, they determine a solution that is acceptable to all parties.
- **Confidentiality:** All information discussed in the mediation process and its results remain confidential. Without the consent of all parties involved, information discussed in mediation cannot be used in other legal processes.
- **Binding Power:** The results of mediation written and signed by the mediator and the parties are binding. This agreement can be submitted to the court for acceptance, or homologation, so that it has the same executive authority as a court decision.

### **Parties Participating in Mediation**

- **Disputing Parties:** Individuals, companies, or other entities that have a conflict or dispute that needs to be resolved are referred to as disputing parties. They must act ethically because they are important parties in the mediation process.
- **Mediator:** The mediator assists the mediation process as a neutral third party. They do not have the authority to decide the dispute, but they help the parties reach a mutual agreement. The mediator must have high competence and credibility to keep the information obtained during mediation confidential.
- **Counsel or Legal Counsel:** The disputing parties can be accompanied by counsel or legal counsel during the mediation process. Counsel or attorney provides legal advice and helps disputing parties understand the legal consequences of the agreement reached.

With binding force, confidentiality, and mutual agreement, mediation decisions can be a fair and effective dispute resolution method if there are parties involved: disputing parties, mediators, counsel, or attorneys.

### **Stages of the Mediation Process**

In general, the pre-mediation stage, the mediation process stage, and the final stage of the mediation process are components of the mediation procedure. When a lawsuit is registered and a mediator is appointed as a third party, pre-mediation begins. The stages begin with the plaintiff reporting his lawsuit to the

competent court relatively and absolutely. The court will set the first day of trial after being registered. The court will send a summons to the defendant and plaintiff. According to Article 17 of Perma 1/2016, the judge will require the parties to mediate on the appointed trial day. In addition, in accordance with Article 20 paragraph (1) of Perma 1/2016, the judge is required to provide an explanation to both parties about the mediation process. To select a mediator, the mediator must be certified and registered with the court.

After a mediator is appointed, the next stage is the mediation process stage by the mediator. According to Article 24 (1) of Perma 1/2016, the parties submit a case summary to the mediator for evaluation. To resolve the conflict, this problem summary will be very helpful to the mediator. According to Perma 1/2016, the mediation period is thirty days after the mediation order is issued. However, in accordance with Article 24 paragraph (2) and (3) of Perma 1/2016, the period can be extended, but not more than thirty days. However, Article 25 of Perma 1/2016 states that the subject of mediation negotiations is not limited to what is stated in the lawsuit.

The fact that expert witnesses provide testimony does not have to be followed in full; instead, both parties must agree whether their testimony is binding.

The next stage is the final stage of the mediation process. In the mediation process, there are two possibilities: mediation is successful or fails. In accordance with Article 27 of Perma 1/2016, if the mediation process is successful, the parties can make a peace agreement that is strengthened by a peace deed from the court. In cases where mediation is only partially successful, they can also withdraw the lawsuit. However, if mediation is unsuccessful, the mediator must submit it to the court. He must also explain why it was unsuccessful. This is in accordance with the requirements stated in Article 32 of Regulation 1/2016.

So, the nature of the decision/legal force of the mediation decision has binding power, confidentiality and mutual agreement. Mediation can be an effective and fair way to resolve disputes if there are parties involved: the disputing parties, the mediator, advisors or attorneys.

## **2. Legal efforts made by one party do not wish to implement the results of mediation dispute resolution in business contracts**

The result of mediation is an agreement reached by the parties involved in the dispute with the assistance of a mediator. The results of mediation are expected to produce a mutually beneficial solution to the dispute and avoid a long and expensive litigation process.

The parties are expected to implement the agreement reached after mediation. However, it is not uncommon for one party to disagree or refuse to implement the results of mediation. This can happen for various reasons, such as dissatisfaction with the results, changes in circumstances, or even the intention to avoid obligations.

Some principles related to the obligations of the parties implementing the results of mediation include:

- Principle of Good Faith  
The principle of good faith requires the parties to act with sincere and honest intentions in implementing the agreement resulting from mediation. The parties must demonstrate a serious attitude in fulfilling the obligations that have been agreed upon.
- Principle of Pacta Sunt Servanda  
The principle of pacta sunt servanda states that the agreement agreed upon by the parties is binding and must be obeyed. This means that the agreement resulting from mediation that has been signed by the parties has legal force that must be implemented.
- Principle of Freedom of Contract  
The principle of freedom of contract gives the parties the freedom to make agreements according to their wishes, as long as they do not conflict with the law, morality, and public order. In the context of mediation, the parties are free to determine the content and terms of the mediation agreement.
- Principle of Justice  
The principle of justice requires that the agreement reached through mediation must be fair to all parties involved. The mediator plays a role in ensuring that the agreement does not burden one party and fulfills a sense of justice.
- Principle of Confidentiality  
The principle of confidentiality requires that the entire mediation process and its results must be kept confidential. This is to protect the interests of the parties and encourage honest and open participation in mediation.

