

Agree to Disagree: Understanding the Failure of Mediation Facilitated by Paralegals

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Abstract

Mediation is widely recognized as an alternative dispute resolution mechanism that emphasizes consensus and mutually beneficial outcomes. However, mediation does not always result in a settlement agreement. This article examines the factors contributing to mediation failure, particularly in cases facilitated by paralegals. Using socio-legal research combined with qualitative analysis of mediation practices at the International Mediation and Arbitration Center (IMAC), the Indonesian National Arbitration Institute (BANI), the Gunungkidul Regency Government in Yogyakarta, and National Legal Reform Agency (BPHN), this study analyzes the role of paralegals, the dynamics of the disputing parties, and the procedural challenges that lead to deadlock during mediation. The research findings indicate that several factors, including a lack of good faith on the part of the parties, unrealistic expectations, communication barriers, power imbalances, and limited mediator competence, influence mediation failure. This study argues that mediation should not be considered a failure when no agreement is reached, as the process can still provide clarity for the parties and guide them towards alternative legal pathways. This research contributes to the dispute resolution discourse by highlighting the practical challenges faced by paralegals in the mediation process.

Keywords

Mediation, Paralegal, Impasse, Failure, Settlement Agreement.

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Introduction

Every society aspires to achieve an orderly, harmonious, and peaceful social environment. The coveted environment is not only an ideal for the community but something that needs real action to be realized. An orderly and peaceful environment is not just formed (not given at all). Individuals in society must be united and determined to carry out actions that lead to an orderly, peaceful society. An environment that every community aspires to.

Instead of creating order and peace in society, another side is evident: the existence of bad relationships between individuals. This more appropriately leads to disharmony in relationships in society. Disharmony in relationships within society creates tension that can lead to disputes. These disputes need to be resolved not only to create an orderly and peaceful environment but also to foster living together in society. Business will be hampered when there is a dispute, life will become uncomfortable, and far from peaceful. It will even go further to realize orderly and peaceful community conditions.

Legal relationships do not always run smoothly, and disputes can arise when some parties are unable to fulfill their obligations to other parties, leaving the other party feeling their rights are being harmed.¹ To maintain good relations and the continuity of the implementation of rights and obligations between the parties, any disputes that arise must be resolved immediately, without waiting for them to become bigger.² Any dispute, whether personal, business, or social, if not resolved, can escalate and disrupt the stability of relations between the parties, potentially causing broader social tensions.³ Disputes that drag on result in worse outcomes, such as lost profits, reduced company goodwill, and disruption to the parties' focus and energy.

¹ Sudikno Mertokusumo, *Hukum Acara Perdata Indonesia* (Yogyakarta: Liberty, 2001).

² Wawan Darma Septiawan Dewi Sulistianingsih, Yuli Prasetyo Adhi, *Pelembagaan Penyelesaian Sengketa Hukum Keperdataan Dalam Masyarakat* (Semarang: Fastindo, 2022).

³ Sapta Eka Yanto and Zainal Arifin Hosein, "Comparison of Dispute Resolution Through Mediation in Indonesia and Japan" 3, no. 1 (2025), <https://doi.org/10.59246/aladalah.v3i1.1103>.

The more complex and varied the disputes in society, the more it aligns with increasing human development. In the end, this requires alternative dispute resolution that does not always refer to decisions by the Court, so as not to pile up cases on the green table, and to improve the effectiveness of dispute resolution. Therefore, through an out-of-court process, the community expects dispute resolution in the form of a “*Win-win solution*”.⁴ Settlement of disputes outside of court is called alternative dispute resolution (ADR). Disputes that can be resolved through Alternative Dispute Resolution are generally civil disputes.⁵

Out-of-court dispute resolution can be resolved in accordance with Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution. The settlement mechanism can be carried out through Arbitration, mediation, consultation, negotiation, and expert determination. The dispute resolution route is now widely chosen by parties in dispute through alternative dispute resolution (ADR), namely mediation. Through mediation, a win-win solution can be realized for the parties to the dispute. However, the choice of ADR is always based on the good faith and voluntariness of the parties to the dispute. The agreement is very important because, in resolving disputes, good faith and voluntariness on the part of the parties will continue to be required.⁶

Some assumptions that an out-of-court mediation can resolve a dispute more effectively and efficiently. In addition, there is a sense of dissatisfaction with the dispute resolution process through the courts because it usually takes a relatively long time and is not without expense⁷. There are other reasons that the results of decisions in the trial are often

⁴ Susanti Adi Nugroho, *Manfaat Mediasi Sebagai Alternatif Penyelesaian Sengketa* (Jakarta: Kencana, 2019).

⁵ Dewi Sulistianingsih & Yuli Prasetyo Adhi, “Menjelajahi Penyelesaian Sengketa Melalui Mediasi Pada Masyarakat Pedesaan,” in *Hukum Dan Politik Dalam Berbagai Perspektif Jilid 1* (Semarang: Universitas Negeri Semarang, 2023), 1–23, <https://doi.org/10.15294/hp.v1i1.103>.

⁶ Sri Hartanto, Indah Sri Utari, and Ridwan Arifin, “Implementation Of Penal Mediation In The Perspective Of Progressive Law (Study At The Semarang City Police Department),” *Indonesian Journal of Criminal Law Studies* 4, no. 2 (2019): p.163, <https://doi.org/10.15294/ijcls.v4i2.21494>.

