

Mediation Ecosystem in Indonesia

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Abstract: Mediation is a method of dispute resolution involving a neutral third party who tries to help the disputing parties reach a mutually agreeable solution. In Indonesia, mediation is divided into court

annexed mediation and out of court mediation. Court annexed mediation is regulated in SCR 1/2016. Meanwhile, the legal basis for out of court mediation is scattered across industrial sectors. The trend in Indonesia, of both court-annexed mediation and out of court mediation, has been increasing over years. Based on the available data, it can be concluded that out of court mediation has a higher success rate than court-annexed mediation.

The SCM is an international convention or agreement regarding the recognition of settlement agreements resulting from mediation. Right now, Indonesia has not signed and ratified the SCM. To sign and ratify the SCM, Indonesia must prepare the regulatory basis to implement the SCM, namely by amending or updating the current legislation, Law 30/1999 and SCR 1/2016, to cover the legal basis for implementing SCM.

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A Overview of Mediation in Indonesia

Alternative dispute resolution is a procedure for settling a dispute by means other than litigation, such as arbitration or mediation.¹ In Indonesia, alternative dispute resolution is regulated in Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution (“**Law 30/1999**”).² One alternative form of dispute resolution referred to in Law 30/1999 is mediation.

Mediation is a method of dispute resolution involving a neutral third party who tries to help the disputing parties reach a mutually agreeable solution.³ Law 30/1999, the legal basis for conducting mediation in Indonesia, does not explicitly define ~~regulate~~ the meaning of mediation.

One author defines mediation as follows:⁴

1. Mediation is a process of resolving disputes based on a voluntary principle through negotiation.
2. The mediator involved is tasked with assisting the disputing parties to find a solution.
3. The mediator involved must be accepted by all the disputing parties.
4. The mediator does not have the authority to decide the matter during the negotiation.

¹ GARNER, 2009, p. 91.

² On conflict coaching in Indonesia see: BASTOMI, 2020, p. 41-50.

³ GARNER, 2009, p. 1070.

⁴ NUGROHO, 2019, p. 24.

5. The aim of mediation is to produce an agreement acceptable to the disputing parties.

In summary, mediation is a process of voluntary dispute resolution facilitated by a mediator whose job is to help the parties resolve their disputes and where the settlement is decided by the parties.⁵

As a non-adjudicative dispute resolution process, mediation has the following advantages and disadvantages:

ADVANTAGES	DISADVANTAGES
In the mediation process, the parties have greater flexibility and the process is less formal compared to litigation and arbitration.	Because the parties cannot be compelled to appear, to be effective, mediation requires the initiative of the parties
Mediation is carried out confidentially so that the privacy of the parties is maintained.	A party who lacks good faith can misuse mediation to prolong the process or to fish for information that will benefit them in any subsequent adjudicative process.
The parties can directly participate in negotiating a resolution without having to be represented by a lawyer.	Since mediation focuses on the parties' interests rather than their strict legal rights in the resolution of a dispute, mediation is deemed inappropriate to use if the parties' intention is to obtain a definitive determination of their respective legal rights. Such determination can only be decided by a judge.
Not only legal aspects are negotiated, but also other aspects of the dispute.	In a court annexed mediation, judge and court personnel mediators are free of charge, but due to court schedules and the limited number of judges and court personnel mediators, their availability to mediate properly is limited.
Mediation is consensual and collaborative in nature so as to create a win-win solution for the parties.	If the parties cannot achieve resolution in mediation, it may lead to litigation, whereas arbitration, say, produces a final and binding arbitral award.
Mediation can restore and even improve the relationship between parties.	Parties might deliberately not comply with the Agreement to Mediate, by sending a representative who does not have sufficient authority, who is unprepared, or who is indecisive.

B Mediation Environment in Indonesia

1 Court Annexed Mediation and Out-of-Court Mediation

Law 30/1999 states that mediation is recognized as an alternative dispute resolution mechanism. However, based on Supreme Court Regulation Number 1

of 2016 on Mediation (“**SCR 1/2016**”), in resolving a civil dispute in court, the parties must first resolve their dispute through mediation, except for cases that are excluded in SCR 1/2016.⁶ From the above, it can be said that there are two categories of mediation in Indonesia: (i) court annexed mediation; and (ii) out of court mediation. These two types of mediation will be discussed in Sections C and D below.

