








LEX JOURNAL: KAJIAN HUKUM DAN KEADILAN

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**EFFECTIVENESS OF MEDIATION AS AN ALTERNATIVE TO OUT-OF-COURT SETTLEMENT OF CONSUMER DISPUTES
(Study at BPSK Mataram City)**

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ABSTRACT

The research objectives are: 1) To examine the regulation of the mechanism for resolving consumer disputes through mediation at BPSK Mataram City. 2) To examine the effectiveness of mediation as an alternative to consumer dispute resolution by BPSK Mataram City. 3) To examine the factors that influence the effectiveness of mediation as an alternative to consumer dispute resolution by BPSK of Mataram City. The type of legal research used is Empirical legal research. The approach methods include the statute approach, conceptual approach, case approach, and sociological approach. The results of the research are: 1). there are several regulations governing the dispute resolution mechanism at BPSK including: Law Number 8 of 1999 concerning Consumer Protection, Regulation of the Minister of Trade Number 72 of 2020 concerning Consumer Dispute Resolution Bodies, Decree of the Minister of Industry and Trade Number 350/MPP/Kep/12/2001 concerning the Implementation of Duties and Authority of Consumer Dispute Resolution Bodies. 2). During the period starting from 2020 until June 2025, BPSK Mataram City has succeeded in resolving 84 cases (63%) using successful mediation, while 44 cases (33%) others were resolved by agreeing to disagree and only 5 cases (4%) failed to be resolved, meaning that most cases can be resolved with the output of a peace deed. In this case, in 2020 until June 2025, BPSK Mataram City has resolved disputes by mediation by 63%, namely 84 cases out of a total of 133 cases. This is an indicator that mediation at BPSK Mataram City is very effective. 3) Several factors

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influence the success of mediation at BPSK Mataram City, namely: Skills and techniques of a mediator in conducting mediation, Good faith of the parties to execute the deed of peace.

Keywords: Mediation, Consumer Dispute, BPSK Mataram City

1. INTRODUCTION

Dispute resolution is one of the important legal aspects needed by humans to create order and order in community life. In resolving conflicts or disputes, it has become the duty of the judicial body to resolve a case based on the law and the judge's belief. The exercise of judicial power is delegated to the judicial body based on Law Number 48 of 2009 concerning Judicial Power. This is the parent and general framework that lays the foundation and principles of justice.

Dispute resolution can be done through 2 (two) processes. The oldest dispute resolution process is through litigation in court, and then the process of resolving disputes through cooperation (cooperative) outside the court develops. The litigation process produces adversarial agreements that have not been able to embrace common interests, tend to cause new problems, are slow to resolve, require expensive costs, are not responsive, and cause hostility between the parties to the dispute. On the other hand, the out-of-court process produces a "win-win solution" agreement, guarantees the confidentiality of the parties, avoids delays caused by procedural and administrative matters, resolves problems comprehensively in togetherness, and maintains good relations. The only advantage of this non-litigation process is its confidentiality, because the trial process and even the results of the decision are not published, this out-of-court dispute resolution is generally called Alternative Dispute Resolution (APS) or Alternative Dispute Resolution (ADR). Some say that Alternative Dispute Resolution (ADR) is the third wave of business dispute resolution. The settlement of business disputes in the era of globalization, with the characteristic of "moving quickly", demands methods that are "informal procedures and can be put in motion quickly".

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However, although mediation as an alternative to out-of-court dispute resolution offers several advantages, such as time and cost efficiency, as well as enabling a more satisfactory agreement for both parties, its effectiveness is still a question that needs to be explored more deeply. Several factors that influence the effectiveness of mediation, such as public trust in the mediation process, the qualifications of the mediator, and the readiness of the parties to compromise, need to be analyzed in depth to determine the extent to which mediation is truly an effective solution in dispute resolution.

Conflicts arising in society that are resolved out of court may also arise from disputes between consumers and business actors. In connection with this, the government, based on the provisions of Article 49 paragraph (1) of Law Number 8 Year 1999 on Consumer Protection, establishes the Consumer Dispute Settlement Body (hereinafter referred to as BPSK) only in level II regions (regencies/cities). Thus, BPSK is appointed by the government as an institution that can resolve consumer disputes outside of court.

