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Comparison of The Effectiveness of Business Dispute Resolution Through Mediation, Arbitration, and Litigation

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Abstract

Resolving business disputes is very important in the business world and can be done using various methods such as mediation, arbitration, and litigation, each of which has advantages and disadvantages. This research aims to compare the effectiveness of these three methods in the context of resolving business disputes in Indonesia. This research method uses a comparative design, with primary data collected through interviews and surveys, as well as secondary data from document analysis and industry reports. The research results show that mediation is the most frequently used method and produces the highest level of agreement and satisfaction between the parties. However, the level of compliance with decisions is higher in arbitration and litigation methods. Industry trends show increased use of mediation, reflecting a shift towards more efficient and cost-effective solutions. These findings imply that companies and policymakers in Indonesia should promote the use of mediation, develop mediation capacity, and ensure a supportive regulatory framework is in place. With these steps, resolving business disputes in Indonesia can become more efficient, effective, and satisfying for all parties involved.

Keywords

Litigation, Arbitration, Mediation, Business, Dispute Resolution

1. Introduction

the rapidly growing era of globalization, resolving business disputes has become a very important aspect of maintaining the stability and sustainability of business activities at the international level. The development of technology and cross-border relations has provided a significant boost to the complexity of business disputes, posing increasing challenges for businesses, lawyers, and governments in dealing with disagreements that arise in the context of international business. However, in the context of diverse cultures, laws, and business interests, selecting the appropriate settlement method can often be complex and confusing. At the global level, resolving business disputes has become the main focus in efforts to ensure the continuity of company operations amidst the growing complexity of business relationships (Gurieli, 2023). A comprehensive understanding of the issues underlying business disputes is crucial to guide the dispute resolution process effectively. Therefore, to address the uncertainty associated with selecting the most appropriate settlement method, it is important to detail the specific issues of primary focus, including the challenges in assessing the relative effectiveness of mediation, arbitration, and litigation.

In an increasingly complex and dynamic business world, disputes are inevitable. Business disputes can arise from various aspects, ranging from differences of opinion regarding contracts to dissatisfaction with the performance of business partners (Dhaniswara, 2023). This creates the potential for complex and diverse conflicts, which require appropriate resolution approaches. Effective handling of business disputes is the key to maintaining operational continuity and harmonious business relationships. There are several commonly used dispute resolution methods, namely mediation, arbitration, and litigation. These three methods have their characteristics, advantages, and disadvantages which have implications for the effectiveness of the solution. Mediation offers a more informal approach and is oriented towards win-win solutions, while arbitration is known for being faster and more private compared to litigation (Alhashemi, 2022; Yuspin & Aziz, 2022). On the other hand, litigation provides a final and binding way of resolution through the judicial system. These three methods aim to compare the effectiveness of resolving business disputes, with emphasis on aspects of speed, cost, satisfaction of the parties, and sustainability of business relationships (Soviani & Priyono, 2022).

The varying speed of resolution, field observations show that the process of resolving business disputes often experiences significant delays, especially in the litigation process. Interviews with several business people also revealed their dissatisfaction with the long duration of resolving disputes through the courts (Amila, 2023). In contrast, mediation and arbitration processes tend to offer quicker resolution, although there are variations in effectiveness across situations (Gurieli, 2023). This finding is in line with previous research by Mishra & Aithal (2023), which shows that the litigation process often takes a long time and burdens the parties with high costs. Meanwhile, research by Ganiyu (2023) confirms that mediation and arbitration can provide faster and more efficient resolution in resolving business disputes. Thus, this research adds a deeper understanding of the importance of considering speed in selecting dispute resolution methods, which can have a positive impact on business actors. From various literature studies conducted, it is known that litigation costs can be very high, including attorney fees, court costs, and indirect costs such as lost time and business interruption. Meanwhile, the costs of mediation and arbitration vary but are generally considered lower than litigation (Balzer & Schneider, 2021). However, there are concerns regarding the costs of arbitration which may increase depending on the complexity of the case and the number of arbitrators involved. In addition, if we look at the level of satisfaction of the parties to the dispute, observations of business dispute resolution cases show that

the level of satisfaction of the parties varies greatly depending on the method used. The results of interviews with several parties who have been involved in mediation, arbitration, and litigation indicate that mediation often produces a higher level of satisfaction because of its collaborative nature and providing a win-win solution (Bhatnagar, 2024). On the other hand, arbitration and litigation, even though they provide binding decisions, sometimes leave a feeling of dissatisfaction, especially for the losing party.

