

STRENGTHENING MARKET FAIRNESS: THE ROLE OF MEDIATION IN RESOLVING COMPETITION DISPUTES

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ABSTRACT

Market fairness is a key element in maintaining healthy competition among businesses, contributing to sustainable economic growth and consumer protection. In the context of competition disputes, swift and efficient resolution is essential to prevent disruptions in market dynamics. This article examines the role of mediation as an alternative mechanism in resolving competition disputes, aiming to enhance market fairness. Mediation offers a more flexible, quick, and cooperative dispute resolution process compared to litigation, reducing tension among businesses and enabling mutually beneficial solutions. By analyzing various cases and regulations across jurisdictions, this paper demonstrates that mediation can serve as an effective tool for balancing economic interests with legal protections. The findings of this study are expected to provide guidance for stakeholders in implementing mediation as part of a strategy to enhance market fairness in an increasingly competitive global landscape. Globally, several countries have begun to adopt mediation as part of their competition regulation, demonstrating its effectiveness in safeguarding market fairness. Through a comparative analysis of mediation models across different jurisdictions, this article provides in-depth insights into how mediation regulations can be integrated into Indonesia's competition system.

Keywords: mediation, market fairness, competition disputes, dispute resolution

1. PREFACE

In a fair market, companies compete based on merit, namely the quality of their products, production efficiency, and the innovations they create. Healthy competition encourages businesses to continuously innovate, seek new ways to improve the quality of their products or services, and reduce operational costs to offer more competitive prices to consumers (Qaqaya, 2008). Market fairness ensures that innovation is rewarded and that companies with superior products or services can reap fair profits from their efforts without being hindered by anti-competitive practices that aim to suppress or obstruct innovation in the market (Yang, 2021). When healthy competition takes place, companies thrive based on their performance and tangible contributions to the market, rather than relying on unfair or illegal practices. When businesses know they are competing in a fair market, they are more motivated to invest in innovation and expansion, which in turn drives sustainable economic growth.

According to Yang (2021), One of the key aspects of market fairness is the enforcement of fair and transparent regulations. Consistent enforcement ensures that all businesses adhere to the same rules, with no discrimination or special treatment for certain groups. In the context of Indonesia, where challenges related to transparency and corruption persist, market fairness means establishing a fair law enforcement mechanism for all businesses, regardless of their size or political influence. Clear and transparent regulations not only create legal certainty for businesses but also ensure that practices harmful to competition are identified

and addressed fairly. The urgency of market fairness in maintaining healthy competition among businesses is evident. Market fairness not only ensures that each business has an equal opportunity to grow based on innovation and efficiency but also protects consumers, promotes sustainable economic growth, and creates a fair and conducive business environment for all parties involved (Umam, 2021).

Mediation is one of the alternative dispute resolution (ADR) mechanisms that is increasingly popular due to its efficiency, flexibility, and cooperative nature compared to formal court litigation. Mediation offers a more dynamic approach to conflict resolution, where disputing parties can engage directly in the process to reach a mutual agreement (Graeff, 2003). One of the main advantages of mediation is its ability to resolve disputes more quickly than formal litigation. In mediation, parties can begin the process immediately after selecting a mediator, without having to wait through lengthy court queues. While litigation can take years to conclude, mediation often can be completed within weeks or months, depending on the complexity of the issue at hand (Alkaff et al., 2021).

This topic is urgent to study and implement because mediation has the potential to improve efficiency, fairness, and stability in resolving competition disputes. Through the application of mediation, Indonesia can develop a more adaptive, inclusive, and sustainable competition law system. This approach will not only benefit businesses but also protect consumers and enhance overall market fairness. Based on this overview, two main research questions need to be proposed: (a) How does mediation play a role in strengthening market fairness in competition disputes in Indonesia?; and (b) How can mediation maintain a balance between the interests of businesses and consumers in the context of competition?.

