

## Effective Communication in Mediation Dispute Resolution

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### ABSTRACT

**Keywords:** effective communication; mediation.

Humans are social beings who need to interact with each other. Humans also as individuals have rights that must be respected. In their activities as members of the community, or between individuals in a family, friction between interests may occur which eventually results in conflict. If the conflict is not resolved, then a dispute arises that must be resolved through the courts or out of court. One method of settlement outside the court or not depending on the judge's decision, is mediation involving a neutral third party (mediator). The mediator is required to be able to carry out effective communication because communication is the key to being able to resolve disputes. This study used the library method, with this method the authors examined legal materials, articles, and training modules to become professional mediators. The results of this research using the library method, can be concluded that effective communication is a capability that must be possessed by a mediator because it can affect the smooth running of the mediation process so that there is a chance of obtaining an agreement in resolving disputes.



### Introduction

Humans are social creatures, meaning that humans are creatures who always need other humans. In carrying out their lives, humans always need the presence of other humans. (Nurhuda & Karimah, 2023). Naturally, humans are creatures who always want to interact and socialize. That is why Aristotle, an ancient Greek philosopher, said that man is a zoon political (Nasution et al., 2021).

Human nature as a social creature requires a medium or a way to interact with each other, namely communication. In this case, communication activities aim to establish a good relationship between one individual and another, so that everyone will be able to understand the perception of others. (Puspitaningrum, 2018) Said that in the sense of communication, there are three concepts, namely:

1. Communication as a one-way action, namely communication as the delivery of a one-way message from a person (or institution) to a person (or a group of people), either

- directly (face-to-face) or through the media (leaflets, newspapers). Magazine, radio or television)
2. Communication is interaction, this view equates communication with a process of cause-effect or action-reaction, which alternates in direction. An example of the definition of communication in this concept is as expressed by Shanon Weaver (in Wiryanto, 2004), communication is a form of human interaction that affects each other, intentionally or unintentionally, and is not limited to verbal forms of communication, but also in terms of facial expressions, paintings, art, and technology.
  3. Communication as a transaction, that is, communication is a dynamic process that continuously changes the parties who communicate. Based on this view, the people who communicate are considered communicators who actively transmit and interpret messages. At any time they exchange verbal and or nonverbal messages (Ekawarna, 2018).

When humans interact with each other, conflicts likely arise due to the confrontation of different interests (Azmi, 2016). Each individual will fight for his interests to be recognized by other individuals. This is what can ultimately lead to disputes if the conflict is not resolved. Unresolved disputes have the potential to make the situation worse. The problem will widen, which will ultimately harm all parties involved. (Sunarso, 2023).

The people of Indonesia are famous for their cooperation deliberations. So that if a conflict arises, it will generally be discussed first between the parties involved. Deliberations can be successful, but not a few fail. The failure to resolve through deliberation may be due to each party being overwhelmed by emotions so that communication is hampered. (Latip et al., 2023). In such a situation, for the communication between the parties in conflict to be established smoothly, a neutral third party is needed. This third party is referred to as a mediator. The mediator will help the parties to deliberate. With the help of this mediator, it is hoped that an agreement can be reached that can end the conflict. (Rado et al., 2016).

For conflicts that cannot be resolved even though they have been assisted by a mediator, the subsequent settlement can be through two ways, namely through the court (litigation) or out of court (non-litigation) (Komarudin, 2014). Settlement through the court must go through a lawsuit, and then follow the process according to the civil procedure law. Based on Perma No. 1 of 2016, mediation is integrated into the legal process of civil procedure. So that before the judge examines the case, the parties are welcome to mediate first. If mediation is successful, the agreement obtained can be strengthened into a peace deed. (Niagara & Hidayat, 2020).

However, if the settlement takes a non-litigation route, then there are several alternative dispute resolutions. (Muryati & Heryanti, 2011). Article 1 of Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution states that Alternative Dispute Resolution is a dispute resolution institution or difference of opinion through a procedure agreed upon by the parties, namely settlement outside the court using consultation, negotiation, mediation, conciliation or expert assessment. (Albar, 2019).

Based on Law No. 30/1999 there are several alternative dispute resolution institutions, one of which is mediation. However, Law No. 30/1999 does not define what mediation is. Law No. 30/1999 only finds the meaning of mediation implicitly, namely in Article 6 paragraph (3,4,5) of the Law. No. 30/1999. In Article 6 paragraph (3), it is said that if a dispute or difference of opinion as referred to in paragraph (2) cannot be resolved, then with the written agreement of the parties, the dispute or difference of opinion shall be resolved through the assistance of one or more expert advisors or a mediator.

