



ETHICS IN MEDIATION: THE ROLE OF ADVOCATES IN DISPUTE RESOLUTION

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Abstract

Mediation is an alternative method of dispute resolution that is increasingly being used in the modern legal system. This process prioritizes dialogue between the disputing parties to reach an agreement without resorting to litigation. In mediation, ethics plays an important role in maintaining fairness, confidentiality and professionalism, both by the mediator and by the advocates involved. Advocates have a strategic role in mediation, namely as legal advisors who provide direction to their clients, and ensure that the mediation process runs in accordance with existing ethical principles. Advocates also function to maintain the integrity and confidentiality of information obtained during mediation, as well as ensuring that clients are not pressured into accepting detrimental agreements. In this paper, we discuss the importance of ethics in mediation, the challenges faced, and the vital role of advocates in ensuring fair and effective dispute resolution. By paying attention to ethics in mediation, it is hoped that the dispute resolution process can take place more transparently, efficiently and fairly for all parties involved.

Keywords: Advocate/ Mediation/ Dispute/ Profession

1. INTRODUCTION

Mediation is an alternative dispute resolution (ADR) method that is very important in the modern legal system. Mediation aims to help disputing parties reach an agreement without going through a long and expensive judicial process. In mediation, a mediator acts as a neutral party to facilitate communication between the parties, so that they can find a mutually agreeable solution (Tarantang Jefry, Jefry Tarantang, 2018, p. 144).

In mediation, the role of the advocate is very important, both for the interests of the client and to ensure that the mediation process runs in accordance with ethical principles. Advocates not only represent their clients' legal interests, but also must comply with professional ethics that regulate their behavior during the mediation process.

This paper will discuss ethics in mediation and the role of advocates in dispute resolution.

Ethics in mediation is very important to ensure that the dispute resolution process takes place fairly, transparently and effectively. Advocates have a crucial role in ensuring that these ethical principles are upheld. By providing appropriate advice, maintaining confidentiality, and behaving professionally, advocates can help clients achieve satisfactory resolutions without compromising the integrity of the mediation process.

The challenges faced in mediation, such as power imbalances and pressure from certain parties, require high vigilance from all parties involved, including advocates, to create fair and sustainable solutions.

Through a good understanding of ethics in mediation and the role of advocates, the dispute resolution process through mediation can be an effective and efficient alternative for many parties.

Advocates have a very important role in mediation. This role is not only limited to providing legal advice to clients, but also to ensuring that the mediation process runs ethically and effectively.

2. RESEARCH METHOD

This research uses a qualitative research method with a descriptive analytical approach which aims to provide an in-depth understanding of the judge's code of ethics as a basis for maintaining judicial integrity and accountability, Sugiono (2011).

3. RESULTS AND DISCUSSION

Advocacy Code of Ethics in Dispute Resolution

A code of ethics is a set of guidelines or rules that regulate the behavior, attitudes and actions of individuals or groups in carrying out their profession, with the aim of ensuring that they act in accordance with established moral and professional standards. The code of ethics functions as a reference for members of the profession to act with integrity, honesty and responsibility, as well as to maintain the quality and credibility of the profession in the eyes of the public.

Codes of ethics often contain basic principles that regulate various aspects of a profession, such as relationships with clients, colleagues, society and other related parties. The code of ethics also aims to prevent actions that are unethical or detrimental to other people, as well as to maintain public trust in the profession.

In the context of the legal profession, such as advocates, the advocate's code of ethics regulates how an advocate must behave in carrying out his duties, both in providing legal advice, representing clients, and in interacting with other parties, including the court and colleagues. This code of ethics is important so that advocates can maintain professionalism, fairness and integrity in every action they take.

The Advocate Code of Ethics is a guideline that regulates the behavior and attitudes of advocates in carrying out their profession, including in the dispute resolution process. In the context of dispute resolution, especially through alternative methods such as mediation, advocates are expected to act in accordance with ethical principles that support the achievement of justice, balance and integrity in every step of the process (Siregar Rizkinami Hajijah, Hajijah Rizkinami Siregar, 2023, p. 426).

