

Managing Legal Disputes through Alternative Disputes Resolution

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Abstract

Dispute management is an attempt to resolve a dispute or conflict through alternative dispute settlement strategies in a legal context. Alternative dispute resolution methods, such as negotiation, mediation, and arbitration have been widely used in dispute settlement in a variety of situations. The method of research carried out in this research is to discuss the related literature according to the title of the research. The results of this study conclude that alternative dispute settlement strategies can be an effective alternative to litigation in settling disputes. These alternative dispute methods provide advantages such as faster processes, and lower costs, and allow the parties involved to be more active in finding mutually beneficial solutions. In addition, alternative dispute settlement strategies can also help maintain relationships between the parties involved in the dispute. In mediation and negotiation, open communication and cooperation are promoted, which can avoid greater conflict and enable the building of better relations in the future. However, it is important to remember that alternative dispute settlement strategies are not always suitable for every situation. In some cases, litigation can still be the best option, especially when a dispute involves a complex issue or if one of the parties refuses to participate in an alternative settlement effort. Overall, dispute management and alternative dispute settlement strategies are important efforts in minimizing conflict and achieving a fair and beneficial settlement for all parties involved. Understanding the advantages, disadvantages, and appropriate context for using alternative dispute settlement strategies is key in navigating the dispute settlement process well.

Keywords: *Dispute Management, Settlement Strategies, Alternatives Disputes Settlement, Law.*

Introduction

The process of settling disputes through the courts is often time-consuming, and expensive, and can burden an already tight judicial system. Disputes are caused by differences in views or perspectives, needs or interests, and values or principles. The factors that influence them are due to differences in view or viewpoints, Differences in need or interest, and differences in value or principle (Collier, J. G., & Lowe, V., 2000) (Kartasasmita, A. & Widjaja, G., 2021). Disagreement can occur when each individual feels that their views are correct and refuses to accept the views of others. It can occur in a variety of situations in everyday life, including at work (Widjaja, 2000), in interpersonal relationships, or in a political context (Bossy, J. (Ed.). 2003; Folberg et al., 2021).

Differences in needs or interests can also lead to conflict. For example, in a business relationship, a dispute between two companies can occur when one or both parties feel that their interests are not satisfied or harmed by the actions of the other party. This type of dispute can involve financial, marketing, or copyright issues, which can create tension between the parties involved, even in the field of health services (Widjaja, G. & Ayuningtyas, D., 2015; Widjaja, G., 2020).

Differences in values or principles are often a source of controversy in broader contexts, such as politics or social issues. Disagreements can occur when individuals or groups have conflicting values, or different principles, on important issues, like human rights, the environment, or religion. This type of conflict can occur at the national level, such as in international conflicts, or at a smaller level such as between individuals or groups in societies (Chern, C. 2019).

Thus, disputes or disagreements can arise when there are differences in views, needs, or values. However, with the ability to use alternative settlement strategies such as negotiation or mediation, most disputes can be resolved peacefully without having to involve courts or resort to larger conflicts. (Paikah, N., & Asriady, M. 2023; Talib, I. 2013).

Such alternative settlement strategies could be an important option to overcome the obstacles that exist in the conventional justice system. In addition, dispute management is an important part of the legal field as

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it can help the parties to a dispute to a fair settlement and avoid prolonged conflict. In the legal context, alternative settlement strategies play a significant role in the management of disputes in a more effective, efficient, and fair manner (Margono, S., 2010; Firdaus et al., 2016; Widjaja, G., 2001).

Dispute management is a process carried out to manage conflicts or differences of opinion between two parties that can be resolved through legal means. Disputes can occur in various areas, such as business, family law, property, employment, and so on. In dispute management, the primary objective is to resolve disputes effectively, efficiently, and fairly for all parties involved. (Gerber, P. 2013; Fenn, P. 2006; Widjaja, G. & Aini, M.H., 2022).

As for alternative settlement strategies in a legal context, they can be the right choice because they are faster, cheaper, and more efficient than through the courts. Some commonly used alternative settlement strategies include negotiation, mediation, arbitration, and adjudication. (Silbey, S. S., & Merry, S. E. 2018; Hensler, D. R., & Rowe, T. D. 2001; Widjaja, G., 2000).