The law does not provide a formulation of the terms mediator and mediator, but in the legal literature we can find it in the Law Dictionary, namely:

“Mediation is a private, informal dispute resolution process in which a neutral third person, the mediator, helps to dispute parties to reach an agreement”

The definition of mediation is mentioned in the laws and regulations, namely, Supreme Court Regulation No. 1 of 2008 concerning Mediation Procedures in Court as amended by the Chief Justice Regulation (Perma) No. 1 of 2016. In Article 1 of the Perma, mediation is a way of resolving disputes through a negotiation process to obtain an agreement between the parties with the help of a mediator.

Article 1 of Perma No. 1 of 2016 contains the phrase "assisted by mediator". Thus the mediator helps the parties to reach an agreement. The role of this help is not small. In mediation, what is aimed at is an agreement, not a decision. The agreement means that what is stated as a settlement is a cold thing by the parties. However, the process of reaching such an agreement will not happen if each party remains emotional and insists on its opinion. The problem may widen and get further away from the word agreement. This is where the role of the mediator is important. The mediator is present to be able to reduce emotions and bring both parties to remain willing to sit together and negotiate until an agreement can be reached.

Therefore, in the process of resolving disputes through mediation, communication skills are required from a mediator. The mediator must be able to stand between two parties with conflicting interests. The mediator must be able to find common ground of different interests. The mediator must be neutral and able to calm both parties who are at odds. Thus, mediators must be able to strive for effective communication in the mediation process. This communication is important because mediation is a follow-up to previous negotiations that failed due to the lack of communication from the parties. So with effective communication in mediation, it is hoped that negotiation failures will not be repeated.

The agreement is the purpose of mediation. To achieve this goal is greatly influenced by the ability of mediators to carry out effective communication. What must the mediator do or have to establish effective communication between the parties so that mediation can be successful? This question is the background of this article.

## **Method**

### **Type of Research**

In making this paper, the author uses a literature research method, where the method used is to research existing legal materials, articles, training modules, scientific papers, and research results that have been published.

### **Data Collection Techniques**

Data and information are collected through literature studies and legal documentation as well as articles related to the subject.

## **Results and Discussion**

### **Definition of Communication**

The need to interact with each other is human nature as a social being. So communication is an important part of human life. There is no human being who is not involved in communication. The term communication etymologically comes from the Latin *communicatus* and this word is derived from the word *communis*. The word *communism* has the meaning of "sharing" or "becoming a common property", which is an effort that has the goal of togetherness or the same meaning (Achmad Nashrudin, 2010). Furthermore, it is said that communication terminologically refers to the process of conveying a statement by one person to another. So in this sense, those involved in communication are human beings.

In this sense, in communication, there is a process of conveying a statement, and such a process can be carried out verbally or non-verbally. Deddy Mulyana (2005) said that language can be considered as a verbal code system. Language can be defined as a set of symbols, with rules for combining those symbols, that a community uses and understands. For communication to be successful, according to Cassandra L. Book (in Achmad Nashrudin, 2010), language must fulfill at least three functions, namely:

1. Getting to know the world around us. Through language, we learn anything that interests us, ranging from the history of a nation that lived in the past to today's technological advances.
2. Get in touch with others. Language allows us to associate with others for our pleasure, and or influence them to achieve our goals. Through language, we can control our environment, including the people around us.
3. To create coherence in our lives. Language allows us to be more organized, and to understand each other about ourselves, our beliefs, and our goals.

However, in the use of this language, there are limitations:

- a. Limited number of words available to represent an object.
- b. Words are ambiguous and contextual
- c. Words contain cultural biases
- d. Mixing facts, interpretations, and judgments

According to Achmad Nashrudin (2010), when we communicate, we translate our ideas in the form of symbols (verbal or nonverbal). This process is called encoding. Language is an encoding tool, but a tool that is not so good (due to limitations).

Therefore, when communicating, you must be more careful in speaking. Don't let the interlocutor become incomprehensible or even misunderstood because of the wrong choice of words. This is what a mediator must understand. When mediating the parties, the mediator must have sensitivity in the use of language so that the mediator's intention to influence the parties to reach an agreement can be achieved. On the other hand, when the mediator does not use the correct language, it can be fatal if it causes misunderstandings. The goal of reaching an agreement can be messy, and ultimately mediation fails.