Several main aspects in the Advocacy Code of Ethics that are relevant to dispute resolution are as follows:

1. Professional Responsibility

Advocates must carry out their duties with full professional responsibility, providing legal advice that is correct, objective and based on applicable law. In dispute resolution, advocates not only act as legal representatives, but also as mediators who help clients understand the legal consequences of the decisions taken.

Professional responsibility is one of the main principles in the Advocacy Code of Ethics which must be applied by advocates at every stage of dispute resolution, whether through litigation or alternative methods such as mediation or negotiation. In the context of dispute resolution, advocates not only act as legal representatives, but also as advisors who provide guidance to clients in making decisions based on applicable law and ethics. The following are some of the main aspects of an advocate's professional responsibilities in dispute resolution:

- **Compliance with Laws and Ethics**

Advocates must always comply with applicable laws and the professional code of ethics that regulates their actions. They must uphold the values of justice and ensure that every step taken in the dispute resolution process does not conflict with the law or ethical principles. This responsibility includes avoiding actions that could harm clients, opposing parties, or the legal system itself.

- **Provide Honest and Objective Advice**

Advocates are obliged to provide objective, accurate and honest advice to clients regarding the legal situation they are facing, as well as the prospects for resolving disputes. They must ensure that clients fully understand the legal consequences of every decision taken, whether in mediation, negotiation or litigation. Advocates should not provide misleading information or promise unrealistic results.

- **Represent Client's Interests with Professionalism**

In the dispute resolution process, advocates must represent clients' interests with full dedication and professionalism, without ignoring the principles of justice. They must strive to achieve the best results for clients, but maintain integrity and avoid unethical methods or tactics, such as intimidation or deception. Professionalism also means respecting the client's right to make the final decision regarding the outcome of the dispute, without any coercion or pressure from the lawyer.

Professional responsibilities in the Advocacy Code of Ethics require advocates to act with integrity, honesty and objectivity at every stage of dispute resolution. They must safeguard the client's interests, respect the legal process, and ensure that every step taken not only benefits the client, but also does not violate the ethical principles underlying the legal profession. By implementing good professional responsibility, advocates can help create a fair, transparent and efficient dispute resolution process for all parties involved (Utami Ananda Rizki, Rizki Ananda Utami;, 2023, p. 722).

2. Confidentiality

Confidentiality of information received from clients is a basic principle in the ethics of the advocate profession. Advocates are obliged to maintain confidentiality throughout the dispute resolution process, including in the mediation process. All information submitted by clients or other parties during mediation must not be shared without permission, unless there is a valid legal order.

Confidentiality is one of the fundamental principles in the advocate's code of ethics, which has a very important role in maintaining integrity and trust in the dispute resolution process, both outside the court and inside the court. In resolving disputes, especially through mediation, negotiation or arbitration, advocates have an obligation to keep all information

provided by clients or obtained during the legal process confidential, unless with the client's consent or if required by law.

- **Definition of Confidentiality in the Advocate Code of Ethics**

Confidentiality in the context of advocacy refers to the advocate's obligation to protect information received from clients and related to legal matters, both personal and related to legal cases, so that it is not distributed to third parties without the client's permission. This includes all forms of communication, both written and oral, as well as documents obtained during the dispute resolution process.

- **Legal Basis of Confidentiality in the Code of Ethics**

In many legal systems, including in Indonesia, confidentiality is an obligation regulated in the advocate's professional code of ethics and in applicable laws and regulations. For example, in Indonesia, the Indonesian Advocate Code of Ethics (KAI) and Law Number 18 of 2003 concerning Advocates regulate that advocates are obliged to maintain the confidentiality of information obtained in their capacity as legal advisors and client representatives.

- **Principle of Confidentiality in Dispute Resolution**

Confidentiality in dispute resolution aims to create a sense of security for clients in providing information that may be sensitive or personal, without fear that the information will be misused or used outside the dispute resolution process. In the mediation or negotiation process, for example, the parties involved must feel free to speak openly with the mediator or advocate, because the information they convey will not be used for other purposes without approval.