2 Mediators and Mediator Certification Agencies

SCR 1/2016 stipulates that each court-annexed mediator must have a mediator certificate. To obtain a mediator certificate, a mediator must attend and pass certified mediator training organized by the Supreme Court or by mediator certification agencies that have obtained Supreme Court accreditation. Such agencies are accredited by the Supreme Court pursuant to the decree of the Chief Justice of the Supreme Court Number 117/KMA/SK/VI/2018 concerning Procedures for Granting and Extension of Accreditation of Mediator Certificate Provider Institutions for Non-Judge Mediators (“**DCJSC 117/2018**”), which aims to provide guidance and guarantee the quality of mediator certificate training issued by the mediator certification agencies.⁷

C Court Annexed Mediation

Article 4 paragraph (1) SCR 1/2016 has regulated the following:

All civil disputes submitted to court, including cases of resistance (*verzet*) over default judgment (*verstek*) and resistance by litigants (*partij verzet*) and third parties (*derden verzet*) against the implementation of decisions that have permanent legal force, must first seek settlement through mediation, unless otherwise specified herein.

Pursuant to SCR 1/2016, in court annexed mediation, mediators may consist of judges or other persons who have mediator certificates.

⁶ Article 4 paragraph (1) of SC 1/2016.

⁷ Point III of DCJSC 117/2018.

In court annexed mediation, the parties have the right to nominate the desired mediator. This right must be exercised by the parties within 2 (two) days after the presiding judges explain the obligation to mediate to the parties.⁸ If the parties do not appoint a mediator within 2 (two) days, the chair of the presiding judges will appoint a mediator judge or court officer who has a mediator certificate to carry out the mediation.⁹ The parties can also nominate more than one mediator.¹⁰

SCR 1/2016 stipulates that the parties must mediate in good faith.¹¹ If the plaintiff does not show good faith during the mediation, then the presiding judges may dismiss the lawsuit.¹² If the defendant is deemed to not have good faith, they will be charged a mediation fee.¹³ The mediators can declare that a party or parties do not have good faith if:¹⁴

- a. parties, after being duly summoned twice in a row, fail to attend the mediation without a valid reason;
- b. parties having attended the first mediation, do not attend the next meeting without a valid reason even though they have been duly summoned twice in a row;
- c. consecutive absences of the parties have disrupted the mediation schedule without a valid reason;
- d. a party, having attended mediation, does not submit and/or respond to the other party's case resume;¹⁵ and/or
- e. parties do not sign the draft of settlement agreement¹⁶ that has been agreed upon without a valid reason.

The parties can agree to hold the mediation in court (in the court's mediation room) or outside the court. However, mediation must be carried out in court when:

- a. mediation is conducted by judges or court officers; or
- b. when a non-judge mediator is appointed to co-mediate with a judge or court officer.

⁸ Article 20 paragraph (1) of SCR 1/2016.

⁹ Article 20 paragraph (3) of SCR 1/2016.

¹⁰ Article 19 of SCR 1/2016.

¹¹ Article 7 paragraph (1) of SCR 1/2016.

¹² Article 22 paragraph (2) of SCR 1/2016.

¹³ Article 22 paragraph (2) and Article 23 paragraph (23) and paragraph (1) of SCR 1/2016.

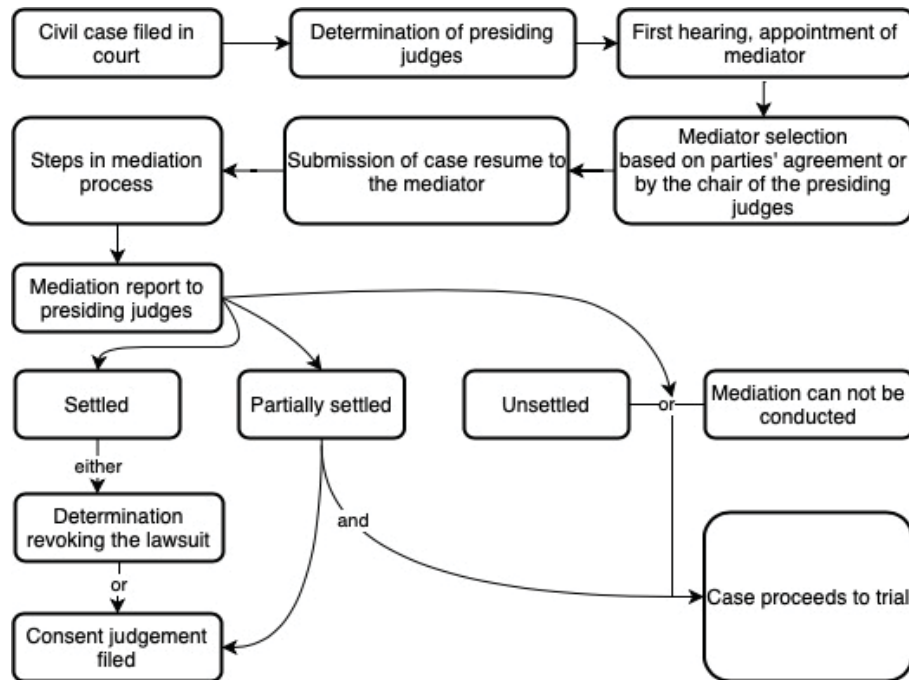
¹⁴ Article 7 paragraph (2) of SCR 1/2016