⁷ Sri Mamudji, “Mediasi Sebagai Alternatif Penyelesaian Sengketa Di Luar Pengadilan,” *Jurnal Hukum & Pembangunan* 34, no. 3 (2017): 194, <https://doi.org/10.21143/jhp.vol34.no3.1440>.

not satisfied with the results, this is because often the results of the decisions received through the court in resolving a dispute there are parties who feel as the losing party who then depart from this not a few parties in dispute will bring this case to a higher court level (appeal) which will then also have implications for the more The length of the dispute resolution process.⁸ In the process of resolving disputes in court, there is no win-win solution; only a win-lose one.

In this mediation, the parties in dispute appoint a neutral mediator to help them resolve the dispute. The main purpose of this mediation is to reach a compromise in resolving a dispute. The mediator will facilitate and assist the parties in explaining or clarifying their interests, preparing guidelines, and helping them resolve their differences to reach a suitable agreement acceptable to both parties. Then a memorandum is prepared containing the agreements reached between the parties to the dispute.

If mediation results in a peace agreement, the parties, with the help of a mediator, are obliged to formulate, in writing, the agreement reached and to sign it, along with the mediator.⁹ If mediation fails, it means that no peace agreement has been reached, or that the parties to the dispute have agreed they cannot find a point of agreement on the expectations of both parties.

The success or failure of mediation depends heavily on a combination of human, process, and technical factors. Broadly speaking, this is determined by the parties' willingness, the mediator's competence, and the communication established. However, the most prominent factor is the mediators. The common public view is that success and failure generally rest on the mediator's shoulders.

The success of mediation largely depends on the mediator's nature.¹⁰ The mediator's ability to build communication, explore the parties'

⁸ Mardalena Hanifah, "Kajian Yuridis: Mediasi Sebagai Alternatif Penyelesaian Sengketa Perdata Di Pengadilan," *Jurnal Hukum Acara Perdata ADHAPER* 2 (2016).

⁹ Betsy Anggreini Kapugu Austin Epafra Rondo, Deasy Soeikromo, "Alternatif Penyelesaian Sengketa Perbankan Terhadap Perlindungan Nasabah Melalui Mediasi," *Lex Privatum* 15, no. 2 (2025).

¹⁰ Iryna Kordunian Mykola Lohvinenko, Mykola Starynskyi, Lyudmila Rudenko, "Models of Mediation: Theoretical and Legal Analysis," *Conflict Resolution Quarterly* 39, no. 1 (2021): 51–65, <https://doi.org/10.1002%2FCrq.21315>.

interests, and foster constructive dialogue is crucial. Mediation can fail if the mediator fails to facilitate communication or is unable to formulate an agreement.

Paralegals are one type of mediator working in rural areas in Indonesia. Interestingly, these paralegals play an active role in assisting the community, especially those who need help accessing justice.¹¹

Regulations regarding paralegals in Indonesia, specifically the Minister of Law and Human Rights Regulation No. 3 of 2021, define paralegals as legal assistants from legal aid communities or organizations who do not practice as advocates but play an important role in expanding access to justice.

The regulation emphasizes a clear distinction between paralegals and advocates. Paralegals are not part of law enforcement but rather legal advisors. Paralegals have the authority to resolve legal disputes through non-litigation means. Advocates can resolve disputes through the courts (litigation). Under the latest regulation (Minister of Law and Human Rights Regulation No. 3/2021), paralegals cannot serve as legal counsel in court (litigation), but instead focus on non-litigation legal assistance.

This paper focuses on mediation failures conducted by mediators (in this case, paralegals). Focusing on mediation failures, rather than solely on successes, is often more important in legal and practical studies because it provides deeper learning, crucial evaluation material, and an understanding of the real obstacles that hinder paralegals from developing themselves to become better and more professional in carrying out their duties.

Some previous studies that may serve as novelties in this paper include Haniva Salsabila's "Dispute Resolution Through Mediation in Civil Procedure Law". This paper describes the implementation of mediation, an effective alternative for resolving civil disputes, in line with the principle of restorative justice.¹² An article from Wiranto et al., entitled: "Factors Causing the Unsuccess of Mediator Judges in Mediating Divorce Cases". This paper analyzes the factors that lead to the

¹¹ Naufal Satria Nugraha et al., "Pendampingan Hukum Oleh Paralegal Sebagai Upaya Peningkatan Akses Keadilan," *Media Hukum Indonesia (MHI)* 2, no. 5 (2025): 352–60, <https://doi.org/10.5281/zenodo.15272815>.

¹² Haniva Salsabill, "Penyelesaian Sengketa Melalui Mediasi Dalam Perspektif Hukum Acara Perdata Indonesia," *Jurnal Hukum Dan Peradilan* 1, no. 1 (2025): 15–23.

mediator judge's unsuccessful mediation in resolving divorce cases.¹³ Written by Yuli Priskila Ginting et al., entitled: "Mediator Competence in Resolving Disputes Before Carrying Out the Trial Process". This paper describes mediation as one of the settlement options made before the trial process begins. Mediation is also considered a means of avoiding the trial process in the Court.¹⁴ Of the three papers for comparison, this paper focuses on the analysis of mediation that produces peace with no agreement between the parties. Although previous studies have examined the effectiveness of mediation and the competence of mediators, little research has specifically examined mediation failure in cases facilitated by paralegals. This study aims to fill this gap by examining the factors contributing to mediation impasses and the role of paralegals in managing unsuccessful mediation outcomes.