2. RESEARCH METHOD

This study uses a normative approach aimed at analyzing primary and secondary legal materials relevant to mediation in the context of competition law. This normative approach focuses on examining the legal rules governing dispute resolution mechanisms, particularly those related to mediation, and the underlying legal principles. The research will analyze laws and regulations concerning competition in Indonesia, primarily Law No. 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition, as well as regulations governing mediation as a dispute resolution mechanism. In addition, this study will review implementing regulations and other legal instruments that support the application of mediation in resolving business and competition disputes.

3. RESULT AND DISCUSSION

Market Fairness and Business Competition

Market fairness can be defined as a condition in which all businesses have equal opportunities to compete fairly in a market without harmful practices, whether through regulations or monopolistic actions by dominant players. In a fair market, there is no discrimination, and all entities—whether large or small companies—have equal access to market opportunities and resources. Market fairness also ensures that consumer rights are protected and that competition among businesses drives innovation, competitive pricing, and better product quality (Garrido-Moreno et al., 2024). Market fairness encompasses not only legal regulations that govern competition but also the fair enforcement of laws and transparency in market interactions. This ensures that no business can misuse a dominant position to harm competitors or consumers (Rahmadi, 2011).

In Indonesia, business competition is regulated by Law No. 5 of 1999, which governs how businesses compete fairly and prevents anti-competitive practices that harm consumers and other businesses. Business competition is a condition where companies compete with one another to offer the best products or services to consumers (Michael L. Moffitt, 2011). In an economic context, healthy competition encourages efficiency, innovation, and improvements in quality and more competitive pricing. Business competition allows consumers to have more choices and ensures that the market is not dominated by one or a few companies that could control prices or the supply of goods and services. Business competition becomes unhealthy when practices such as monopolies, cartels, and price-fixing occur, which harm both consumers and competitors. These practices can create market imbalances, harm consumers, and hinder innovation and economic progress (Garrido-Moreno et al., 2024).

The second type of dispute is cartel-related, which involves collusion among several businesses to control prices, production, or distribution with the aim of reducing competition. Cartels are usually conducted in secret and often result in prices being set higher than they would be in a competitive market, thus harming consumers (Richie Gunawan & Sudiro, 2022). Cartel disputes commonly arise in oligopolistic industries, where only a few companies hold a large share of the market. In such cases, these companies may collaborate to raise prices or limit production simultaneously, which disrupts competition. KPPU is responsible for investigating cartel practices and can impose strict sanctions and nullify agreements that harm consumers and competitors. Ezrachi et al. (2023) emphasize, “these forms of unfair competition can take various shapes, such as price manipulation, abuse of dominant market position, vertical integration that blocks access for competitors, or discriminatory treatment”.

The final type of dispute is vertical integration disputes, which occur when a company attempts to control the entire supply or distribution chain to monopolize the market (Ali et al., 2020). In practice, vertical integration can happen when a large company acquires major suppliers or distributors, making it difficult for competitors to access the market. For example, a manufacturing company might purchase a large distribution company, which then creates challenges for competitors in distributing their products. In such cases, KPPU can order the cancellation of acquisitions or transactions that harm market competition (Niekerk, 2020). These disputes illustrate that practices hindering healthy business competition can threaten fairness and economic progress. Therefore, through Law No. 5 of 1999, Indonesia is committed to regulating and preventing such harmful practices.

The Role of Mediation in Enhancing Market Fairness

Mediation is an extrajudicial dispute settlement process that prioritizes compromise among conflicting parties. This approach depends on a neutral third person, referred to as a mediator, whose main function is to facilitate communication, assist in identifying the fundamental reasons of the conflict, and guide the parties toward a mutually advantageous resolution (Soemarwi & Prima, 2022). In contrast to litigation, which results in legally enforceable decisions made by a judge or arbitrator, mediation provides a more collaborative and voluntary method for resolving conflicts. The mediator lacks the authority to enforce choices or solutions; instead, they function as a facilitator, guaranteeing that all parties have equitable opportunity to articulate their concerns, suggest alternatives, and ultimately reach a mutually agreeable resolution. The success of the procedure depends on the opposing parties' readiness to engage in conversations and negotiate sincerely (Ezrachi et al., 2023).

