

## The Urgency of The Mediator's Code of Ethics As An Independent Third Party In Resolving The Parties' Dispute

Ujang Badru Jaman<sup>1</sup>, Armansyah<sup>2</sup>

<sup>12</sup>Faculty Of Law Nusa Putra University, Sukabumi, Indonesia  
Corresponding author; ujang.badru@nusaputra.ac.id

### ABSTRACT

This research was conducted with the aim of knowing how the position of the mediator as an independent party in case dispute resolution and how the urgency of the mediator's code of ethics in violating the code of ethics. This research uses normative juridical research methods. the position of the mediator has an important role as a neutral party in charge of facilitating dialog between the parties to the dispute. and the Mediator's Code of Ethics has great urgency in the context of dispute resolution as an independent third party. By ensuring that mediators operate with integrity and neutrality, the Code forms the basis for ethical behaviour that supports a fair mediation process. The existence of this independent third party is critical in creating an environment that allows disputants to communicate openly and honestly. The Code of Ethics ensures that the mediator carries out his or her role with fairness, keeps information confidential and avoids conflicts of interest. With the Code of Ethics, the mediator not only acts as a facilitator but also as a holder of high standards in ensuring fairness and openness in dispute resolution. The Mediator Code of Conduct therefore plays a crucial role in upholding ethical norms that ensure trust and success of the mediation process.

### Keywords:

Mediator; Mediator  
Code of Ethics;  
Dispute Resolution;

### INTRODUCTION

The development of dispute case resolution can generally be done through a court institution known as the litigation process and can also be through an alternative dispute resolution institution or better known as ADR (Alternative Dispute Resolution) to resolve disputes outside the court or non-litigation.(Fuad, 2019) One form of the settlement process in its development is increasingly recognized as case settlement through mediation. In the context of bureaucratic reform of the Supreme Court of the Republic of Indonesia, Mediation is part of the vision of realizing a great and oriented Indonesian judicial body in increasing public access to justice as well as implementing the principles of the administration of justice that is simple, fast, and light in cost.

Based on Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in Court, mediation is a way or form of dispute resolution that is carried out by efforts through a negotiation process with the help of a Mediator.(Priskila Ginting et al., 2023) with the hope that the parties can obtain an agreement and a good decision. A mediator must be able to become a professional mediator by prioritizing the requirements of professional skills and a code of ethics in accordance with the provisions issued by the National Mediation Canter through the Indonesian Community Mediator (MMI) organization which is also able to provide legal certainty for actions that might harm one of the parties for the mediator's partiality or problems related to the profession.

In mediation, one of the important principles of a mediator is to be neutral and solutive. In this sense, a mediator is prohibited from making decisions based on partiality towards one of the parties in a case. The existence of a mediator's code of ethics provides neutrality in helping the mediator see the problem between the two

parties clearly and fairly. The helplessness of the parties in finding a way out of a problem requires a neutral and independent party who is considered to have the ability to resolve the case. Therefore, the mediator's code of ethics is used as a guideline so that the mediator's neutrality is maintained. Mediator personalities who are too impartial will damage the trust of both parties and will damage the mediation process. In addition, the mediator must also be able to maintain the confidentiality of information provided by both parties and must also consistently avoid conflicts of interest that can damage the neutrality and credibility of the mediator itself. From the description described above, this research wants to explain the legal issues related to the position of the mediator in helping to resolve a case and how the urgency of the mediator's professional code of ethics when there is a violation of the code of ethics.

### **METHOD**

By using a systematic methodology, this research aims to discover, develop, and test the truth of a science. and Systematically means in accordance with the guidelines or research rules that apply to scientific work. while methodology means using methods that are scientific in nature.(Hadi, 1986) As legal research, this research can be categorized as a type of normative juridical research. With the approach used in this research, namely the Legislation Approach, Conceptual Approach, through these methods and approaches, a legal issue can be identified regarding the truth of the legal issues being studied. The results of this research have an important role as a basis for formulating and forming legal arguments that have a logical, rational, and accurate framework.(Mahmud Marzuki, 2013).