¹⁵ According to Article 1 point (7) of SCR 1/2016, case resume is a document made by the parties that contains the case and settlement review.

¹⁶ According to Article 1 paragraph (8) of SCR 1/2016, agreement resulting from the mediation in the form of a document containing the terms of settlement of the dispute signed by the parties and the mediator.

The following flowchart illustrates the court annexed mediation stages according to SCR 1/2016:

Court-Annexed Mediation Process Flowchart



Court annexed mediation can be conducted online as per Article 5 paragraph (3) of SCR 1/2016, which regulates that mediation can be carried out using audio-visual media which allows direct participation by the parties. Furthermore, Supreme Court Regulation Number 3 of 2022 on Mediation in Courts Electronically (“**SCR 3/2022**”) provides a legal umbrella for holding court annexed mediation online.

Online court annexed mediation can be carried out if the parties agree to carry out mediation electronically¹⁷ in a virtual space using an application agreed upon by the parties.¹⁸ The virtual space is a legitimate mediation space with the same status as the mediation room in court.¹⁹

¹⁷ Article 5 paragraph (1) of SCR 3/2022.

¹⁸ Article 11 paragraph (1) of SCR 3/2022.

¹⁹ Article 12 of SCR 3/2022.

D Out of Court Mediation

Apart from court annexed mediation, as regulated in SCR 1/2016, mediation is also carried out outside the court. In Indonesia, out-of-court mediation can be done in the following industry settings:

a Financial Services Sector Disputes

Based on the Financial Services Authority/*Otoritas Jasa Keuangan* (“**FSA**”) Regulation Number 61 of 2020 on Alternative Dispute Resolution Institutions (“**FSAR 61/2020**”), the Financial Sector Alternative Dispute Settlement Institution/*Lembaga Alternatif Penyelesaian Sengketa Sektor Jasa Keuangan* (“**LAPS SJK**”) is an institution that settles financial services disputes outside the court. LAPS SJK facilitates dispute resolution between consumers²⁰ and financial service providers/*penyelenggara usaha jasa keuangan* (“**FSP**”). Disputes that can be submitted to the LAPS SJK are disputes between consumers and the following categories of FSP:

- a. *Commercial Banks;*
- b. *Rural Banks/Financing Banks;*
- c. *Securities Trading Brokers;*
- d. *Investment Managers;*
- e. *Pension Funds;*
- f. *Insurance Companies;*
- g. *Reinsurance Companies;*
- h. *Financial Institutions;*
- i. *Pawn Companies;*
- j. *Guarantee Companies;*
- k. *Information Technology-Based Borrowing-Lending Service Providers;*
- l. *Crowdfunding Service Operators;*
- m. *Microfinance Institutions;*
- n. *Indonesian Export Financing Institutions;*
- o. *PT Permodalan Nasional Madani (Persero); and*
- p. *Other financial service institutions conducting intermediary fund management and depository activities in the financial services sector, both carrying out their business activities conventionally and sharia, based on statutory provisions in the financial services sector.*

²⁰ Based on Article 1 point (3) of POJK 61/2020, a consumer is a party that places their funds and/or makes use of the services available at PUJK.

FSAR 61/2020 limits the disputes that can be submitted to LAPS SJK, to disputes where:²¹ (a) the FSP has offered a settlement, but it was rejected by the consumer, or the FSP has not responded to the complaint; (b) the dispute is not in the process of, or has already been decided by, a court, arbitration, or other alternative dispute resolution institution; (c) the dispute is a civil case.

Based on the data that we received from LAPS SJK, below are LAPS SJK's data on the docket and dispute resolution at LAPS SJK from 1 January 2021 until 31 March 2023.

LAPS SJK Docket	
1 January 2021 - 31 March 2023	
Complaints	Amount
Complaint Received	3648
Complaint Rejected	1664
Complaint Accepted	1984
Settled in the early stage, through: Financial Service Providers' internal dispute resolution (bipartite) and verification	348
Dismissed (Financial Service Providers rejected, consumers revoked the complaints)	311
In Progress	852

Source: Financial Sector Alternative Dispute Settlement Institution/Lembaga Alternatif Penyelesaian Sengketa Sektor Jasa Keuangan, received by 2 May 2023.