Negotiation is the process of reaching agreement between the parties involved in a dispute through dialogue and negotiation. Mediation is the process in which a neutral third party helps the parties to a dispute reach a fair settlement (Parmitasari, I. 2019; Widjaja, G., 2000). Arbitration is a process where the dispute is handed over to an independent third party to make a decision that is binding on the parties in dispute. (Harahap, M. Y. 2003; Nugroho, S. A., & SH, M. 2017). Adjudication is the process of submitting a dispute to the authority to settle the dispute. (Yuliana, W. T. 2020). However, each such settlement strategy has its advantages and disadvantages, so it has to be selected in accordance with the case and the needs of each dispute.

The use of dispute management and alternative settlement strategies can avoid the complexity and cost of settling disputes in court. The success of dispute management and alternative settlement strategies depends on the policy and commitment of the parties involved in the dispute to reach a fair and best-for-all settlement.

This research aims to describe what factors influence the success of alternative settlement strategies. How is the implementation of such a strategy in real practice in various areas of law? These questions require in-depth study and objective research to answer them.

This research is expected to provide insights for stakeholders, such as lawyers, mediators, and arbitrators, in improving the practice and implementation of alternative dispute resolution strategies as well as providing better alternatives in the resolution of disputes outside the court.

Research Method

The method of research carried out in this research is the study of literature. A literature research method is a way of conducting research using written reference sources. In this method, researchers gather information from various literary sources such as books, journals, papers, articles, and online resources such as websites and electronic databases (Earley, M. A. (2014; Williams, C. 2007).

The steps in literature research consist of:

Determining the subject of research. The first thing to do is to determine the topic of study. The topic of research must be specific and clear to facilitate the search for literary sources.

Gathering literary sources. After determining the research topic, the researchers must then gather literary resources from various sources. Literary sources can be taken from libraries, bookstores, or other accessible sources such as online databases and the Internet.

Read and explore literary sources. After collecting literary resources, the next step is to read and examine the sources. The researcher should select sources of literature that are relevant to the topic of research and pay attention to the accuracy of the information presented.

Analyze the data and compile the results of the research. After examining the literary sources, the researcher should carry out the data analysis and summarize the research results in written form. The research results should include the information found from the sources of literature and the analysis results of such data.

Present the results. After compiling the results, the last step is to present the results in the form of a research report or paper. The study reports should be well structured and packaged in a writing structure that meets the standards of scientific writing. (Gentles et al., 2016; Caruth, G. D. 2013).

Literature research methods are an effective way to obtain and analyze information relevant to research topics. In this method, researchers should pay attention to the rigor of choosing literary sources and the accuracy of the information presented.

Result and Discussion

Dispute Management Concept

The concept of dispute management is the approach used to manage and resolve any dispute that may arise between individuals, groups, organizations, or states. The primary objective of the management of disputes is to a fair and satisfactory settlement for all parties involved. (Saeputra, R. 2019).

A fair settlement is a settlement that respects justice for all parties involved. For such a settlement to be considered fair, some aspects must be considered, among others;

Listening to all the parties involved. It is important to listen to all parties involved in a conflict or problem so that all perspectives can be well considered.

Analyze facts and evidence. A fair settlement should be based on clear facts or evidence, not just on subjective opinions or assumptions.

Consider applicable laws and rules. If possible, a fair settlement must reach a common agreement between all the parties involved.

Transparency and accountability: A fair settlement must be transparent and ensure the accountableness of all parties involved. All decisions and actions must be accountable. (Cohen, G. M. 2000; Vanhaute, L. 2014).

The concept of dispute management is:

Dispute prevention: This concept emphasizes the importance of preventive measures aimed at avoiding the occurrence of a dispute. Dispute prevention includes effective communication, good negotiation, and building a mutually beneficial relationship between the parties that are potentially involved in a conflict.

Identification and evaluation of disputes: The concept involves the early identification of emerging disputes and the collection of relevant information to understand and evaluate such disputes.

Negotiation: The negotiation is a process in which the parties involved in a dispute seek to reach an agreement through discussion and negotiations. This concept includes the ability to listen, communicate effectively, and find mutually beneficial solutions. The negotiations aim to reach a satisfactory agreement for all parties involved without involving third parties. 4) Mediation: Mediation involves using a neutral third party called a mediator to help facilitate the negotiation process between the parties involved in a dispute. Mediators act as facilitators and help create a safe and trusted environment for all parties to communicate and reach a mutually beneficial settlement.

Arbitration: The arbitration is an alternative method of dispute settlement in which the parties to a dispute submit the settlement of the dispute to a neutral third party called an arbitrator or an arbitral panel. The arbitrator then makes a decision that is binding on both parties. Arbitration is often used in business disputes or international trade (Fenn, P. 2006; Gerber, P. 2013; Widjaja, G., 2021).