Various studies have been carried out in resolving business disputes using various methods in resolving problems, such as using mediation methods in resolving business disputes with a focus on the level of satisfaction of the parties involved (Ogwora, 2023; Liu & Wan, 2023; Anumudu & Uchendu, 2023). Research examining the effectiveness of using arbitration methods in resolving international business disputes has also been widely conducted because arbitration is a more formal and more structural method compared to mediation (Susanti & Gayo, 2023). However, research that compares the effectiveness of resolving business disputes through mediation, arbitration, and litigation has not yet been conducted, so this research seeks to find out how effective the business dispute resolution process is by considering four main dimensions of effectiveness, namely speed, cost, the satisfaction of the parties, and sustainability of business relationships. This research also carries out direct and holistic comparisons between the three main dispute resolution methods, namely mediation, arbitration, and litigation, and emphasizes analysis of the impact of each dispute resolution method on the sustainability of business relationships.

This research aims to compare the effectiveness of three business dispute resolution methods (mediation, arbitration, and litigation) in terms of speed, cost, the satisfaction of the parties, and sustainability of business relationships by providing an analysis of the advantages and disadvantages of each method so that it can serve as a guide for business people in choosing the dispute resolution method that best suits the situation at hand. In addition, this research also aims to identify key factors that influence the success of each method to optimize the business dispute resolution process in the future. Several important aspects of this research are: a) To increase the efficiency of dispute resolution by helping business people choose the most efficient and effective methods, thereby saving time and costs and with this information companies can reduce unnecessary expenses and allocate resources more efficiently, b) The understanding gained about how each method affects party satisfaction and the sustainability of the business relationship can help maintain good relationships with business partners, which is critical for long-term success. Finally, this research strengthens the theoretical and practical foundations in the field of business dispute resolution, fills the gaps existing in previous studies with a more complete and integrated analysis, and provides significant practical benefits for the business community and policymakers, ensuring that business dispute resolution is possible most efficiently and effectively.

2. Literature Review

2.1. Litigation

Litigation is a traditional method of resolving business disputes in which the parties involved take their dispute to court and let a judge make the decision (Menkel-Meadow, 2021). In litigation, the disputing parties submit their claims or defenses to court, and the final decision is rendered by a judge or jury. Litigation is a very formal process and requires significant time and costs (Tanati et al, 2022). The advantage of litigation is that court decisions are binding and can be enforced by force if necessary. However, litigation can also be a lengthy and costly process and can damage business relationships between the parties involved. The litigation

process can provide strong legal force and must be obeyed by the parties to the dispute. Litigation follows structured and orderly procedures so that the parties to a dispute know exactly what is expected of them. In litigation, decisions are made by a neutral and independent judge or jury. However, litigation also has the disadvantage that it is very expensive because it involves attorney fees, court costs, and other administrative costs. Litigation can also take a long time, especially if there is an appeal or the case is complex. In addition, litigation often triggers tension and sharpens feuds between disputing parties, so that good business relationships may be disrupted (Kusumonegoro & Djajaputra, 2023).

2.2. Arbitration

Arbitration is a business dispute resolution process in which the parties involved submit their dispute to one or more arbitrators who will make a binding decision for both parties (Winarta, 2022). The arbitrator is usually an expert in the legal field or industry related to the dispute. Arbitration is a more formal and more structural method compared to mediation (Susanti & Gayo, 2023). Arbitration can provide quicker and cheaper benefits compared to litigation because the process is simpler and there is no busy court schedule. Disputing parties can also choose arbitrators who have special expertise related to the dispute they are facing. Not only that, arbitration is usually private and confidential, so that the parties to a dispute can keep their business information confidential. However, arbitration can be more expensive than mediation or litigation, because the parties to the dispute must pay the arbitrator's fees and administrative costs. The arbitrator's decision is binding, which means that both parties must accept the decision, even if they do not completely agree. Arbitration can be carried out both domestically and internationally, depending on the wishes of the disputing parties, but arbitration decisions only apply in the jurisdiction specified in the arbitration agreement, so arbitration decisions may not be accepted in other countries (Anwari et al., 2021).