BPSK Mataram City, as one of the institutions that carry out mediation in resolving consumer disputes, is expected to provide a clear picture of the effectiveness of mediation in practice. Therefore, this study aims to analyze and evaluate the effectiveness of mediation as an alternative to out-of-court dispute resolution, focusing on the implementation of mediation at BPSK Kota Mataram, as well as the challenges and factors that influence its success.

The mechanism for resolving consumer disputes at BPSK, either by conciliation, mediation, or arbitration, refers to the Decree of the Minister of Industry and Trade of the Republic of Indonesia No. 350/MPP/KEP/12/2001 on the Implementation of the Duties and Authority of the Consumer Dispute Resolution Agency. About these mechanisms, BPSK mostly uses mediation.

Mediation as regulated in the 3rd book of the Civil Code is a form of engagement, mediation which is also known as peace is defined in Article 1851 of the Civil Code, which states that: Peace is an agreement which contains that by submitting, promising or

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withholding an item, both parties end a case being examined by the court or prevent a case from arising, this agreement only has legal force, if it is made in writing.

Based on Article 49 paragraph (1) of the GCPL Law, the Mataram City Government, to protect its citizens, realizes the importance of establishing a Consumer Dispute Resolution Body, a strong desire to protect the community is an asset for the Mataram City government to form a body that can accommodate complaints from the community as consumers. Thus, the Consumer Dispute Settlement Body was formed in Mataram City, whose first inauguration was held in 2010.

2. RESEARCH METHODS

The research used is empirical legal research with the consideration that this research refers to regulations or other legal materials related to the establishment of the Consumer Dispute Resolution Agency and also examines social symptoms that arise in community life in general and specifically on the effectiveness of mediation as an alternative to out-of-court dispute resolution at the Consumer Dispute Resolution Agency Mataram City. The approaches used are the statutory approach, conceptual approach, case approach, and sociological approach. The sources and types of data used in this research are Primary data and secondary data.

3. DISCUSSION

The Consumer Dispute Settlement Body (BPSK) of Mataram City is an institution established under Law No. 8/1999 on Consumer Protection, with the task of resolving disputes between consumers and business actors outside the court. Initially, BPSK of Mataram City was located in the NTB Governor's Office Complex, and is now located at Jalan Langko No. 61, Mataram (Office of the NTB Provincial Trade Office). The establishment of BPSK was strengthened through various regulations, including Kepmenperindag No. 350/MPP/Kep/12/2001, Keppres No. 90/2001, and Keppres No. 108/2004. The inauguration of BPSK members in Mataram City was conducted in several

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periods, starting in 2010 until the third period in 2020-2025. Based on Law No. 23/2014, the management authority of BPSK is now under the NTB Provincial Government, and its funding is sourced from the provincial APBD, by MOT Regulation No. 06/M-DAG/PER/2/2017.

BPSK membership consists of elements of government, business actors, and consumers, each representing a relevant agency or institution. The dispute resolution process at BPSK is fast (resolved within 21 working days), easy (simple procedure without the need for legal counsel), and free. In contrast to the process in court, disputes at BPSK are resolved through mediation, conciliation, or arbitration with the principles of deliberation and kinship, resulting in a solution that benefits both parties (*win-win solution*).

Description of Consumer Dispute Resolution Mechanism through Mediation at BPSK Mataram City

About the regulation of the mechanism for resolving consumer disputes at BPSK, several regulations regulate it, including: a). Law No. 8 Year 1999 on Consumer Protection. This law is the main legal basis governing the existence and duties of BPSK in resolving consumer disputes. This Law on Consumer Protection was formulated concerning the philosophy of national development that national development, including the development of laws that protect consumers, is in the context of building the whole Indonesian human being based on the state philosophy of the Republic of Indonesia, namely the Pancasila state foundation and the state constitution of the 1945 Constitution; b). Regulation of the Minister of Trade No. 72/2020 on the Consumer Dispute Settlement Body. This regulation provides further details regarding the duties and authority of BPSK in resolving disputes. This regulation is a replacement for the regulation of the Minister of Trade number 06/M-DAG/PER/2/2017 concerning the Consumer Dispute Resolution Agency; c). Decree of the Minister of Industry and Trade No. 350/MPP/Kep/12/2001 on the Implementation of the Duties and Authority of the Consumer Dispute Settlement

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Body. This decree regulates the implementation of the duties and authority of BPSK in resolving disputes. This decree is also the procedural law that serves as a reference in the implementation of dispute resolution at BPSK.