### **RESULTS AND DISCUSSION**

#### **a. The Position of the Mediator as an Independent Party in Case Settlement**

Mediation is an approach to conflict resolution in which disputants engage in a process of negotiation or agreement, with the guidance of a mediator who does not have the authority to make decisions or force a settlement. A distinctive feature of mediation is that the negotiation process is essentially similar to deliberation or consensus. In line with the nature of negotiation, deliberation or consensus, it is important to remember that no pressure can be applied to accept or reject any particular idea or solution during the mediation process. The final decision must have the consent of all parties involved. In an effort to avoid inefficient and costly conflict handling, such as through the courts, an Alternative Dispute Resolution (ADR) model can be applied. In ADR, a third party, acting as a mediator, is involved to help resolve disputes through informal means.

In Indonesia, the implementation of mediation in the court environment was officially started through Supreme Court Regulation (PERMA) Number 2 of 2003 concerning Mediation Procedures in Court. This PERMA has undergone several improvements, starting from the initial revision with the issuance of PERMA Number 1 of 2008 and the last amendment was made through PERMA Number 1 of 2016. (Mawu, 2019) In resolving disputes or cases through mediation, there needs to be a mediator whose job is to facilitate the settlement. Mediators have a central role in mediating civil conflicts, which is basically a peaceful approach involving a third party to help resolve disputes in order to provide solutions that are acceptable to the parties to the dispute.

The success of mediation depends largely on the intelligence and skill of the mediator in generating opportunities for communication, as the mediator has a dominant role in managing the process by using effective strategies to convince and open the minds of participants. The role and position of the Mediator is to work with the aim of creating an environment that supports open and constructive communication between the parties. They assist in analysing root causes, identifying interests, and designing solutions that are acceptable to all parties involved. Through listening, understanding and conflict management skills, mediators guide the negotiation process towards a fair and satisfactory resolution.

The success of a mediator lies not only in technical expertise, but also in neutral, ethical and trustworthy personality traits. By avoiding partisanship and ensuring that the parties feel heard and valued, the mediator creates a favourable environment for agreement. Some traits of successful mediators include: (Nugroho & SH, 2019)

- a. Skills in designing preparation and planning ability;
- b. Understanding of the issues that are the object of the dispute;
- c. Skills to convey ideas orally;
- d. The ability to think comprehensively, clearly and quickly in situations with time pressure and information uncertainty;
- e. Listening skills that involve speed, accuracy, simplification, reformulation, reframing, and systematization;
- f. General understanding and skills in decision-making;
- g. Impeccable honour and integrity;
- h. The power of influence.

Fundamentally, the essence of mediation is a settlement process that does not involve a trial, often known as an out-of-court settlement. Gery Goodpaster describes the mediator as a "therapist in negotiation". The mediator's role involves analysing and diagnosing the conflict, followed by designing and controlling the process and other interventions. (Goodpaster, 1999) The ultimate goal is to guide the disputing parties to reach an amicable agreement. In this context, some of the roles of a mediator involve:

- a. Analysing the conflict
- b. Define key issues and concerns
- c. Compile an agenda list
- d. Facilitate and oversee communication
- e. Provide learning to parties on the negotiation process and skills
- f. Support parties in collecting relevant information
- g. Structure solutions to create various resolution options.

The position and function of the mediator can be based on Article 1 point 2 of the Supreme Court Regulation (PERMA) Number 1 of 2016 concerning mediation procedures in court. The article explains that a mediator is a judge or other individual who has obtained a certificate as a mediator, acting as a neutral party who assists parties in the negotiation process to explore various options for resolving disputes without the use of forced decisions or settlement pressure. By referring to the definition of a mediator as explained, it can be understood that a mediator is an individual who must maintain a "neutral" attitude and has the task of helping the two parties involved in the dispute. The dispute referred to here is a case that has been filed with the court in the form of a lawsuit (except for small claims cases). The mediator is responsible

for guiding both parties in finding solutions to reach peace and is expected to play an active role in encouraging the parties to continue trying to reach an amicable agreement.

