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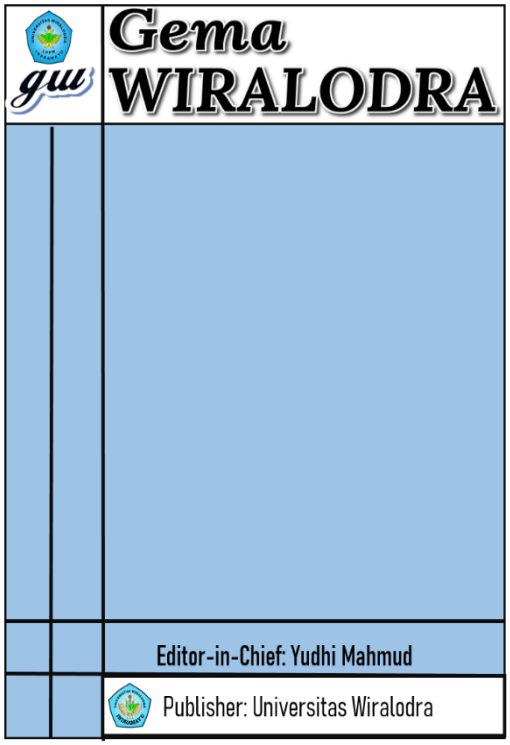

Failure Of Mediation Implementation In District Court

Imas Khaeriyah Primasari[a*]
[a*]Faculty of Law, Universitas Wiralodra, Indramayu, Indonesia,
primasari250179@gmail.com

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Orginal Article

Failure of Mediation Implementation In District Court

Imas Khaeriyah Primasari[a*]
[a*]Faculty of Law, Universitas Wiralodra, Indramayu, Indonesia, primasari250179@gmail.com

***Correspondence:** **primasari250179@gmail.com**

Abstract
This study discusses the failure of mediation implementation in district courts, aiming to identify the factors behind these failures. The research was motivated by the frequent unsuccessful mediation processes in district courts. Using a qualitative approach with descriptive analysis, the study found that the main cause of mediation failure in district courts is legal culture, which can be divided into external and internal factors. Internally, many mediator judges are indifferent, lack seriousness, and treat mediation merely as a formality in fulfilling their duties. Externally, parties involved often prioritize prestige, ego, and self-esteem, believing it is more honorable to proceed to trial rather than settle through mediation.
Keywords: Failure of Mediation, Culture, Behavior, Judges

1. Introduction

In social life, conflict is a natural and common occurrence because every individual has different interests. When the interests of one individual clash with those of another individual, or when the interests of one group conflict with those of another group, conflict arises.

In the realm of private law, where the primary focus is on individual (personal) interests, disputes may involve family matters, inheritance, property, contracts, banking, business, the environment, and various other types of civil disputes.

In Indonesia's dispute resolution system, broadly speaking, the forms of dispute resolution are divided into two main categories, namely:

1. Litigation is a mechanism for resolving cases through the court system. Litigation arises when the parties involved in a dispute have already attempted negotiation but failed. Litigation is adversarial, costly, and compared to other methods of reaching an agreement or decision, it is very inefficient, time-consuming, and resource-intensive (Goodpaster, 1999)
2. Non-Litigation Dispute Resolution (Alternative Dispute Resolution)

Non-litigation is the resolution of disputes outside the court through peaceful means. Non-litigation dispute resolution is based on law and is considered a high-quality form of settlement because disputes resolved this way can be settled thoroughly without leaving residual hatred or resentment (Wiryawan, Iwayan Artadi, 2009)

This reflects the distinction between formal court-based dispute resolution and alternative methods such as mediation, negotiation, and conciliation, which are common in Indonesia and often preferred for their efficiency and amicable outcomes (Saputra, 2024).

Provide an overview of the various types or forms of Alternative Dispute Resolution (ADR) outside the court system, they are presented as follows below:

a. Negotiation

Negotiation is a voluntary process conducted directly between the parties involved to reach an agreement that is acceptable to both sides regarding a particular issue or problem. According to Article 6 paragraph 2 of Law Number 30 of 1999, essentially the parties have the right to resolve disputes arising between them on their own. The agreement on the resolution must

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subsequently be documented in writing and approved by the parties (Rohani & Apriani, 2022; Syafrida, 2020).

Negotiation is the simplest and most cost-effective alternative dispute resolution method compared to other non-litigation methods. This process allows the parties to discuss and freely reach a mutually agreed outcome without third-party intervention, thereby avoiding any imbalance in the negotiation forum.