A defining characteristic of mediation is its consensus-driven approach. This trait promotes a setting in which conflicting parties cooperate instead of contend, facilitating innovative, adaptable, and customized solutions that are frequently unattainable inside the inflexible structure of litigation. Mediation fosters mutual understanding and cooperation, in contrast to adversarial legal proceedings that frequently damage relationships, so potentially preserving or enhancing both professional and personal connections (Pahrazi & Farma Rahayu, 2024).

The mediator's neutrality is a fundamental element of mediation. The mediator must uphold equity, neutrality, and the absence of any conflicts of interest during the entire procedure. They are responsible for establishing an environment in which both parties feel acknowledged and valued. A mediator must possess no personal interest in the outcome of the proceedings. This entails refraining from activities that could be perceived as favoring one party over another, exerting undue pressure, or swaying the decisions of the parties. Neutrality is crucial for preserving the trust and confidence of the parties involved, as it upholds the integrity of the mediation process (von Ingersleben-Seip & Georgieva, 2021). The mediator orchestrates discussions by establishing structure, promoting effective communication, and steering parties towards resolution while maintaining objectivity and empathy (Lianos, 2013).

Mediation is crucial in fostering transparency and justice within the realm of economic competitiveness. It provides a systematic framework for resolving conflicts via open communication and consensus, hence reducing the likelihood of anti-consumer activities. Unresolved disputes in the business sector frequently result in adverse behaviors, like limited access to goods or services, diminished quality, or inequitable pricing. Mediation alleviates these risks by allowing businesses to resolve issues without engaging in actions that may harm consumers or undermine market trust (Runesson & Guy, 2007).

Furthermore, mediation fosters consumer trust and loyalty by showcasing a company's dedication to resolving conflicts transparently and equitably. When enterprises address disputes collaboratively, consumers are more inclined to view them as reliable and principled. This cultivates robust partnerships between enterprises and their clientele, elevates the organization's reputation, and amplifies consumer loyalty. Through mediation, organizations demonstrate their commitment to safeguarding consumer interests in difficult circumstances, ultimately reaping the rewards of continued support and goodwill from their customers (Jon J. Masters, 2005).

Case Studies and Implementation of Mediation in Various Countries

Mediation has gained significant popularity as a means for resolving commercial conflicts globally, especially in the United States, the European Union, and Singapore. This popularity arises from the numerous benefits mediation provides, such as time efficiency, cost reduction, and the capacity to preserve amicable relations between conflicting parties. Every nation has implemented mediation through its distinct methodology, however all aim to improve efficiency and cultivate a sustainable economic milieu (Janssen & Vennmanns, 2021).

Mediation has emerged as a fundamental method for resolving business disputes in the United States, especially in commercial and contractual problems. The U.S. justice system, at both federal and state levels, strongly advocates for mediation as a preliminary measure before litigation. This proactive strategy has rendered mediation a broadly acceptable and commonly employed tool. Mediation was instrumental in a 2008 patent dispute between two prominent technology firms. The mediation process allowed the corporations to circumvent extended litigation, conserve substantial resources, and preserve a collaborative relationship,

demonstrating mediation's capacity to produce mutually advantageous results (Siti Rahmah et al., 2024).

The efficacy of mediation in the United States is bolstered by the presence of seasoned mediators, strong legal structures, and a corporate culture that prioritizes alternative dispute resolution techniques. Numerous industries in the U.S. incorporate mediation into their normal dispute resolution procedures, acknowledging its capacity to provide customized solutions and alleviate judicial dockets. The extensive adoption indicates that mediation is not only an alternative but a favored method for settling corporate disputes.