2.3. Mediation

Mediation is an alternative method of resolving disputes using negotiation to produce an agreement between both parties to the dispute with the help of a mediator (Sugianto & Marpaung, 2022). The mediator acts as a liaison between the two parties and assists them in identifying problems, exploring solutions, and reaching agreements that are beneficial for both parties (Syaputri & Ivanda, 2023). The advantages of the dispute resolution process using the mediation method are that it is faster, cheaper, and more confidential compared to arbitration and litigation (Mantili, 2021). Mediation also allows parties to maintain their business relationship after dispute resolution. Mediation is usually voluntary and non-binding, and the disputing parties have complete control over the outcome. The advantage of the mediation process is that mediation allows the disputing parties to choose a suitable time and place to meet and negotiate, it is confidential so that the disputing parties can be more open and honest in sharing information. Mediation can help maintain good relations between disputing parties because the process is more collaborative rather than having a winner and a loser. However, because mediation is voluntary, if one party does not want to reach an agreement, mediation cannot be carried out. The success of mediation depends on the mediator's ability to direct the process and help the disputing parties reach a mutually beneficial agreement (Alamsyah et al., 2023).

2.4. Effectiveness of Business Dispute Resolution

Resolving business disputes is important in the business world (Anggraeny et al., 2021). When a dispute occurs between parties involved in a business, it is important to find an effective and efficient solution. Dispute resolution is generally divided into litigation and non-litigation. Litigation settlement is the process of resolving legal disputes in court in which each party to the dispute has the same rights and obligations, both to file a lawsuit and refute the lawsuit through an answer. Meanwhile, non-litigation settlement is a method of resolving disputes outside of court (Sopamena, 2022). Several methods can be used to resolve business disputes, including mediation, arbitration, and litigation. In comparing the effectiveness of these three business dispute resolution methods, it is necessary to pay attention to several key factors such as speed, cost, confidentiality, and maintaining business relationships. Mediation is the fastest and cheapest method compared to arbitration and litigation. Arbitration is also faster and cheaper than litigation. However, mediation and arbitration allow parties to maintain their business relationships, while litigation can damage those business relationships. Confidentiality is also an important factor in resolving business disputes. Mediation is the most confidential method, followed by arbitration while litigation is an open process and information related to the dispute can be accessed by the public.

3. Methods

This study employs a comparative research design to assess the effectiveness of resolving business disputes through mediation, arbitration, and litigation. This approach allows for a direct analysis of the advantages and disadvantages of each method. The population consists of companies operating in Indonesia, with the sample selected using purposive sampling based on specific criteria. These criteria include the company's experience in resolving business disputes through one of the three methods, their location in Indonesia, and willingness to participate. Additionally, the sample represents various industry sectors such as manufacturing, financial services, technology, and construction, and includes companies of different sizes and geographic locations to provide a comprehensive perspective. The data utilized in this research includes both primary and secondary data. Primary data encompasses the company's experience in resolving business disputes, including the number of cases, types of disputes, settlement outcomes, and satisfaction levels, collected through interviews and online surveys. Secondary data consists of company profiles and industry reports that support the primary data analysis. Data analysis focuses on identifying the number of cases, types of disputes, settlement outcomes, and satisfaction levels. Additionally, secondary data analysis aims to identify general trends in business dispute resolution practices in Indonesia and compare the research findings with previous studies to observe changes in preferences or effectiveness. Through this, the study provides a comprehensive overview of the effectiveness of mediation, arbitration, and litigation in business dispute resolution and highlights emerging trends in Indonesia.