This study employs a socio-legal research method combined with qualitative analysis. Primary legal materials include Indonesian legislation related to mediation and legal aid, particularly Law No. 30 of 1999 and relevant Supreme Court Regulations. Secondary materials consist of academic literature, journal articles, and legal commentaries on mediation and dispute resolution. In addition, empirical insights were obtained from mediation practices at the International Mediation and Arbitration Center (IMAC), National Legal Reform Agency (BPHN), and the Indonesian National Arbitration Board (BANI).¹⁵ We also include data from the Gunungkidul district government, Yogyakarta province, Indonesia. The Gunungkidul Regency Government has made efforts and strategies to develop paralegals in its region. Data were analyzed using a qualitative descriptive approach to identify patterns and factors contributing to the failure of mediation.

¹³ Yusnanik Bakhtiar Wiranto, Henni Muchtar, Isnarmi, "Faktor Penyebab Ketidakberhasilan Hakim Mediator Dalam Melakukan Mediasi Perkara Perceraian," *Jurnal Ideologi Dan Konstitusi* 3, no. 2 (2023): 80–86.

¹⁴ Yuni Priskila Ginting et al., "Kompetensi Mediator Dalam Menyelesaikan Sengketa Sebelum Melaksanakan Proses Persidangan," *Jurnal Pengabdian West Science* 2, no. 7 (2023): 541–57, <https://doi.org/10.58812/jpws.v2i07.466>.

¹⁵ Ali Masyhar et al., "Legal Challenges of Combating International Cyberterrorism: The NCB Interpol Indonesia and Global Cooperation," *Legality: Jurnal Ilmiah Hukum* 31, no. 2 (2023), <https://doi.org/10.22219/ljih.v31i2.29668>.

This research focuses on a portrait of failures in mediation conducted by paralegals in rural communities and efforts to improve the quality of paralegal candidates. This research aims to understand the role of paralegals in resolving legal disputes in rural communities and to explore the barriers and challenges faced by communities and local governments in establishing a paralegal presence. This research will utilize field observation techniques and interviews to collect data. The following data collection methods will be used. The research will be conducted in Gunungkidul Regency, chosen for its rural character and a society that upholds local values. Gunungkidul Regency is also an interesting area to study due to its large and diverse social structure. The regency consists of 18 sub-districts and 144 villages, which will serve as the research sample.

After data collection, the following steps will be taken: (1) Data Preparation: All collected data will be gathered to ensure completeness and accuracy. Only relevant data will be selected and organized; (2) Data Classification: Data will be grouped and classified according to predefined categories based on the research themes; (3) Qualitative Data Analysis: Once data is classified, it will be analyzed qualitatively. The analysis will focus on identifying patterns, themes, and relationships between the data points. The goal is to gain a deeper understanding of the issues being discussed in the research.

Result & Discussion

Paralegals are legal professionals who perform procedures independently or semi-autonomously as part of the legal aid system. They perform tasks that require an understanding of the law to be carried out properly.¹⁶ Law No. 16 of 2011 on Legal Aid is the legal basis for the existence of paralegals in Indonesia.¹⁷ A paralegal is any person from a

¹⁶ Yordan Gunawan and Mohammad Bima Aoron Hafiz, "Pendidikan Paralegal Bagi Masyarakat Sebagai Wujud Pemenuhan Hak Asasi Manusia Berkelanjutan," *Berdikari: Jurnal Inovasi Dan Penerapan Ipteks* 9, no. 1 (2021): 87–97, <https://doi.org/10.18196/berdikari.v9i1.10853>.

¹⁷ Cahya Wulandari, Sonny Sptoajie Wicaksono, and Umi Faridatul Khikmah, "Paralegal Existence in Providing Access to Justice for the Poor in Central Java," *Indonesian Journal of Criminal Law Studies* 4, no. 2 (2019): p.199, <https://doi.org/10.15294/ijcls.v4i2.36304>; Septhian Eka Adiyatma, "Civil Law in

community, society, or legal aid provider who has undergone paralegal training, is not a lawyer, and does not independently represent legal aid recipients in court.

To fulfill the right to legal aid for every poor person facing legal challenges, paralegals are essential to manage both non-litigation and litigation cases.¹⁸ To accommodate this, the Indonesian Ministry of Law and Human Rights promulgated Regulation No. 1 of 2018 on Paralegals in the Provision of Legal Aid (Permenkumham Paralegal) on January 17, 2018. The Regulation stipulates that paralegals regulated by this Ministerial Regulation are those who provide legal aid and are registered with a legal aid provider.¹⁹ However, under the provisions of Regulation No. 3 of 2021 on Paralegals in the Provision of Legal Aid, paralegals may perform their duties only in non-litigation matters, including through mediation.²⁰

Paralegals work in partnership with legal aid providers (legal aid organizations/LBH), which serve as bridges to improve access to justice, especially for the poor and vulnerable. Paralegals work under the legal umbrella of legal aid providers to provide basic legal services, but are not professional advocates and cannot act independently in court. Legal Aid Providers are legal aid institutions or community organizations that provide legal aid services in accordance with Law Number 16 of 2011 on Legal Aid.

The existence of paralegals in Indonesia can be seen in several factors, including: (1) structural factors; (2) mediator competence; (3) psychological factors; and (4) legal culture.

Indonesia and Russia: Easy and Affordable Access to Legal Aid,” *Journal of Law and Legal Reform* 4, no. 3 (2023): p.449, <https://doi.org/10.15294/jllr.v4i2.68099>.

¹⁸ Indah Sri Utari et al., “Legal Protection for Child Sexual Violence Victims: Victimology Perspectives, Challenges, and Policy Solutions in Asia,” *Jurnal Suara Hukum* 8, no. 1 (2026): 40–77, <https://journal.unesa.ac.id/index.php/suarahukum/article/view/48307>.