**b. The Urgency of the Mediator Professional Code of Ethics in Violation of the Code of Ethics**

Essentially, every professional body is required to have a Code of Ethics as a guideline for all its members in carrying out their duties and profession. In this Code of Ethics, the obligations and legal protection rights for each member are regulated in detail, covering important aspects in the implementation of their duties and roles in society. (Mediator Masyarakat Indonesia, 2022) The mediator profession involves resolving various conflicts within the community, and in carrying out their duties, mediators must comply with applicable legal regulations and the Code of Ethics. Every mediator is required to remain neutral, impartial, and have freedom based on the principles of Honesty, Honour, Independence, Confidentiality, and Openness. Therefore, in carrying out the profession, mediators need to understand the rules governing interactions with fellow mediators and also the public who are users of their services. (Lukman, 2016)

Based on the Decree of the Supreme Court of the Republic of Indonesia Number 117/KMA/SK/VI/2018 concerning Procedures for Granting and Renewing Accreditation of Mediator Certification Organizing Institutions for Non-Judge Mediators, it is stated that a mediator is a judge or other individual who has obtained a Mediator Certificate and functions as a neutral party who assists the parties in the negotiation process to find various possibilities for resolving disputes without using decisions or forced settlements. Regulations governing aspects related to the mediator profession in the courts are contained in Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures (Chapter III) in the Courts.

Therefore, every Mediator has an obligation to maintain ethics, credibility, dignity, and honour in carrying out his/her duties. Mediator members are expected to be loyal and uphold the Mediator Code of Ethics, whose supervision is carried out by the Honorary Council as the enforcer of violations of the Code of Ethics committed by MMI Mediators. This aims to provide effective control, so as to provide benefits for both members and society at large.

The code of conduct for a mediator has been regulated through ethical provisions that apply in the professional organization Mediator Masyarakat Indonesia (MMI). The code of ethics acts as a guideline for mediators in carrying out their duties with integrity, professionalism and fairness. In this context, the ethical norms for a Mediator are explained through PERMA number 1 of 2016 and the Decree of the Chief Justice of the Supreme Court which further provides details regarding the mediator's code of ethics. If there is a violation of the code of ethics, a Mediator may be subject to severe sanctions such as dishonourable dismissal, as sanctions imposed on other legal professions. the urgency of the Mediator's professional code of ethics becomes clear in the following points:

- a) **Maintaining Professional Integrity** The code of ethics aims to maintain the integrity of the mediator profession. If violations occur, this can damage the reputation of the profession and public trust in mediators. The importance of the code of ethics is to identify violations, take appropriate action, and ensure that mediators are held accountable for their behaviour.

- b) **Protecting the Parties Involved** The mediator's code of conduct plays an important role in protecting the interests and safety of the parties involved in the mediation. Violations of the code of conduct can harm one or both parties, cause injustice, or undermine the mediation process as a whole. In such cases, the urgency of the code of conduct is to resolve the breach promptly and ensure that the mediation process can proceed fairly and safely for all parties.
- c) **Maintain Standards of Professionalism**, The mediator's code of conduct sets high standards for mediation practice, including principles such as neutrality, fairness, confidentiality, and competence. Violations of the code of ethics can undermine the established standards of professionalism and reduce the effectiveness of mediation. The urgency of the code of ethics is therefore to ensure that mediators carry out their duties in a professional manner and in accordance with established standards.
- d) **Providing Assurance to the Parties Involved**, the mediator's code of conduct provides assurance to the parties involved that they will be treated fairly and honourably during the mediation process. When violations occur, the urgency of the code of conduct is to guarantee that complaints or issues arising from such violations are dealt with seriously and fairly. This helps to maintain the confidence of the parties involved in the mediation process.

Violations of the Code of Ethics committed by the mediator profession will have an impact on: (Mediator Masyarakat Indonesia, 2022)

- a) **Loss of Trust of Disputing Parties**, If a mediator is found to have violated the Code of Ethics, the trust of the disputing parties may be shattered. They may feel that the mediation process was unfair, and this may result in rejection of the resulting solution.
- b) **Harm to the Reputation of the Mediator Profession**, Violation of the Code of Ethics by a mediator can harm the reputation of the entire profession. The public and disputants may see the case as a poor reflection on mediation as a whole, casting doubt on the integrity and professionalism of the mediator.
- c) **Legal Impact**, Violations of the Code of Ethics can have legal consequences. An aggrieved party may file a lawsuit against a mediator who is deemed to have violated ethics. This may result in sanctions, fines, or even revocation of the mediator's license.
- d) **Complicating Dispute Resolution**, Violations of the Code of Ethics can complicate the dispute resolution process. When mediators do not adhere to the principles of neutrality, objectivity or confidentiality, parties may feel uncomfortable and reluctant to actively participate in mediation.