4. Results and Discussion

The results of the analysis show that there are significant differences in the effectiveness of resolving business disputes through mediation, arbitration, and litigation. Based on the analysis of primary data and secondary data, several key findings have been identified. It was found that mediation is the most commonly used method in resolving business disputes in Indonesia, followed by litigation and arbitration. The most common types of disputes include breach of contract and employment disputes, demonstrating the relevance and complexity of these issues in the business context in Indonesia. Evaluation of settlement outcomes shows that

mediation tends to produce higher levels of agreement than arbitration and litigation, but compliance with arbitration and litigation decisions tends to be higher. Parties involved in dispute resolution generally give a high level of satisfaction to mediation, followed by arbitration and litigation, which are largely based on the success of reaching an agreement satisfactory to all parties. The results of industry trend analysis show an increase in the use of mediation in resolving business disputes in Indonesia, reflecting a shift towards faster and more cost-effective solutions (Yildirimoglu, 2022). These findings are in line with previous research, which confirms the trend of increasing use of mediation and a shift from litigation to other alternative dispute resolution methods (Yuspin & Aziz, 2022).

Thus, this research provides an in-depth understanding of the effectiveness and preferences regarding business dispute resolution methods in Indonesia, as well as strengthening existing findings in previous literature. However, it is important to note that the decision to select a dispute resolution method must consider the specific context of each business case, including the complexity of the dispute, the interests of the parties involved, and the time and costs available. The findings of this research indicate that mediation is the most commonly used business dispute resolution method in Indonesia, followed by litigation and arbitration. This is consistent with dispute resolution theory which emphasizes the importance of collaborative and participatory processes. Mediation allows parties to seek win-win solutions, which often results in higher levels of satisfaction compared to adversarial processes such as litigation and arbitration. In this context, research findings showing high levels of satisfaction with mediation underscore the effectiveness of this collaborative approach in resolving business disputes. The most common types of disputes found, namely contract violations and employment disputes, show the relevance and complexity of these problems in the business context in Indonesia (Sobakar & Opatskyi, 2023; Rangkuti & Nadhirah, 2023). The flexibility of mediation allows for tailored solutions that take into account short-term disruptions, such as breach of contract cases, and long-term relationships, such as employment disputes. Clear procedures and binding decisions in mediation provide a sense of security and fairness, increasing the parties' satisfaction with the outcome (Gryn, 2022; Inawati et al., 2024).

Evaluation of dispute resolution results shows that mediation tends to produce a higher level of agreement compared to arbitration and litigation. However, compliance with arbitration and litigation decisions tends to be higher. This suggests that while mediation is effective in reaching agreements, the formal structure of arbitration and litigation provides greater legal certainty, which is important in ensuring compliance. The results of this study indicate that the highest level of satisfaction is achieved through mediation, followed by arbitration and litigation. This satisfaction is largely based on successfully reaching an agreement that is satisfactory for all parties. Industry trend analysis shows the increasing use of mediation in resolving business disputes in Indonesia. This shift reflects a global trend towards faster and more cost-effective solutions. According to studies (Liu & Wan, 2023; Sauden & Chhetri, 2023), there is a global increase in the use of alternative dispute resolution methods such as mediation and arbitration because they offer more efficient solutions and reduce the burden on the justice system. These findings are in line with changes in business practices in Indonesia, where companies are increasingly seeking more efficient and effective methods of resolving disputes.

This research makes an important contribution to business dispute resolution by confirming that mediation is an effective and desirable method in Indonesia. However, it is important to note that, although mediation has many advantages, arbitration and litigation remain important because they provide greater legal certainty and compliance (Mastur et al., 2024). Therefore, companies need to consider the unique characteristics of each dispute resolution method and choose the

one that best suits their needs. The practical implication of these findings is that companies and policymakers should promote the use of mediation as an effective and efficient dispute resolution method. In addition, there is a need to increase understanding and skills in mediation among legal and business practitioners to ensure that the mediation process can be implemented well. Finally, a regulatory framework that supports and facilitates the use of mediation is also needed to ensure that this method can be implemented widely and effectively.

