

The Benefit Values of Settling Business Disputes by Means of Mediation in Indonesia

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ABSTRACT

This article will discuss the benefit values of the settlement of business disputes namely business to consumer disputes (b to c) by means of mediation at Consumer Dispute Settlement Agency (BPSK) DKI Jakarta, one of the prominent province in Indonesia. The discussion of benefit values will be based on utilitarianism theory of Jeremy Bentham to the data of the sum of parties who settling their business disputes by means of mediation at BPSK DKI Jakarta from 2010-2015. In addition, literature review related to the finding that mediation experiences resulting reconceptualization to legal actors will be provided in this paper.

Keywords: *benefit values, settling business disputes, mediation, Indonesia*

1. INTRODUCTION

The role of the Consumer Dispute Settlement Agency (hereinafter referred to as Badan Penyelesaian Sengketa Konsumen/BPSK) is growing more important in the emerging business disputes namely business to consumer disputes (b to c) by means of mediation in Indonesia. This is due to the increasing acceptance of mediation among justice seekers in solving business disputes. The parties who choose the mediation respect the "meeting of mind" in the form of benefits received by means of mediation compared to other business dispute resolution. This makes many of them find mediation as a process to satisfy a maximum of rights or damages with a minimum of friction or confrontation. The solution they take is a win-win solution for both parties. This process, which is only at the level above the negotiation of both parties, is a dispute resolution process that is faster, cheaper and simpler than the other form of business dispute settlements or litigation.

Problems that will be discussed in this article are the aspects of benefit values are obtained by means of mediation at the BPSK DKI Jakarta according to theory of utilitarianism from Jeremy Bentham and the reconceptualization of the ultimate goal of mediation related to the benefit values in settling business disputes by means of mediation in Indonesia. Those problems will be discussed in considering whether mediation, in these days, merely an alternative dispute settlement or literally has been an appropriate one.

2. RESEARCH METHOD

The research method used in this study is normative method [1]. Utilitarianism theory by Jeremy Bentham will be used to analyse the benefit values in settling business disputes by means of mediation in BPSK DKI Jakarta as a sample of BPSK in Indonesia. By literature review, we will find that somehow, mediation experiences resulting reconceptualization to legal actors.

Secondary data used in this research consists of primary legal material and secondary legal material. Primary legal material used are Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection, Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2016 concerning Mediation Procedure in Court and Decree of the Minister of Industry and Trade of the Republic of Indonesia Number 350/MPP/Kep/12/2001 concerning Implementation of Duties and BPSK. Secondary legal materials used are journals related to the benefit values in settling business disputes by means of mediation.

3. BENEFIT VALUES IN MEDIATION

Many mediation users not only seek the simple and fast dispute settlement, they also seek the way to reconcile the confronting interests of each party and harmonize their inter-relations. Some of the parties even have

continued their business relationship even after a particular dispute has been settled. Factually, the mediation approach is not a ‘win or lose’ approach, but a ‘win-win solution’ approach, so that, it supports reconciliation that can prolong the business relation between parties.

In Indonesia, the BPSK established under Article 49 paragraph (1) of Law Number 8 of 1999 juncto Article 2 of the Decree of the Minister of Industry and Trade No. 350/MPP/Kep/12/2001. BPSK is an institution that is quite effective in resolving consumer cases. This is evidenced by the chart below that shows the choice of the parties to resolve business disputes by means of mediation. As presented in the chart below, from 2010 to 2015, the total of mediations held had been increased significantly from year to year in BPSK. For those five years in BPSK, mediation has been preferred 2496 times (53,2%), arbitration 1773 times (37,78%) and conciliation 363 times (7,74%). Although in 2010 and 2011, mediation was not the most preferred, however, in 2013 to 2015, mediation subsequently has been a trend in settling business disputes.