The concept of dispute management involves measures of prevention, identification, evaluation, negotiation, mediation, and arbitration to manage and resolve disputes. This approach aims to minimize the negative impact of disputes, reach a settlement that satisfies all parties involved, and promote a harmonious and lasting relationship.

Alternative Settlement Strategy

Alternative Dispute Resolution (ADR) is an out-of-court approach to conflict resolution that can speed up the process, be more cost-effective, and a win-win outcome for all parties involved. Out-of-court conflicts refer to disputes resolved without going through formal court proceedings (Menkel-Meadow, C. 2015).

The commonly used alternative settlement strategy is the process that involves third parties consisting of; First, Mediation. Involving a neutral third party (mediator) helps facilitate the negotiation process between the parties in dispute to reach a common agreement. Mediators do not have the power to produce a decision but help the parties to find a solution that is acceptable to all. Second, is arbitration. Third parties called arbitrators are selected by the parties to a dispute to make binding decisions related to their dispute. Arbitration is often faster than conventional court proceedings and allows parties to choose an arbitrator who has expertise according to the dispute being faced. Negotiation itself comes later, although this is the simplest approach in ADR, involving parties in a dispute to directly find a way out without involving a third party. The parties are trying to reach an agreement that is acceptable to all parties by discussing and negotiating. Fourth is Interrogation: In interrogation, a third party acts as an advisor or expert who provides advice or solution to a problem faced by the parties to a dispute. The mediator helps the parties to find a solution that is acceptable to all without interference to make decisions. Fifth is Online Arbitration: In the digital age, online arbitration is becoming increasingly popular. The parties can use a dedicated online platform to conduct arbitration proceedings without having to meet physically. It can speed up the dispute settlement process, especially in cases of an international nature. (Lee, C. K., Yiu, T. W., & Cheung, S. O. 2016; Gill, et al., 2014; Nwazi, J. 2017).

These alternative settlement strategies provide more flexibility and freedom for disputing parties to resolve their disputes according to their own needs and interests. The use of out-of-court dispute settlement methods has many advantages, some of which are flexibility, speed, efficiency, and confidentiality. (Wicaksana et al., 2021).

Flexibility is one of the main advantages of out-of-court dispute resolution. Here are some aspects of flexibility in off-courts dispute settlement:

Settlement processes: Alternative settlement methods, such as negotiation and mediation, allow the parties involved to have greater control over the dispute solution process. They can choose the schedule of the meeting, the scope of the topics discussed, and the approach used. In conventional courts, strict procedures and rules must be followed.

Decision: In the out-of-court settlement of a dispute, the decision is not made by a judge or arbitrator appointed by the State, but by the parties to the dispute themselves or by a mediator/arbitrator chosen jointly. It gives parties the ability to reach a flexible and creative solution that suits them, unlike courts that have to follow standard legal rules.

Financing: There is flexibility in terms of costs and cost-sharing in out-of-court settlement of disputes. The parties involved can reach an agreement on fair costs and share financial responsibility according to their agreement. In courts, costs are often higher and governed by established rules.

Scope: Dispute resolution outside the court can deal with a broader issue than just legal questions. The parties have the flexibility to include non-legal aspects, such as understanding, communication, relationships, or business interests in the settlement process. This makes it possible to a more holistic and sustainable solution. (Sutrisno, N. 2009; Syaputri, M. D., & Ivanda, A. C. 2023; Siregar, A. R. M., & Nasution, A. R. 2023).

This flexibility gives the parties involved room to adapt the settlement process to their needs and objectives, which in turn can speed up settlement, save costs, and create a more satisfactory solution for all parties.

Meanwhile, speed in dispute settlement is one of the advantages of out-of-court dispute resolution. Here are some aspects of speed in off-courts dispute resolution:

Time of settlement: Alternative methods of resolution, such as mediation, negotiation, and arbitration, often allow for a faster settlement of disputes than conventional courts. The parties involved can schedule meetings flexibly and do not have to wait for scheduled hearings.

Shorter processes: The out-of-court dispute settlement process is usually simpler and more direct than a court process that requires a long series of trials and formal procedures. This makes the settlement of disputes faster. (Afriana, A. 2015; Sejati, D. R. R. 2024).

Thus, speeds in out-of-court dispute resolution can help parties resolve disputes more efficiently, save time, and reduce costs. This can provide faster solutions for the parties involved and enable them to continue their activities without being interrupted by the ongoing dispute settlement process.