- **Advocate's Responsibility to Maintain Confidentiality**

Advocates are responsible for maintaining the confidentiality of all information provided by clients during the dispute resolution process, whether in meetings, written communications, or documents submitted by the client. This applies not only during the mediation or negotiation process, but also after the process is complete.

Some of the obligations of advocates regarding confidentiality:

- **Maintaining Client Confidentiality:** Advocates are obliged to ensure that the information received is not leaked or disseminated to third parties without the client's consent.
- **Not Using Information for Personal Interests:** Advocates must not use the information obtained for personal interests, including financial gain or other unlawful gain.
- **Maintaining Confidentiality After Dispute Resolution:** The obligation to maintain confidentiality remains in effect even though the dispute has been resolved and the client no longer requires the services of an advocate.

"Confidentiality is the main pillar in the ethics of the advocate profession, especially in resolving disputes, whether through mediation, negotiation or litigation. This obligation to maintain confidentiality is not only a legal obligation, but also to ensure the trust and safety of clients in using advocate services. By maintaining confidentiality, advocates contribute to creating a fair, transparent and efficient environment in resolving disputes, which ultimately supports achieving a fair solution for all parties involved."

3. Not taking sides (Impartiality)

Advocates must maintain a neutral attitude and not take sides with either party in the mediation or dispute resolution process. They must act in the interests of their clients without disregarding the principles of justice. Even in dispute resolution that involves mediation, advocates must ensure that all decisions taken are the result of agreement between both parties, without any pressure or coercion.

The principle of impartiality is one of the fundamental values in the advocate's code of ethics, which regulates the behavior and actions of advocates in carrying out their professional duties, especially in the context of dispute resolution. This principle requires advocates to act with integrity, objectivity and professionalism, and ensure that they do not take sides with either party in the dispute being resolved, whether in mediation, negotiation or other legal procedures.

• Definition of Impartiality

Being impartial means that advocates must maintain a neutral and objective attitude in handling disputes faced by their clients. Advocates must not discredit another party or act for the benefit of one party at the expense of another party. They should also not show preference or bias towards one party, even if they only represent one party in the dispute.

• Principle of Impartiality in the Advocate Code of Ethics

In the Indonesian Advocate Code of Ethics (KAI), the principle of impartiality is emphasized in the context of protecting clients' interests without violating the rights of other parties. Advocates must act with due regard to the principles of justice and must not use tactics that could harm other parties, such as manipulation or fraud. Advocates are required to avoid actions that could damage the reputation or position of the opposing party without a valid legal basis (Mustakim, 2019, p. 1).

• Application of the Principle of Impartiality in Dispute Resolution

The application of this principle is very important in resolving disputes through various methods, both through litigation and alternative channels such as mediation or negotiation. Following are some aspects where the principle of impartiality must be maintained:

1. In Mediation and Negotiations: If advocates are involved in mediation or negotiations between clients and opposing parties, they must ensure that they act solely as legal advisors who help clients to understand their options and the risks involved. Advocates should not use their position to influence mediators or opposing parties in unethical ways.
2. As Legal Advisor: Advocates must provide objective advice to clients, without distorting facts or law for personal or client gain. They must provide clients with a clear understanding of the weaknesses and strengths of their legal positions.

Avoiding Conflicts of Interest: One important aspect of impartiality is avoiding conflicts of interest. Advocates may not represent clients who have conflicting interests, either in the same dispute or in other cases that can objectively influence their decisions.

Not Using Tactics That Harm Other Parties: Advocates must avoid using tactics that could harm opposing parties without clear legal reasons, such as denigrating opposing parties or disseminating irrelevant information. Actions that harm other parties can damage an advocate's reputation and create distrust in the legal process.

• The Role of Advocates in Maintaining Impartiality

Advocates play a key role in maintaining the continuity of the principle of impartiality in dispute resolution. In mediation or negotiation, advocates are tasked with:

1. Create a fair atmosphere for both parties by maintaining open and transparent communication.
2. Help clients understand the opposing party's point of view, which can help reach mutually beneficial agreements.

