
A LEGAL REVIEW OF MEDIATIONS THAT APPEAR TO BE SUCCESSFUL BUT END IN FAILURE

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ABSTRACT

Mediation has become one of the increasingly popular dispute resolution methods in the modern legal system as it is considered a quick, efficient and more cost-effective solution than litigation. However, the success of mediation cannot always be guaranteed. Some cases show that mediations that seem to go well at first, end without reaching a binding agreement. This research aims to analyze the causes of mediation failures that appear successful but end up failing. The research method used is a qualitative approach, with data collection through literature study. Once the data was collected, it was analyzed through a process of filtering, presenting information, and drawing conclusions. The results revealed several main factors that led to mediation failure, including unclear or unrealistic agreements, overly high expectations from one or both parties, external influences that disrupted the mediation process, and mediator limitations in skills and neutrality. This research emphasizes the importance of a thorough understanding of the factors that cause failure as well as appropriate preventive measures to increase the success of mediation and reach a mutually beneficial agreement.

KEYWORDS *Legal review, Failed Mediation, Mediation Failure Factors.*



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INTRODUCTION

As social beings, humans cannot be separated from the possibility of disputes in their daily interactions. A dispute occurs when one party feels aggrieved by the actions or decisions of another party, who then conveys this dissatisfaction to the party concerned. This situation arises when there is a difference of opinion between individuals or groups, which ultimately forms what is known as a dispute. This means that this dispute is an unfavorable phenomenon and can be considered a disruption in social relations (Fadillah & Putri, 2021).

Disputes can occur in various places as long as there is interaction between people, be it in a personal, professional, or general community environment. In general, disputes arise when one or both parties experience a default, which can be

How to cite:

Siagian C.L.B. (2025). A Legal Review of Mediations That Appear to be Successful But end in Failure. Journal Eduvest. 5(1): 56-65

E-ISSN:

2775-3727

defined as a failure to fulfill an agreed obligation. Disputes can take the form of not fulfilling the performance at all, not fulfilling the performance in cash, being late in fulfillment, or even fulfilling the performance in the wrong way. The existence of this default indicates a problem in the relationship that needs to be resolved (Nurlani, 2022). A dispute is an indication of wrongdoing or dissatisfaction that must be addressed, because if left unchecked, the consequences of the conflict can damage social relationships and have a wider impact. Therefore, it is imperative to have an efficient, effective and speedy dispute resolution system.

Dispute resolution can be done through various means, with the two main methods often used being court settlement and out-of-court settlement. Dispute resolution through the courts often results in adversarial decisions, where one party wins and the other loses. This model, while providing legal certainty, is not able to embrace common interests. As a result, one party may be satisfied and the other dissatisfied, which can lead to new problems between them. In addition, the judicial process tends to be slow, time-consuming and relatively costly, making it less efficient as a dispute resolution method (Fadillah & Putri, 2021).

As an alternative, out-of-court dispute resolution is gaining popularity. One widely used form of non-judicial settlement is mediation. Mediation is a process in which parties negotiate to reach a mutually beneficial agreement, and it has become a recognized method in the modern legal system (Amarini, 2017). One of the advantages of mediation is its flexibility, where the process helps the parties to craft a solution that suits their individual needs and expectations. In addition, mediation is confidential and participatory, allowing all parties to be actively involved in discussions and negotiations, potentially resulting in a more satisfactory solution for all parties (Zaini, 2019).

However, while mediation is often considered an effective solution, its success cannot always be guaranteed. There are many situations where the mediation process seems to go well initially, with both parties showing a willingness to compromise. The parties even agree on some key points, but ultimately fail to reach a binding agreement. These failures are often influenced by a complex range of factors which, if properly analyzed, can help prevent them from occurring.

Previous research by (Sandy, 2019), revealed that the failure of mediation in divorce cases at the Palangka Raya Religious Court was due to the emotional nature of the divorce itself. In this situation, the parties often insist on their respective stances, so there is no good faith to compromise. Another study by (Wungguli, 2020) showed that in the Bitung Religious Court, there were false assumptions from the community regarding the function of the court which contributed to the failure of mediation. Other factors identified included family involvement, the absence of litigants during the mediation process, as well as the failure of both parties to listen

to the mediator and leave the process entirely to the mediator. The egos of each party were a major obstacle in finding a resolution to the problem.