In practice, negotiation is carried out based on the willingness and mutual consent of the parties without coercion, following procedures agreed upon together regarding the time and place of the negotiations. If negotiation fails, the resolution can be continued through other alternative methods such as mediation, conciliation, arbitration, or litigation(Syafrida, 2020).

Legally, negotiation is regulated under Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, which states that alternative dispute resolution institutions are dispute settlement bodies outside the court through procedures agreed upon by the parties, including negotiation. The advantages of negotiation include its voluntary nature, fast procedures, low costs, and the preservation of good relations between the disputing parties (Hanif, 2020).

b. Mediation

Mediation refers to the involvement of an impartial third party in the process of negotiation or conflict resolution. Acting as a neutral facilitator, the mediator organizes and directs the dialogue between the disputing parties, aiming to support them in reaching a resolution. In accordance with Article 6, paragraph 3 of Law Number 39 of 1999, disputes or disagreements can be resolved with the help of "one or more expert advisors" or through a mediator, provided there is a written agreement between the parties. This written settlement is final and binding, and must be carried out in good faith. Furthermore, the agreement must be registered with the District Court within 30 (thirty) days from the signing date and must be implemented within 30 (thirty) days after registration.

In general, mediation is understood as a process in which a mutually accepted third party—who holds little to no authority to impose a decision—intervenes in a negotiation or dispute to help the involved parties voluntarily reach a mutually agreeable solution (Ajol, 2023; Bismitha & Sundaram, 2021)

c. Conciliation

Conciliation is a method of resolving disputes that involves the participation of a third party known as a conciliator. Unlike in mediation, the conciliator plays a more proactive role by initiating the process, shaping the dialogue, and proposing potential solutions for resolution, which are then submitted to the parties in conflict. When the disputing parties are unable to reach an agreement on their own, the conciliator may offer a suggested resolution. However, the conciliator does not have the authority to enforce a decision; their role is limited to providing recommendations. The success of this process relies heavily on the willingness and good faith of the parties involved to accept and implement the suggested resolution (Shinde, 2012; Zamroni, 2021)

Civil dispute resolution in court is often likened to the phrase "loser becomes ashes, winner becomes charcoal," meaning that both the winner and the loser suffer losses. This condition is a difficult assumption to refute because, generally, people hold this view regarding the dynamics of the litigation process today. Especially for those who have personally experienced litigation in court, they will feel how the trial process consumes a lot of time, energy, and thought, all of which are difficult to quantify materially. Moreover, almost every stage of the

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trial requires a considerable amount of cost, particularly for plaintiffs who must pay an initial fee (advance payment) to finance the trial process.

Mediation is one form of Alternative Dispute Resolution (ADR) outside the court. ADR has a special appeal in Indonesia due to its confidentiality and its basis in the socio-cultural system of deliberation and consensus (musyawarah mufakat). The purpose of mediation is to resolve disputes between parties by involving a neutral and impartial third party. Essentially, the presence of ADR directly assists procedural law, especially Civil Procedure Law, to minimize the excessive burden borne by the District Courts. Therefore, PERMA No. 1 of 2016 concerning Mediation Procedures in Court was issued(Mihardja et al., 2023).

The purpose of this PERMA is to encourage parties involved in court cases, both in district and religious courts, to prioritize resolving issues peacefully. However, in reality, many mediations in court do not succeed. For example, in the Central Jakarta District Court from 2023 to 2025, out of 1,176 cases mediated, only 139 mediations were successful, while 1,037 were unsuccessful. Mediation in the district court has not been running effectively, as evidenced by the large number of cases that have failed to be resolved through mediation in court. This situation has motivated me to conduct more in-depth research to specifically examine this issue, which will be presented in a journal entitled "The Failure of Mediation Implementation in the Central Jakarta District Court."

Based on the above, the author formulates the following problems:

1. Why does the implementation of mediation in the district court often fail to succeed?
2. Why does the legal culture factor influence the failure of mediation implementation in the Central Jakarta District Court?

The purpose of this research is to identify the causes of the failure of mediation implementation and to understand how legal culture factors affect the failure of mediation in the district court.

2. Method

2.1 Type of research

Referring to the formulation of the problem, this research is included in empirical juridical legal research using a descriptive approach. The theoretical framework uses the theory of legal culture. The subject of this research is the Central Jakarta District Court. The data collection technique uses a survey technique. The survey was conducted during the implementation of mediation at the Central Jakarta District Court. In addition, an observational study was conducted by looking at data that failed in the implementation of mediation at the Central Jakarta District Court and a case study of the Implementation of failed mediation.

