

Mediation Skill Improvement in Special Branch Leader of 'Aisyiyah in Malaysia for Effective Dispute Resolution

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Abstract

Law counsel for mediators aims to resolve legal issue faced by the cadres and Indonesian citizens who stay in Malaysia. In contrast, the heads of 'Aisyiyah Special Branch Leaders (PCIA) do not possess a particular skill that can be used as an alternative in resolving disputes out of court, which is mediation. Mediation is used to bring bargaining value closer to an agreement. Mediators tend to be more focused on the problems or the positions claimed by parties. The counseling method is implemented by arrangement, mediator's role and function review, tasks division, and dialogue session. During this agenda, all participants participate in experience simulations, which are carried out by each group. The role of the third party, in this case, the mediator, in completing the task is to become a middleman between parties resolving disputes. As a middleman', it means that mediators must position themselves as neutral parties and must choose nobody's side while resolving disputes. Through this law community service, participants deliver their reviews during dialogue sessions, they reveal that there is a significant improvement in understanding concepts of mediation's key such as the mediator's role, negotiation technique, and how to constructively overcome legal issues.

Key Words: Skill Improvement; Mediation; Dispute Resolution.

Abstrak

Peningkatan Keterampilan Mediasi di Pimpinan Cabang Istimewa 'Aisyiyah Malaysia dalam Penyelesaian Sengketa yang Efektif

Penyuluhan hukum bagi mediator ini bertujuan membantu menyelesaikan masalah hukum yang dihadapi oleh para kader dan warga negara Indonesia yang tinggal di Malaysia. Namun disisi lain, para pimpinan di Pimpinan Cabang Istimewa 'Aisyiyah (PCIA) belum memiliki keahlian khususnya mengenai alternatif penyelesaian sengketa diluar pengadilan, yaitu mediasi. Mediasi dimaksudkan guna mendekatkan perbedaan nilai tawar atas suatu

kesepakatan. Mediator hanya terfokus pada permasalahan atau posisi yang dinyatakan para pihak. Metode penyuluhan ini dilaksanakan dengan persiapan, pemaparan peran dan fungsi mediator, pembagian tugas, hingga tanya jawab. Dalam agenda ini seluruh peserta menyaksikan simulasi mediasi yang dilakukan setiap kelompok. Peranan pihak ketiga, dalam hal ini sebagai mediator, dalam menjalankan tugasnya yaitu menengahi para pihak dalam menyelesaikan sengketa. "Berada di tengah" memiliki arti juga bahwa mediator harus berposisi sebagai pihak yang netral atau tidak memihak dalam menyelesaikan sengketa. Melalui pengabdian hukum ini, peserta memberikan pesan-kesan dalam sesi tanya jawab bahwa terjadi peningkatan pemahaman yang signifikan tentang konsep-konsep kunci mediasi, seperti peran mediator, teknik negosiasi, dan cara mengatasi konflik secara konstruktif.

Kata Kunci: Peningkatan Keterampilan; Mediasi; Penyelesaian Sengketa.



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INTRODUCTION

Mediation is an alternative way to reconcile between parties who are in dispute caused by different perception, interest, and necessity among disputed parties. During mediation process, disputed parties hand out the resolution to a mediator in order to achieve a just course and can be accepted among all disputed parties (F. Sugianto et al., 2020; Kamaruddin, 2018). Mediation process becomes more important in order to avoid time-consuming judicial bureaucracy. According to parties in conflict, litigation option does not always provide effective outcome in resolving dispute (Siregar et al., 2021). By taking mediation option to resolve the conflict, the parties have helped minimizing the large numbers of judicial proceedings, so the court will be more effective and efficient in dispute resolution

Mediation has several advantages compared to litigation process (Moh Fahri, 2021; Mulyana, 2019). Mediation provides faster and cheaper option than judicial proceeding that take longer and more expensive resources (Hidayat, 2016). Thus, before opening a case, the court is responsible reconcile both parties who are in dispute through mediation. It is demonstrated that peacekeeping is dependent on mediation, supporting UN Secretary-General Antonio Guterres's recent appeal for peacekeeping to be seen as a component of "inclusive peace processes." We find that peacekeeping can be important for mediation, which is consistent with several recent studies (Clayton, G., & Dorussen, H., 2021).