However, it is not necessarily the failure of mediation due to the inability of the mediator to communicate. However, when the mediator is in the midst of a "hot" and arrogant party, usually the language used is not controlled, then this is precisely where the role of the mediator lies. Mediators with communication skills must be able to cool the atmosphere and influence the parties to be able to continue mediation and be able to encourage the parties to continue communicating with each other until an agreement is reached.

Meanwhile, non-verbal communication is communication that uses non-verbal messages. Nonverbal terms are usually used to describe all communication events outside of spoken and written words. In practice, these two types of communication can complement each other in daily communication (Achmad Nashrudin, 2010).

### **Mediation as an Alternative to Dispute Resolution**

Mediation is one of the dispute resolution mechanisms. This alternative dispute resolution has been used for a long time. Maybe even in everyday life, many people experience it. Both as a mediator, as well as when being one of the parties in mediation. This mediation settlement is a settlement by setting aside the process in court.

Etymologically, mediation comes from the word mediation or mediation, which is dispute resolution involving a third party as a mediator or dispute resolution by mediation. In the literature, there are many limitations on mediation, one of which is the limitation of Christopher W. Moore that mediation is an intervention in a dispute by a third party that can be accepted by the disputing party, not part of both parties and is neutral. This third party does not have the authority to make decisions (Bambang Sutiyoso, 2006).

Alternative dispute resolution by implied mediation is regulated in Article 6 paragraph (3) of Law No. 30 of 1999, if a dispute or difference of opinion as referred to in paragraph (2) cannot be resolved, then with the written agreement of the parties, the dispute or difference of opinion shall be resolved through the assistance of one or more expert advisors or a mediator. In this article, it is mentioned that a mediator is a person who is a mediator in the mediation process.

Dispute resolution through mediation has the following characteristics (Bambang Sutiyoso, 2006):

1. Mediation is a dispute resolution process outside the court based on negotiation
2. The mediator is involved and accepted by the parties to the dispute in the negotiation.
3. The mediator is tasked with helping the parties to the dispute to find a solution.

4. The mediator is passive and only functions as a facilitator and connector of the disputing parties, so they are not involved in drafting and formulating the draft or proposal of the agreement.
5. The mediator does not have decision-making authority during the negotiation.
6. The purpose of mediation is to reach or produce an agreement that is acceptable to the parties to the dispute to end the dispute.

Mediation was previously conducted outside the court. However, in subsequent developments, mediation is also part of the civil procedure legal process in court but has not yet entered the examination of the subject matter of the case. Article 1 of Perma RI No. 1 of 2016 states that mediation is a way of resolving disputes through a negotiation process to obtain an agreement between the parties with the help of a mediator. The mediator can be chosen from among the judges or other parties who have a mediator certificate.

This mediation is a negotiation process between the parties, but among the parties, there is a mediator who will mediate and assist the parties in resolving their disputes. Even as a mediator, the mediator must still keep the negotiations from reaching an impasse so that the mediation is successful.

Erman Rajagukguk in Bambang Sutiyo (2006) stated that mediation will be successful if it has the following things:

1. The parties want to continue their business relationship
2. The parties have a common interest in resolving their disputes quickly.
3. Litigation is considered by the parties to take a long time, is expensive, and will cause a bad view for both parties due to publication. Plus, it doesn't necessarily win.
4. Even if the parties are emotional, the mediation process is considered by them as a place to meet and convey their respective interests.
5. Time is the essence of completion.
6. A good mediator will be able to make both parties communicate. Mediation will not succeed if one party files a lawsuit or frivolous claim and the other party feels that he or she will win through litigation. Likewise, mediation will fail if one of the parties delays the resolution of the dispute for as long as possible, one or both parties are indeed in bad faith.

### **Effective Communication**

Based on the description above, it appears that mediation is a continuation of a negotiation process between the parties that failed. Therefore, a mediator has the challenge of not repeating negotiations or negotiations that have failed as much as possible. The mediator must be able to make the negotiation continue so that there is a meeting point for the two conflicting interests. Mediators must be able to establish good communication to create a positive relationship between the parties, namely by communicating effectively.

According to Tommy Suprpto (2009), communication is said to be effective if the communicator receives the message, meaning, or intent, as desired by the sender of the message. Meanwhile, according to Eti Wati and Arni Wianti, quoted from the book

Nursing Communication (2017), effective communication in a foreign language is known as the term communication is in tune. This means that both parties communicate with each other and both understand the message being discussed. The purpose of effective communication itself is to make it easier to understand the message conveyed. The requirements for effective communication include:

1. Creating a favorable atmosphere
2. Use language that is easy to capture and understand
3. The message conveyed can arouse the attention or interest of the communicator.
4. Messages can arouse interest on the part of the communicator that can benefit them.
5. Messages can foster an appreciation or reward on the part of the communicator.