¹⁹ Eka N.A.M. Sihombing, “Jurnal Ilmiah Penegakan Hukum,” *Jurnal Ilmiah Penegakan Hukum* 6, no. 1 (2019).

²⁰ Anis Mashdurohaturun et al., “Legal Protection of Creditors with Rejected Claims under Debt Payment Suspension Framework,” *Journal of Human Rights, Culture and Legal System* 6, no. 1 (April 5, 2026): 182–221, <https://doi.org/10.53955/JHCLS.V6I1.916>.

Structurally, legal aid providers supervise and evaluate paralegals' performance in providing legal aid. Legal aid providers submit reports on the results of their supervision and evaluation of paralegals to the National Legal Development Agency.

To be recruited as a Paralegal, they must meet the following requirements: (1) be an Indonesian citizen; (2) be at least 18 (eighteen) years of age; (3) be able to read and write; (4) not be a member of the Indonesian National Armed Forces, the Indonesian National Police, or a State Civil Apparatus; (5) meet other requirements determined by the Legal Aid Provider and not in conflict with laws and regulations. Paralegals providing Legal Aid must possess competencies (qualifications) that include: (1) understanding basic law, regional conditions, and community interest groups; (2) the ability to strengthen communities in fighting for human rights and other rights protected by law; and (3) community advocacy skills in the form of defending and supporting the community.

Psychological factors are crucial for a paralegal because this work involves intensive interaction with clients who are often in stressful situations, trauma, or legal conflict. The ability to manage one's own psychological aspects and understand the client's psychological condition determines the effectiveness of legal assistance. Paralegals must possess strong mental and psychological strength. A paralegal must possess excellent communication skills, emotional intelligence, patience and resilience, strong ethical standards, self-confidence and authority, adaptability, and flexibility.²¹

A paralegal plays a role in reducing the burden on the courts, strengthening a culture of deliberation, and delivering more humane and sustainable justice. From this perspective, paralegals build a legal culture that maintains good relations between the parties and strengthens a culture of deliberation in society.

²¹ Indah Sri Utari et al., "The Digital Sanctuary: Forging Legal And Ethical Frameworks For Interfaith Coexistence Online," *Contemporary Issues on Interfaith Law and Society* 4, no. 2 (2025), <https://doi.org/10.15294/ciils.v4i2.35309>.

A. Mediation as a Solution to Dispute Resolution Outside the Court

Mediation is widely recognized as an effective alternative dispute resolution mechanism because it promotes cooperative negotiation and mutually beneficial outcomes.²² Although mediation is the preferred option for disputing parties, it has many advantages. It is a simple and fast process and offers a win-win solution. This is because the results are achieved through deliberation and mutual agreement, ensuring that neither party feels disadvantaged. Furthermore, mediation is a problem-solving negotiation process facilitated by a neutral third party, the mediator. The mediator assists the disputing parties in organizing meetings, leading negotiations, taking notes, creating agendas, proposing resolutions, and even helping to reach a satisfactory decision.²³ However, the mediator is not authorized to decide disputes as judges or arbitrators do.²⁴

As for mediation in Indonesia, it is based on Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution, in addition to other regulations that regulate mediation contained in several Supreme Court Regulations (PERMA), including: (1) PERMA No. 2 of 2003 on Mediation; (2) PERMA No. 1 of 2008 on Mediation Procedures in Court; (3) PERMA No. 1 of 2016 on Mediation Procedures in Court; (4) PERMA No. 3 of 2022 on Electronic Mediation in Court.

The steps taken in resolving disputes outside the court through mediation as stipulated in Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution, in Article 6 it is explained that in the case of disputes or differences of opinion cannot be resolved, based on a written agreement between the parties, disputes or differences of opinion are resolved through the assistance of a person or expert advisor or through a mediator. The existence of this mediator indicates that a mediation process will be conducted. In the mediation process, a mediator appointed by the parties will provide input or solutions that the

²² Dwi Rezki Sri Astarini, *Mediasi Pengadilan* (Bandung: P.T. Alumni, 2013).

²³ Mamudji, "Mediasi Sebagai Alternatif Penyelesaian Sengketa Di Luar Pengadilan."

²⁴ Karmawan, "Diskursus Mediasi Sebagai Upaya Penyelesaian," *Kordinat: Jurnal Komunikasi Antar Perguruan Tinggi Agama Islam* 16, no. 1 (2017): 107–26, <https://doi.org/10.15408/kordinat.v16i1.6457>.

parties can adopt. It is then explained that the parties are assisted by an expert advisor or a mediator within a period of at least 14 days. In the mediation process, if they cannot agree on a single goal, both parties may request that the arbitration or dispute resolution institution appoint a mediator. At this stage, it has entered an alternative dispute resolution through arbitration. Therefore, it can be concluded that a mediation process can be completed within 14 days. This is, of course, when viewed in terms of time: mediation really prioritizes time efficiency. Beyond that, in terms of costs, it will be cheaper than settling through the court. If, within these 14 days, there really is an agreement between the parties and the dispute can be resolved, it will have a great advantage: better dispute-resolution effectiveness than other methods, especially litigation or court proceedings. This is very much in accordance with the principles of justice, namely, fast, simple, and low-cost justice.²⁵

Thus, the decision, as the final result of the peace effort through mediation, can take three forms of ordinary legal force, namely a binding and final draft agreement. There is a peace deed in the form of perfect proof, and executory power with a request for determination by a panel of judges.²⁶ An agreement to undergo a mediation process gives rise to binding and final legal effect. The results of the mediation agreement, as written and signed by the mediator in the draft, constitute perfect proof. The proposal to increase the legal force of the agreement becomes stronger in the eyes of the law if the agreement's result is sought to be made a deed of peace, thereby giving rise to executive power.