5. Conclusion

Business dispute resolution in Indonesia is generally carried out through three main methods: mediation, arbitration, and litigation. Mediation is the most commonly used method and produces the highest level of satisfaction among the disputing parties. This is because mediation tends to create better agreements, with a more flexible and participatory approach. However, although mediation is very satisfying, the level of compliance with decisions is actually higher in arbitration and litigation methods. Both of these methods provide stronger legal certainty because the results of the decision are legally binding. Industry trends show an increase in the use of mediation, in line with the global shift towards more efficient and cost-effective dispute resolution. On the other hand, arbitration and litigation remain the main choices when parties want clearer legal certainty and stronger compliance with decisions. This finding is consistent with previous research that emphasizes the importance of considering the unique characteristics of each dispute resolution method in the business context, according to the specific needs and circumstances of each case. This reinforces the importance of choosing the right method to achieve the most effective results in resolving business disputes.

References

- Alamsyah, M. F., Akuba, A., & Bimbing, M. A. G. (2023). Pengaruh Ukuran Perusahaan Terhadap Nilai Perusahaan Melalui Struktur Modal Sebagai Variabel Mediasi. *Jurnal Fokus Manajemen Bisnis*, 13(1), 91-105.
- Alhashemi, A. A. (2022). An Analytical Look at the Importance of a Legal Organization for the International Electronic Commerce Arbitration Body: Comparative Study between a Draft Law on Arbitration in the UAE and the French and English Laws. *Journal of Law and Legal Reform*, 3(4), 481-520.
- Anggraeny, I., Lutfia, F., Ratna, A., & Rachmaudina, T. (2021). Pendampingan Hukum Pengusaha UMKM dalam Penyelesaian Sengketa Kontrak Bisnis. *CARADDE: Jurnal Pengabdian Kepada Masyarakat*, 3(3), 527-536.
- Anumudu, A. C., & Uchendu, G. M. (2023). Examination of Major Causes of Disputes and Dispute Resolution Methods Used in the Nigerian Construction Industry. *International Research Journal of Innovations in Engineering and Technology*, 7(3), 16.
- Anwari, A., Anwari, A. N., & Affandi, I. (2021). Arbitrase Sebagai Alternatif Penyelesaian Sengketa Kekayaan Intelektual Terhadap Pelanggaran Merek. *Justitia: Jurnal Ilmu Hukum dan Humaniora*, 8(6), 1449-1457.
- Balzer, B., & Schneider, J. (2021). Managing a conflict: optimal alternative dispute resolution. *The RAND Journal of Economics*, 52(2), 415-445.
- Bhatnagar, S. (2024). Legal Issues in Corporate Partnerships and Joint Ventures. *Integrated Journal for Research in Arts and Humanities*, 4(1), 119-130.
- Gamage, A. N. (2023). Factors that Affect in Selecting the Most Appropriate Alternative Dispute Resolution Strategy for Construction Disputes. *Saudi J Civ Eng*, 7(4), 102-114.
- Ganiyu, A. P. (2023). Arbitration, International Mediation, and the Widening of the Alternative Dispute Resolution Space: Bloated Expectations or a Matter of Time. *International Journal of Law and Society*, 6(1), 23-30.

