



# The Idea of Requiring Mediation Outside of Court in Realizing Simple Principles, Fast and Low Cost

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**Abstract.** It is mandatory for judges, parties, or their attorneys to mediate cases in court according to Supreme Court of the Republic of Indonesia Regulation (PERMA RI) Number 1 of 2016 about Mediation Procedures in Court. The reality that court-based mediation is not operating at peak efficiency. Furthermore, courtroom mediation is essentially a rerun of the out-of-court mediation process, in which nearly all issues prior to bringing a lawsuit have been resolved through mediation; the judge consistently reminds the parties of this and provides them with the chance to work things out as long as no binding judgment is rendered by the court. The problem in this study is whether the concept of requiring outside mediation in court is a condition for being able to file a lawsuit in court according to the principles and principles of dispute resolution? and how to arrange the implementation of mediation obligations outside of court as a condition for being able to file a lawsuit in court. This study takes a philosophical, intellectual, and legal approach to its normative research. The results of the study can be explained that requiring mediation outside the court before submitting a lawsuit to court can utilize mediators who are certified and registered with mediation institutions by using electronic devices can realize a simple, fast and low-cost settlement according to the mandate of Law Number 48 of 2009 Concerning Judicial Power and amendments to the Supreme Court Rules by including mediation outside the court as a mandatory stage and a condition for filing a lawsuit in court.

**Keywords:** Mediation Out of Court, Electronic Mediation, Judicial Powers.

## 1 Introduction

The system offers two options for resolving disputes: settlement outside of court (also known as non-litigation) and litigation in court. Settlement through the court process is the last step if deliberations are not successful. The end result of dispute resolution in court is a decision that is still widely felt does not solve the problem and tends to cause dissatisfaction with the losing party, through legal efforts that require extra effort, thought, cost, and a long time. Time Mulyana (2019). The settlement process

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outside the court is carried out with the hope of resolving the problem with a win-win solution, because it is based on deliberation to reach a consensus so that the disputing parties feel satisfied and can accept well. Alternative Dispute settlement is the term for conflict settlement that takes place outside of court (ADR) Sulisti (2021).

In addition to being a type of Alternative Dispute Resolution (ADR) or Alternative Dispute Settlement (APS), mediation can also be referred to as judicial mediation, or court mediation. Indonesian mediation arrangements are governed by Supreme Court Regulation (PERMA) No. 1 of 2016 concerning Mediation Procedures and Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution (UU AAPS). Mayesha (2021).

Mediation that is in court must be taken first before the main civil matter is examined by a judge. Article 3 paragraph (1) PERMA Mediation, the mediation process is integrated with the proceedings in court. Its implementation is carried out in the trial process at the court of first instance and is an obligation (imperative) for judges, mediators, parties, and/or their attorneys.

Article 4 paragraph (1) of PERMA No. 1 of 2016 makes clear the necessity of the mediation process in court: "Either through mediation, unless otherwise determined based on this Supreme Court Regulation, efforts must first be made to settle them through mediation, including cases of resistance (*verzet*) over the *verstek* decision and resistance of the litigants (*partij*). *verzet*) and third parties (*derden verzet*) regarding the implementation of decisions that have permanent legal force."

Even though every case that has been submitted to the Court has generally been carried out by a process of deliberation to reach a consensus and the parties to the dispute have run out of patience, so that the obligation to mediate in the Court becomes a repetition of the process which actually distances the achievement of the principles of simple, fast and cheap justice as mandated by the Law. Number 48 of 2009 concerning Judicial Power.

With the parties' strong desire to pursue justice and the number of cases that have reached the High Court and Supreme Court, it is critical to maximize the mediation process. In civil disputes, the litigants who seek justice often employ all available legal remedies, such as appeal, cassation, and re-prosecution (PK). In numerous instances, even with relatively small cases, the parties continue to file all the way up to the Supreme Court for re-submission. Sri (2018). It is for this condition that the idea of the need for mediation outside the court becomes important to be formulated in the laws and regulations in Indonesia.

For this reason, in this paper, it is interesting to formulate the problem of whether to require mediation outside the Court as a condition for being able to file a lawsuit in Court according to principle and get a settlement as soon as possible? and what are the arrangements for implementing mediation obligations outside of court as a condition for being able to file a lawsuit in court? and how are the arrangements for Electronic Mediation Towards Modern Justice in the Digital Age?