The parties in mediation are parties who bring interests that are contrary to each other. In such a case, of course, each will insist on fighting for its interests to be more recognized. Conditions where each party insists on their opinions, usually cause communication not to go well. Communication is not effective, because the message from each party is not understood by the other party. So the mediator must improve communication between the parties. Improving communication is indeed the task of the mediator. Another task is to prepare an atmosphere conducive to decision-making; facilitating negotiations and encouraging the achievement of agreements (National Mediation Center: 2022)

There are several things that a mediator must pay attention to, including directing the process and improving the quality of negotiations between the parties to the dispute before the mediation meeting, during the mediation meeting, or at a separate meeting (caucus). In this process, the mediator's ability to carry out effective communication is very influential. In the process of directing this, of course, verbal and non-verbal communication is needed. Not only the language or words chosen but also the body gestures, and facial expressions of the mediator will be able to influence the success of mediation.

In carrying out mediation, mediators are required to have the ability to interact with the parties to the dispute. Therefore, the mediator must have competence. The Chief Justice of the Supreme Court (KMA) Decree No. 108/2016 concerning Mediation Governance in the Court, states that there are four competencies of mediators, namely:

1. Intrapersonal competence: the ability to foster good relationships with parties to be trusted.
2. Process competence: the ability to use the mediation stages and mediation skills.
3. Management competence: the ability to manage and maintain the course of mediation events
4. Ethical competence: the ability to apply conformity between behavior and the code of ethics and norms of mediation practice.

A mediator must have effective communication skills. What are the tools of a mediator to ensure smooth communication during negotiations? A mediator must have the "tools" of "listening", "empathizing" and "asking". The following is a presentation on

communication techniques for mediators that the author summarized from the mediator certification training module at the National Mediation Center in 2022.

In general, when becoming a listener, they will instinctively do the following things, namely possibly interrupting, arguing, answering, patronizing, advising, judging, or belittling. This is an ineffective way of listening. Negotiations will not go smoothly. So to be effective, a mediator must do "effective listening". In "listening" during the mediation process, the mediator must provide time, focus, maintain body language, be enthusiastic, express friendly, smile, not assume, and refrain from interrupting.

Effective listening can also be done with the "copas" technique, which is repeating the last one to three words or important words. Or the "paraphrasing" technique, which is repeating what has been conveyed with sentences composed by the mediator himself. The paraphrasing shows that the mediator has listened well and understands what has been conveyed and allows the speaker to correct the mediator's understanding. For example, "What did Mr. Andi say"

Next is to "empathize". The way to empathize is with labeling. Imagine that we are in their position. For example, "It looks like Mr. Andi..." Or "It seems that Mr. Andi feels". Not with sympathy, for example, "Why does he have the heart...". By using sympathetic words, the interlocutor may feel more emotionally burned.

The last is "asking". Questioning can be applied in all stages of the mediation process. A mediator must have the skills to structure questions. There are several criteria for the question, namely:

- a) Questions must be open-ended, in this case, questions must be general and effective in digging up information.
- b) Clarification questions to check the level of truth
- c) A question of what if to consider options without committing first.
- d) Generic questions, which are helpful in any mediation

In addition to copas, reframing can also be done. Reframing is a skill that mediators must have. This is very useful and is also a tool in the negotiation process. Doing the right reframing is not easy, it requires quite mature experience. Reframing is an art, the use of reframing must be appropriate. If not, then reframing can be a productive contra.

The purpose of reframing is to change a sentence from a negative tone to a positive one; from destructive to constructive; and oriented to enlarge the problem into problem-solving. The reframing functions are:

1. Refine the language by issuing words that are accusatory and have certain elements of judgment;
2. Focus on the positive by removing negative references and all destructive elements in the language;
3. Focus on common interests and needs by replacing words that indicate position;
4. Leads to settlement for the future
5. Combining problems with avoiding understanding only one side;
6. Softening demands, threats, and final offers;
7. Turning an absolute request or position into a form of settlement.

