

# TRANSPLANTING MEDIATION INTO INDONESIAN CIVIL JUDICIAL SYSTEM

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## Abstract

Mediation which has been integrated to court since 2003, was the result of transplantation from the United States of America with a low rate of success. If it is evaluated with *the law of the non-transferable law* by Robert B. Seidman, the rule of law derived from a country which is formed based on its socio-cultural condition cannot be automatically applied to a certain group of people living with a different socio-cultural awareness. The objective of the research is to find a suitable mediation concept to be applied in civil case litigation and to find out factors influencing the less-successful court connected mediation in Indonesia. This is a qualitative research using socio legal approach. Primary data obtained through interviews, secondary data obtained through document review. Based on qualitative analysis, it is found out that the suitable mediation concept applied in civil case litigation was repositioned as one of requirements to file a suit. Factors influencing less-successful court connected mediation in Indonesia are law and legislation, law enforcement officers, facilities and infrastructure, society and culture.

**Keywords:** *Transplantation, mediation, civil judicial system, Indonesia.*

## 1. Introduction

Mediation is integrated on the court has been known as a mandatory procedure in the resolution of civil cases since 2003. Currently integrated on the court mediation is regulated through PERMA No. 01 of 2016, but in practice has not shown significant success. If evaluated Principles of Good Corporate Governance and the factors that affect the enforcement of civil law in Indonesia, there are inefficiencies in law enforcement, in particular through the completion of the mediation process to be integrated on the court.

This study aims to find the concept of mediation is suitable to be applied to the settlement of civil cases in the District Court of Indonesia, and what factors influence the

court mediation is less successful in Indonesia. The purpose of these studies was based on the results of previous studies because of their failure to use mediation in Indonesia, particularly mediation which is integrated with the court (court connected mediation). Based on the research that has been conducted, the achievement of mediation success rate highest court is only 5%.

The practice of mediation that is integrated with the court in Indonesia started in the early 2000s, in particular for civil cases were sued to court. The first time that integrated with the court mediation is corroborated by the Supreme Court Regulation No. 02 of 2003 on Mediation Procedure in court. Article 2, paragraph (1) of this Regulation is

a provision for the first time require all civil cases filed in the court of first instance to advance resolved through peace with the help of a mediator. This provision as well as building a series of new procedures for the settlement of civil disputes in court who had not previously been done.

Five years later the Regulation repealed and replaced with the Supreme Court Regulation No. 01 of 2008 on Mediation Procedure Court, which extend into force of mediation in court. Among the expansion, namely the use of mediation at all levels of dispute resolution. Similarly, enacted provisions that restrict the behavior of mediator through the "code of conduct mediator" who must be obeyed. This change left from the many weaknesses of the rules of mediation in court in 2003. The failure of utilization of mediation in the courts for at least 10 (ten) the first year it pushed back the reform law on mediation in courts conducted in 2016.

In 2016, the Supreme Court Rules 2008 to change back to the Supreme Court Regulation No. 1 Year 2016 on Procedures for Mediation in the Court. One of the fundamentals weigh on the establishment of the Supreme Court Regulation No. 1 Year 2016 on Mediation in the Court Procedure (hereinafter referred to as Rules of the Supreme Court), which is not optimal previous regulation to meet the needs of the implementation of the mediation is a far more powerful and able to improve the success of mediation in court.

Among the differences with the previous regulations were repealed, that a period of mediation shorter terms in good faith and sanctions for parties who are not of good will in mediation. The absence of good faith cannot be associated with the receipt of a lawsuit by a judge. Even judges can be blamed for violating the provisions of the legislation if it does not order the parties to mediate. The issue of the failure of mediation in Indonesia is very complex, more than just a question of procedures, but also involves the mind-set of the parties to the dispute to mediation as a procedure.

Conceptually, the technical design is slightly different, the actual mediation has developed

in Indonesia, both in format based on customary law or customs, religions and among the Chinese community in Indonesia found the peaceful resolution of disputes with Confucius that emphasized the harmonious relationship between man and man and human nature. The main equations with mediation lies in the peaceful resolution of disputes based on the interests of each party. The main difference lies in third parties that facilitate the settlement of the dispute. In the tradition or habit of Indonesian society, local authorities often take an important part, whereas in mediation, the mediator is a neutral third party or impartially, in addition to professional. Conflicts or disputes in Indonesian tradition tend not to be separated from public life, which characterizes the relationship on the community. Therefore, the role of third parties or powerful positions in society is very important.