## 2 Research Methods

As defined by Soekanto (2007), "a legal research is carried out by examining literature or secondary materials" is what this study is, which is normative legal research. The methods that are employed are the statutory approach (statutory approach) and the conceptual approach. Using document studies, the author examines mediation-related laws and regulations. Primary legal materials comprise legal materials such as Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, Law Number 48 of 1999 concerning Judicial Power, and Supreme Court Regulation Number 1 of 2016 concerning These and other laws and regulations.

Mediation Procedures in Courts and Supreme Court Regulation Number 2 of 2023 about Electronic Mediation in Courts.

## 3 Results and Discussion

### 3.1 Mediation as an Alternative to Out of Court Dispute Resolution.

The Cooperative Dispute Resolution Mechanism (MPSSK) or Alternative Dispute Resolution (APS) are common names for Alternative Dispute Resolution (ADR). Mohamad (2008). ADR is the settlement of legal disputes conducted outside the judiciary, for example through negotiation, mediation, conciliation and arbitration or through mini trials and summary jury trials.<sup>8</sup> This dispute resolution system has similarities with the dispute resolution system regulated since 1970 in the Dispute Law which is often used by Japanese people in resolving disputes outside the court Sundari (2002).

An organization called Alternative Dispute Resolution was established to address disagreements or conflicts between parties outside of court by expert opinion, negotiation, mediation, conciliation, or consultation. Siti (1987).

English mediation, often known as mediation, is a settlement process when a third party acts as a mediator or mediates a disagreement. In the literature there are many limitations or definitions of mediation put forward by experts Bambang (2006).

The existence of mediation as a form of alternative settlement mechanism is not something foreign, because the method of conflict resolution is part of social norms that live or at least have lived in society Maria (2008).

Through the assistance of a mediator, who is an impartial third party, two or more parties to a dispute collaborate to discover the best resolution to their disagreement (a collaborative issue solving procedure). Tony (2004).

The principles of mediation institutions are as follows: mediation is, in general, voluntary; the scope of filing disputes is, in general, civil in nature; the process is straightforward; the parties' conflicts are kept confidential during the mediation process; and the mediator is mediating.

Thus, in principle, the process of mediating conflicts outside of court involves the participation of unbiased and neutral third parties, whose presence is agreed upon by the parties involved. This is known as non-interventionist mediation.

### 3.2 Integrating Mediation in Court (Court Connected Mediation)

Mediation by one or more peacemakers who act as peace facilitators called mediators through peace institutions (dading) can occur and be carried out either outside the court (out of court connected mediation) or in an integrated court (court connected mediation or court annexed mediation) Lumban (2006). Courts are currently using mediation as an extrajudicial conflict settlement procedure. Mediation is a type of dispute resolution that is currently used in conjunction with the legal system. The settlement of this dispute has a specificity, namely that it is carried out when the case has been registered in court (Continued to court) Dian (2019). According to Article 1 Point 1 of the Supreme Court Regulation (PERMA) Number 1 of 2016 about Procedures for Mediation in Courts, mediation is an integrated part of the legal system that involves negotiating a settlement through a process of agreement-seeking. The mediator provides assistance to the parties.

Arrangements for Mediation in Courts by the Supreme Court in the Supreme Court Regulations are further arrangements regarding matters required for the smooth administration of justice based on the provisions of Article 79 and Elucidation of Article 79 of Law no. 14 of 1985 concerning the Supreme Court as amended by Law Number 3 of 2009 concerning the Second Amendment to Law Number 14 of 1985 concerning the Supreme Court Lumban (2016).

Through this PERMA, mediation is included in the formal justice process, that all civil cases must first be sought for settlement through mediation as stipulated in Article 4 paragraph (1) PERMA No.1 of 2016. Article 4 paragraph (1) PERMA No.1 Year Year In 2016, it was determined that the types of cases that must be mediated and which can be excluded are Ronald (2021):

Article 4, paragraph (1) of PERMA No. 1 of 2016 stipulates that: "Any civil lawsuits submitted to the Court, including cases of resistance (verzet) on verstek decisions and litigants' and third parties' resistance (partij verzet) against implementing decisions with permanent legal force, must first meet certain requirements. By means of mediation, a settlement is sought. That article clarifies that mediation is a procedure that must be used to try to settle conflicts in court, unless otherwise specified based on the Supreme Court Regulation.