Terms of the Parties	The term Mediator
Disputes/Disputes	Problem/situation
Negotiation	Discussion
Demands	Hope
Opponent/side of the accused	Other parties
Agree	Receive
Break down the facts.	Explain your understanding
Compromise/concession	How you handle it
An agreement was made.	Making decisions
It's a matter of principle.	So this is very important to you.
Loss	Wide range of compensation
Basics of the claim	The issues that matter to you
I don't believe in you.	I have difficulty understanding you.

From sharing the techniques described above, the point for mediators is to be active listeners because most of the time spent by mediators is listening to the parties. The concept of active listening emphasizes that being a good listener is not a passive activity. But it is related to hard work. The mediator must physically show his or her attention, be fully concentrated, be able to encourage the parties to communicate, be impartial, and not adjudicate. The concept of active listeners is divided into three parts (training modules, PMN):

1. Attendance skills. This type of skill is closely related to the existence of a mediator with the client, both physically and psychologically. This includes showing physical attention by making eye contact, moving the limbs accordingly, and sitting in harmony.
2. Expertise follows. This skill shows that the listener/mediator understands the speaker. This is reflected in giving gestures, not interrupting the conversation, giving minimal but sufficient encouragement, taking notes, asking relevant questions, preparing a summary, and self-defense in providing solutions.
3. Reflective skills. Related to giving a response to the speaker for the understanding obtained by the listener. This includes identifying and justifying the content and feelings of a message, summarizing the content and feelings, and then followed by clarifying by asking questions.

### **Verbal and Non-Verbal Communication**

One of the duties of the mediator is to improve communication because in general, a dispute arises. After all, there are problems between the parties in communicating. Therefore, the mediator must be able to implement correct and effective communication, so that both parties to the dispute can communicate. Communication can be done verbally and also non-verbally. These two types of communication can complement each other.

Verbal communication is a form of communication that is usually carried out by the parties by conveying messages through the words uttered by the speaker. While non-verbal communication is a form of communication by observing the speaker. Non-verbal communication is generally divided into two, namely visual and sound (National Mediation Center, 2022)

Visual communication is related to all forms of communication that can be observed by the recipient of the message. Body language is a very important form of visual communication and must be understood by mediators. For example, facial expressions and eye gaze are very important visual communication and are the concern of the mediator. Voice communication is a form of message delivery that is carried out orally and is communicated without using words or language. Forms of voice communication include loudness, intonation, tone, emphasis, rhythm, and mute.

In the mediation process, the emotions of the parties will be easily provoked, especially at the beginning of the negotiation. Emotions can interfere with the communication process. The parties may blame each other, not want to listen to each other, deny each other, and show hostility. This is where the role of the mediator is to improve communication between parties who are emotional. The mediator must remain patient and calm. In such a situation, the mediator must understand a lot of non-verbal communication when the parties express their wishes. The importance of understanding non-verbal communication is emphasized by Alan Pease in his book "body language: how to Read Others' Thoughts by Their Gestures" (National Mediation Center, 2022) where the results of his observations show the following:

- a) More than 65% of messages are delivered non-verbally
- b) Non-verbal communication has five times greater influence than verbal communication.
- c) In general, non-verbal communication conveys personal attitudes, while verbal communication is used to convey information.
- d) One body movement can have many meanings and must be interpreted in the context of verbal and non-verbal communication as well as the culture and environment of the speaker.

Paying attention to the results of Alan Pease's observation that there are 65% of non-verbal message delivery, proves that a mediator must master the interpretation of non-verbal communication. The mediator must understand voice messages and body language. For example, if one of the parties sits with his hands crossed, it can be interpreted that the party is anxious and shows a defensive attitude. Based on this interpretation, mediators can follow up on the appropriate form of intervention (National Mediation Center, 2022).

## **Conclusion**

One alternative dispute resolution is mediation. In mediation, the parties to the dispute will be assisted by a mediator to reach an agreement. Reaching this agreement is not an easy matter. Each party is controlled by emotions. Both sides find it difficult to communicate because they stick to their opinions. Communication is not effective, because the message from each party is not understood by the other party. This is where the ability of mediators is required to be able to improve the communication of the parties.

In terms of the task of improving the communication of the parties, the mediator must be able to implement effective communication. Effective communication means that the parties to the dispute can understand the message from the other party. For this reason, a mediator must equip himself so that the communication of the parties can run effectively. Some of the things that a mediator must have or do are as follows:

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1. Being an active listener, therefore having to understand the technique
2. Understanding the interpretation of nonverbal communication
3. Have the ability to ask questions
4. Showing empathy
5. Neutral
6. Stay focused and not provoked by emotions

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