The integration of mediation into the judicial system gave hope to strengthen and maximize the functions of the judiciary in resolving disputes, particularly to overcome the accumulated civil case in court and embodies the principle of justice is simple, quick and low cost as stipulated by Article 2 (4) of Law No. 48 Year 2009 on Judicial Authority. In practice, the problems faced is the fact suboptimal achievements of mediation that is integrated on the court (court connected mediation). That fact leads to an explanation of praxis that integration of mediation in civil judicial process turned out to make civil judicial longer and not simple. Therefore, the process of settlement of civil disputes in court are more expensive and the expected ideal way precisely distorted.

Based on the data in the Semarang District Court within the last three years, namely; 2013, 2014, 2015 indicate that the number of civil cases are heard by the Semarang District Court as follows:

- 1) In 2013: 479 cases
- 2) In 2014: 482 cases
- 3) In 2015: 520 cases

Condition number of the case shows that there is an increasing trend from year to year. The increase in the number of cases

that coined the potential for the accumulation of cases from the Court of First Instance (District Court), which was supported by the judges on average no more than 32 people. Means that on average each judge within one year holds 16 cases to be solved. It is not an easy thing to be resolved given the formality / stage of completion of a civil case under civil law is so complex, so it takes a long time to complete. The incoming cases was not balanced by the success of the settlement through mediation in court. Based on the data in court, it was a civil case can be resolved through mediation in the courts, among others:

- 1) In 2013: 15 cases
- 2) In 2014: 8 cases
- 3) In 2015: 7 cases

The data explain the success of mediation in the courts even more decreased from year to year. Ironic because the number of cases is increasing, but the success of the mediation decreases. The facts also show that the success rate of effectiveness in settling disputes through court mediation still very low, less than 2% (two percent). This shows a decrease in mediation success rate achieved in 2007 based on the results of research conducted in 2003-2007 at the District Court of the Supreme Court of the pilot project on average under 5%. This condition is ironic in the hope of integrating mediation agency in court is to help reduce the burden of the courts in settling disputes. This reality is in fact explains that mediation as if only a mere myth conflict transformation. Moral and social vision of transformation - from an individualistic conception to relational and interactive - on receipt of mediation in the courts is not a success. As noted by Robert A. Baruch Bush and Joseph P. Folger, scholars and thinkers of the view that even though the ethical individualism of modern Western culture is the greatest achievement over the previous social order, it is now a possibility and necessitates to move further and achieve full integration on the freedom of the individual and social consciousness in a relational social order created through new forms of social institutions and processes.

Failure use of mediation in Indonesia is not only integrated with the court, but also the mediation outside the court. That is, among

the institutions existing dispute resolution - and the court of arbitration, mediation precisely at least be an option for dispute resolution. Therefore, it is ironic to the traditions or customs of the Indonesian nation has institutions of peace in resolving the conflict. This condition also indicates inaccuracy, even mistakes in an effort to offer mediation as a form of dispute resolution, particularly integrated with the court.

Failure situations mediation practices that are integrated with the courts in Indonesia can be called a unique situation other than that drawn from studies in other countries. Therefore, experience in Indonesia to provide confirmation of the unique situations and strategies-strategies offered. The failure was not entirely due to internal factors associated with the strategy of mediator, as well as the choice of model depicted through statutory laws and regulations governing the mediation. Outside factors, external factors, such as the psychology of the nation in the dispute, legal traditions, in particular the practice of litigation that necessarily harmonized with the mediation that is not based on local customs. Matters of harmonization with the local habits implicitly actually been made possible by the Rules of the Supreme Court through the provision regarding the opening of involving experts, community leaders, religious leaders, or traditional leaders. However, this involvement is optional hanging on the agreement of the parties. Moreover, in concept, structure, and methods cannot be interpreted does convergence between foreign and receiver models.