2.2 Data collection procedure:

a. Primary Data

Data taken from direct data at the Central Jakarta District Court

b. Secondary Data

Secondary data here is data that is not obtained directly from the field in the form of civil case data mediated by the Central Jakarta District Court from 2023 to 2025

2.3 Data collection techniques: Using both primary and secondary data sources

Primary

Primary data source figures that failed in the implementation of mediation at the Central Jakarta District Court; and

Survey data from the Central Jakarta District Court website

Secondary Sources with:

Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution;

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Supreme Court Regulation of the Republic of Indonesia No. 1 of 2016;
Literature, scientific works that support and other laws and regulations;
Data collection techniques interviews and literature.
The data obtained has been validated and published in the form of mass media publications.
The data obtained were analyzed through sorting and then analyzed to obtain the results of this study.

3. Results and Discussion

1. Failure of Mediation Implementation in the District Court

The failure is caused by legal culture factors and technical factors. Legal culture is divided into two: internal and external legal culture. Internal legal culture refers to the legal culture of the community members who carry out legal duties, especially in mediation implementation, namely the mediator judges who do not sufficiently strive to help the parties end their disputes peacefully, resulting in mediation being treated merely as a formality without genuine impact.
External factors include the parties involved and behavioral patterns during the mediation process in the district court. There is a perception that it is more honorable if the case proceeds through the trial process. Additionally, some lawyers/legal advisors behave obstructively, not wanting the case to be successfully mediated because they fear losing their fees if the mediation succeeds.
The concept of legal culture implies that, at least in a certain sense, every country or society has its own legal culture, and no two countries or societies are exactly the same, just as no two societies are identical in politics, social structure, or general culture. However, some societies are more closely related than others.
Legal culture refers to attitudes-attitudes about what is considered right or wrong, useful or useless when someone goes to court. Legal culture relates to the public's understanding of patterns of attitudes and behaviors toward the legal system. These forces consist of elements of values and social attitudes.
According to Hilman Hadikusuma, legal culture is the shared general response of a particular society to legal phenomena; this response is a unified view of legal values and behaviors. Culture here is used to mean a way of life and a shared worldview that plays a significant role in shaping negotiation interactions.
As a means of social engineering, law is a means that is shown to change the behavior of citizens, in accordance with the goals that have been set previously. Law is essentially a norm, and each norm must contain value, so at a glance it is immediately answered that the content of the law is value, the value referred to here is no other

2.Legal Culture Factors Affect the Failure to Implement Mediation in District Court.

The role of a mediator as a third party largely depends on the trust placed in them by the disputing parties. This trust arises from the belief that the mediator possesses the capability to assist in resolving the conflict. Such trust is a crucial foundation for the mediator in carrying out the mediation process. With the confidence of the parties, the mediator can more effectively encourage and facilitate dialogue to reach a resolution. However, trust alone is not enough to ensure the mediator will achieve an outcome that satisfies all parties. For this reason, a mediator must possess certain qualifications and skills that support their effectiveness in managing the mediation.

Given that the mediator plays a key role in determining how effective the dispute resolution process is, they must meet both internal and external qualifications. Internal qualifications refer to the mediator's personal competencies, including their ability to guide, manage, and facilitate the mediation process to help the parties reach a mutually acceptable

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agreement. External qualifications, on the other hand, involve the formal credentials or requirements the mediator must fulfill, depending on the nature of the dispute being addressed

In PERMA No. 1 of 2016, it is stipulated that mediators who carry out mediation must in principle have a mediator certificate obtained after attending training organized by institutions that have obtained accreditation from the Supreme Court of the Republic of Indonesia.

The smooth implementation process of the mediation process in the court is highly determined by the values that are embraced and applied in the society concerned, namely, the attitude and behavior of the judge in carrying out his duties as a mediator, and the mediator judge who is not serious and apathetic because there are many workers

The attitude and behavior of the parties in the mediation process is that they maintain their self-esteem, it is better to withdraw if the value of the compensation is not appropriate, besides that because of their lack of understanding of the law on the alternative dispute resolution

The attitude of the lawyer/legal advisor is to intervene between the parties in the mediation process, the lawyer does not want to reconcile because he will lose the successful payment of fees and operational money

From the results of the study, the cause of the failure to implement mediation in court is the attitude and behavior of the mediator judge, the parties, and lawyers/legal advisors in the mediation process in court. From the results of the research, the strongest factor is legal culture, because attitudes and behaviors are very influential as explained in the previous urian about legal culture, so it can be divided into internal and external legal culture, namely:

a. Internal legal culture

is the legal culture of the community who carry out legal duties specifically, in the implementation of mediation, namely many mediato judges are apathetic, not outspoken and only used as formalities in carrying out their duties as mediator judges, an attitude that prioritizes the incentives received. The attitude and behavior of the judge, the parties, and lawyers/legal advocates in the mediation process in court is a legal culture in carrying out the mediation process in court, from the results of the interview, the strongest weakness is from the legal culture factor in carrying out the mediation process in court, another reason is that the judge believes that a complicated case cannot be mediated, the next cause is the attitude of the mediator judge to carry out mediation from the internal judiciary itself. Many judges who have been in office for a long time are only as deciders/adjudicators in the litigation process according to their education When they become prospective judges, not mediators

b. External legal culture is a legal culture that exists in the general population