LAPS SJK Resolution		
1 January 2021 - 31 March 2023		
Methods	Settled	Not Settled
Facilitation	9	10
Succes Rate	47%	53%
Mediation	230	218
Success Rate	51.3%	48.7%
Arbitration	6	

Source: Financial Sector Alternative Dispute Settlement Institution/Lembaga Alternatif Penyelesaian Sengketa Sektor Jasa Keuangan, received by 2 May 2023.

Based on the data above, it can be inferred that from January 2021 until March 2023, the percentage of the case exercised by LAPS SJK is around 84.3% (the number of cases that settled in the early stage, in progress, and settled,

²¹ Article 32 paragraph (1) of POJK 61/2020.

which contains the case settled and non-settled on facilitation, mediation, and arbitration, divided by the number of complaints accepted). Also, mediation by LAPS SJK has a success rate of 51.3%.

Dispute resolution in the financial services sector has recently been boosted by the promulgation of Law Number 4 of 2023 on Development and Strengthening of the Financial Sector ("**Law 4/2023**"). Under Law 4/2023, LAPS SJK has gained more recognition and is now regulated by law, where previously it was regulated by FSA regulations. The development is expected to provide better outcomes for mediation in financial services sector disputes.

b Consumer Disputes Mediation

Every consumer who is harmed can sue business actors through an institution tasked with resolving disputes between consumers and business actors or through the courts. Settlement of consumer disputes can be resolved through court or out of court. Mediation is one of the methods to resolve consumer disputes. The Consumer Dispute Settlement Agency/*Badan Penyelesaian Sengketa Konsumen* ("**BPSK**") has the duty and authority to conduct the handling and settlement of consumer disputes through mediation.²²

Based on the Minister of Trade Regulation Number 17/M-DAG/PER/4/2007 on Duties and Authorities of the Consumer Dispute Settlement Agency and Procedures for Settlement of Consumer Disputes ("**MOTR 17/2007**"), to resolve disputes through mediation, the parties must first try to settle the dispute by conciliation. In the mediation process, the chair has the duty to: (a) summon the disputing consumers and business actors; (b) summon witnesses and experts when necessary; (c) provide a forum for consumers and business actors who have disputes; (d) actively reconcile consumers and business actors in disputes; (e) actively provide suggestions for resolving consumer disputes under regulations in the field of consumer disputes.²³

The parties are given the freedom to resolve disputes through mediation. The chair acts actively as a mediator to provide advice, instructions, suggestions, and other efforts to resolve disputes. The mediation results are then outlined in the form of a decision.²⁴

Based on the data that we received from BPSK, below are BPSKs data on the consumer protection dispute resolution from 2017 to 2021.

²² Article 17 (1) of MOTR 17/2007.

²³ Article 17 paragraph (2) of MOTR 17/2007.

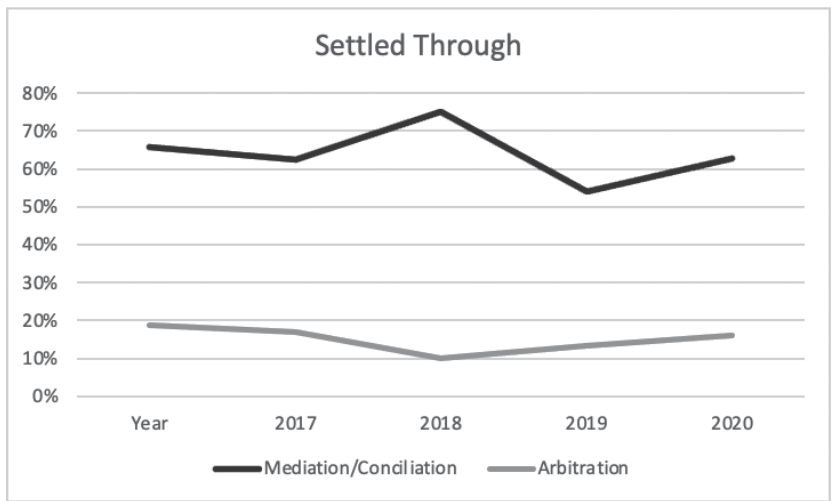
²⁴ Article 17 paragraph (3) of MOTR 17/2007.