Based on these conditions, the integration of mediation with civil judicial process in the Indonesian courts need to streamline the reconstruction of reaching agreement of the parties to the dispute. Hope is not the other, is integrated on the court mediation can actually be an ideal forum and effective in resolving the dispute, so that the dispute does not continue very long trial process. Unproductiveness nullifying the mediation process at the interface the potential consequences of the court assumptions emergence of increasingly negative towards

the processes of dispute resolution in the courts.

Without ignoring the success of mediation in court, eventually mediation becomes a kind of performance because the legislation necessitates mediation before the trial examination. This led to a dispute resolution increasingly longer, cost more expensive, and more complicated process. One interesting phenomenon is based on facts that have been mentioned above that the success rate of mediation in the District Court in Indonesia on average no more than 5%. Based on this phenomenon, researchers interested in conducting research on transplantation Mediation to the Civil Justice System in Indonesia

## 2. Method

The method used is juridical empirical approach to researching the primary data are supported by secondary data. The study was conducted from juridical factors in advance and proceed with conducting research in the field of primary data on the three classes of the District Court.

The research is a qualitative research with a philosophical approach and Socio Legal Research. The "socio legal research" have to explain the difference between legal and non-legal problems and require a variety of social science disciplines that are used to help assess implementation problems in the community setting. Socio legal studies is an alternative approach which is testing the doctrinal study of the law, the word "socio" in socio legal studies represent a linkage between the context in which the law was (an interface with a context within roommate law exists). That is why when a researcher using a socio-legal social theory for analysis purposes, they often are not intended to give attention to the sociology or the social sciences alone, but also focus on the law and legal studies.

The approach in this study included the approach legislation, approach to the history and concept approach (philosophy) will be used continuously and interconnected in order to obtain data that can then be reviewed, analyzed and interpreted so that the problem in the study of the dynamics of

setting mediation court as efforts to settle civil lawsuits, and compatibility between legislation and practice in the field can be seen up to a success rate of mediation as a form of court settlement of civil cases.

This part contains research or book review methodology, subject, research instrument if any, and data analysis which will be used, schedule to conduct the research or book review.

## 3. Result and Discussion

### A. Concept of Mediation which is appropriately applied at civil case litigation in Indonesia

Transplantation derived from English word *transplantation*, *too transplant* means to take up and plant to another or to move from one place to another. Transplantation, in medical term, means an attempt to move a certain part of the body from one place to another or a medical effort to move cells, tissues (a collection of cells), or organs from donors to recipients. According to article 1 (5) of Law no. 23 of 1992 on Health, transplantation means "a series of medical measures to move the organ and or tissue derived from someone else' body or the body itself in line of treatment to replace organ and or tissue that is not functioning well". Based on some definition above, transplantation definition used by the author in this discussion means a series of legal actions to move dispute settlements procedure and mechanism applied in western law tradition (the United States) into the tradition of Indonesian society.

The fifth principle of ten principles of *Good Corporate Governance* is efficiency and effectiveness that means ensuring the implementation of public service by using all available resources optimally and responsibly. According to Soerjono Soekanto, there are five factors to consider in law enforcement effectiveness, namely: a. Law (legislation); b. law enforcement officer; c. supporting Infrastructure and facility; d. society; and e. culture.

Soerjono Soekanto's opinion is supported by Robert B. Seidman's theory of the operation of law in society that each rule of law tells how a role holder or *role occupant* is expected to act. How a person will act in response to legislation which is the function-regulation that is aimed at him, sanctions, activities of implementing institutions and overall complexity of social, political, etc about him.

How implementing institutions will act in response to the rule of law which is the function-the rule of law that is aimed at them, sanctions, the overall complexity of social, political power, etc about them and the feed back from the role occupant. Further, how the legislators will act is the function of regulation that govern their behavior, sanctions, overall complexity of social, political, and ideological power about them and also feedback comes from the role occupant and bureaucracy.

Robert B. Seidman also proposed a theory of *the law of the non-transferable law*, that a rule of law derived from a country which is formed based on its socio-cultural condition cannot be automatically applied to a certain group of people living with a different socio-cultural awareness.