Mediation is a favored approach for dispute resolution inside the European Union, particularly in cross-border issues. Directive 2008/52/EC developed a comprehensive legislative framework that promotes mediation in civil and commercial disputes among EU member states. This regulation seeks to furnish businesses with an effective, cooperative framework to resolve disputes without the intricacies and delays typically linked to judicial processes. A German corporation and a French company effectively resolved a trade dispute about a supply arrangement. The mediation process maintained their commercial connection and accelerated settlement, underscoring the significance of mediation in promoting cross-border cooperation and economic stability (Jeong, 2023). The EU's mediation strategy has notably reduced the strain on courts and promoted voluntary dispute resolution, hence fostering a more cohesive and amicable business environment among member states (Lee, Alexa Shi et al., 2021).

Simultaneously, Singapore has established itself as a preeminent force in mediation across Asia, mostly attributable to robust governmental backing and significant investments in conflict resolution infrastructure. The Singapore International Mediation Centre (SIMC) is fundamental to the country's aim to establish itself as a global mediation hub. The SIMC has effectively settled numerous high-stakes international conflicts, emphasizing timeliness, neutrality, and professionalism. In an investment dispute involving corporations from two Asian nations, SIMC enabled a prompt resolution that circumvented the substantial expenses and delays associated with litigation. The efficacy of mediation in Singapore has not only bolstered its standing as a financial and business hub but has also enticed foreign corporations to regard the city-state as a favored location for conflict resolution (Pehlivan, 2022). Singapore's dedication to advancing mediation is evident in its legislation, including financial incentives for corporations opting for mediation and public awareness initiatives highlighting the advantages of alternative dispute resolution (Yang, 2021).

The successful mediation cases in these nations provide significant insights for Indonesia, which can modify these approaches to align with its legislative framework and corporate context. Indonesia, characterized by its expanding economy and intricate market dynamics, stands to gain significantly from the implementation of a comprehensive mediation system (LLP, 2021). Through the examination of international precedents, Indonesia can formulate regulations that harmonize flexibility with structure. The U.S. model, which affords businesses considerable autonomy in mediation with less governmental interference, may serve as a catalyst for Indonesia to develop a more flexible and business-oriented mediation framework. In contrast, the EU's focus on oversight in significant competition conflicts may be utilized judiciously to guarantee accountability and market equity (Moskal, 2023).

Moreover, Indonesia can derive inspiration from Singapore's extensive mediation framework. Creating a specialized mediation center, like the SIMC, might enhance Indonesia's appeal to

multinational enterprises and fortify its status as a regional economic center. Furthermore, training initiatives for mediators, public-private collaborations, and incentives for enterprises to engage in mediation can cultivate an environment in which alternative dispute resolution is standard practice.

Challenges and Obstacles in Implementing Mediation in Indonesia

Indonesia should prioritize cultivating skilled and experienced mediators specializing in competition cases. The experiences of nations such as the United States and Singapore underscore the significance of mediators with a profound comprehension of competition law and the pertinent business sectors. This skill is essential for guaranteeing that mediation processes provide equitable and successful outcomes for all parties involved. Mediators possessing specialized knowledge can more effectively manage the intricacies of competitive disputes, reconciling the interests of the conflicting parties with overarching principles of market equity (Laskowski, 2018).

To achieve this, Indonesia's Business Competition Supervisory Commission (KPPU) should conduct targeted training programs aimed to educate mediators with the essential skills and knowledge. These programs may encompass subjects such as antitrust principles, market analysis methodologies, and negotiation tactics pertinent to competition disputes. KPPU should partner with reputable mediation institutions, both nationally and globally, to guarantee that mediators obtain exemplary training and comply with worldwide best practices. The involvement of highly skilled mediators would augment the credibility and efficacy of mediation as a dispute resolution method, instilling confidence in the process for all parties involved (Medina, 2022).

The significance of a robust mediation infrastructure is evident in Singapore, where the Singapore International Mediation Centre (SIMC) serves as a fundamental entity for the resolution of international business disputes. The SIMC establishes internationally acknowledged standards for mediation, providing a systematic framework and exceptionally prepared mediators to address intricate disputes. Creating a comparable agency in Indonesia could markedly enhance its ability to address competitive issues effectively and professionally. A dedicated mediation center could function as a central facility for specialized training, case administration, and the advocacy of mediation as a viable option to litigation.