Paralegals are one of the mediators whose duties are quite complex. Mediation conducted by paralegals is similar to that conducted by mediators. Uniquely, paralegals are not only subject to Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution but also to their own regulations, specifically those of the Minister of Law and Human Rights.

²⁵ Abu Rahman Baba, "Efektifitas Mediasi Dalam Penyelesaian Sengketa Harta Bersama Di Pengadilan Agama Makassar," *Jurnal Syariah Hukum Islam* 1, no. 1 (2018), <https://doi.org/10.5281/zenodo.1242531>.

²⁶ Indriati Amarini, "Penyelesaian Sengketa Yang Efektif Dan Efisien Melalui Opti Malisasi Mediasi Di Pengadilan," *Jurnal Kosmik Hukum* 16, no. 2 (2016): 86–106, <https://doi.org/10.30595/kosmikhukum.v16i2.1954>.

One of the things regulated by Law Number 16 of 2011 on Legal Aid concerns the position and role of paralegals. Paralegals play a crucial role in providing legal aid by directly assisting the community. Therefore, the existence of legal assistants or paralegals may be developed to advocate and assist people experiencing poverty who need legal assistance in rural or remote urban areas, considering the limited number of advocates and the reach of advocates' workplaces, who mostly carry out their duties in urban areas, as per the domicile of the District Court. Therefore, the paralegal function is essential to ensure that poor people have access to justice. Since most volunteers do not have a foundation in legal education, it is important to empower paralegals through training in technical skills in advocacy, mediation, conciliation, and negotiation to provide legal aid.²⁷ The majority of the community's problems stem from a lack of public understanding of the law. Several programs run by academic institutions or legal aid groups can help combat low legal awareness by engaging in advocacy. Legal aid organizations act as lawyers or other legal experts, taking on a variety of legal roles to protect the rights of their clients and communities through advocacy, legal aid, defense, and other legal actions. to represent a party in court and serve as legal counsel in non-court proceedings.²⁸

BPHN strives to provide concrete legal services to every resident up to the village/sub-district level. The Village/Village Posbankum will be located in each village/sub-district. At least in each sub-district, there is 1 (one) Posbankum that will provide legal services, including the following:²⁹

1. Legal Information Services: a place to source legal information for the village/sub-district community, as an information window (legal library) and legal consultation.

²⁷ Moh Saman et al., "Prevention of Radicalism and Terrorism in Higher Education: Regulation and Implementation," *Indonesian Journal of Advocacy and Legal Services* 5, no. 2 (2023), <https://doi.org/10.15294/ijals.v5i2.74122>.

²⁸ Marisa Kuningingsih et al., "Training of Paralegal Communication Technique at PDNA Ngawi," *Jurnal Pengabdian Masyarakat Bestari* 2, no. 4 (2023): 335–44, <https://doi.org/10.55927/jpmb.v2i4.3691>.

²⁹ BPHN, "Laporan Kinerja Badan Pembinaan Hukum Nasional Semester 1 Tahun 2025" (Jakarta, 2025).

2. Legal Aid and Advocacy Services: a place of coordination in the settlement of legal cases in the region, especially those that need assistance through litigation. This service is a coordination room for law enforcement officials, legal counselors, and village assistants.
3. Conflict/Case Resolution Service Through Mediation: a place for the Head of the Village and/or Village Head with the status of Non-Litigation Peacemaker (NLP.) who resolves conflicts that occur in the village/sub-district in a non-peaceful non-litigation manner. In the settlement of disputes that occur, it can involve other parties such as babinsa, bhabinkamtibmas, traditional leaders, or other related parties.
4. Advocate Referral Service: a referral place for paralegals for legal disputes that lead to litigation by both advocates who are members of accredited PBH and advocates who are members of advocate organizations.

The establishment of the Village/Village Posbankum is a priority program of BPHN in 2025. The Posbankum Desa/Kelurahan is a quick response to the community's need for inclusive and easily accessible legal aid services, especially in rural areas. This program aims to expand access to justice evenly so that the establishment of 7,212 Village/Village Posbankum within six months is an extraordinary achievement. This achievement demonstrates an increase in access to justice for the community. It reflects the Village/Urban Village's commitment to providing easily accessible legal aid services, serving as a forum for dispute resolution, increasing legal awareness, and providing legal assistance.³⁰

B. Failure in Mediation and Agreements That Lead to Disagreement in the Outcome of Mediation

The meaning of mediation, which leads the parties to agree to make peace, has been applied in the lives of the Indonesian people for centuries. Peace is felt to have an impact on their lives, namely by creating

³⁰ BPHN.

harmony, fairness, and balance, and by maintaining integrity in society.³¹ This is also based on consensus deliberation, where the “agreement” to make peace has been developed in Indonesia for a long time. The existence of mediation in Indonesian society is familiar because it resembles consensus deliberation. So that mediation is one of the many alternative dispute resolution methods outside the court that has advantages for resolving disputes.

The process of resolving disputes outside of court is often considered a fair way, and it can be called a “*win-win solution*”. One alternative to court-based dispute resolution is mediation. The need for mediation as an alternative to court-based dispute resolution has many advantages, including reduced time and costs.