Mediation Skill Improvement in Special Branch Leader of 'Aisyiyah in Malaysia for Effective Dispute Resolution

As mentioned above, the aim of mediation is to help both parties resolving a fruitful agreement without the need bring the case to court room. All stages of mediation process are meant to ease communication and problem solving: arrangement, problem statement, negotiation, and closing. According to technical stages during mediation process, negotiation process becomes part of mediation process in indirect way. In other words, all parties offer solutions to each other (an answer) for the problems they face. This stage is called negotiation. During the stage, mediator is taking notes and making list from each ideas offered by each party (Dewi, 2022), the mediator then will conduct the advantages and drawbacks if such option is implemented (F. A. Sugianto & Marpaung, 2022). From several ideas or solutions offer which gathered by mediator, the mediator will share education and share points of view or knowledge to all parties to achieve a fruitful outcome based on result and discussion of each available solutions' advantages and disadvantages. Hopefully, parties will eventually choose one of solutions to be implemented as mutual reconciliation between parties. In this case, mediator role is very significantly needed in order to achieve such solution to resolve problems faced by disputed parties.

Mediator must have capabilities to be able to create such relaxing and conducive environment, such environment will create compromise between disputed parties. At the end of the day, it will eventually provide win-win consensus for all corresponding parties (Cahyani, 2022; Zulaeha, 2016). A professional mediator offers enormous number of benefits in dispute resolution. Firstly, strategy of mediation demands all disputed parties to be proactive in finding resolution of their problems. By exchanging ideas and collaboration, parties who are in conflict will most likely strengthen their relation during mediation and they will have more preparation for future engagement.

Similar to alternative dispute resolution in Indonesia, mediation in Malaysia is not a new method to resolve disputes (Abdul Rani Kamarudin & Norjihhan Ab Aziz, 2014). It is evident that mediation has been invented and used in almost all types of civil disputes in Malaysia where participants are free to make their own decisions and can seek the assistance of the mediator to

consider their needs and interests (Abdul Rani Kamarudin & Norjihhan Ab Aziz, 2014).

Target society for this community service is PCIA Malaysia. So far, PCIA Malaysia has a problem in which they try to help resolving legal conflicts faced by cadres and Indonesia citizens who stay in Malaysia. In other hand, the heads of PCIA do not possess special skill about alternative non-court dispute resolution, (Dewi, 2022) which is mediation. Caused by lack of understanding of mediation process and its benefit, there are many non-litigation disputes that do not conclude in mutual benefit at the field. Both individual and party are not familiar with the term of mediation, they are likely limited to have professional mediator option. Moreover, general society consider that mediation is a final option after a fruitless outcome was concluded throughout formal legal proceedings; contrary, mediation should be picked as first option before.

In order to overcome background of study, law counselling action about mediation must be focused on training program, such as workshop and seminar. Mediation simulation is equally important to provide direct experience of mediation for participants. Furthermore, strengthening network between community organization, mediator, and lawyer, also counselling among all communities who are often involved in disputes can improve access and coordination for dispute resolution. Hopefully, the action will improve understanding about mediation and increase awareness of mediation benefit as efficient and effective method of dispute resolution.

RESEARCH METHOD

Method applied during mediation skill improvement activity in 'Aisyiyah Special Branch Leader in Malaysia for effective dispute resolution is by using Law Counsel, dialogue, and mediation simulation. The activity is directly performed with members of PCIA Malaysia. The subject material delivered in this activity is about task, role, and function of mediator. Next, there will be dialogue session to further elaborate participant knowledge which is previously given by Volunteer of Community Service. The last agenda is mediation simulation, the Volunteer separates participants into several groups and each group will be handed out a study case to all participants as discussion

Mediation Skill Improvement in Special Branch Leader of 'Aisyiyah in Malaysia for Effective Dispute Resolution and training material of each group mediation (Khan et al., 2020). Mediation simulation is performed each group in front of all participants.