According to Fridman, behavioral attitudes are part of external law must be processed in order to be in accordance with the provisions of the internal legal culture , the attitude of the parties attaches importance to self-esteem, individualism, and patterns of behavior in the mediation process in the district court who are of the view that they will be more proud if the case goes through the trial process than if they succeed in mediation without thinking about the benefits of the mediation process. The mediation is a fast, cheap and simple dispute resolution. In a diverse society made up of various social groups with differing cultural backgrounds, races, ideologies, and other distinctions, conflict can easily arise and create social tension. These differences can intensify to the point where each group views the other as a threat, leading to attempts to overpower or eliminate one another. Such tensions often manifest as anger and hostility, fueling the desire to harm, dominate, or destroy opposing individuals or groups. Essentially, conflict is a social dynamic in which individuals or groups pursue their goals by confronting and challenging their adversaries..

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The results of the research on the failure of the implementation of mediation in the district court, studied with the theory of Lawrence M. Fridman in the legal system there are three elements, namely, structure, substance, and legal culture, the structure is the institution that is authorized in the implementation of the mediation process is the judicial institution, the substance of the mediation procedure in the court is PERMA No. 1 of 2016, the creation of the PERMA is to reduce the accumulation of civil cases in the court. the Supreme Court and the Supreme Court and to optimize the institution of peace in article 130 HIR/154 RB.g by not only being facilitated by the Chief Judge of the Assembly. However, it can also be facilitated by third parties who have special abilities in the field of negotiation techniques and conflict resolution processes, and legal culture greatly influences the behavior of court users to decide to turn on and off the implementation of mediation procedures in district courts is the legal culture of the parties, lawyers/legal advisors, and mediator judges which have been described above that legal culture greatly affects the failure to implement mediation in the district court. court.

According to Lawrence M. Friedman, human behavior is heavily influenced by perceptions and attitudes. These elements shape how individuals respond to the law—whether they form interest groups, apply pressure for legal change, become active participants, or even resist and violate legal norms. As such, the concept of legal culture becomes essential. A particularly influential form of legal culture is that of legal professionals, including lawyers, judges, and others who operate within the legal system. Their values, ideologies, and principles significantly shape the expectations placed upon the legal system. From this perspective, the legal system is not merely viewed as a framework or a mechanism for deterrence; rather, the actions and professionalism of legal actors play a critical role in processes such as court-based mediation.

Friedman argues that law should not only be analyzed through its structural and substantive components but also through the demands and expectations that stem from the interests of individuals and social groups when interacting with legal institutions. These interests represent social forces that are manifested in the values and attitudes of the broader society.

Such demands originate from the public or users of legal services who seek resolution to their issues and make choices among various dispute resolution methods. Their selection is influenced by factors such as personal orientation, emotions, perceptions, and behavioral tendencies toward the law. These influences are shaped by motivations, interests, beliefs, desires, expectations, and societal opinions about the legal system. For instance, an individual who chooses to settle a dispute in court likely does so because they have a favorable view of the court and are influenced by these underlying factors.

The failure to implement mediation from the above author's opinion about the causes of the failure to implement mediation in the district court is greatly influenced by the values, attitudes and abilities of the mediator judges, the parties and lawyers/legal advisors and as well as the attitudes and behaviors of the pure law clearly depend on the attitudes that have been explained in the aats that the behavior and attitude of legal professionals, ideological values, and the principles of lawyers, mediator judges and parties have a great influence on the pattern of demands submitted to the system for the success or not of the implementation of mediation in court.

4. Conclusion

The failure to implement mediation in the district court is due to the legal culture factor of the parties, both internal and external, namely the mediator judge, the disputing parties and also the legal advisor/lawyer who does not promote peace as a forum for dispute resolution

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Internal legal culture factors of the attitude and behavior of the parties who are concerned about self-esteem, individualism, and elements of behavior patterns in the mediation process of the disputing parties who think that they will be more proud if the case continues the trial process and the attitude of legal lawyers who behave in the obstruction do not want the case to be successfully mediated because if they succeed in mediation and reconciliation, they will not get more fees, The technical factor is that the mediator judges in the court who have certificates are still few so that the knowledge and skills are still not expert in merit.

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