A mediator assists the dispute resolution process through mediation. The mediator here helps the parties resolve their dispute by clarifying the issues and guiding them to the best possible settlement. These mediators certainly have extensive experience and knowledge of the problems the parties to the dispute face.³²

After registration, the mediator conducts pre-mediation, namely a session in which the applicant and the respondent separately provide information, so that a meeting can be held with all parties. The session listened to each party’s problems, then conducted a definition process, followed by a problem-solving phase, namely bargaining between the parties to reach an agreement.³³ The results of the agreement are contained in the draft agreement, which serves as the source of the peace agreement signed by each party and the mediator, because it is an authentic deed.³⁴ The mediation process is shown in the image below.

³¹ Syahrizal Abbas, *Mediasi Dalam Perspektif Hukum Syariah, Hukum Adat Dan Hukum Nasional* (Jakarta: Kencana, 2011).

³² Dewi Sulistianingsih and Indira Fibriani, “Problematic Acta Perdamaian Pada Penyelesaian Sengketa Keperdataan Melalui Mediasi,” *Jurnal Suara Hukum* 5, no. 1 (2023): 179–89, <https://doi.org/10.26740/jsh.v5n1.p179-189>.

³³ Indah Sri Utari et al., “Legal Protection for Children as Victims of Economic Exploitation: Problems and Challenges in Three Major ASEAN Countries (Indonesia, Vietnam and Philippines),” *Lex Scientia Law Review* 7, no. 2 (2023), <https://doi.org/10.15294/lesrev.v7i2.68301>.

³⁴ Dedy Mulyana, “Kekuatan Hukum Hasil Mediasi Di Dalam Pengadilan Dan Di Luar Pengadilan Menurut Hukum Positif,” *Jurnal Wawasan Yuridika* 3, no. 2 (2019): 177, <https://doi.org/10.25072/jwy.v3i2.224>.

Efforts to resolve disputes through mediation are conducted in the following stages: (a) The Mediator invites the parties; (b) Explanation of the purpose and nature of mediation to the parties; (c). The parties submit disputes or disputes that are requested for mediation; (d). The mediator formulates an understanding of and identification of problems to agree on the matters in dispute and the desired way of resolution; (e). Prepare a mediation schedule with the parties; (f). Negotiations, including the submission of evidence from the parties, listening to expert testimony or other parties; (g). The parties find an alternative dispute resolution agreement; (h). The parties have the right not to proceed with the mediation process; (i). Preparation and signing of minutes of agreement or dispute settlement agreement by the parties³⁵. The goal is to resolve disputes based on an agreement that satisfies both parties. As a third party to the dispute resolution process, a mediator must perform their role effectively to achieve the goals of mediation. In addition, a mediator must perform various functions, including holding meetings, leading negotiations, taking notes, preparing agendas, submitting settlement proposals, maintaining the negotiation process, and helping the parties draft agreements.³⁶

Mediators have a decisive role in the mediation process. The failure or success of mediation is also highly determined by the role the mediator plays. He played an active role in bridging several meetings between the parties. The design of the meeting, leading and controlling it, maintaining the balance of the mediation process, and demanding that the parties reach an agreement are the mediator's main roles. In this position, the mediator becomes the catalyst that fosters constructive discussions in which the parties actively examine the root of their dispute. During the discussion, the parties raised several problems and practical solutions. Mediators assist the parties in exchanging information and in the bargaining process to reach multiple agreements. Mediators as neutral third parties serve the interests of the parties in the dispute. The

³⁵ Enny Mirfa Rini Fitriani, M.Iqbal Asnawi, Arman Muis, Fatimah, "Tinjauan Kepastian Hukum Terhadap Hasil Kesepakatan Perdamaian Dalam Mediasi Di Luar Pengadilan," *Recht Studiosum Law Review* 3, no. 1 (2024), <https://doi.org/10.32734/rslr.v3i1.15935>.

³⁶ Lalu Moh Fahri, "Mediator Dan Peranannya Dalam Resolusi Konflik," *Jurnal Pendidikan Dan Ilmu Sosial* 3, no. 1 (2021): 114–25.

mediator must foster positive interaction and communication to delve into the parties' interests and offer alternatives to fulfill them. In leading a meeting attended by both parties, the mediator plays a role in accompanying, directing, and helping the parties open positive two-way communication, because the communication built will facilitate the next mediation process. In this role, the mediator must use polite, soft, and non-offensive language with the parties so that they seem relaxed when communicating with each other. In guiding the communication process, the mediator also directs the parties to gradually discuss the steps they may take to end the dispute. Mediators help facilitate communication so that the parties gain a comprehensive understanding of the issues they are disputing. With the help of a mediator, the parties can make an objective assessment of their issues and move towards negotiations to reach an agreement that resolves the dispute.³⁷

Mediation must be taken seriously to achieve peace; therefore, it is conducted in private before the case is further examined. Mediation is an effort by the parties to make peace for their own benefit, not the mediator's, so that the litigants bear all costs incurred by the mediation process.³⁸ In the mediation process, the parties do not face pressure from any party, so the result is an agreement reached by the parties themselves.³⁹

The results of mediation are divided into several types, including mediation reaching an agreement (successful), mediation reaching a partial agreement (partially successful), and mediation not reaching an agreement or not being implementable (unsuccessful).⁴⁰ Reaching an

³⁷ Nia Maulina, Dahlan Tamrin, and Mohammad Afifulloh, "Peran Mediator Dalam Meminimalisir Angka Perceraian Pada Masa Pandemi Covid-19 Di Pengadilan Agama Sintang," *Intizar* 28, no. 1 (2022): 41–49, <https://doi.org/10.19109/intizar.v28i1.12115>.