The regulation on mediation can be found in the provisions of Article 6 paragraph (3), Article 6 paragraph (4), and Article 6 paragraph (5) of Law No. 30/1999 on Arbitration and Alternative Dispute Resolution. The provisions regarding mediation stipulated in Article 6 paragraph (3) of Law No. 30/1999 are/are a process of activity as a continuation of the failure of negotiations conducted by the parties according to the provisions of Article 6 paragraph (2) of Law No. 30/1999. According to the formulation of Article 6, paragraph (3) of Law No. 30 of 1999, it is also said that upon written agreement of the parties, the dispute or difference of opinion is resolved through a mediator. The law does not provide a clear definition or definition of mediation or mediator.

Meanwhile, according to Law No. 30 of 1999, an agreement to settle a dispute or difference of opinion in writing is final and binding on the parties to be implemented in good faith. The written agreement must be registered at the District Court within a maximum of 30 (thirty) days from the signing, and must be implemented within a maximum of 30 (thirty) days from registration. As with the provisions contained in Article 6 paragraph (4) of Law No. 30 Year 1999, it can be said that the Law distinguishes between mediators: Mediators jointly appointed by the parties (Article 6 paragraph (3) of Law No. 30 of 1999); and Mediators appointed by the arbitration institution or alternative dispute resolution institution appointed by the parties (Article 6 paragraph 4 of Law No. 30 of 1999).

Implementation of Dispute Resolution through Mediation at BPSK Mataram City.

BPSK is an institution that carries out the function of mediation. BPSK is categorized as a public or semi-public institution because it is formed by the government, and in carrying out its functions, BPSK does not collect fees or service money. BPSK

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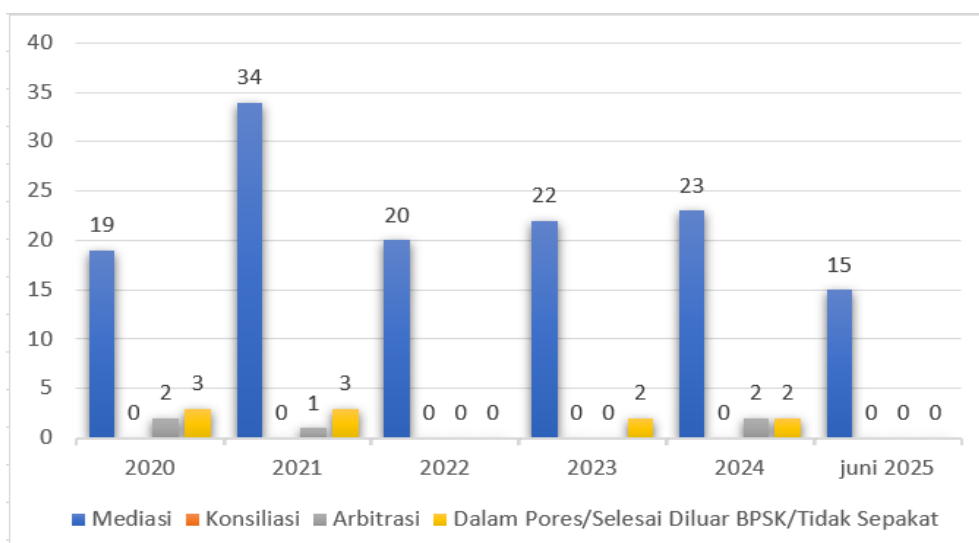
obtains funds from the government. Although 3 (three) ways can be taken to resolve consumer disputes out of court through BPSK, either mediation, conciliation, or arbitration. However, only mediation will be discussed further. Mr. Muna'im explained that BPSK of Mataram City not only carries out its main task to resolve disputes between consumers and business actors, but BPSK is also used as a place by students from various universities, both public and private, from various levels, be it undergraduate, undergraduate or even doctoral level. Starting from Thematic KKN activities, research, and mediation practice places.