Avoid all forms of intervention that could damage objectivity in the dispute resolution process.

The principle of impartiality is a crucial component in the advocate's code of ethics, especially in dispute resolution. Advocates must maintain an objective and fair attitude, and avoid actions or attitudes that show illegal bias towards one party. The application of this principle not only maintains fairness in the dispute resolution process, but also strengthens public trust in the lawyer profession and the legal system as a whole.

3. Integrity and Honesty

Advocates are expected to always be honest and have high integrity at every stage of dispute resolution. In providing legal advice, advocates must ensure that the information provided is accurate and clear, and avoid giving clients false hopes or promises that cannot be fulfilled.

Integrity and honesty are two important values that underlie an advocate's code of ethics in resolving disputes. In this context, integrity refers to the conformity between actions and moral principles upheld by an advocate, while honesty refers to truth, openness, and not hiding relevant facts or information.

The following are several things related to integrity and honesty in the advocate's code of ethics in resolving disputes:

• Honesty in Presenting Facts

Advocates are required to always convey correct facts in every statement or argument submitted to the court or other parties involved in the dispute. This honesty aims to ensure that the judicial process is fair and not misleading.

• Integrity in Maintaining Client Confidentiality

Even though advocates have an obligation to defend their clients' interests, they must still maintain integrity in maintaining the confidentiality of information received from their clients. This is part of the ethical obligation not to exploit this information for personal or other parties' interests.

An advocate must avoid all forms of fraudulent or unethical practices, such as manipulating evidence, providing false information, or misleading authorities. This kind of action will damage the integrity of the advocate profession and harm the justice system.

• Respect the Legal Process

In every dispute, advocates must respect applicable legal procedures and try to ensure that dispute resolution is carried out in accordance with valid legal provisions. Using illegal methods or deviating from applicable rules is a violation of professional integrity.

• Prioritize Justice

Advocates should not only focus on winning, but must try to find a fair solution for all parties involved. This integrity and honesty also requires advocates to consider not only the client's interests, but also broader legal interests.

- **Commitment to Professionalism**

An advocate must demonstrate a high commitment to professionalism, which includes being honest and full of integrity in every aspect of his duties. This includes interacting with opposing parties, judges, and other related parties.

By maintaining integrity and honesty, advocates not only maintain their own credibility, but also ensure that the dispute resolution process runs fairly, transparently and in accordance with applicable law.

The Role of Advocates in Mediation

The role of advocates in mediation is very important to help resolve disputes peacefully and effectively. Mediation is a dispute resolution process in which the disputing parties are assisted by a neutral mediator to reach a mutual agreement. Although the mediator plays the main role, the advocate has a very significant role in ensuring the client's interests are protected and the mediation process runs smoothly (Marzuki Suparman, Suparman Marzuki;, 2017, p. 91).

The following are some of the main roles of advocates in mediation:

1. Become the Client's Companion and Legal Advisor

Advocates function as companions who provide legal advice to clients during the mediation process. They help clients understand their legal position, their rights, and the consequences of each option proposed in mediation. In this case, advocates provide clear information to clients regarding opportunities for dispute resolution through mediation and guide them in making the best decisions (Mahadewi Julia Kadek dan Wideasari Ayu Komang Ni, Ni Komang Ayu Wideasari dan Kadek Julia Mahadewi;, 2022, p. 128).

Being a client's companion and legal advisor is one of the main roles of an advocate, both in the litigation process and in alternative dispute resolution such as mediation. As companions and advisors, advocates play an important role in providing legal protection to clients and helping them make informed and strategic decisions.

As legal advisors, advocates are responsible for providing clear and objective information regarding clients' legal rights, their obligations, and the potential consequences of legal actions taken. Advocates must be able to explain clients' legal situations simply, without hiding facts or providing biased judgments. This advice is important so that clients can make the right decision regarding the steps to be taken (Tarantang Jefry, Jefry Tarantang;, 2018, p. 56).