The dual role of a judge who also functions as a mediator in a trial can be explained by stating that, basically, the code of ethics for judges and the code of ethics for mediators have significant similarities. Both have a responsibility to maintain independence and be able to find a middle solution as a trustee in resolving disputes. However, the main difference between the two is that a judge can only operate and interact in a court environment, whereas a mediator can act in a variety of places and situations, provided they have the ability to understand and mediate peacefully between disputing parties. In addition, mediators can come from a non-judge background, showing flexibility in their appointment.

The Mediator Code of Ethics serves as the legal foundation governing the practice of the Mediator profession. This Code of Ethics guarantees and provides



protection, while still upholding the obligation for mediators to be fair, honest and responsible in carrying out their profession. This applies both to parties using mediator services, fellow mediators, court institutions, the state or society in general, and to each Mediator. In mediation, professionalism and integrity become the main foundation to ensure that the dispute resolution process runs fairly and effectively. The Mediator Professional Code of Ethics is an important guide that governs the behaviour and responsibilities of mediators in ensuring the trustworthiness and success of mediation. Violations of the Code can have a serious impact on the mediation process and outcome, and can damage the reputation of the mediator profession as a whole.

### CONCLUSION

In the context of case settlement, the position of the mediator has an important role as a neutral party who is tasked with facilitating dialog between the parties to the dispute. The position of a mediator is very different from that of a judge or arbitrator, as they do not have the authority to make decisions or impose solutions. Instead, the mediator functions as a facilitator to help the parties reach an agreement voluntarily. In essence, the mediator is a peace catalyst who helps to resolve tensions, find joint solutions, and steer the parties towards a mutually beneficial settlement without involving formal litigation.

The Code of Ethics for Professional Mediators has great urgency in maintaining the integrity, professionalism and public trust in mediation. Violations of the Code of Ethics can undermine the mediation process, cause psychological and legal harm to the disputants, and jeopardize the reputation of the mediator profession as a whole. It is therefore important for mediators to internalize and adhere to the Code of Ethics as the primary guide in carrying out their duties. Self-discipline, a deep understanding of ethics, and a commitment to meeting the highest standards in the profession are key to ensuring successful mediation and building strong trust in dispute resolution.

### Reference

- Fuad, H. Z. (2019). Mediation as Dispute Resolution in Traditional and Modern Societies. *February 12, 2023, 1*. Retrieved from <https://badilag.mahkamahagung.go.id/artikel/publikasi/artikel/mediasi-sebagai-penyelesaian-sengketa-pada-masyarakat-tradisional-dan-moderen-oleh-helmy-ziaul-fuad-s-h-i-s-h>
- Goodpaster, G. (1999). *Guide to Negotiation and Mediation*. ELIPS Project, Ministry of Justice.
- Hadi, S. (1986). *Research Methodology: For writing papers, theses, thesis and dissertations*. Publishing Foundation of the Faculty of Psychology UGM.
- Lukman. (2016). Code of Ethics for Mediators. *June 17*. Retrieved from <https://www.pmn.or.id/wp-content/uploads/2020/06/Lamp5-SK108-Pedoman-Perilaku-Mediator-17-Juni-2016>.
- Mahmud Marzuki, P. (2013). Legal Research Revised Edition. *Jakarta: Kencana Prenada Media Group*, 60.
- Mawu, V. S. (2019). The Position of Mediator in Civil Case Dispute Resolution at Manado District Court. *Angewandte Chemie International Edition*, 6(11), 951-952., VII(3), 95-102.
- Indonesian Community Mediator. (2022). *INDONESIAN MEDIATOR CODE OF ETHICS INDONESIAN COMMUNITY MEDIATORS (MMI)*. 7823-7830.

- Nugroho, S. A., & SH, M. H. (2019). *The Benefits of Mediation as an Alternative Dispute Resolution*. Prenada Media.
- Priskila Ginting, Y., Arundati, A., Caesar Budianto, A., Natacha Londe, E., Alessandra Jursito, T., & Gracielle Tang, V. (2023). Mediator Competence in Resolving Disputes Before Carrying Out the Trial Process. *West Science Journal of Service*, 02(07), 541-557.