Settlement of consumer disputes through mediation at BPSK is different from mediation in court as stipulated in Supreme Court Regulation (PERMA) Number 1 Year 2008. Court mediation only applies to civil disputes submitted to the court (court-connected mediation), while disputes that have been decided by BPSK are exempted from the obligation to mediate in court, as stipulated in Article 4 of the PERMA. The dispute resolution process at BPSK begins with a consumer complaint, either orally or in writing, which is recorded by the secretariat and given a registration number. The complaint can also be filed by the heirs or attorney of the consumer, if the consumer is deceased, sick/elderly, immature, or a foreign national. The secretariat will assess whether a dispute has occurred, and the complete complaint file will be submitted to the BPSK Chairperson to form a settlement panel.

The Chairman of BPSK then summons the business actor in writing within 3 working days at the latest. If the business actor or other party does not fulfill the summons, BPSK is authorized to request the assistance of investigators, by Article 52 letter (i) of GCPL. Not all complaints lead to mediation, conciliation, or arbitration decisions. Sometimes, consultation with BPSK members is enough to resolve consumer problems, thus reducing the burden of cases in the courts and the Supreme Court. Based on primary data, since its inauguration on June 24, 2010, until June 2025, BPSK of Mataram City has resolved 418 cases. This research specifically focuses on the effectiveness of mediation

in resolving consumer disputes by the BPSK of Mataram City during the period from 2020 to June 2025.

In the last five years, BPSK Mataram city resolved more disputes by mediation than by conciliation or arbitration. The author can say that the comparison is far enough so that it can be concluded that dispute resolution through mediation at BPSK Mataram city is very dominant compared to other alternative dispute resolution methods. The following is a recapitulation of the comparison of dispute resolution methods through mediation, conciliation, and arbitration at BPSK Mataram City from 2020 to February 2025:



Comparison between Dispute Resolution through Mediation, Conciliation, and Arbitration at BPSK Kota Mataram from 2020 to June 2025

Figure 1 shows that dispute resolution at BPSK Kota Mataram from 2020 to February 2025 was dominated by the mediation method, followed by arbitration, while conciliation was rarely chosen. Several cases are still in process, completed outside BPSK, or ended without an agreement.

According to Mr. Muna'im, SE, M.Si, Head of BPSK Secretariat of Mataram City for the period 2020-2025, BPSK serves many consumer complaints and consultations.

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Not all complaints proceed to trial, because: Family settlement outside BPSK; The business actor refers to the contract clause for settlement outside BPSK; The consumer is absent; The company is domiciled outside NTB Province; and The business actor is absent 3 times in a row without explanation. If the business actor is absent, BPSK records it in the minutes of the hearing. Consumers can use this document to seek further legal remedies at other institutions.

Before the first hearing, a pre-hearing was conducted, led by the Deputy Head of BPSK to determine the dispute resolution mechanism (mediation, conciliation, or arbitration). Although not regulated in Ministerial Decree No. 350/MPP/Kep/12/2001, this stage is outlined in the SOP of BPSK of Mataram City for the sake of time efficiency. According to Ms. Haerani, SH, MH, Deputy Chairperson of BPSK of Mataram City, the settlement must be completed within 21 working days, as stipulated in the GCPL Law. The BPSK panel consists of 3 members representing the elements of government, business actors, and consumers, and is assisted by a clerk. In mediation, the panel is tasked with summoning the parties, calling witnesses/expert witnesses, providing a forum for dialogue, actively encouraging peace, and providing recommendations by consumer protection regulations.