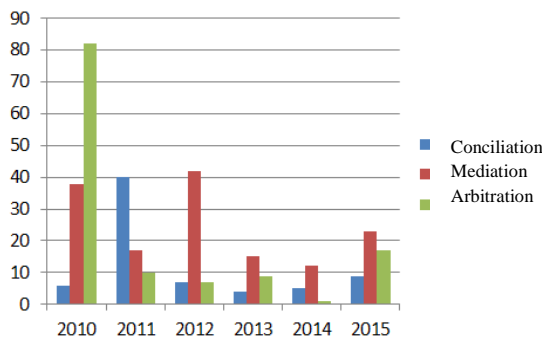


Figure 1 Dispute resolution by means of conciliation, mediation and arbitration in Consumer Dispute Agency (BPSK) DKI Jakarta in 2010-2015

Consumers and businessmen who preferred mediation in settling dispute settlement, according to Figure 1, has reached its peak in 2010-2015. More than 50% of the total justice seekers at those five years used mediation to evaluate the conflicting interest and rely to it in formulating their settlement agreement. Jeremy Bentham considers the application of the value of benefit as an antithesis of pain or suffering. Unresolved problem is a ‘suffering’, but choosing dispute resolution that unresponsive to prolong the business relation between the parties sometimes also a ‘pain’ to particular person. Therefore, mediation is provided by those who would like to solve their problem peacefully and also prolong their business relation even after their dispute has been settled. According to him, the application of the law also cannot bring pain or suffering to the public in general, as he said in the statement [2]:

“The interest of the community is one of the most general expressions that can occur in the phraseology of morals: no wonder that meaning of it is often lost. When it has a meaning, it is this. The community is a fictitious body, the composition of the individual persons who are considered as constituting as it were its members. The interest of the community then is, what is it? --- the sum of the interests of several members who compose it.”

Related to the total of justice seekers that preferred mediation in 2010-2015, the sum is more than 50%. It means that most of the justice seekers in BPSK, on those years, tend to seek peaceful settlement and open the opportunity to prolong the business relation itself. Those benefits are ‘happiness’ to some people. This happiness comes from settling business dispute by means of mediation. So that, this kind of happiness that made more than 50% justice seekers preferred mediation as a prime business dispute resolution at that time. Based on the sum, in those years, seeking a peaceful settlement while prolong business relation has been not only individual interest. There were a group, at that time, that have the same interest. If we correlate this to Jeremy Bentham’s theory, seeking a peaceful settlement while prolong business settlement were the sum of the interests of several members within the group. The group who were not as a whole, but as a group of individuals who have their individual interests due to maintaining the customers that have been trust their product or service for particular time. The sum total of settlement agreement is the sum total of ‘happiness’ that has been defined by the parties by taking mediation as business dispute settlement.

The peaceful side of mediation, in some ways, has been formulated by the Indonesian government, namely in Consideration of Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2016 concerning Mediation Procedure in Court and Decree of the Minister of Industry and Trade of the Republic of Indonesia Number 350/MPP/Kep/12/2001 [3]:

“That mediation is a peaceful, appropriate and effective way to resolve disputes and can open wider access to parties to obtain a satisfactory and just solution... Mediation is an instrument to improve public access to justice as well as the implementation of a simple, fast and low-cost principle of the administration of justice.”

The implementation of a simple, fast and low-cost trial principle in mediation is in line with the normative regulations enacted in Article 52 of Law Number 8 of 1999 concerning Consumer Protection [4], Article 3 of the Decree of the Minister of Industry and Trade of the Republic of Indonesia Number 350/MPP/Kep/12/2001 concerning Implementation of Duties and Authorities of the Consumer Dispute Settlement Agency [5], and Consideration of Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in the court [6].

According to the analysis above, it can't be denied that mediation is an emerging business dispute settlement that can bring 'happiness' to the general public not only by implementing a simple, fast and affordable principle but also accommodating peaceful settlement while prolong business relation. It is nice to see that the Indonesian government has an unwavering attention to this matter by protecting this kind of happiness with relevant regulations. Regulations that make this kind of happiness can be managed with all the consequences that can be accompanied to it. Regulations that make this kind of happiness can be protected in many ways. Compare this with the thoughts of Walter Bossert and Kotaro Suzumura in "The Greatest Unhappiness of the Least Number" [7] which offers an alternative articulation of "greatest-happiness-of-the-greatest-number" with measurable utilities, Jeffrey M. Robinson in "An Incongruent Amalgamation: John Stuart Mill's Utilitarianism on Naturalism" [8] and Katalin Martinás in "On The Theory of Human Decisions in the Age of Beneficial Globalization" [9].