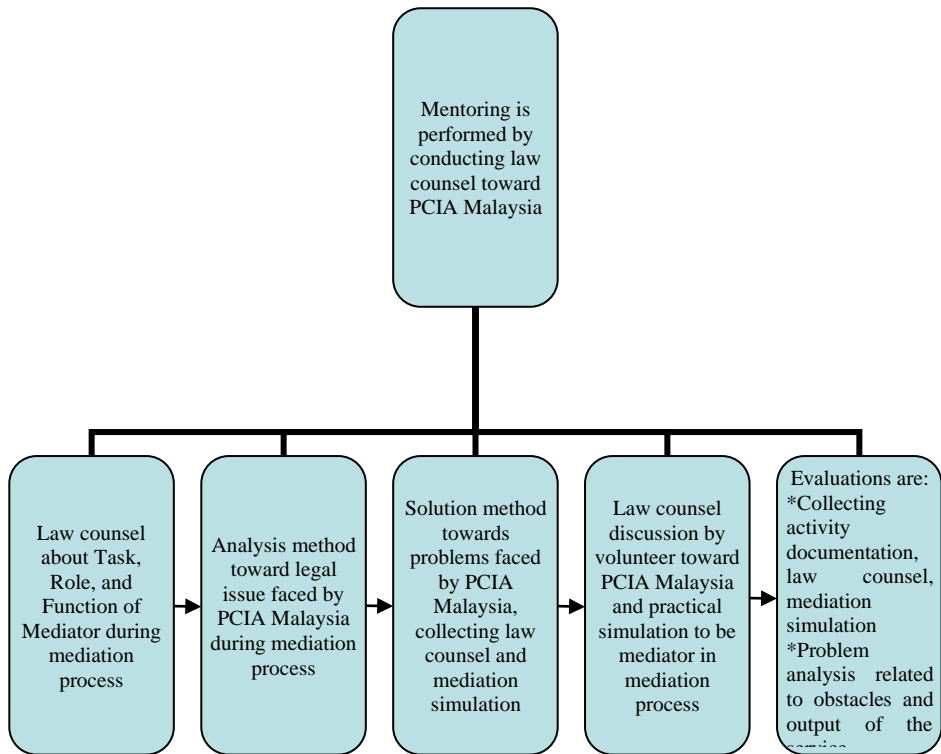


Chart 1. Implementation method of law community service toward PCIA Malaysia

RESULT AND DISCUSSION

Improving mediation skill in 'Aisyiyah Special Branch Leaders activity (PCIA) Malaysia in effectively resolving dispute resolution has objective to improve mediation capability in dispute resolution is successfully done, it indicates significant impact in understanding and applying mediation among society. This activity is designed to overcome challenge often faced by leaders in PCIA Malaysia mediation implementation, also lack of knowledge about process and benefit of mediation and limited access to find such professional mediator.

1. Improving Mediation Understanding

Education and training session, participant will receive in-depth subject material about mediation, stages of mediation process, and its benefit as alternative dispute resolution faced by cadres and Indonesian citizens who stay in Malaysia. The teaching session cover whole detail of how mediation could become efficient solution compared to litigation process (Putra, 2021). Mediation is used to bring bargaining value closer to an agreement (Mokhtar, 2022). According to Kamus Besar Bahasa Indonesia, word of Mediation means a process involving third party in resolving conflict as a counselor. The definition contains three important points, which are:

- a. Mediation is a process of resolving conflict or dispute which occurred between two or more parties;
- b. The party, who is in charge of dispute resolution, is a party who come from outside of conflicted parties; and
- c. The third-party acts as counselor and do not possess authority in decision making.