Consumer Protection (CP) Dispute Resolution					
Year	Number of Cases	Settled through			Not Settled
		Conciliation	Mediation	Arbitration	
2017	762	55	447	144	116
2018	1157	105	618	197	237
2019	1049	38	748	106	157
2020	1043	43	520	140	340
2021	1619	41	976	261	341

Source: Ministry of Trade, Directorate General of Consumer Protection and Trade Compliance, received by 29 March 2023.

Based on the data above, it can be concluded that mediation at BPSK has an increasing trend. Mediation success rate per year are as follow:

- 2017: 58.6%
- 2018: 53.4%
- 2019: 71.3%
- 2020: 49.8%
- 2021: 60.2%.



Furthermore, mediation is the most widely used and taken option to settle disputes compared to conciliation and arbitration.

c Land Disputes Mediation

Land dispute mediation is regulated by the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Regulation Number 21 of 2020 on Handling and Settlement of Land Cases (“**MOAASP/NLAR 21/2020**”). Land disputes mediation can be conducted by and at the initiative of (a) Ministry, Regional Offices, or Local Offices under their respective authorities and/or at the initiative of the disputing parties; or (b) Individuals or institutions at the initiative of the disputing parties.²⁵

Land dispute mediation must be attended by the parties. If the parties cannot attend mediation, the parties can be represented by their attorneys/proxies. If the parties fail to attend the meditation after being properly invited 3 (three) times, the mediation will be declared a failure. In conducting mediation, the parties may invite experts and/or relevant agencies. After reaching an agreement, the result of the mediation is outlined in a settlement agreement which is then registered at the District Court to obtain a settlement deed (referring to SCR 1/2016). If the mediation fails, then the Ministry, Regional Office, or Local Office, according to their authority, will decide the case.²⁶

d Medical/Health Disputes Mediation

Based on Law Number 36 of 2009 on Health and its amendments based on Law Number 6 of 2023 (“**Law 36/2009**”), if there are health workers who are suspected of negligence in conducting their profession, such negligence must be resolved first through mediation.²⁷ Mediation is conducted if there is a dispute between health workers, as health service providers, and patients, as recipients of health services.²⁸ Mediation aims to resolve disputes outside the court by a mediator agreed by the parties.²⁹

The definition of a medical dispute is not strictly regulated in Law 36/2009. However, Article 58 paragraph (1) stipulates that everyone has the right to claim compensation against a person, health worker, and/or health provider who causes them harm due to errors or negligence in the health services they receive. Losses, as referred to in Article 58 paragraph (1), also include unauthorized disclosure of medical records.³⁰

²⁵ Article 43 paragraph (2) of MOAASP/NLAR 21/2020.

²⁶ Article 44 of MOAASP/NLAR 21/2020.

²⁷ Article 29 of Law 36/2009.

²⁸ Elucidation of Article 29 of Law 36/2009.

²⁹ Elucidation of Article 29 of Law 36/2009.

³⁰ Elucidation of Article 58 paragraph (1) of Law 36/2009.

e Mediation in Labor/Industrial Relations Disputes

Settlement of labor disputes or industrial relations is regulated in Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes (“**Law 2/2004**”). Industrial relation disputes refer to contentions which trigger conflict between employers and employees.

Types of disputes covered by Law 2/2004 are: (a) dispute of rights;³¹ (b) dispute of interests;³² (c) dispute over employment termination;³³ and (d) dispute over worker unions³⁴ within a company.

Dispute settlement through mediation is facilitated by a mediator from the relevant manpower offices on the Regency or City level.³⁵ Mediation is the second stage in the settlement of industrial relations disputes after the disputing parties failed to reach a settlement in bipartite negotiation. If mediation does not result in a settlement, the mediator will issue a written recommendation.³⁶ The party refusing the mediator’s recommendation can bring the dispute to the Industrial Relation Court.³⁷

NUMBER OF INDUSTRIAL RELATION DISPUTES RESOLVED THROUGH MEDIATION ON 2022³⁸		
No.	Type of Cases	Total
1	Disputes of rights	1,270
2	Disputes of interests	248
3	Dispute over employment termination	3,075
4	Dispute over worker unions within a company	48
Total		4,641

Source: Directorate General of Development of Industrial Relations and Employment Social Security, Data from January to December 2022.

³¹ Article 1 point (2) of Law 2/2004 defines disputes of rights as a dispute which occurs due to the non-fulfillment of rights because there is in conformity between the implementation or interpretation of provisions under laws and regulations, employment agreement, company regulation, or collective labor agreement.