The first hearing is conducted no later than 7 working days after the complaint is declared complete. Evidence can be in the form of goods/services, testimony of the parties, witnesses/letters, or other supporting documents. Under the GCPL, the burden of proof is shifted to the business actor, different from the Civil Code Article 1865, which imposes the burden on the injured party. This provides legal convenience for consumers. If an agreement is reached, a written agreement is made, which is ratified by a decision of the Tribunal. If no agreement is reached, an official report on the failure of the mediation is made and signed by both parties, the Tribunal, and the Registrar.

The Chairman of BPSK shall deliver the decision to the parties no later than 7 working days after it is read out. If within 14 working days of receipt there is no objection, then the business actor is obliged to implement the decision within 7 working days. If not

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implemented, the implementation of the decision is submitted to PPNS-PK for investigation. Based on Article 46, paragraph (1) of UUPK, a lawsuit against BPSK can only be filed by individual consumers or their heirs. Meanwhile, lawsuits by consumer groups, LPKSM, or the government can only be filed through the court.

The stages of mediation at BPSK Kota Mataram include: consumer complaints with complete evidence; submission of files to the Head of BPSK and appointment of a panel; rejection of the complaint if it is incomplete or outside the authority; written summons to the business actor for a maximum of 3 working days; pre-hearing to choose the type of settlement; the first hearing is a maximum of the 7th day since the complaint was received; the agreement is set out in the agreement and strengthened by the decision of the panel; if it fails, minutes of failure are made; decision is submitted within 7 working days and must be implemented within 14 working days if there is no objection. In general, the implementation of mediation at BPSK Mataram City was by the provisions of GCPL and Minister of Trade Decree No. 350/MPP/Kep/2001. The existence of a pre-hearing process is an effective strategy to screen and resolve disputes early on without having to proceed to the hearing stage.

Overview of Alternative Dispute Resolution (ADR)

To avoid protracted and costly dispute resolution processes in court, parties often include dispute resolution clauses in business contracts, which provide for settlement to be made first amicably through negotiation, mediation, or conciliation before resorting to adjudication channels such as arbitration or court. According to Law Number 30 Year 1999, Alternative Dispute Resolution (APS) includes consultation, mediation, conciliation, and arbitration, which are conducted based on the agreement of the parties. In this mechanism, disputes can be resolved directly by the parties or with the help of a neutral third party.

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Forms of Alternative Dispute Resolution (ADR)

Jacqueline M. Nolan-Haley, in her book entitled *Alternative Dispute Resolution*, explains that alternative resolution consists of Negotiation, Mediation, and Arbitration, while Priyatna Abdurrasyid concluded that the forms of Alternative Settlement are Mediation, conciliation, disputes prevention, binding opinion, valuation, appraisal, special master, master, ombudsman, mini trial, private judge, summary jury trial, quality arbitration or arbitration. Arbitration is an out-of-court dispute resolution through a third party (arbitrator) who is authorized to make final and binding decisions. Although initially quick and inexpensive, arbitration now tends to be formal and expensive, but remains the main choice in international business disputes.

Negotiation is the simplest and least expensive form of dispute resolution, commonly used in trade relations. The process allows parties to resolve disputes directly without the intervention of a third party. However, its success depends largely on negotiating skills. The advantage of negotiation is that the parties have full control over the dispute resolution process and outcome. Mediation is a form of negotiation that involves a neutral third party (mediator) who guides the disputing parties to reach an agreement without imposing a decision. The advantages are that the process is voluntary, flexible, oriented towards mutual interests, maintains long-term relationships, and gives full control to the parties. The mediator only facilitates, does not give a decision, so the result is the parties' agreement.

Conciliation is similar to mediation, but the conciliator can propose a settlement to the parties. If agreed, the proposal becomes a final and binding agreement. The main difference is that there is a recommendation from a third party, which is not available in mediation. Although often used interchangeably, conciliation usually involves more active intervention and is educational.

The goal of ADR (alternative dispute resolution) is to provide effective out-of-court solutions that are fair and efficient. Mas Achmad Santosa cites five important reasons for the development of ADR in Indonesia: (1) to increase investment attractiveness by

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ensuring legal certainty; (2) to meet public demands for quick and fair dispute resolution; (3) to accommodate public participation in public decision-making; (4) to encourage the improvement of judicial institutions through fair competition; and (5) to reduce court caseloads. ADR is considered the right solution under certain conditions to resolve disputes peacefully and efficiently.