Terminologically, legislation and experts define mediation as follow:

- a. Supreme Court Act Number 1 of 2016 about mediation Procedure in Court. Mediation is a dispute resolution way through negotiation process in order to achieve consensus from conflicted parties helped by mediator.
- b. Mediator is a neutral party who help disputed parties to find number of possibilities of dispute resolution without deciding and forcing conclusion of the conflict.
- c. Professor Takdir Rahmandi stated that mediation is a process of dispute resolution between two or more parties through negotiation or consensus with the help of neutral party who has no decision authority. Mediator party task is to provide procedure and substantial counsel.

Thus, the essential elements of mediation can be identified, as follow:

- a. Mediation is a method of dispute resolution through negotiation based on consensus approach or parties' consensus;

Mediation Skill Improvement in Special Branch Leader of 'Aisyiyah in Malaysia for Effective Dispute Resolution

- b. The parties seek counsel from party who does not side, which is mediator, and
- c. Mediator has no authority to decide, only to counsel crossed parties in dispute to find mutual benefit resolution that can be accepted by all side.

Next, it is also explained to participants that mediation, in fundamental, can be performed inside or outside of court. Mediation performed during judicial proceeding is regulated in Supreme Court Regulation (PERMA) Number 1 of 2016 that stated the obligatory of mediation before civil lawsuit examination with a District Court judge as mediator who does not handle the case. Meanwhile, non-court mediation is performed by private mediator, individual, or alternative independent institution dispute resolution. But, as the study is limited to the heads of PCIA who stay in Malaysia, it will be focused on non-court mediation.



Figure 1. Delivery of MEdiation material to PCIM Malaysia Participants

There are several things which are important for a successful mediation. Mediation process will be quick and well-done if the parties perform negotiation and make decision directly or by a representative. It is possible that the representative of the parties does not provide with an understanding matter to conflicted parties. In this case, the role of the mediator is needed in order to reach a solution to resolve the problems faced by the parties to the dispute. This

is also in accordance with the existing legal conditions in Malaysia, where the government expects mediation to be one of the ways to reduce disputes in the courts (Mohamed & Hui, 2006).

Mediator's role in mediation process is very important in connecting several meetings between parties in conflict. Sometimes, mediator is someone who has high status and such model does not require skills in process or technique of mediation (Nugroho, 2019). One of important party who is involved in mediation process is mediator. Mediator is a neutral third party who focused only on problems or positions declared by the parties. Here are several functions of mediator in dispute resolution, which are:

- a. Mediator as *Catalyst*: The presence of mediator during negotiation process will lead to constructive environment.
- b. Mediator as *Resource Person*: Utilize available sources of information.
- c. Mediator as *Translator*: Convey and formulate of one side party offer by using fine words without corrupting meaning of the information.
- d. Mediator as *Educator*: Mediator must involve into dynamics of all parties' differences.
- e. Mediator as *Agent of Reality*: To provide a crystal-clear explanation toward one of party that their suggestion is impossible to be declared as consensus through negotiation.
- f. Mediator as *Scapegoat*: A mediator must be ready to be blamed.
- g. Mediator as Bearer of bad News: All parties, during negotiation, can be as emotional as they want, so mediator can be separated from related parties in order to receive all inputs from participants.

According to the functions explained above, it is concluded that function of mediator is to decide *bottom-line* position of the parties and provide several approaches to motivate parties to find compromise point.

There are several stages must be performed by mediator in dispute resolution, which are:

- a. Forum Establishment

In this early stage, mediator informs to the parties about form of process and general rule during mediation. Then, mediator asks the parties to obey the rule.

Mediation Skill Improvement in Special Branch Leader of 'Aisyiyah in Malaysia for Effective Dispute Resolution

b. Information Gathering and Sharing

Next, mediator performs fact and information qualification from each side. Solving problem: during problem solving session, mediator works together with all parties and sometimes separately by using caucus.

c. Decision Making

In this last stage, all parties in conflict work together with help of mediator to choose most favorable decision as consensus.