³² Article 1 point (3) of Law 2/2004 defines dispute of interests as a dispute which occurs in the course of an employment relationship due to the absence of agreement concerning the drawing up, and or amendment of work requirements which are established under the employment agreement or company regulation, or collective labor agreement.

³³ Article 1 point (4) of Law 2/2004 defines dispute over employment termination as a dispute which occurs due to the absence of agreement concerning the employment termination which was conducted by one of the parties;

³⁴ Article 1 point (5) of Law 2/2004 defines among worker unions/labor unions as a dispute between a worker union/labor union with another worker union/labor union within a company due to lack of consensus concerning the membership, and implementation of union-related and obligations.

³⁵ Article 8 of Law 2/2004.

³⁶ Article 13 paragraph (2) of Law 2/2004

³⁷ Article 14 paragraph (1) of Law 2/2004

³⁸ Directorate General of Development of Industrial Relations and Employment Social Security of Ministry of Manpower, Data Perselisihan yang Diitangani dan Diselesaikan oleh Mediator Tahun 2022. Accessed on: 16 March 2023, <https://satudata.kemnaker.go.id/data/kumpulan-data/952>.

Based on the data above, 4,641 industrial dispute cases were resolved using mediation in 2022.

f Intellectual Property Disputes Mediation

Intellectual property rights is a category of intangible rights protecting commercially valuable products of the human intellect. The category comprises not only trademark, copyright, and patent rights, but also trade-secret rights, publicity rights, moral rights, and rights against unfair competition.³⁹ In Indonesia, intellectual property rights are divided into: (a) patents; (b) trademarks; (c) industrial designs; (d) geographical indications; (e) trade secrets; (f) integrated circuit designs; and (g) copyrights.

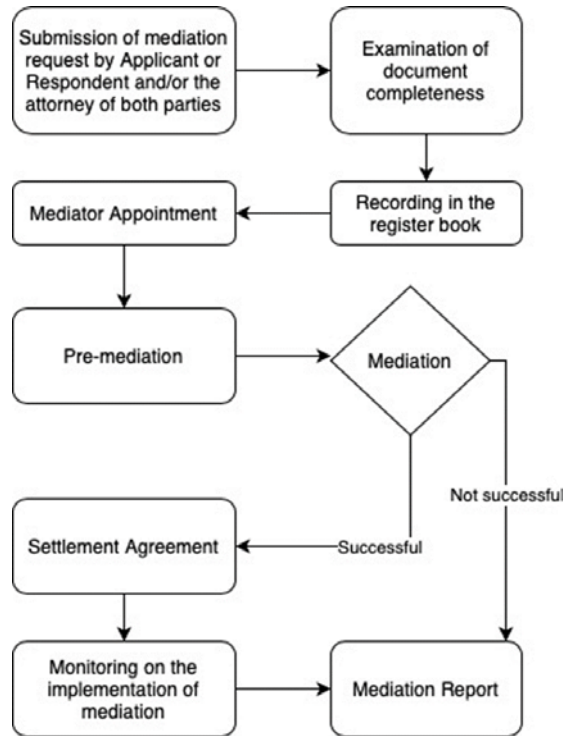
Type of Intellectual Property	Regulation
Patent	Law Number 13 of 2016 on Patent as amended by Law Number 6 of 2023
Trademark and Geographical Indication	Law Number 20 of 2016 on Trademark and Geographical Indication as amended by Law Number 6/2023
Industrial Design	Law Number 31 of 2000 on Industrial Design
Trade Secret	Law Number 30 of 2000 on Trade Secrets
Integrated circuit design	Law Number 32 of 2000 on Layout Designs of Integrated Circuit
Copyright	Law Number 28 of 2014 on Copyright

Each intellectual property is covered by several laws. Below is the flowchart illustrates the mediation process at the Directorate General of Intellectual Property of Ministry of Law and Human Rights.⁴⁰

³⁹ GARNER, 2009, p. 881.

⁴⁰ Directorate General of Intellectual Property of Ministry of Law and Human Rights. Accessed on: 16 March 2023, www.dgip.go.id/menu-utama/penyidikan-ki/sengketa?kategori=Penyelesaian.

Mediation Process at The Directorate of General of Intellectual Property of Ministry of Law and Human Rights



E Enforcement of Mediation Settlement

Indonesian civil procedural law, through the *Herziene Inlandsch Reglement* (“HIR”) recognizes the legal power of mediation settlement, both from court annexed mediation and outside court mediation. Article 130 paragraph (2) HIR stipulates that the settlement deed has the same effect of a final and binding court decision, and cannot be appealed. Therefore, it can be enforced.