Furthermore, research by (Sihabudin & Navianto, 2018) states that the substance of the Supreme Court Regulation of the Republic of Indonesia Number 1 of 2016 concerning Mediation Procedures in Courts also affects the success of mediation. The lack of clarity in the regulation regarding the legal consequences of unsuccessful mediation makes the mediation process considered a mere formality. This results in many parties being reluctant to fully commit to the mediation process, which in turn leads to failure to reach an amicable agreement.

Meanwhile, the novelty of this research focuses on an in-depth study of the factors that lead to the failure of civil court mediation, even though the process appears to be successful at an early stage. This phenomenon is a significant issue in the field of law, as mediation failure not only causes disappointment for the parties involved, but can also have an impact on subsequent legal proceedings. It forces the parties to return to litigation, which requires more time, money and resources. In addition, mediation failure can have legal implications regarding the implementation of partial agreements, as well as the risk of default if a party does not implement the agreed mediation outcome.

Through this research, it is hoped to provide a more comprehensive understanding of the challenges faced in the mediation process, as well as the solutions that can be taken to improve its effectiveness as a dispute resolution mechanism. Therefore, the main objective of this research is to take a closer look at the phenomenon of seemingly successful but ultimately unsuccessful mediations.

RESEARCH METHOD

Legal research is a scientific activity based on certain methods, systematics, and thoughts, which aims to study one or several specific legal symptoms, by analyzing them. The type of research used in this research is normative juridical research, namely a research approach based on primary legal materials by examining theories, concepts, legal principles and laws and regulations related to this research. This normative legal research method or library legal research is carried out by examining library materials or secondary data only. This legal research method examines normative law, which is focused on the Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2016 concerning Mediation Procedures in Court.

In research, researchers try to understand and observe reality objectively, even though this reality is subjective to the party under study. This means that researchers see reality from the point of view of individuals or groups who are the subject of research (Adlini, Dinda, Yulinda, Chotimah, & Merliyana, 2022).

Data collection techniques are carried out through literature studies, namely by collecting and processing various literature sources that are relevant to the topic and research objectives. This literature study aims to compile a strong theoretical foundation and explore theories related to the problem under study. These theories are then used as a reference in analyzing and discussing the research results (Jailani, 2023). After the data is collected, the next step is to analyze it by filtering relevant data. The data that has been selected is then presented in a structured manner to facilitate understanding and interpretation. The final stage of this process is drawing conclusions based on the results of the analysis.

RESULT AND DISCUSSION

Mediation has become an alternative dispute resolution method that is increasingly used in various fields, including in the legal sphere. Along with the increasing popularity of mediation, its integration into the court process has become one of the important instruments in overcoming the accumulation of cases in the courts. In addition, mediation also strengthens and maximizes the function of the judiciary in resolving disputes, in addition to adjudicative procedures that decide cases (Minin, 2016).

The main objective of mediation is to reach a mutually beneficial agreement between the disputing parties. In this process, a neutral mediator helps the parties communicate more effectively, so that the different views of the disputants can be understood and, if possible, united in an amicable agreement (Mulyana, 2019). The advantage of mediation is that it is not based on the principle of "winning or losing". The end result of mediation is a mutually agreed upon peace agreement, thus creating a comprehensive solution that is acceptable to all parties. The mediation process also provides other benefits, such as cost and time savings compared to litigation, and offers emotional comfort to the parties. This is because the agreement reached is the result of direct negotiations between the parties, according to their own wishes (Rochmani, Faozi, & Megawati, 2020).

However, the mediation process does not always go smoothly. Sometimes, a mediation process that seemed promising at the beginning ends in failure. Failure in the mediation process can worsen the relationship between the parties, increase tensions, and increase the likelihood of new conflicts arising. There are a number of factors that can lead to this failure including unclear or unrealistic agreements. This is often the case in civil disputes, where parties lack a thorough understanding of the mediation process and fail to maximize their efforts to resolve the dispute .

The agreement reached may seem adequate on paper, but if the language used is ambiguous or poorly specified, it may lead to different interpretations later on. This lack of clarity has the potential to trigger new disputes between the parties

involved, ultimately defeating the purpose of the mediation process. In addition, unrealistic expectations are also a major factor in mediation failure.