In actuality, PERMA No. 1 of 2016 about Mediation Procedures in Courts refers to the goal of incorporating mediation within the legal system for:

1. Many issues are thought to be possible to be resolved through mediation.
2. It is believed that the mediation procedure can settle disagreements more quickly and affordably than the litigation process.
3. It is anticipated that mediation will increase the parties' access to a feeling of justice.
4. In resolving conflicts, mediation can enhance and optimize the role of the court.

Unfortunately, in practice, mediation is perceived as being ineffective when it comes to settling civil claims in court because it is frequently used merely as a formality. As a result, many cases end up failing at mediation, making the hope of strengthening mediation institutions in courts less than ideal.

The lack of maximum implementation of mediation in court can be seen in the Special Class 1A Bandung District Court as the results of research conducted by Dian Maris Rahmah stated that from 2013 to 2018 the number of cases submitted out of a total of 2,213 civil cases was only 106 whose cases were successful in mediation, mediation was successful 6% Failed Mediation 94% Percentage of Cases Successful Mediation, 1,810 failed and 240 cases were withdrawn/aborted. This indicates that only about 5% are successful in Mediation. Therefore, it can be said that the proportion of successful mediations is still below average and falls into the low category.

During the initial court examination, the parties were informed by the panel of judges who handle civil cases that mediation is a prerequisite for any settlement of civil disputes. Consequently, the Chairman of the Panel of Judges clarified that mediators could be selected by the judges themselves from outside the court or from within, and that mediators from within the court could be utilized to support the mediation process for resolving civil cases. The parties incur no fees at all if they choose to work with a mediator appointed by the District Court. If the parties want to work with a mediator outside of the District Court, they will be responsible for payment based on the complexity of the case. The Panel of Judges has offered the parties the option of choosing their own mediator or one whose name is already listed on the roster of District Court mediators.

### **3.3 Arrangements Requiring Out-of-Court Mediation**

Mediation by one or more peacemakers who act as peace facilitators called mediators through peace institutions (*dading*) can occur and be carried out either outside the court (out of court connected mediation) or in an integrated court (court connected mediation or court annexed mediation).

The Mediation Procedure is intended to realize the principle of justice that is fast, simple and low cost. Therefore, it requires genuine willingness from the parties to make it happen. With a successful Mediation procedure it is expected to minimize time, cost and effort.

A lengthy and drawn-out conflict settlement process is another common outcome of the judiciary's formal and technical temperament. particularly when it comes to expensive civil litigation. This type of situation demonstrates how strict the lawsuit dispute resolution procedure is. It is therefore widely acknowledged that the empowerment of mediation institutions in court is likewise ineffective. In addition to restricting mediators and facilities, the parties' failure to support the creation of the mediation process also has a significant impact on the process's failure because, typically, when parties choose to submit a case to court, it already indicates that the case is extremely difficult to resolve. In mediation, there isn't a final chance to come to a resolution. In order for the mediation to proceed successfully, the parties must have the mediator's withdrawal, who must be very motivated to invite the parties to reconcile.

Currently, according to data from the Supreme Court of the Republic of Indonesia, there are 23 Mediation Institutions accredited by the Supreme Court that can organize mediation education or training. These mediation institutions are as follows:

No	Institution Name	Decision Number	Active Date	End Date
1	Gki Mediation Help Center	102/KMA/SK/IV/2022	08 April 2022	08 April 2027
2	Indonesian National Mediation Agency (Bamni)	96/KMA/SK/IV/2022	04 April 2022	04 April 2027
3	Center for Marriage Development and Preservation Advisory Board (Bp4).	95/KMA/SK/IV/2022	04 April 2022	04 April 2027
4	Indonesian Public Procurement Institute (Ippi)	16/KMA/SK/I/2022	13 January 2022	13 January 2027
5	Center for Law and Conflict Resolution (Purak)	260/KMA/SK/XII/2021	20 December 2021	20 December 2026
6	Walisongo Mediation Center (Wmc)	259/KMA/SK/XII/2021	20 December 2021	20 December 2026
7	The Focus on Harmony Guides Indonesian Mediation Indonesian Independent	191/KMA/SK/IX/2021	21 September 2021	21 September 2026
8	Mediators and Arbitrators Foundation (Medarbid)	190/KMA/SK/IX/2021	21 September 2021	21 September 2026
9	Fatahillah Mediation Center Uin Syarif Hidayatullah Jakarta	33/KMA/SK/II/2021	03 February 2021	03 February 2026
10	Center for International Mediation and Arbitration (Imac)	286/KMA/SK/XII/2020	15 December 2020	15 December 2025
11	University Education and Training August 17, 1945 Semarang	229/KMA/SK/IX/2020	07 September 2020	07 September 2025
12	Mediation Utilization Development Training Center (P4m)	189/KMA/SK/VIII/2020	04 August 2020	04 August 2025
13	Indonesian Mediation Agency	188/KMA/SK/VIII/2020	04 August 2020	04 August 2025
14	Justitia Training Center	151/KMA/SK/VI/2020	29 June 2020	29 June 2025
15	Indonesian Institute for Conflict Transformation (Iict)	149/KMA/SK/VI/2020	22 June 2020	22 June 2025