Ehrmann revealed that *"There are two principal forms of resolving legal disputes throughout the world. Either the parties to a conflict determine the outcome themselves by negotiation, which does not preclude that a third party acting as a mediator might assist them in their negotiations. Or, the conflict is adjudicated, which means that a third, and ideally impartial party decides which of the disputants has the superior claim"* (Vago, 2011). These forms are applied and sometimes intertwined to civil, penal, and administrative disputes (Vago, 2011). On that basis, Steven Vago emphasized that the main dispute resolution mechanism can be depicted in a continuum range (series) from negotiation to adjudication. In negotiations, the participation is

voluntary and the parties in disputes arrange their own settlement. The next sequence of continuum is mediation, where the third party facilitate the settlement and help parties to reach *voluntary agreement*. The end of the continuum is the adjudication (both judicial and administrative) – all parties were forced/compelled to take part, and the case was given a verdict by the judge, formal procedures, all parties can be represented by advocates, the result can be enforced under the law. Similar process of adjudication is arbitration, which is more informal. (Vago, 2011)

Christopher W. Moore depicts conflict management continuum and settlement approach, that there are ways to settle a conflict in society and they can be an option. Each choices has different ways in the (*formality of the process*), (*privacy of the approach*), involved parties, (*the authority of the third party*), verdict types resulted, and the coercion level given by or to the disputants. The left side of the continuum is informal, a private procedure that is only involving disputants. While, on the right side, a party imposes coercion and often in form of public action to force the opponent to follow (obey) (Vago, 2011). The model used is determined by the dispute settlement purposes, complexity, and social status. Each models has strength and weakness. The use of litigation model or court process, is based on the dispute settlements' paradigm of enforcing the *rule of law*. The existence of court is intended to become a facilitative tool to enforce the law by providing the disputant access to justice.

In Indonesia, in general provision regarding to mediation is regulated under Act Number 30 of 1999 on Arbitration and Alternative Dispute Resolution (Undang-Undang Arbitrase dan APS), but it is not regulated further, even it is not mentioned as court connected mediation. Special provision on mediation in court is regulated by Supreme Court Rules Number 1 of 2016 on Mediation Procedure in Court

(hereinafter referred as Supreme Court Rule).

At the level of ideas, the Act on Arbitration and ADR contains controversy. On one hand, it showed the freedom of mediator to use model variation, on the other hand, the Act limits the model variation to offer. Technically, mediation is becoming very strict. The impression created about the mediator's freedom to use model variation is actually an incorrect impression since what is freed by the Arbitration and ADR Act and the Supreme Court Rules is the technique of model that specified limited. It means both Arbitration and ADR and Supreme Court Rule follow the paradigm of "limited model" and do not provide "model and technical freedom space". It is clearly stated on article 6 section (2) of Arbitration and ADR Act :

Dispute or different opinion settlement through Alternatives Dispute Resolution referred to in section (1) is resolved in a meeting directly attended by parties in a maximum period of time of 14 (fourteen) days and the result is set forth in a written agreement.

Supreme Court Rules regulates a wider term compared to the provision on Article 6 Section (2) of Arbitration and ADR Acts about the possibility of mediation model application. Article 5 Section (3) of Supreme Court Rules states that "mediation can be carried out through media of communication, long distance audio visual that enables all parties to see and listen directly and participate in the meeting". Supreme Court Rules is considered to be more advanced than the Arbitration and ADR Acts, but it raises a question "does not it mean Supreme Court Rules contradict to the Arbitration and ADR Acts?". In spite of this contradiction, it shows that is the time for Arbitration and ADR Acts to be revised so that it does not raise a multi-interpretation about the contradiction. The preference to revise the Arbitration and ADR Acts is caused by its incompatibility with the nature of mediation as a more flexible dispute settlement process – model and

technique – compared to adjudicative court or arbitration.

Conceptually, the possibility of "long distance mediation" application based on Supreme Court Rules is one of the models related to "joint meetings". So, the question is, "why is "joint meeting" model not adopted?" A more essential question to ask is "why are other models not adopted, so that the court connected mediation are more varied?" In order to provide the mediator a freedom to construct a strategy, Supreme Court Rules do not mention "joint meetings" a contrary limits the strategy. This causes an ineffective mediation in court in terms of the models and types of mediation. This condition confirms a factor that influence the effectiveness of mediation as stated by Tobias Böhmelt that :

*With regard to mediation effectiveness, the existing literature frequently emphasizes three factors. The first one pertains to characteristic of the dispute, i.e. its intensity and duration or the issues at stake. The third factor describes the mediators as such or the type of mediation pursued.* (Böhmelt, 2011)

In term of a freedom to choose strategy and discretion to choose models, mediation can be integrated to court that enables the mediator to choose one among models and strategies that is suitable with the situation in Indonesia. Joint meeting can be suitable for certain situations, but it may not be suitable for other case. In many cases whose parties do not want to conduct a face-to-face meeting for any reason, they need another model other than joint meeting.

