



Received: August 15, 2024
Revised: October 15, 2024
Accepted: October 30, 2024

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DESCRIPTIVE OF QUANTITATIVE DATA | RESEARCH ARTICLE

Regulation of the Role of Mediators in Efforts to Resolve Employment Disputes: A Comparative Study of Indonesia and United Kingdom

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Abstract: This study aims to examine the regulatory frameworks for mediators in employment dispute resolution in Indonesia and the United Kingdom. The research method involves a comparative analysis of the two countries' approaches to regulating the mediation process, mediator qualifications, and the enforceability of mediated agreements. The findings of the study indicate that a robust regulatory environment is crucial in ensuring the credibility and reliability of the mediation process, which in turn increases the willingness of parties to engage in mediation and improves the overall outcomes of employment disputes. The research identifies key considerations for the development of a future regulatory framework, including the need to strike a balance between confidentiality and transparency, strengthen the enforceability of mediated agreements, and harmonize the standards for mediator training, accreditation, and ethical guidelines. The research results suggest that the implementation of a regulated system for case reporting, the development of specialized tribunals or procedures for efficient enforcement of mediated agreements, and the establishment of comprehensive national standards for mediator qualifications and continuous professional development would contribute to the overall effectiveness of mediation as a dispute resolution mechanism in both developed and developing country contexts.

Keywords: Employment Dispute Resolution, Mediation Regulation, Comparative Analysis, Regulatory Framework, Mediator Standards.

1. INTRODUCTION

Employment disputes can have significant impacts on both employees and employers, affecting workplace productivity, employee morale and overall organizational performance. Effective dispute resolution mechanisms, such as mediation, play a vital role in addressing these conflicts and promoting harmonious employment relations. This study aims to explore the regulation of the role of mediators in employment dispute resolution efforts, by conducting a comparative analysis between a developed country such as the United Kingdom and a developing country such as Indonesia. This article provides an overview of the mediation process, highlighting its collaborative and voluntary nature. It explains the role of the mediator as a neutral third party who facilitates communication and negotiation between the disputing parties to help them reach a mutually satisfactory agreement (Dzyuba et al., 2017). The article emphasizes the importance of the regulatory framework governing mediation, as it can have a significant impact on the effectiveness and accessibility of this dispute resolution mechanism. It further underlines the importance of understanding the differences in mediation practices and the role of mediators across different legal and cultural contexts, as this



knowledge is essential for policymakers, employers and employees to navigate the complex landscape of employment dispute resolution.

Mediators play a crucial role in the effective resolution of employment disputes, as highlighted by numerous research studies. Their function as neutral, third-party facilitators is integral to the collaborative and voluntary nature of the mediation process (Bingham, 2004). Mediators facilitate communication and negotiation between the disputing parties, guiding them through a structured process to help them reach a mutually satisfactory agreement (Andrews, 2018). This collaborative approach is key to addressing the underlying interests and concerns of both employees and employers, rather than focusing solely on their legal positions or demands. By fostering open and constructive dialogue, mediators create an environment conducive to finding creative solutions that meet the needs of all stakeholders. Research has shown that the neutrality and impartiality of the mediator are critical to the success of the mediation process. Mediators must refrain from advocating for either party or imposing their own views, instead remaining objective and focused on facilitating the negotiation (McCorkle, 2005). This neutrality helps to build trust between the parties and encourages them to engage in open and honest communication, crucial for identifying common ground and developing mutually acceptable resolutions. The mediator's role also extends to managing the emotional and psychological aspects of the dispute. Conflicts in the workplace can often be fraught with tension, resentment, and miscommunication. Mediators use various techniques, such as active listening, reframing, and caucusing, to diffuse tensions, manage emotions, and guide the parties towards a constructive dialogue (Goldberg, 2006). By maintaining a calm and impartial demeanor, the mediator can help the parties move past their entrenched positions and focus on finding practical solutions.