1 Court Annexed Mediation Resolution

If the parties reach an agreement in court annexed mediation, the parties can record their agreement in a settlement agreement.⁴¹ The parties, through the mediator, can propose to the presiding judge that the settlement agreement be

⁴¹ Article 1 point (8) of SCR1/2016 defines a settlement agreement as an agreement resulting from mediation in the form of a document containing dispute resolution provisions signed by the parties and the mediator.

recorded and reinforced by a settlement deed.⁴² If the parties do not want to convert the settlement agreement into a settlement deed, the settlement agreement must contain a clause to withdraw the lawsuit.⁴³

In the event that the parties wish to turn the settlement agreement into a settlement deed, the presiding judges will study and examine the settlement agreement within a maximum period of 2 (two) days.⁴⁴ After that, if the presiding judges decide that the settlement agreement is not in accordance with Article 27 paragraph (2), which stipulates that the settlement agreement must not contain provisions that: (a) conflict with law, public order, and/or morality; (b) harm third parties; or (c) which cannot be implemented, then the judge will return the settlement agreement for revision by the parties and the mediator with a period for revision of no longer than 7 (seven) days from the date of receipt of the revision instruction.⁴⁵ If the settlement agreement needs no revisions, by no later than 3 (three) days, the presiding judges will set the date of the hearing to announce the settlement deed.

From 2020 to 2022, the Supreme Court has issued the Supreme Court Annual Report. Based on the report, the following statistics relate to mediation in court for from 2020 to 2022 are as follow:

YEAR 2020 ⁴⁶						
No	Court	Number of Mediated Cases	Status of Mediation			
			Settled	Not Settled	Dismissed	In Process
	District Court	36.366	1.125	14.955	20.286	0
Success Rate (%)			3.09	41.12	55.78	0
	Religious Court	59.257	4.052	53.093	2.112	0
Success Rate (%)			6.83	89.59	3.56	0
Total		95.623	5.177	68.048	22.398	0
Total Percentage (%)			5.41	71.16	23.42	

⁴² Article 27 paragraph (4) of SCR1/2016. Article 1 point (10) of SCR 1/2016 defines a settlement deed as a deed that contains the contents of the settlement agreement and the judge's decision that strengthens the settlement agreement.

⁴³ Article 27 paragraph (5) of SCR 1/2016.

⁴⁴ Article 28 paragraph (1) of SCR 1/2016.

⁴⁵ Article 28 paragraph (2) and Article 28 paragraph (3) of SCR 1/2016.

⁴⁶ SUPREME COURT OF THE REPUBLIC OF INDONESIA, 2020.

YEAR 2021 ⁴⁷						
No	Court	Number of Mediated Cases	Status of Mediation			
			Settled	Not Settled	Dismissed	In Process
	District Court	39.888	1.187	16.251	21.193	1.257
Success Rate (%)			2.98	40.74	53.13	3.15
	Religious Court	62.464	8.964	52.596	904	0
Success Rate (%)			14.35	84.20	1.45	0
Total		102.352	10.151	68.847	22.097	1.257
Total Percentage (%)			9.91	67.26	21.58	1.22

YEAR 2022 ⁴⁸						
No	Court	Number of Mediated Cases	Status of Mediation			
			Settled	Not Settled	Dismissed	In Process
	District Court	40.551	1.362	16.985	20.863	1.341
Success Rate (%)			3.36	41.89	51.45	3.31
	Religious Court	68.831	19.499	47.705	1.243	384
Success Rate (%)			28.33	69.31	1.81%	0.56
Total		109.382	20.861	64.690	22.106	1.725
Total Percentage (%)			19.07	59.14	20.21	1.58

From the Supreme Court's annual reports, court annexed mediation has a very low success rate, but still has an increasing trend from year to year. From the author's experience, the low success is driven by the following obstacles in the mediation process:

- 1 Mediation relies heavily on the initiative of the parties. If the parties do not have the initiative to resolve the problem, then resolving a dispute through mediation is difficult.
- 2 If the parties do not have good faith, then the mediation process will not run smoothly. For example, one of the parties deliberately does not attend mediation in order to prolong the mediation process.

⁴⁷ SUPREME COURT OF THE REPUBLIC OF INDONESIA, 2021.

⁴⁸ SUPREME COURT OF THE REPUBLIC OF INDONESIA, 2022.

- 3 Specifically for court annexed mediation, mediation is regarded as a formality because the parties must first mediate before the court will hear their case.