Theoretically, mediation model can be classified into settlement model/compromise, facilitative model, therapeutic style, and evaluative model. The strictly categorization acceptance of those model in Indonesia leads to a court mediation distortion in evaluative model. Susanti Adi Nugroho determines that court mediation focuses on evaluative model. This model is marked by : (a) the parties come and expect the mediator can give an understanding that if the case

continued, the party who wins or loses will be determined, (b) more focus on rights and responsibilities, (c) the mediator is usually an expert in certain field, or an expert in law because the focus of the approach is the rights. Mediator tend to provide a solution and information about the law in order to lead to a proper final result, (d) giving suggestions and advices for the parties in form of legal advice or a solution offered by the mediator, so that it contains some weakness (e) the parties feel that they do not own a final result that is signed by all parties (Nugroho, 2009). This determination makes the mediation becomes less subdued. The failures caused by an incompatible model with the situation of the disputants – disadvantages prominence, demand, psychological condition, legal relationship as the basis of the dispute – cannot be matched by model variations, so there is no way else to settle the dispute.

The explanation above leads us to understanding that the model of court connected mediation needs a reconstruction aimed to achieve an optimal result, namely the success as a significant effort of dispute settlement. Based on the developed model, a variation of model applicable in Indonesia needs to be loosen. It means to change the strict mediation rules that limit the model and strategy to give the mediator a freedom to choose model and strategy that is suitable with the case.

The positioning of court connected mediation as a facility to replace and optimize the provision on Article 130HIR/Article 154 Rbg related to peace, in fact, is not suitable to apply in Indonesia. Court connected mediation in its application is also combined with “peace” concept. The “peace” has been based on the case register and announcement by the court.

This condition, hipotactically, causes the defendant feel ashamed, even challenged, so that the defendant especially is difficult to give concession

in bargaining process/discussion during mediation process. This reality is similar with one of the reasons of ADR emergence, such as the judicial process is not able to keep confidential of the parties’ legal relationship that causes the dispute. So, when mediation is positioned in an opened-process for it has been announced by the court, mediation creates cynicism for the parties. Laurence Boule states that “*mediation is often promoted in terms of the privacy of the mediation sessions and the confidentiality of what transpire there.*” (Nugroho, 2009)

In order to overcome that problem, the obligation of “openness” session needs to be reconsidered to prevent the wounding of the main character, in a more confidential meaning. Mediation should have been done before the case is registered to the court, so that the dispute has not been announced to the public yet. Hypotactically, it can decrease the burden of the opened characteristic of the dispute, because the parties have not been defeated by “wanprestasi”. In this case, the re-purification of the court connected mediation is a necessity.

The re-purification of the court connected mediation is not easy as long as we still apply HIR/Rbg that regulates the openness characteristic of all dispute in court, including the “peace” based on article 130 HIR/article 154 Rbg. It reflects the urgency to reform the HIR and Rbg.

The condition of using the court connected court model still needs an open space; the model is not the only way to achieve our expected goal. Esin Orucu states:

*“Cultural diversity’ reflecting on legal systems must be appreciated since ‘diversity’ and ‘flexibility’, being related to freedom of choice, are part of democracy, the one fundamental value upheld by all in at least the Western world. Aims such as ‘harmonization, ‘integration’ and ‘globalization’ show acceptance of the existence of differences but, nevertheless, aspire to produce*

*sameness. Yet the distinctiveness and mutuality should also be emphasized within the concept of 'harmony' (Orucu, 2000).*

It means, the use or the choice of a more opened-model still needs harmonization with the culture of recipient society. The plurality of Indonesia with the traditional pattern of dispute settlement that create peace needs to get a part in the court connected mediation.