As legal companions and advisors, advocates not only provide legal advice but also accompany clients throughout the legal process, ensuring their rights are protected, and helping them make the right decisions. Advocates play an important role in guiding clients through complex and uncertain processes, whether in mediation, negotiation or litigation. Professional, ethical and integrity-filled assistance from an advocate can greatly influence the outcome of every dispute faced by a client.

2. Help develop a mediation strategy

Before mediation begins, advocates help clients to formulate appropriate mediation goals and strategies. They seek to understand the strengths and weaknesses of the client's

position and help the client determine a realistic and beneficial solution, as well as prepare relevant arguments or information that can be used in mediation.

Helping to develop mediation strategies is one of the important roles of advocates in peaceful dispute resolution. Mediation is a process in which the parties to a dispute try to reach an agreement with the help of a neutral mediator. As legal advisors, advocates help clients to formulate an effective approach to mediation with the goal of achieving a fair and favorable settlement (Wibowo Edy Sunarno, Sunarno Edy Wibowo, 2016, p. 143).

Before developing a strategy, advocates must fully understand the dispute faced by the client. This includes identifying the core issues causing the dispute as well as the client's interests and goals. Advocates need to explore what the client really wants—whether it is a financial settlement, a relationship resolution, or some other course of action. This helps in formulating realistic and acceptable solutions.

Developing an effective mediation strategy is an important task for advocates to ensure clients can reach a favorable dispute resolution in a peaceful and efficient manner. Good strategy includes a deep understanding of the dispute, the legal position, the client's interests, and the ability to assess and respond tactfully to the opposing party. By preparing good arguments, setting clear goals, and managing the process with negotiation skills, advocates can help clients reach adequate agreements in mediation.

3. Convey Clients' Interests Professionally

Advocates are responsible for conveying their clients' legal interests and positions clearly and professionally during the mediation process. They play a role in making constructive requests or offers to opposing parties, as well as trying to find common ground that can be agreed upon by both parties. Even though advocates do not act as mediators, they still have an obligation to ensure that the process runs according to law and ethics (Anggraini Melinda, Melinda Anggraini, 2021, p. 635).

Conveying a client's interests professionally is one of the key roles of an advocate, whether in mediation, negotiation or litigation. As legal companions and advisors, advocates must be able to convey their clients' interests clearly, effectively and ethically without compromising professional integrity. The following are several principles and steps that advocates can take to convey their clients' interests professionally:

Before conveying the client's interests, the advocate must first understand in depth what the client really wants. This includes not only short-term goals (such as resolving disputes or financial agreements), but also long-term goals (such as maintaining business relationships or obtaining better legal protection). Understanding the client's interests as a whole will help advocates convey messages more precisely.

Advocates must ensure that communications with other parties, including opposing parties, mediators, or judges, are always clear, direct, and unambiguous. This includes avoiding the use of terms that are too technical or confusing, as well as ensuring that any claims or positions presented are based on valid facts and law. Clarity of communication will minimize misunderstandings and help the parties involved understand the client's position better.

Although advocates are tasked with advocating for clients' interests, it is important to convey positions in a diplomatic and non-confrontational manner. In mediation, negotiation, or trial, presenting a client's interests in a harsh or aggressive manner can damage the relationship and prevent a constructive resolution. Instead, advocates should use a calm approach, speak respectfully, and keep emotions in check, even in stressful situations (Ongkowijaya Yudhi, Yudhi Ongkowijaya, 2021, p. 2187).

In conveying the client's interests, advocates must ensure that the arguments presented are based on strong facts and relevant evidence. Submission of claims or positions must be

accompanied by supporting data, documents or evidence. This not only strengthens the client's position, but also maintains the integrity of the legal process and avoids accusations of conveying false or misleading information (Fazila Debi, Debi Fazila;, 2023, p. 310).

As a professional, a lawyer must always maintain ethics and respect applicable legal procedures. In conveying a client's interests, advocates must not use unethical tactics, such as conveying false information, manipulating evidence, or intimidating opposing parties. Conveying interests must always be carried out within a valid legal framework and in accordance with the professional code of ethics.