³⁸ Israr Hirdayadi and Hery Diansyah, "Efektivitas Mediasi Berdasarkan Perma No. 1 Tahun 2008 (Studi Kasus Pada Mahkamah Syar'iyah Banda Aceh)," *Samarah* 1, no. 1 (2017): 205–25, <https://doi.org/10.22373/sjhk.v1i1.1576>.

³⁹ Burhan Latip et al., "Penyelesaian Sengketa Kewarisan Melalui Mediasi: Jalan Terbaik Menyelesaikan Masalah," *Mawaddah: Jurnal Hukum Keluarga Islam* 1, no. 1 (2024): 48–57, <https://doi.org/10.52496/mjhki.v1i1.4>.

⁴⁰ Alfani Sahara and Fahmi Fatwa Rosyadi Satria Hamdani, "Upaya Mediator Terhadap Rendahnya Tingkat Keberhasilan Mediasi Di Pengadilan Agama

agreement during mediation is not mandatory; sometimes mediation does not work, and the disputing parties cannot reach an agreement.

When mediation reaches an agreement, the mediator will draft a written agreement for the parties to sign. The mediator will ensure that the agreement does not conflict with applicable law and its provisions, and that the parties can execute the agreement's details.⁴¹ A peace agreement deed is an agreement resulting from Mediation in the form of a document containing dispute resolution provisions signed by the Parties and the Mediator. With the ratification of the peace treaty, the peace agreement has the same executory force as a court decision.⁴²

Mediation does not always end in peace and the signing of an agreement that meets the parties' expectations. However, mediation could have failed. There was an agreement between the parties to continue the dispute with the court. In this case, it has been considered that the mediation conducted has failed. And no agreement was reached to reconcile.

The success of mediation depends on both parties' willingness to engage in the process and their commitment to finding a solution.⁴³ Mediation will not work if one or both parties insist on their initial position without the desire to seek a mutually beneficial solution. In many cases, an open attitude and willingness to negotiate are essential to reach an agreement.⁴⁴

Soreang," *Jurnal Riset Hukum Keluarga Islam*, no. 1 (2023): 65–70, <https://doi.org/10.29313/jrhki.v3i2.2791>.

⁴¹ Sarwono Hardjomuljadi Dhuhiita Atitami Hariputri, Sami'an, "Mediasi Sebagai Alternatif Penyelesaian Sengketa Konstruksi," *Jurnal Hukum & Pembangunan Masyarakat* 16, no. 1 (2025).

⁴² Putri Anggun Puspasari, Ni Luh Made Mahendrawati, and Desak Gede Dwi Arini, "Penerapan Mediasi Dalam Penyelesaian Sengketa Wanprestasi Hutang Piutang Di Pengadilan Negeri Gianyar," *Jurnal Preferensi Hukum* 2, no. 1 (2021): 182–87, <https://doi.org/10.22225/jph.2.1.3065.182-187>.

⁴³ Sheza Vanisha Kalila et al., "Peran Mediasi Dalam Penyelesaian Sengketa Wanprestasi Sewa Menyewa," *INNOVATIVE: Journal Of Social Science Research* 5, no. 1 (2025).

⁴⁴ Safira Putri Zakia, "Tinjauan Yuridis Terhadap Pemanfaatan Mediasi Sebagai Alternatif Penyelesaian Sengketa Dalam Hukum Acara Perdata Di Indosenia," *Jurnal Multidisiplin Ilmu Akademik* 2, no. 1 (2025): 69–76, <https://doi.org/10.61722/jmia.v2i1.3153>.

Mediation could have failed. If the parties are stronger in dispute after mediation, even in worse conditions, it will be a failure in mediation. If the mediation process is unsuccessful and peace cannot be reached, all impasses will be resolved in court. However, success or failure should not be determined by whether the parties reach an agreement, because the agreement reached may not be what they agreed to.

The factors that hinder the Mediation Procedure are the parties' incompleteness during the mediation process, exceeding the predetermined time limit, not acting in good faith, self-interest, and the mediator's inability to communicate, which prevents them from finding common ground. Therefore, for the mediation process to be successful, cooperation between the parties and the mediator is needed.⁴⁵ If they do not find common ground, it can be said that mediation has failed.

Several factors can lead to the failure of the mediation process, such as unclear or unrealistic agreements, excessively high expectations from one or both parties, external influences that can affect the decisions of the parties to the dispute, and the limitations of mediators, both in terms of skills and the ability to be neutral, can be the cause of mediation failure.⁴⁶ Mediation tends to be unsuccessful when the parties to the dispute are inflexible and fail to communicate effectively. Communication is a key factor in achieving a successful mediation outcome. The parties' emotions emerge strongly in every mediation process, which, in the end, makes the dispute broader and stronger. There is an imbalance of power between the parties, or the parties have unrealistic expectations that are difficult to realize.

So, the point concerns the success or failure of a mediation process; i.e., it is not possible to judge mediation by whether the dispute has been resolved. This is not the definition of the success of a mediation. Mediation is not a failure if the dispute is not resolved, and the final decision not to resolve the dispute may be the right one for the parties if it is well thought out, based on sufficient information, and the parties'

⁴⁵ Bethsaidah Putri Sitorus dan Debora, "Implementasi Mediasi Dalam Penyelesaian Perkara Perdata Di Dalam Pengadilan," *Journal Equitable* 10, no. 1 (2025): 30–47, <https://doi.org/10.37859/jeq.v10i1.8123>.