Meanwhile, efficiency is one of the main advantages of out-of-court dispute settlement. Here are some aspects of efficiency in out-of-court dispute resolution:

Time: Alternative settlement methods, such as mediation and arbitration, can offer a faster settlement than conventional court proceedings. The parties involved can schedule meetings and procedures more flexibly, thereby speeding up dispute settlement.

Costs: Out-of-court settlement of disputes can often be more economical than court proceedings. This can be due to lower costs for mediation or arbitration compared to litigation costs, as well as cost savings arising from faster settlement times.

Resources: Dispute resolution outside the court can save the resources of the organization or individuals involved in the dispute. With more efficient processes and a focus on problem-solving, parties can allocate their time and energy to other more productive activities.

Creativity: In the out-of-court settlement of disputes, the parties have the freedom to create unique and creative solutions according to their needs. This can result in an efficient and satisfactory solution for all parties involved, without having to be restricted by rigid court procedures (Sari, I., 2019; Tektona, R. I., 2011; Widjaja, G. 2000).

Thus, efficiency in the out-of-court settlement of disputes can help the parties involved to reach a faster, cost-effective, and more efficient solution. It benefits all parties involved in a dispute, as well as promotes a sustainable and harmonious settlement during a conflict.

Confidentiality is one of the advantages of out-of-court dispute settlement. Here are some aspects of confidentiality in out-of-court dispute settlement:

Privacy: Out-of-court settlement procedures, especially mediation, can offer flexibility in the privacy of the parties involved. In mediation, meetings and discussions are usually held in private and not open to the public, so sensitive information will not be visible to uninterested people.

Information control: In out-of-court dispute settlement, the parties involved have greater control over the information they provide. They can decide what they want to disclose to others, thus keeping information as confidential as possible.

Confidentiality: Many alternative settlement methods, such as mediation and arbitration, implement a confidentiality agreement that protects all parties involved. Under this confidentiality agreement, information disclosed during the settlement process may not be used outside the dispute settlement.

Business protection: Out-of-court dispute resolution through arbitration or mediation can help keep business strategy, financial information, or plans confidential from business competition. It becomes essential for those who want to protect competitive advantage and keep confidentiality in the resolution of disputes involving other parties. (Sembiring, J. J., & Sh, M. 2011; Sari, I. 2019; Widjaja, G., 2000).

Thus, confidentiality in out-of-court dispute resolution provides protection against sensitive information and helps prevent the unwanted spread of information. This is an important advantage for many parties who want to maintain their confidentiality and privacy during the dispute settlement process.

Related Legal Concepts

Law is a rule or system that governs human actions and behavior in a society. Law serves as a tool for order, justice, and security in a country. Law covers a wide range of fields such as criminal law, civil law, administrative law, business law, and so on (Law, J. (Ed.). 2015; Law, W. K. 2008).

The law has several functions, among others:

Enforcing order and justice: The law serves to maintain order in society so that there are no actions that harm and undermine social stability. The law also aims to create justice in the treatment and protection of every individual.

Regulate the relationship between the individual and the state: The law provides the basis for the relationship of the individual with the state. The law encompasses the rights and obligations of every citizen and establishes the limits of the power and action of the state against the individual.

Dispute settlement: The law provides a mechanism for the settlement of disputes between individuals or groups in dispute. This can be done through court proceedings or alternative mechanisms such as mediation or arbitration.

Regulating business and economic activities: The law also regulates various aspects of economic and business activities. Business law sets out rules to be followed in terms of contracts, ownership, transactions, consumer protection, and so on.

Encourage compliance and accountability: The law has the role of imposing sanctions for breaches of rules. It aims to encourage adherence and responsibility to the law, as well as to give effect to perpetrators of acts against the law. (Lauterpacht, H. 2011; Luhmann, N. 2004).

Therefore, it is important to understand and comply with the laws in force in a country or territory, as any violation of the law can have a serious impact on individuals and societies.

In law, various related concepts are important to understand, among others:

Rule of Law: rule of law or principle of the supremacy of law refers to the existence of the law equal and fair for all people without exception, including governments and public officials. This principle opposes arbitrary action or violation of the law by anyone (Bingham, T. 2011).

Legal certainty: Legal certainty or legal certainties stipulate that the law must be clear, consistent, and predictable. It is important in creating stability and security in the legal system (Braithwaite, J. 2002).

Equality before the law: The principle of equality before the law states that all individuals must be treated fairly and equally by the legal system. No discriminatory treatment based on race, religion, gender, or other factors (Acemoglu, D., & Wolitzky, A. 2021). This principle protects the right of individuals to express their opinions, express their views, and share information, as long as it does not violate the law or harm others (Milton, J. 2009). This means that the burden of proof lies with the accuser and not the accused. (Tadros, V. 2007).