The legal substance related to mediation provided by the Service Team based on Indonesian law is not much different from mediation as defined by Malaysian law. In Malaysia, depending on the situation, mediation can be, in brief, transformative, evaluative or facilitative (Abdul Rani Kamarudin & Norjihhan Ab Aziz, 2014). Typically, the mediator serves only as a facilitator to assist the parties, with the parties participating in the process and making decisions. In certain circumstances, the mediator may assess the issues and make decisions on their behalf based on the merits of the case and applicable laws. It is best to maintain the relationship between the parties by talking and listening to each other if the conflict involves people they know or are related to. If the parties cannot resolve their dispute, they can still take their case to court.

2. Direct Experience through Mediation Simulation

The activity is followed by mediation simulation agenda. In this agenda, all participants watch mediation simulation that is performed by each group. The third party, in this case is mediator, is to become a middleman for all parties during dispute resolution process as its tasks. To be a 'middleman' also means that mediator must be in neutral position or choose nobody side while resolving issue (Mulyana, 2019; F. A. Sugianto & Marpaung, 2022). In this simulation agenda, volunteer provides position case to all participants. There are several groups which consist of 3 participants per group which first participant is played as first party, second participant as second party, and mediator will be the third participant. Each group can train/discuss to arrange strategy for mediation simulation.

Performed mediation simulation gives opportunity for participants to practice what they have learned before in controlled scenario. Through this simulation, participant will experience various process of mediation directly, to train their communication skill effectively, and improve their skill in identifying and resolving number of issues appeared during dispute resolution.



Figure 2: Mediation Simulation Assistance and Evaluation

Mediation simulation is one of key components in this law counsel activity, which is designed for participant to experience direct mediation situation. Here are some details of the simulation:

- a. **Role Distribution:** participants are divided into several groups, each group play its role as conflicted parties, mediator, or facilitator. Each participant has role based on case scenario.
- b. **Mediation Process:** Simulation is started with introduction and delivering state of problems by parties in conflict. The, mediator provide the parties with a discussion, helping them with identifying interest and necessity from each side, and provide with several future solutions.
- c. **Interaction and Negotiation:** participants train to effectively communicate and negotiate in order to decide the most fruitful option. Mediator uses

Mediation Skill Improvement in Special Branch Leader of 'Aisyiyah in Malaysia for Effective Dispute Resolution mediations' techniques such as open questions, reflections, and clarification to facilitate the process.

- d. Conclusion and evaluation: after mediation session is finished, the conclusion is conducted to elaborate result and discussion about mediation simulation experience. Participants and facilitator give review about process, challenges, and earned skill.

Through mediation simulation activity, the result shows that participants feel more confident and ready to implement the mediation technique in real life situation. This simulation also helps to overcome some stigma about mediation with transparent and cooperative process.

3. Discussion and Dialogue Session

Discussion and dialogue session provide opportunity for participants dive deeper into problems they face and about how mediation can used to overcome such problems. The discussion opens constructive dialogue between participants and Volunteers, it clarifies some aspects of mediation, and to answer some questions that may be appeared. The review from participants stated that this session is very valuable in educating lack of knowledge and providing practical clarification in mediation implementation.



Picture 3. Discussion and Evaluation of Service Activities

Through this activity, from subject material exposure to mediation simulation, for improving knowledge about mediation, participant express their impression during dialogue session, it is found that there is significant improvement in understanding key concepts of mediation such as mediator role, negotiation techniques, and how to constructively outcome a conflict the mediation skill is important to empower the leaders in PCIA Malaysia in resolving dispute occurred among Indonesian citizens who become member of PCIA Malaysia without using judicial proceeding.

CONCLUSION

Implementation of law counsel community service for mediator which attended by leaders of 'Aisyiyah Special Branch of Malaysia becomes very important as mediation is one of non-court alternative option. As the service activity is ended, the 'Aisyiyah cadres and citizens of Indonesia (WNI) who stay abroad possess particular skill if they must face legal issues happened among them. It is intended as mediation capabilities can be used as bargaining tool to achieve consensus, rather than bringing the issue into the court.

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Mediation Skill Improvement in Special Branch Leader of 'Aisyiyah in Malaysia for Effective Dispute Resolution

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