One party, or even both parties, often have too high expectations of the outcome of mediation. When the agreement reached does not match their expectations, a sense of dissatisfaction arises (Hartawati, Beddu, & Susanti, 2022). When this happens, the aggrieved party decides not to implement the agreement that has been made because they feel that they did not get the expected benefits from mediation. This suggests that the success of mediation may depend on the mental readiness and realistic expectations of the disputants.

Another factor that often causes mediation to fail is external pressure. Intervention from third parties, such as family, friends, or even lawyers, can influence the parties' decisions in mediation. These third parties can provide input or pressure that is not always in line with the original wishes of the disputing parties. The findings of (Zulfa & Muwaffiqillah, 2023) show that the interference of third parties, especially family or lawyers, often plays a role in disrupting the mediation process, especially in the settlement of cases at the Kepahiang Religious Court. This kind of pressure can make it difficult for parties to reach an agreement based purely on their own individual desires, so mediation does not work well.

In addition to outside intervention, lack of commitment is also a cause of mediation failure. One or both parties may not have a strong commitment to resolving the dispute through mediation. In some cases, individuals only participate in the mediation process because of legal demands or pressure from other parties, but actually have no intention of reaching an agreement (Fauzi, 2018). This weak commitment makes the parties less serious in finding a joint solution, so that mediation does not produce results.

In addition, changes in the attitude of one of the parties during the mediation process or after an agreement has been reached are also a frequent cause of failure. This change can occur due to new information obtained during the mediation or due to influence from other parties. When the attitude of one party changes, an agreement that was previously considered acceptable by both parties becomes difficult to implement.

Furthermore, an important factor that can lead to mediation failure is the limited ability of the mediator. Some views state that the failure of mediation in court is often due to the lack of skill, proficiency and dedication of the mediating judge.

Mediators who lack experience or skills in facilitating communication between disputing parties can hinder the mediation process and prevent effective agreements from being reached (Rahmah, 2019).

In the mediation process, it is recognized that the role of the mediator as a neutral party is crucial. The mediator not only functions as an arbiter, but also as a

party who provides direction, input, and solutions to help the parties reach an agreement. As an outsider who is not directly involved in the dispute, the mediator is expected to make a maximum contribution in helping the parties find a middle ground (Zulfa & Muwaffiqillah, 2023). However, if the mediator does not have sufficient interactive skills, such as the ability to understand the problems faced by the parties or sensitivity to conflict dynamics, the mediation process can be hampered. As a result, agreements reached may not last long or may not be reached at all (Mubarak, Edyar, & Aulia, 2024).

In addition to technical skills, mediator neutrality is also a very important factor in successful mediation. The mediator must always maintain a neutral attitude and not favor one of the parties. When the mediator is seen to be favoring one of the parties, this can undermine the parties' trust in the mediation process. Such distrust can make the disputing parties feel unfairly treated, which in turn can derail the mediation process (Nurasri, 2023).

The failure of mediation can have a number of significant legal implications for the parties involved. One of the main impacts is the return of the case to court. If mediation fails to reach an agreement, the dispute will proceed through the court process. This means that the parties will have to face a longer and more time-consuming process, as well as greater costs compared to a mediated settlement. Although mediation is designed as a more efficient alternative, failure to reach an agreement requires the parties to proceed with dispute resolution through a judicial decision, which tends to be more complicated and formal.

In addition, if during the mediation process some agreements are reached and implemented, but others are not fulfilled, the aggrieved party has the right to file a lawsuit to hold them accountable. The legal implication of non-compliance with the results of mediation in court is the continuation of the legal process until there is a final decision from the judge (Sulistianingsih & Fibriani, 2023).

Therefore, the District Court has the authority to execute mediation results that are not complied with by one of the parties. If the mediation is conducted outside the court and one of the parties does not implement the agreement, the aggrieved party still has the right to file a lawsuit with the court. This is because an agreement resulting from mediation is considered equivalent to an ordinary agreement, such as a sale and purchase agreement, which can be sued through a default mechanism if violated.

In addition, failure to implement mediation agreements can also lead to legal sanctions. Parties who do not fulfill the commitments agreed upon in the mediation process may be subject to fines or other sanctions, depending on the applicable laws and regulations. In certain cases, breach of the agreement may even trigger criminal consequences, especially if the non-compliance is deemed to have significantly harmed the other party. These sanctions aim to ensure that the outcome of the

mediation, which is supposed to resolve the dispute amicably, is respected and implemented by all parties involved.