⁴⁶ Nuraliah Ali Christian Lasro Berto Siagian, Mulida Hayati, "A Legal Review Of Mediations That Appear To Be Successful But End In Failure," *Eduvest – Journal of Universal Studies* 5, no. 1 (2025): 56–65.

beliefs. Although at the end of the mediation, no agreement was reached, or an agreement was reached that is interpreted as not agreeing. This is not an absolute failure of the mediation process, but it is an option for the parties to move their dispute to other channels.

What are the consequences of failed mediation? None. A failed mediation will be taken to court. Even in court, mediation will be conducted again; if mediation in court fails, the judge will move it to the next stage.

Neither party nor the mediator is responsible for the success of the mediation. Mediation must fail. The parties to the dispute have only an obligation to act in good faith, with a view to resolving the dispute they are facing.

Paralegals providing legal aid services are very much needed, given that many people still do not understand how the law is implemented in Indonesia and find it difficult to access justice. The role of paralegals in mediation focuses on non-litigation legal services. Paralegals serve as companions and facilitators in dispute-resolution efforts outside the court. Paralegals help legal aid recipients (from poor/vulnerable communities) resolve cases, whether civil, criminal, or state administrative disputes, through a family-centered approach and mediation.⁴⁷

The role of paralegals in providing legal aid is recognized by Indonesian law. Minister of Law and Human Rights Regulation (Permenkumham) Number 3 of 2021 on Paralegals in the Provision of Legal Aid further regulates the requirements, rights, and obligations of paralegals in the performance of their duties.⁴⁸ Although not lawyers,

⁴⁷ Restorative justice serves as an approach to law enforcement, in which mediation constitutes one of the alternative mechanisms to ensure access to justice for the poor and vulnerable groups. Read on Uche Nnawulezi et al., “An Analysis of Indonesian Administration of Criminal Legislation as Instrument of Restorative Justice for Prisoners,” *Indonesian Journal of Criminal Law Studies* 10, no. 1 (2025): 267–96, <https://doi.org/10.15294/ijcls.v10i1.23946>.

⁴⁸ Made Hendra Wijaya, Ni Komang Sutrisni, and Mohd Shafie Bin Hamzah, “From Procedural to Substantive Morality: Participation Problem on Lawmaking in Indonesia,” *Journal of Sustainable Development and Regulatory Issues (JSDERI)* 4, no. 1 (April 20, 2026): 304–38, <https://doi.org/10.53955/JSDERI.V4I1.231>.

paralegals assist advocates and are therefore often referred to as legal assistants.⁴⁹

Mediation conducted by paralegals is an alternative dispute resolution mechanism that often fails. This failure can be caused by various factors, both from the paralegals themselves and from the disputing parties. Paralegals play a crucial role in overcoming this failure through assistance, education, and facilitating more effective communication.

Based on the results of interviews conducted in the legal department of the Gunungkidul Regency Government, Yogyakarta Province, the failure of mediation carried out by paralegals occurred due to several factors, including: (1) the paralegals' lack of ability; (2) the paralegals' lack of experience in dealing with disputes in the community; (3) the limited number of paralegals; (4) uncontrolled pressure and field conditions.

Conclusion

Mediation is an effort to resolve disputes in good faith, in which each party presents arguments to a mediator because they themselves are considered powerless to resolve them. The dispute resolution process using mediation can be conducted in court or out of court, with a mediator serving as a third party who bridges the gap between the parties. Mediation is the process of involving third parties to resolve disputes between advisors. This means that the third party will provide suggestions that the parties in dispute can consider in resolving the dispute. Mediation is one alternative option for resolving disputes outside the courts, and it can also be conducted in court. The meaning of mediation is the agreement of the parties to reconcile. Still, it will not always end in a peaceful agreement that meets the parties' expectations. There is a condition in which mediation ends with an agreement to disagree on expectations or disputed points. Mediation is a peaceful process between the parties to the dispute, but the condition is that they agree to continue the dispute in court; this is a failed mediation. Failure to reach a mediation agreement led to an agreement to proceed with the dispute through another channel (other than

⁴⁹ Ichwan Setiawan Yogha Aditya Ramadhan, "Analysis The Role Of Paralegals In The Right To Provide Legal Aid Services To People Involved In Online Lending Cases," *Journal Humaniora: Jurnal Hukum Dan Ilmu Sosial* 03, no. 03 (2025): 68–74, <https://doi.org/10.37010/hmr.v3i3.107>.

mediation). Disputes that are not mediated will proceed to the trial stage in court. Factors that affect failure in mediation are: (1) Factors of lack of reliability of mediators in the mediation process; (2) The expectation factors of the parties to the dispute that are impossible to realize; (3) High selfishness of the parties to the dispute; (4) Lack of good faith on the part of the parties to the dispute; (5) one or both parties insist on proceeding to court. This study demonstrates that mediation failure does not necessarily indicate a malfunction of the dispute resolution process. Instead, it reflects the complex interplay among mediator competence, the disputing parties' attitudes, and structural constraints within the mediation framework. The findings show that factors such as lack of good faith, unrealistic expectations, communication barriers, and power imbalance significantly contribute to mediation impasses. Paralegals acting as mediators play a crucial role in facilitating dialogue and maintaining neutrality; however, their effectiveness depends heavily on their negotiation skills and the parties' willingness to cooperate. Therefore, strengthening mediator training, improving mediation procedures, and promoting a culture of good-faith negotiation are essential to enhancing the effectiveness of mediation as an alternative dispute resolution mechanism.

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