The parties implementing the mediation results must pay attention to the principles of good faith, pacta sunt servanda, freedom of contract, justice, and confidentiality. These principles provide a moral and legal basis for the implementation of the mediation agreement, and ensure that the dispute resolution process runs fairly and efficiently.

If one party does not agree to implement the mediation results, the party who feels aggrieved has several legal options that can be taken, including:

- a. Renegotiation: The aggrieved party can try to negotiate with the dissenting party.
- b. Renegotiation: If renegotiation is unsuccessful, the aggrieved party can request re-mediation with the same or a different mediator. Re-mediation can offer an opportunity to reach a new, fairer agreement.
- c. Filing a Lawsuit in Court: The aggrieved party can file a lawsuit in court if the negotiation and re-mediation efforts are unsuccessful. In such a situation, the party can ask the court to enforce the mediation results or claim compensation for losses suffered due to the other party's non-compliance.
- d. Application for Execution: If the mediation results are stated in the form of a valid agreement and meet legal requirements, the aggrieved party can file an execution application with the court. If the agreement is proven to be valid and binding, the court can execute the agreement.

The aggrieved party must consider several legal elements when taking legal action. Some of them are:

- a. **Validity of the Agreement:** Ensure that the mediation results meet legal requirements such as an agreement, the ability of the parties, and a clear object.
- b. **Written Evidence:** Keep all written evidence that supports the claim that the mediation effort has been completed and that the other party has not implemented the agreement.
- c. **Legal Procedure:** Understand the applicable legal procedures for filing a lawsuit or request for execution so that there are no mistakes that can harm the legal position.

Legal efforts against parties who do not agree with the results of mediation can have good or bad impacts. On the one hand, the legal process can provide legal certainty and protection for the injured party; on the other hand, the legal process can prolong the dispute and damage the business relationship between the parties involved.

## **CONCLUSIONS AND RECOMMENDATIONS**

### **Conclusion**

Based on the legal analysis of the legal force of mediation results as a method of dispute resolution in business contracts, it can be concluded that mediation has great potential as an effective dispute resolution method. A strong legal basis for mediation in resolving business disputes is provided by Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution.

The disputing parties have binding legal force over the results of the mediation which are stated in the form of a written agreement. The agreement must be signed by the mediator and the disputing parties, in addition to meeting the requirements stipulated in the law. In addition, the agreement resulting from mediation can be submitted to the court for homologation, or approval, so that it has the same executive authority as a court decision.

Several factors influence the success of mediation in resolving business contract disputes; these include the competence and credibility of the mediator, clear procedures, and openness and good communication between the parties. If these factors are met, mediation can be a faster, cheaper option and maintain good relations between the parties.

Overall, mediation as a method of dispute resolution in business contracts in accordance with the provisions of Law Number 30 of 1999 can provide adequate legal certainty and be an effective choice in resolving various business disputes.

### **Suggestions**

The suggestions that the author can provide are for the government and related institutions to continue to strengthen regulations governing mediation. Business actors should be informed more about the advantages of mediation and its procedures so that they better understand and utilize it as an alternative

dispute resolution. There needs to be an educational program targeting lawyers, business people, and the general public about the importance of mediation as an alternative dispute resolution. Training and seminars facilitated by experienced facilitators can help the parties understand the advantages and proper procedures for mediation. Since the success of mediation is highly dependent on the quality of the mediator, there needs to be an ongoing training and certification program for mediators. In addition, there should be clear professional standards for mediators so that they can handle different business disputes quickly. The author suggests that parties in business contracts include mediation provisions as an initial step in dispute resolution before going to court. This can speed up settlement and reduce costs for the parties.

This research is expected to contribute to optimizing dispute resolution in the business sector and provide a better understanding of the potential of mediation as a viable alternative dispute resolution.

### **ADVANCED RESEARCH**

This research was conducted with maximum effort. However, as the author of this research, I realize and admit that this research is still far from perfect, there are still shortcomings due to the limitations of my knowledge and science. The limited availability of data, sources and access to information is one of the obstacles in compiling this research. So that I as the author of this research with an open heart accept all input, direction, or constructive suggestions from all readers for the sake of improving better research, their contributions are highly expected. These constructive inputs will be very valuable to increase my knowledge in improving this research.

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