Although Indonesian, traditionally, recognize as discussion or “musyawarah” , which in the context of dispute settlement means an effort or peaceful way between parties to settle dispute, but it does not entirely equal to mediation. In certain parts, discussion has fundamental differences with mediation. They may, principally, be equal but technically there is discrepancy. So, it makes mediation is difficult to accept and needs a modification in strategy and model.

It is in line with society’ view that when the parties are summoned by the court as litigants, with a subpoena, the defendant feel he had been placed as the guilty party. In the view of Indonesian people, it is a negative stigma, which risk their reputation and dignity/self-esteem. Thus, the concept of mediation which is appropriate in litigation cases in Indonesia needs to be repositioned. Initially, it is integrated in the litigation process, then converted into one of the requirements of filing a lawsuit.

#### **B. Factors Influencing the Less-successful of Court Connected Mediation in Indonesia**

The problems of ineffective court connected mediation caused by some factors. The factors are the failure in creating integrated model, including the failure of mediator in mediation process. A confidential mediation should be integrated with a civil judicial model which is open to public. It causes the emergence legal cultural problems for mediator, advocate, and parties who have legal dispute in mediation practice. As

has been stated by Tony Whatling that cultural assumption influences the success of mediator in a mediation (Whatling, 2016).

Steven E. Barkan, based on socio-legal point of view, reveals the influence of social and individual factors. The society has a different point of view towards some certain aspects of their structure and culture, which is helping explaining the different preference of dispute settlement method (Barkan, 2009). Like explaining why some societies or individuals prefer mediation while others do not (Barkan, 2009). American society is an individualistic society that base their mindset of settling cases on liberalism. It is different with the Indonesian society that tend to be communal and uphold social values. If it is categorized as a special situation, then, as has been stated by Christopher W. Moore, a strategy is needed to respond this special situation.

*We now turn to an examination of contingent strategies and activities – interventions and preventions by mediators to respond to unique or unusual situations, conflict dynamics, or parties, which are not present in every negotiation or dispute. Though it is impossible to identify or describe all the situations that may require contingent activities by mediators, and details about their actual moves, there are a number of them that are common enough to merit description (Moore, 2014).*

Special situation develops in Indonesia society: If a party has been summoned by a court as litigants, with a subpoena, the defendant feel he had been placed as the guilty party. This raises a negative stigma in society and this causes offense to the parties and gives impact to their reputation and self-esteem.

Moore also mentions some writers who describe special situations and potential contingency strategies that can be chosen by mediator to overcome the failure in mediation practice, as has been said

proposed by Fisher, Maggiolo, and Wall. The situations and strategies are:

1. *Problems with parties working together in joint sessions that may require private meetings or caucuses;*
2. *Situations involving time and timing that may require time management by mediators*
3. *Situations requiring mediator influence and potential strategies and techniques;*
4. *Problems with parties' bases of power and means of influence, and mediator techniques to address and manage them;*
5. *Issues related to gender, working with women, and women as mediators;*
6. *Problems related to past, resent, and future causes of conflicts, and grand strategies to address them;*
7. *The presence of strong values and how they may be handled (Moore, 2014).*

The seven potential causes of technical failure, according to Moore have some strict rules in Supreme Court Rules, so the mediator in court do not have much creativity to adjust with the condition of the parties who have legal dispute. Even the violation towards procedure has resulted in court verdict *void ab initio*

In relation to the number of mediator, Supreme Court Rules enables the use of *co-mediation process* model. As it is regulated on article 19 of Supreme Court Rules as follow:

- (1) The parties have a right to choose a mediator or more which is listed in Mediator List in the court.
- (2) If there is more than one mediator in mediation process, the division of tasks of the mediators is determined and agreed by the mediators.
- (3) Further requirements about mediation list as mentioned on section (1) is regulated in the Chairman of Supreme Court Decision.

Although co-mediation process is possible, according to, Supreme Court Rules, it is never or, at least, seldom applied in court, especially, in the

relation with the choice to use non-judge mediator, and the fee is paid by the parties or based on their agreement.