- Gryn, D.V. (2022). Mediation As One of The Alternative Methods of Resolution of Individual Employment Disputes: Experience of Foreign Countries. *Uzhhorod National University Scientific Bulletin*, 2(72):15-19.
- Gurieli, A. (2023). The Importance of Mediation in the Process of Resolving International Private Disputes. *Law & World*, 25, 102.
- Harjono, D. K. (2023). Application of the Pacta Sunt Servanda Principles in the settlement of business Disputes through Arbitration. *International Journal of Law and Politics Studies*, 5(1), 70-76.
- Inawati, I., Rahmadi, M., & Mahmuctarom, M. (2024). Legal Protection of the Interests of Fair Competition in the Business Sector: Analysis of Anti-Trust and Cartel Violations. *Research Horizon*, 4(3), 189-200.
- Kusumonegoro, K. E. A., & Djajaputra, G. (2023). Perbedaan Putusan Bpsk Dan Pengadilan Negeri Atas Perjanjian Pembiayaan Dengan Penyerahan Hak Milik Secara Fidusia. *UNES Law Review*, 6(1), 3335-3343.
- Liu, Y., & Wan, Y. (2023). Consumer satisfaction with the online dispute resolution on a second-hand goods-trading platform. *Sustainability*, 15(4), 3182.
- Mantili, R. (2021). Konsep penyelesaian perselisihan hubungan industrial antara serikat pekerja dengan perusahaan melalui Combined Process (Med-Arbitrase). *Jurnal Bina Mulia Hukum*, 6(1), 47-65.
- Mastur, M., Afif, M. N., & Bahari, A. S. (2024). Implications of Constitutional Legal Policies on Business Practices: Analysis of Economic Rights Protection and Corporate Regulation. *Research Horizon*, 4(3), 201-212.
- Menkel-Meadow, C. (2021). What is an appropriate measure of litigation? Quantification, qualification and differentiation of dispute resolution. *Quantification, Qualification and Differentiation of Dispute Resolution (July 29, 2020)*. *Oñati Socio-Legal Series*, 11(2), 2020-54.
- Mishra, K., & Aithal, P. S. (2023). Evaluating the Impact of Disputes on Time and Cost of Projects. *International Journal of Applied Engineering and Management Letters (IJAEML)*, ISSN, 2581-7000.
- Ogworu, E. T. (2023). Reengineering The Prevention and Management of Conflict Through Alternative Dispute Resolution Mechanism: A Critical Analysis of Mediation, Its Nature, Fundamental Principles and Approaches. *Journal of African Interdisciplinary Studies*, 7(6), 40-65.
- Rangkuti, R. A., & Nadhirah, I. (2023). Optimalisasi Peran Mediator dalam Penyelesaian Perselisihan Hubungan Industrial di Dinas Tenaga Kerja Provinsi Sumatera Utara. *J. Educ. Hum. Soc. Sci*, 5(3), 2139-2148.
- Sauden, A., & Chhetri, S. (2023). An Assessment of the Effectiveness of Alternative Dispute Resolution Methods. *Journal of Productive Discourse*, 1(1), 53-64.
- Sobakar, A.O., & Opatsky, R.M. (2023). Mediation is a form of pre-trial dispute resolution regarding the forced transfer of property for public purposes or for reasons of public necessity. Electronic scientific publication "Analytical and comparative jurisprudence", 1, 396-400.
- Sopamena, R. F. (2022). Alternative Dispute Resolution Dalam Sengketa Bisnis Internasional. *Balobe Law Journal*, 2(1), 1-6.
- Soviani, R. Y., & Priyono, E. A. (2022). The Dispute Settlement through International Arbitration between PT. Karaha Bodas Company against PT. Pertamina and PLN. *Jurnal Daulat Hukum*, 5(3), 184-195.
- Sugianto, F. A., & Marpaung, D. S. H. (2022). Efektivitas Peranan Mediasi Dalam Upaya Alternatif Penyelesaian Sengketa Kekayaan Intelektual. *Jurnal Meta-Yuridis*, 5(1), 51-59.
- Susanti, A. Y., & Gayo, S. The Use of Mediation as an Alternative Dispute Resolution in the Settlement of Banking Disputes.
- Syaputri, M. D., & Ivanda, A. C. (2023). Mediasi Sebagai Alternatif Penyelesaian Sengketa Bisnis di Indonesia. *Yustitia*, 9(2).
- Tanati, D., Rongalaha, J., & Palenewen, J. Y. (2022). Penerapan IPTEKS Tentang Penyelesaian Sengketa Tanah Ulayat Pada Masyarakat Hukum Adat Melalui Jalur Non Litigasi Di Kampung Asei Besar Distrik Sentani Timur Kabupaten Jayapura. *Jompa Abdi: Jurnal Pengabdian Masyarakat*, 1(4), 42-51.
- Winarta, F. H. (2022). *Hukum Penyelesaian Sengketa Arbitrase Nasional Indonesia dan Internasional: Edisi Kedua*. Sinar Grafika.

- Yildirimoglu, H. (2022). Commercial Mediation Practices in European Countries. *Istanbul University of Commerce Journal of Social Sciences*, 21(44), 945-961.
- Yuspin, W., & Aziz, A. (2022). Business Dispute Settlement Through Mediation in State Courts and Arbitration Institutions. *International Journal of Social Science Research and Review*, 5(10), 352-358.



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