To minimize the risk of failure in the mediation process, there are several preventive measures that can be taken. First, is to ensure thorough preparation before the mediation begins. This preparation is essential to clarify the objectives of the mediation, collect relevant data, and set realistic time limits for the mediation process to be effective. This initial stage, known as the premediation stage, requires the mediator to formulate a number of necessary steps and strategies before the mediation actually begins (Simatupang, Siregar, & Harahap, 2024). With good preparation, the parties can be better prepared for the mediation process and reduce the possibility of misunderstandings or disagreements that may arise along the way.

The next step is to choose the right mediator to prevent mediation failure. Mediators who have experience and good reputation can significantly affect the success of mediation. According to Karmawan in (Zulfa & Muwaffiqillah, 2023), the benchmark for the effectiveness of mediation in resolving civil cases is highly dependent on the professionalism of the mediator. A professional mediator must have patience and in-depth knowledge of the issues in question, as well as the ability to explore the problem from the point of view of all parties involved. In addition, the mediator must be able to communicate well, both verbally and nonverbally, because smooth communication helps both parties to understand reactions and immediate feedback.

Good interaction in mediation can also create a more open atmosphere, so that the parties can more easily reach a mutually beneficial agreement.

Another important step in minimizing the risk of mediation failure is to ensure effective communication. Open, honest and respectful communication between the parties is essential to building trust and reaching a good agreement. In the mediation process, communication serves not only as a means to exchange information between the mediator and the litigants, but also as a negotiation tool. Through communication, the mediator can provide an explanation of the purpose of mediation and provide relevant advice, while the parties can convey their problems and propose expected solutions (Zulfa & Muwaffiqillah, 2023). This communication includes the interpersonal aspect, where one party expresses a message and the other party receives the message, and provides feedback. With effective communication, mediation can be more directed and focused on solutions that are acceptable to all parties.

In addition to communication, flexibility in the mediation process is also an important factor. The parties must be prepared to compromise and find mutually beneficial solutions. In mediation, open and free communication allows the parties to speak without fear or concern that the information they provide will be disseminated. Another advantage of mediation is that it is more private than court,

which is open to the public. This privacy allows the parties to speak more honestly and openly, so that they can reach a better agreement without having to go through a long and complicated judicial process (Martinelli, Hartono, & Sabrina, 2024).

Finally, enforcement of agreements also plays an important role in reducing the risk of mediation failure. The agreement that has been reached should be clearly formulated, in writing, and equipped with an appropriate monitoring mechanism. In mediation, the final outcome of the agreement is usually set out in the form of a deed. This deed provides clarity on the rights and obligations of each party and has strong legal force, so that it can be used as legal evidence in the event of a future dispute. With this legal certainty, the parties can be more confident that the agreement reached will be respected and implemented, reducing the emergence of new disputes in the future.

Based on this discussion, it can be said that mediation is an effective tool in resolving disputes peacefully and efficiently. However, although mediation has many advantages, its success cannot always be guaranteed. There are several factors that can lead to failure in the mediation process, such as unclear or unrealistic agreements, overly high expectations from one or both parties, as well as intervention from outside parties that influence the parties' decisions. In addition, the mediator's limitations, both in terms of skills and neutrality, can also be a cause of failure. Therefore, to increase the chances of mediation success, it is important to understand the factors that can lead to failure and take appropriate preventive measures, thereby achieving a stronger and more lasting mediation agreement.

CONCLUSION

Mediation is an effective method of resolving disputes amicably and efficiently, as it helps the parties involved to reach an agreement without the need to face lengthy and expensive judicial proceedings. Although mediation offers many advantages, its success is not always guaranteed. There are a number of factors that can lead to the failure of the mediation process, such as unclear or unrealistic agreements, overly high expectations from one or both parties, external influences that can affect the decision of the disputing parties, as well as the mediator's limitations, both in terms of skills and ability to be neutral can be the cause of mediation failure. Therefore, to increase the success of mediation, it is important to understand the factors that may lead to failure and take preventive measures. Such steps include careful preparation before starting the mediation process, selecting an experienced and professional mediator, and maintaining open and effective communication throughout the mediation process. By doing so, the chances of reaching an agreement that satisfies both parties can be increased, so that mediation can run better.

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