Due process of law: The due process of the law refers to the legal procedure to be followed in order to ensure justice. This process involves notification, opportunity for defense, and fair trial (Williams, R. C. 2010).

Legal rights: The concept of legal rights or legal rights states that every individual has rights guaranteed and protected by law. This includes the right to life, freedom, privacy, and other rights. (Barzel, Y. 2002).

Separation of Powers: The principle of separation of powers refers to the division of power between the branches of government, i.e. legislative, executive, and judicial power. This principle aims to prevent abuse of power. (Waldron, J. 2013).

Relationship between Dispute Management and Legal Conflict

Dispute management is the process of managing and resolving conflicts or disputes peacefully and effectively. Dispute management can be done through various methods such as negotiation, mediation, or arbitration. A legal conflict is a situation where there is a disagreement or a conflict of interest involving a legal aspect (Fadillah, F. A., & Putri, S. A. 2021; Widjaja, G., 2000). Legal conflicts can arise in a variety of situations, such as:

Differences in interpretation or interpretation of the law: A legal conflict may arise if there are differences in opinions or interpretations about a particular law or regulation.

Violation of the law: When a party commits an act contrary to the applicable law, a conflict of law may arise. Violations of the law such as theft, fraud, or concealment can trigger a legal conflict between the perpetrator and the victim.

Conflicting interests: A conflict of law can also arise when there is a conflicting interest between two or more parties involving legal aspects. For example, a dispute between landowner and property developer concerning ownership or use of land.

Violation of civil or civil rights: a conflict of law may occur if there is a violation of human rights or individual civil rights, for example, racial discrimination or sexual harassment that violates individual rights. (Irsyad, M. 2021; Afifah, W. 2014).

Legal conflicts can end in further legal processes, such as courts or arbitration, in order to a fair and legal settlement. Legal conflicts can also be resolved through alternative mechanisms such as mediation or negotiation, which can help the parties involved find a faster and more effective solution without having to go through a lengthy litigation process. (Sholahudin, U. 2017).

Meanwhile, the relationship between dispute management and legal conflict can be explained as follows:

Preventing lengthy and expensive legal processes: Dispute management aims at resolving conflicts peacefully and avoiding lengthened and costly judicial processes. By using dispute management methods such as negotiation or mediation, parties involved in a conflict can seek alternative solutions without having to involve a court.

Avoid legal conflicts that trigger litigation: When a legal conflict occurs, there is a potential for litigations or legal processes involving a tribunal. In this case, dispute management can be used as an initial step in trying to resolve the conflict peacefully before reaching the litigation stage. Thus, dispute management can help avoid conflict escalation to the level of justice.

Seeking a more profitable solution for all parties: One of the objectives of dispute management is to a solution that is profitable for all the parties involved in the conflict. In this case, dispute Management aims to create a win-win solution or solution that meets the interests and satisfaction of all parties involved.

Accelerate conflict settlement: Through dispute management, conflict resolution can be done faster than formal legal processes. Dispute management methods such as negotiation or mediation can provide room for direct communication, mutual understanding, and collaboration in finding solutions, thus saving time in conflict resolution. (Warjiyati, S. 2018; Indra Afrita, S. H. 2021).

In practice, dispute management is often used as an alternative to avoiding or mitigating possible legal conflicts. Dispute management enables the parties involved to seek a more efficient, fair, and sustainable solution to conflict resolution while respecting applicable legal aspects.

Conclusion

Alternative methods of dispute resolution, such as mediation, arbitration, and negotiation, can provide solutions that are more efficient, fast, and flexible than litigation. (penyelesaian melalui pengadilan). This method allows the parties to reach a mutually beneficial agreement without having to go through a lengthy and expensive court process. In addition, alternative settlement strategies can also help to maintain relations between the parties involved in a dispute. Through mediation and negotiation, the parties can communicate openly and work together to find a solution that satisfies all parties. It helps to avoid further conflict and maintain good relations in the future. However, the use of alternative settlement strategies is not always suitable for every type of dispute. There are cases where litigation is still necessary, especially if the case involves a complex problem or if one of the parties refuses to attempt an alternative settlement.

Overall, dispute management and alternative settlement strategies can be good choices for settling disputes in a legal context. The success and suitability of alternative settlement strategies depend on the type of dispute and the preferences of the parties involved.

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