Effectiveness of Mediation as an Alternative for Resolving Consumer Disputes by BPSK Mataram City

Mediation as an alternative form of out-of-court dispute resolution has long been recognized in the Indonesian legal system, such as in the Environmental Management Law and the Labor Law, before it was specifically regulated in the GCPL Law. Law Number 8 Year 1999 on Consumer Protection authorizes BPSK to resolve disputes through mediation, arbitration, or conciliation as stated in Article 52. BPSK itself acts as a small and simple dispute resolution institution (small claim court) that aims to reach an agreement regarding the form and amount of compensation, as well as preventing the recurrence of losses experienced by consumers. The effectiveness of mediation is highly dependent on the ability of the mediator and the willingness of the parties to reach a win-win solution.

Based on the results of primary data processing from the author, the following is a recapitulation of the selection of consumer dispute resolution methods using mediation from 2020 to February 2025:

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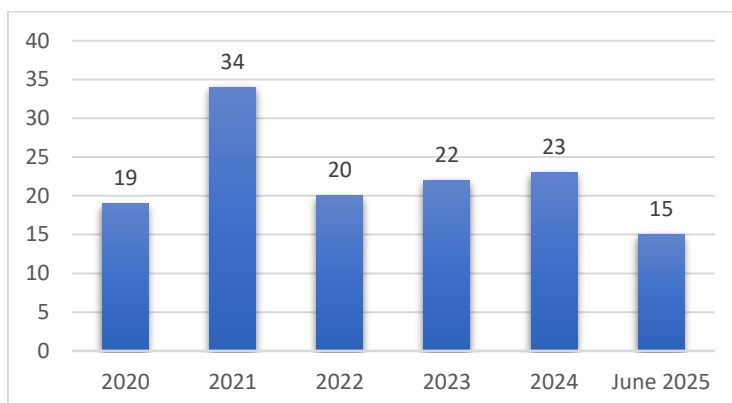


Figure 2. Registration of Complaints and Dispute Resolution at BPSK Mataram City Using Mediation in 2020 to June 2025

Based on Figure 2, it can be seen that the choice of dispute resolution through mediation at BPSK Mataram City fluctuates every year but tends to increase, with a total of 133 cases resolved through mediation from 2020 to June 2025. Mediation is the method most chosen by the parties. If successful, mediation results in an agreement that is outlined in a deed of peace and strengthened by a final and binding BPSK decision. If it fails, an official report is made explaining the disagreement, but the process is still considered procedurally successful. Therefore, the effectiveness of mediation can be measured relatively, both from the results of the agreement and the success of the process. The high rate of dispute resolution through mediation indicates that mediation at BPSK Mataram City is considered quite effective.

Factors Affecting the Effectiveness of Mediation as an Alternative Settlement of Consumer Disputes by BPSK Mataram City

Mediation as a form of alternative dispute resolution has several advantages, including a flexible process because it is not rigidly bound by formal legal rules, so that the parties can directly discuss the substance of the problem without getting caught up in legal technicalities. The mediation process is also closed and participatory, allowing the

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principal parties to be directly involved without having to use the services of a legal representative. In addition, mediation can discuss various aspects beyond the law, including social and economic relations, and produce a win-win solution.

However, mediation also has disadvantages, such as its success being highly dependent on the goodwill of the parties. Mediation can be misused as a stalling strategy by dishonest parties. Not all disputes are suitable for resolution through mediation, especially those involving ideological values or the determination of absolute rights that must be decided by a judge. In addition, mediation normatively only applies in the realm of private law. Even so, mediation at BPSK is still considered effective, efficient, and fair in resolving consumer disputes, as confirmed by Marc Galanter's Justice in Many Rooms theory, which states that justice is not only found in court but also outside formal judicial institutions.