One of the main roles of advocates in mediation is to negotiate to reach a fair agreement for their clients. Advocates use negotiation skills to help find solutions that are acceptable to all parties. In this case, the advocate ensures that the agreement reached does not harm the client's interests and is still in accordance with applicable legal provisions.

Negotiation for a fair settlement is one of the key roles of an advocate in resolving disputes between disputing parties. As legal counsel, advocates must focus on achieving favorable settlements for their clients, while ensuring that the results are fair and in accordance with applicable law. In this context, negotiations are not just a bargaining process, but must also be based on the principles of fairness, transparency and professionalism.

Here are some important steps in negotiating for a fair settlement:

Before starting negotiations, advocates must prepare the client's legal position as well as possible. This involves a thorough understanding of the facts of the case, the available evidence, as well as the relevant legal provisions. Advocates need to formulate what they want to achieve in negotiations, whether in the form of a financial agreement, specific actions, or a resolution of the relationship. A clear and well-thought-out strategy helps advocates stay focused and not be tempted to accept offers that are less profitable for clients.

In negotiations, a good relationship with the opposing party is essential to reaching a fair agreement. Advocates must strive to build trust with opposing parties, mediators, or other interested parties. This trust can make it easier to reach a resolution that is beneficial for all parties, as well as creating an atmosphere that is conducive to open and constructive discussions. Although advocates must prioritize the interests of their clients, they must still maintain good professional relationships with other parties.

One of the keys to fair negotiations is understanding the interests and goals of all parties involved. Advocates must not only focus on the client's interests, but also understand the position and desires of the opposing party. By understanding the other party's motivations and goals, advocates can look for win-win solutions that benefit both parties, which ultimately makes it easier to reach a fair and mutually beneficial settlement.

Negotiations for a fair settlement often involve compromise. Advocates must be prepared to make flexible offers, while keeping the client's best interests in mind. The ability to offer alternative options or creative solutions, that meet most of the needs of both parties, can pave the way for a quicker and more efficient resolution. This flexibility is important to maintain a smooth negotiation process and ensure that clients still obtain balanced and fair results.

During the mediation process, advocates are expected to act with integrity and in accordance with the legal profession's code of ethics. They must not mislead other parties or mediators, and must maintain the confidentiality of information received from clients. Apart from that, advocates must also ensure that any agreement reached in mediation is in accordance with applicable law and does not conflict with the principles of justice.

Maintaining integrity and ethics is a very important aspect in the lawyer profession, especially when they are involved in negotiations, mediation, or litigation processes. Integrity refers to loyalty to the principles of truth and justice, while ethics regulates how an advocate behaves in carrying out his duties in accordance with high professional standards. These two values are not only moral obligations, but also legal obligations regulated in the advocate's professional code of ethics.

4. CONCLUSION

Mediation is an alternative dispute resolution (ADR) method that is very important in the modern legal system. Mediation aims to help disputing parties reach an agreement without going through a long and expensive judicial process. In mediation, a mediator acts as a neutral party to facilitate communication between the parties, so that they can find a mutually agreeable solution.

A code of ethics is a set of guidelines or rules that regulate the behavior, attitudes and actions of individuals or groups in carrying out their profession, with the aim of ensuring that they act in accordance with established moral and professional standards. The code of ethics functions as a reference for members of the profession to act with integrity, honesty and responsibility, as well as to maintain the quality and credibility of the profession in the eyes of the public.

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The Advocate Code of Ethics is a guideline that regulates the behavior and attitudes of advocates in carrying out their profession, including in the dispute resolution process. In the context of dispute resolution, especially through alternative methods such as mediation, advocates are expected to act in accordance with ethical principles that support the achievement of justice, balance and integrity in every step of the process.

In the Indonesian Advocate Code of Ethics (KAI), the principle of impartiality is emphasized in the context of protecting clients' interests without violating the rights of other parties. Advocates must act with due regard to the principles of justice and must not use tactics that could harm other parties, such as manipulation or fraud. Advocates are required to avoid actions that could damage the reputation or position of the opposing party without a valid legal basis.

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