Co-mediation model does not work well in court connected mediation because since the beginning process the court has determined the parties to have only one mediator. It is caused by the limited number of mediator available in court related to "free" service, without any additional cost. Except if the parties are willing to spend additional cost for the second mediator, especially those who are not provided by the court. It makes the cost of a case higher. Moreover, the court through its presiding judge never offers a possibility the parties in dispute to choose co-mediation.

Based on the research result on mediation practice in 6 (six) courts, it showed the ineffectiveness mediation implementation. This is based on the Concept of effectivity in law enforcement by Soerjono Soekanto and the Theory of the Operation of Law by Robert B. Seidman to ensure the public service using law and legislation, available resources optimally and responsibly (the law enforcement officers), facilities and infrastructures, society and culture. There should be mediation result achievement of more than 5%, but, in reality, until this research was carried out the achievement has not showed improvement even tends to decrease. Thus, this fact is in line with the theory of *the law of the non-transferable law*, that Law and Legislation derives from a country which is formed based on its socio-cultural condition cannot be automatically applied in a group of people living with a different socio-cultural awareness.

The Supreme Court Rules which is a result of transplantation mediation model in the United State of America, cannot be automatically applied in court connected mediation in Indonesia.

Transplantation Mediation into civil judicial system in Indonesia will be successful if Robert B. Seidman's theory

*the operation of law* is applied where any laws should tell about how **a role holder (role occupant)**, here refers to a mediator, was expected to act. How a mediator will act in response to legislations that is a function-regulation aimed at him, the sanctions, the activities of the implementing institutions as well as overall complexities of social, political, et cetera about him. Then, how the implementing institutions, here refers to court, will act in response to rule of laws that is a function-rule of laws aimed at them, sanctions, overall complexities of social and political power, et cetera about themselves as well as feedback comes from the role holder.

Thing should be noted is , how **the legislators** will act that is the function-regulations that govern behavior of judges and also mediators and the parties, sanctions, overall complexity of social, political and ideological power , et cetera about themselves as well as feedback comes from the role holders and bureaucracy.

Based on field research at District Court of Jakarta Barat, District Court of Denpasar, District Court of Temanggung, District Court of Boyolali, District Court of Ungaran and District Court of Pekalongan, factors influencing the less-successful mediation process in district courts is the incompatibility concept of court connected mediation based on the Supreme Court Rules, unprofessional mediator related to competency and skill of mediator ( mostly judges acting as mediators), facilities and infrastructures supporting mediation process, society and culture.

#### 4. Conclusion and Suggestion

##### A. Conclusion

Based on qualitative analysis, it is known that the concept of mediation which is suitably applied in civil case litigation is repositioned into one of requirements to file suit. Factors influencing the less-successful of court connected mediation in Indonesia are the legislation, law enforcement officers, facilities and infrastructures, society and culture.

##### B. Suggestion

To reposition, mediation process has to revise the Supreme Court Rules and to develop the culture of law awareness in society based on the values of Pancasila. The concept of mediation integrated in litigation procedure must also reevaluated and make the process of court connected mediation as one of requirements to file a suit.

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## 6. Biographies

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and Notary Master from Gadjah Mada University since 1994 and 1996. Graduate from Undergraduate Law Program from Diponegoro University since 1986. Get a job in Faculty of Law Faculty of Diponegoro University since 1987. He was active wrote some article and to publish in Masalah-Masalah Hukum Journal. He is a dean in Faculty of law Diponegoro University since 2015. Beside as lecturer, he was active as Professional Arbiter in KONI.

Tunjung Sekartaji Hapsari, S.H., M.H is Lecturer in Lecturer in Faculty of Law, Diponegoro University.

Graduate from Law Master Program since 2014. Graduate from Undergraduate Law Program from Diponegoro University since 2012. She active wrote some research report about Non Judge Mediator in 2015 and join activities for development society in law faculty.

Nurul Musjtari Dewi, S.H., M.Hum., is Doctoral Program student in Diponegoro University since 2013. Graduate from Law Master Program from Gadjah Mada University since 2001 and graduate from Undergraduate Law Program from Gadjah Mada University since 1995. Get a job in Faculty of Law University since 1996. She was active wrote some article and to publish in Media Hukum Journal. Beside as lecturer, she was active to development society and joint in Syariah Arbitration Board in Yogyakarta. She also active as a woman advocate and joint in Indonesian Advocate Association.