Furthermore, a comparison to this analysis has been conducted by Tamara Relis in "Perception in Litigation and Mediation: Lawyers, Defendants, Plaintiffs, and Gendered Parties". Using sociological and psychological approach as an addition, she conducted an in-depth empirical study to analyse "How do professional, lay, and gendered actors understand and experience litigated case processing leading up to and including mediation in legal disputes?" based on the data derived from 131 interviews, questionnaires, and observations of parties, lawyers, and mediators involved in 64 mediated fatality and injury cases in medical disputes.

According to her, despite evident differences in mediation objectives, some plaintiff lawyers' discourse made plain the reconceptualizing of their cases and their roles. She added that legal actors' mediation that is generally correlative of law is perceptions of mediation as a tactical forum for achieving strategic objectives in their case battles. She defines mediation as traditionally understood to mean "a nonbinding process in which" unaligned third party works with disputed parties and their lawyers towards resolving or mitigating their conflict in a mutually satisfactory settlement. According to her, in mediation, parties may consider a comprehensive mix of their needs, interests, and whatever else they are relevant to the dispute. On that research, the spirit of reconceptualization of legal actors become vibe due to her finding that mediation experiences resulting such as [10]:

- a. reconceptualization theme findings empirically;
- b. reconceptualization on the defense;
- c. reconceptualizing disputes; and
- d. reconceptualizing their roles and thinking about their cases on a more holistic by human basis approach

In mediation, she researched how the parties changed their perspective on disputes in mediation. Relis said that:

"Views on mediations and their fairness were overall positive, regardless of results. Some actors subsequently changed their dispute views."

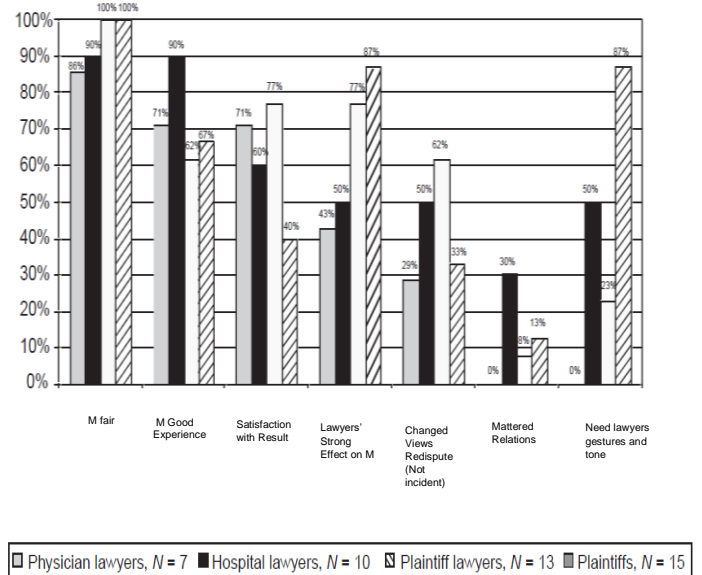


Figure 2 Surface perceptions of mediations – all actors. (Note:“M”stands for mediation.) by Tamara Relis

Some other relevant literatures have discussed about mutually satisfactory settlement and other benefit values in settling business dispute by means of mediation [11] [12] [13] [15] [16].

4. CONCLUSIONS

By means of mediation, the parties were able to secure social cohesion by balancing conflicting interests. By means of mediation, they can prolong business relation as well. Those were the benefit values that obtained by the parties in BPSK DKI Jakarta, namely in 2013 to 2015. Not only that it was simple, fast and affordable to settle a business dispute by means of mediation. Those can be seen as 'happiness' according to Jeremy Bentham's theory.

Legal actors' experience in mediation resulting reconceptualization theme findings empirically, reconceptualization on the defense, reconceptualizing disputes, reconceptualizing their roles and thinking about their cases on a more holistic by human basis approach. Experiencing mediation may also assist in the cultural transformation necessary for the legal world and its actors.

ACKNOWLEDGMENT

This work was supported by Lembaga Penelitian dan Pengabdian Kepada Masyarakat (LPPM), Tarumanagara University, Indonesia.

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