Mediators with expertise in competition law offer numerous specific benefits to the dispute resolution process. Their knowledge allows for the swift resolution of conflicts through the rapid identification of significant issues and the formulation of practical, pertinent solutions. Their expertise in business regulations and industry-specific terminology guarantees effective communication and reduces the likelihood of misunderstandings. This efficiency decreases the time and resources necessary for conflict resolution, which is especially advantageous in dynamic corporate contexts where delays can result in substantial economic repercussions (Alexander, 2019).

Mediators possessing a profound comprehension of competition law are distinctly equipped to guarantee that mediation outcomes adhere to the ideals of robust competition. This alignment is essential in conflicts where the outcome may influence market dynamics. In instances of purported monopolistic conduct or anticompetitive pacts, mediators must devise resolutions that fulfill the interests of the parties while complying with antitrust laws to safeguard consumers and the whole market.

Competition conflicts frequently encompass intricate and technical matters, such market share assessment, predatory pricing tactics, or the competitive ramifications of mergers and acquisitions. Mediators possessing expertise in corporate regulation are more adept at tackling these problems. They can interact efficiently with economists, market analysts, and other specialists to produce complete solutions that encompass legal, economic, and commercial viewpoints. This comprehensive approach guarantees that resolutions are informed and sustainable.

Mediators proficient in competition law assist in reducing the danger of nullification of mediation results stemming from non-compliance with relevant legislation. In certain instances, especially those with considerable market implications or antitrust issues, mediation agreements may necessitate examination and endorsement by regulatory bodies, such as KPPU. Mediators familiar with these criteria can assist parties in achieving legally sound settlements, hence diminishing the probability of conflicts being reviewed owing to regulatory non-compliance (Lamb, 2018).

Indonesia's endeavor to create a robust mediation system for competition disputes must also consider broader structural and institutional factors. Incorporating mediation clauses into contracts and agreements can inspire firms to prioritize mediation as their initial approach in the event of disagreements. Furthermore, public awareness initiatives emphasizing the advantages of mediation, including financial savings, secrecy, and the maintenance of relationships, can facilitate its broader acceptance. Policymakers can consider incentives for enterprises that choose mediation, such tax advantages or accelerated regulatory approvals.

4. CONCLUSIONS AND RECOMMENDATIONS

Mediation has significant potential to enhance market fairness by offering efficient, fair, and cooperative dispute resolution. By facilitating a quick and cost-effective process, generating mutually beneficial solutions, and promoting collaboration between disputing parties, mediation creates a more conducive business environment. Additionally, mediation minimizes negative impacts on the market and consumers, ensuring that the outcomes not only benefit the parties involved but also reflect broader market interests. By leveraging mediation, Indonesia can build a more robust market fairness framework, ultimately supporting economic growth and enhancing consumer welfare. By providing a more cooperative and efficient approach, mediation allows companies to resolve disputes while considering consumer interests and market stability.

Wider promotion of the benefits of mediation to business actors and policymakers is crucial for expanding the adoption of this method in dispute resolution. Through various initiatives such as educational campaigns, the development of training modules, collaboration with business associations, policy formulation, media campaigns, the establishment of mediation institutions, and integration of mediation into formal education, understanding of mediation's benefits can be further disseminated. Strengthening mediator capacity through specialized training in competition law is essential for enhancing the quality of mediation and ensuring fairness in business dispute resolution. With comprehensive training programs, recognized certifications, collaboration with experts, case simulations, and ongoing professional development, mediators will be better equipped to handle complex competition cases.

Enhancing mediators' capacity through specialized training in competition law is crucial for ensuring fair and efficient resolution of business disputes. A deep understanding of competition

law enables mediators to better manage conflicts, find mutually beneficial solutions, and prevent disputes from escalating. Comprehensive training programs, recognized certifications, and ongoing professional development equip mediators with the skills necessary to handle complex competition cases. Through quality mediation, businesses can avoid costly litigation, protect their reputations, and contribute to a healthier business ecosystem.

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