The effectiveness of mediation by BPSK Mataram City is influenced by several factors. First, the mediator's ability to lead the mediation process is very important. The mediator must be able to explain procedures, offer solutions, and keep the mediation atmosphere conducive. Second, the success of mediation is highly dependent on the active participation and goodwill of the parties. The high level of sectoral ego is often a barrier to reaching an agreement. Mediators are required to be able to reduce ego and build mutual trust. Third, the success of mediation is also determined by the implementation of the deed of peace as the final result of the parties' agreement. The peace deed is a concrete indicator of the success of mediation, where the more peace deeds that are formed, the more effective the mediation conducted by BPSK.

In general, there are three possible outcomes of the mediation process at BPSK. First, mediation is said to be successful if an agreement on dispute resolution is reached and set out in a legally binding peace deed. Second, mediation is categorized as an "agreement to disagree" if the parties only agree on the method of dispute resolution but do not agree on the amount or form of compensation. Third, mediation is considered a failure if no agreement is reached at all, either on the method of settlement or the

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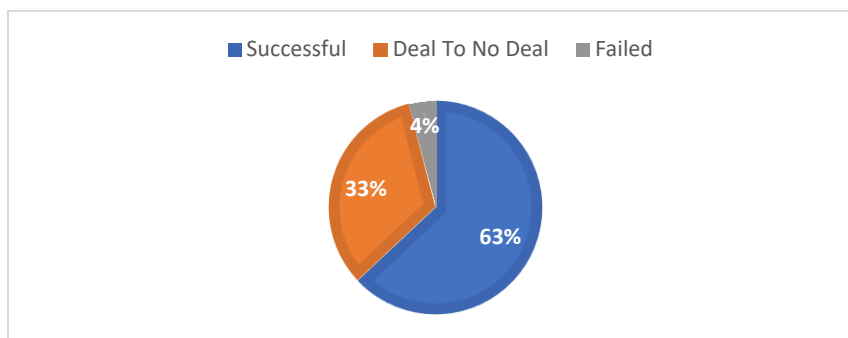
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substance of the dispute. This failure can be caused by various factors, such as the absence of the parties, the exceeding of the time limit, the absence of good faith, the absence of the authorized party, or the non-fulfillment of the terms of peace. In this context, BPSK of Mataram City has carried out its strategic role by prioritizing the mediation process as the main effort in resolving consumer disputes peacefully, quickly, and efficiently.

Below can be seen the details of mediation results at BPSK Mataram City from 2022 to June 2025:



Comparison Between the Percentage of Failure and Success of BPSK of Mataram City in Handling Disputes through Mediation.

During the period from 2020 to June 2025, BPSK of Mataram City was recorded to have successfully resolved 84 cases, or 63% through successful mediation, while 44 cases, or 33% were resolved through agreement to disagree. The other 5 cases, or about 4% failed in the mediation process. The data shows that most of the cases resolved at BPSK Mataram City ended with a peace deed which has been fully implemented by the parties, strengthening the indicator that mediation in this institution runs effectively. The effectiveness is also characterized by the implementation of the peace deed, which is strengthened in the BPSK Decision, which is final and binding.

If analyzed based on the theory of legal effectiveness, the law is said to be effective if the legal rules can achieve the objectives intended by the maker. In this context, mediation as a legal instrument has proven to be the most preferred dispute resolution

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mechanism and provides the best solution for the disputing parties. With the achievement of a successful mediation rate of 63% of the total 133 cases, it can be concluded that mediation at BPSK Mataram City is considered effective as a means of resolving consumer disputes outside the court.

4. CLOSING

The settlement of consumer disputes by BPSK is regulated through several regulations, namely Law No. 8/1999, MOT Regulation No. 72/2020, and Kepmenperindag No. 350/MPP/Kep/12/2001, which together regulate the duties and authority of BPSK. At BPSK in Mataram City, the mediation mechanism proved to be quite effective, with 63% of cases successfully resolved through mediation and only 4% failing. The success of mediation was influenced by three main factors: the mediator's skills in psychological, social, and religious approaches; the active participation of the parties without bringing sectoral ego; and the existence of good faith in implementing the results of mediation in the form of a peace deed.

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