16	Tarumanegara University Faculty of Law	93/KMA/SK/VI/2019	18 June 2019	18 June 2024
17	Legal Studies Advanced Education Institution, Faculty of Law, University of Indonesia	92/KMA/SK/VI/2019	18 June 2019	18 Juni 2024
18	Indonesian Sharia Lawyers Association	16/KMA/SK/I/2019	18 January 2019	18 January 2024
19	Gadjah Mada University (JGM) Indonesian Mediation Center	15/KMA/SK/I/2019	18 January 2019	18 January 2024
20	Impartial Mediator Network	14/KMA/SK/I/2019	18 January 2019	18 January 2024
21	my School of Law and Government Surabaya	278/KMA/SK/XII/2018	21 December 2018	21 December 2023
22	National Mediation Center	95/KMA/SK/V/2018	17 May 2018	17 May 2023
23	Hasanuddin University Faculty of Law	005/KMA/SK/I/2011	10 January 2011	10 January 2016

From the number of these private mediation institutions, of course, many competent and certified mediators have been produced who can assist judges with tasks that are already too heavy. So that by requiring mediation outside the court for every case that will be submitted to the Court will reduce the burden of lawsuits because the number of cases is reduced and the settlement of cases is also faster. Moreover, the fact that the implementation of mediation in court, the parties always appoint a mediator from the judge on the grounds that they are not willing to incur costs.

### 3.4 Electronic Mediation Means Towards Modern Justice in the Digital Age

The current Digital Era has encouraged the Supreme Court of the Republic of Indonesia as the exercise of judicial power to apply an electronic system. Regulations that have been issued include:

- a. Supreme Court Regulation Number 3 of 2018 concerning Electronic Administration of Cases in Courts as amended by Supreme Court Regulation Number 1 of 2019 concerning Electronic Administration of Cases and Trials in Courts;
- b. Supreme Court Regulation Number 1 of 2016 concerning Implementation of Mediation in Courts. The same goes for mediation in court.
- c. Republic of Indonesia Supreme Court Regulation Number 2 of 2023 concerning Electronic Mediation in Courts.

Electronic mediation is carried out by boldly using applications such as the Zoom, Skype,

Google Meet, or Microsoft Team and other media centers with due observance of the principles of voluntary, confidential, effective, secure and affordable access. as Article 2 paragraph (1) PERMA Number 2 of 2023 among others.

The implementation of electronic mediation can of course also be applied to Mediation Outside the Court conducted by Private Mediators who are certified by the Supreme Court of the Republic of Indonesia and the National Professional Certification Agency (BNSP). Thus, for the application of mediation outside the court as a mandatory stage before filing a lawsuit in court, it is necessary to change the procedural law regarding the implementation of mediation.

## 4 Conclusion

To fully implement the concept of quick, easy, and affordable dispute resolution, as well as to support judges in their duties of resolving incoming cases and optimizing the role of certified mediators registered with Indonesian mediator associations, it is appropriate to mandate mediation outside of court prior to filing a lawsuit.

### 4.1 Recommendation

To achieve this, legal norms must be incorporated into the Draft Civil Procedure Code (RUU KUHPperdata, which is currently included in the Civil Procedure Code) in order to create a regulatory basis that governs the process and technical implementation of mediation outside of the court. This will ensure that the parties have certainty in the settlement of their cases. list of national legislation programs, or by making changes to the Republic of Indonesia's Supreme Court Regulation Number 1 of 2016 regarding the Implementation of Mediation in Courts and modifying the specifics of the electronic mediation implementation as outlined in the Supreme Court of the Republic of Indonesia Number 2 of 2023 concerning Electronic Mediation in Courts.

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