2 Outside Court Mediation Resolution

SCR1/2016 provides a legal basis for the enforcement of mediation settlement agreements for parties mediating outside the court. Parties that have reached settlement, either with or without the assistance of a certified mediator, may submit a settlement agreement⁴⁹ to the competent court to obtain a settlement deed⁵⁰ by filing a lawsuit.⁵¹ In a lawsuit to obtain a settlement deed, the presiding judges will ratify the settlement agreement in a decision without examining the merit of the case within 14 (fourteen) days since the registration of the lawsuit.⁵²

A settlement agreement submitted by the parties to obtain a settlement deed must comply with the provisions stipulated in Article 27 paragraph (2) SCR 1/2016, namely, it must not contain provisions that: (a) conflict with law, public order, and/or morality; (b) harm third parties; or (c) which cannot be implemented.⁵³ If the settlement agreement is not in accordance with those provisions, the presiding judges will provide instructions to the parties to revise the settlement agreement. Based on these instructions, the parties must immediately revise and resubmit the settlement agreement.⁵⁴

F Indonesia and the Singapore Convention on Mediation

The Singapore Convention on Mediation (“**SCM**”) is an international convention or agreement regarding the recognition of settlement agreements resulting from mediation. On 7 August 2019, the SCM was officially announced and signed by 46 (forty-six) countries.⁵⁵ The SCM aims to provide binding legal certainty to mediation agreements on international business disputes for countries that have signed the SCM.

The SCM draws its inspiration from the New York Convention, which provides legal certainty for the enforcement of international arbitral awards, while the

⁴⁹ Article 1 point (8) of SCR1/2016 defines a settlement agreement as an agreement resulting from mediation in the form of a document containing dispute resolution provisions signed by the parties and the mediator.

⁵⁰ Article 27 paragraph (4) of SCR1/2016. Article 1 point (10) of SCR 1/2016 defines a settlement deed as a deed that contains the contents of the settlement agreement and the judge's decision that strengthens the settlement agreement.

⁵¹ Article 36 paragraph (1) of SCR 1/2016.

⁵² Article 36 paragraph (3) and Article 36 paragraph (4) of SCR 1/2016.

⁵³ Article 37 paragraph (1) of SCR 1/2016.

⁵⁴ Article 37 paragraph (2) of SCR 1/2016.

⁵⁵ On the Singapore Convention in Brazil see: COMETTI; MOSCHEN, 2022. See also MASON, 2021.

SCM provides legal certainty for the enforcement of settlement agreements from international mediation or conciliation. The existence of the SCM means that international mediation agreements can be recognized by countries that have signed or acceded to and ratified the SCM.

However, Indonesia has not signed and ratified the SCM. To ratify the SCM, Indonesia must make preparations, one of which is to prepare the regulatory basis to implement the SCM. Indonesian laws and regulations are still not in line with some provisions regulated in the SCM.

Law 30/1999, as the legal basis for implementing alternative dispute resolutions, does not yet regulate the enforceability of the inter-state mediation (the term of international mediation is not yet covered in Law 30/1999). On the other hand, HIR and SCR 1/2016 only regulate the implementation of mediation at the district court level. Therefore, to adopt the SCM, Indonesia has to adjust or update its laws and regulations to make sure the laws and regulations are in line with the SCM.

G Conclusion

Mediation is a method of dispute resolution involving a neutral third party who tries to help the disputing parties reach a mutually agreeable solution. In Indonesia, mediation is divided into court annexed mediation and out of court mediation. Court annexed mediation is regulated in SCR 1/2016. Meanwhile, the legal basis for out of court mediation is scattered across industrial sectors.

The trend in Indonesia, of both court-annexed mediation and out of court mediation, has been increasing over years. Based on the available data, it can be concluded that out of court mediation has a higher success rate than court-annexed mediation.

The SCM is an international convention or agreement regarding the recognition of settlement agreements resulting from mediation. Right now, Indonesia has not signed and ratified the SCM. To sign and ratify the SCM, Indonesia must prepare the regulatory basis to implement the SCM, namely by amending or updating the current legislation, Law 30/199 and SCR 1/2016, to cover the legal basis for implementing SCM.

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Informação bibliográfica deste texto, conforme a NBR 6023:2018 da Associação Brasileira de Normas Técnicas (ABNT):

GERUNGAN, Alexandra; ADRE, Claudio Shallaby; SHAHAB, Fahmi; LEE, Raymond. Mediation Ecosystem in Indonesia. *Revista Brasileira de Alternative Dispute Resolution – RBADR*, Belo Horizonte, ano 05, n. 09, p. 73-92, jan./jun. 2023. DOI: 10.52028/rbadr.v5i9.ART04.