Furthermore, research has highlighted the importance of the mediator's expertise and experience in the specific context of employment disputes. Mediators with a deep understanding of labor laws, workplace dynamics, and industry-specific practices are better equipped to provide valuable insights, suggest creative options, and help the parties navigate the complexities of their dispute. This expertise, combined with strong interpersonal and communication skills, enhances the mediator's ability to guide the parties towards a mutually beneficial agreement. The existing research literature underscores the critical role of mediators in the effective resolution of employment disputes. By facilitating communication, maintaining neutrality, managing emotions, and leveraging their expertise, mediators can help the parties overcome their differences, find common ground, and reach a mutually satisfactory agreement. This collaborative approach is essential for addressing the underlying interests and concerns of both employees and employers, rather than focusing solely on their legal positions or demands. Through open dialogue and creative problem-solving, mediators can guide the parties towards practical solutions that meet the needs of all stakeholders, ultimately promoting harmonious employment relations and enhancing workplace productivity.

This article presents mediation as a collaborative process in which the mediator, as a neutral third party, plays a critical role in facilitating communication and negotiation between the disputing parties. This collaborative approach aims to assist the parties in reaching a mutually satisfactory agreement, which is an important outcome in resolving employment disputes. The paragraph highlights the voluntary nature of the mediation process, indicating that the parties choose to engage in this dispute resolution mechanism, rather than being forced to do so. The regulatory framework governing mediation is identified as a significant factor that can impact the effectiveness and accessibility of this dispute resolution mechanism. The article suggests that understanding the differences in mediation practices and the role of mediators across different legal and cultural contexts is essential for policymakers, employers and employees to navigate the complex landscape of employment dispute resolution. The emphasis on the importance of understanding these regulatory and contextual factors underscores the need for a comprehensive and nuanced approach to mediation in employment

disputes. This paragraph serves as an introduction to the broader topic of regulating the role of mediators in employment dispute resolution efforts, which forms the backdrop for the comparative analysis between Indonesia and the United Kingdom. By highlighting the key elements of the mediation process, the significance of the regulatory framework, and the importance of understanding the legal and cultural context, this paper lays the groundwork for a more in-depth examination of the ways in which mediation is regulated and practiced in the two countries studied.

This research paper examines the legal and regulatory frameworks governing the use of mediation in employment disputes in Indonesia and the United Kingdom. It investigates the principles of confidentiality and neutrality that underlie the mediation process. It also explores the enforceability of mediated agreements and the impact of cultural differences and legal systems on the effectiveness of mediation. By comparing mediation practices in the two countries, this study aims to identify best practices, challenges, and opportunities for improving the regulation and use of mediation in resolving employment disputes. The importance of this study lies in its potential to inform policymakers, labor organizations, and human resource professionals about the effective implementation of mediation as a dispute resolution mechanism. By understanding the regulatory approaches and practical experiences in both developed and developing countries, stakeholders can learn from each other's successes and challenges, ultimately improving the accessibility, fairness, and effectiveness of mediation in resolving employment disputes. This comparative analysis can also contribute to a broader understanding of the role of mediation in promoting social and economic development, fostering harmonious employment relations, and enhancing productivity and well-being in the workplace.

2. RESEARCH METHOD

This study employs a normative legal research methodology, utilizing a statutory regulatory approach, a conceptual approach, and a comparative approach. The data will be analyzed in a descriptive-prescriptive manner. The statutory regulatory approach involves a comprehensive examination of the relevant laws and regulations governing the role of mediators in employment dispute resolution in Indonesia and the United Kingdom. This includes an in-depth analysis of the principles, procedures, and mechanisms outlined in the respective legal frameworks, with a focus on the qualifications, responsibilities, and ethical obligations of mediators (Mamonto, M. A. W., & Gani, A. W. 2022). The conceptual approach involves a thorough review of the underlying principles and theoretical foundations of mediation as a dispute resolution mechanism. This includes an understanding of the concepts of confidentiality, neutrality, and the collaborative nature of the mediation process, and how these principles are reflected in the regulatory frameworks of the two countries. The comparative approach involves a systematic analysis of the similarities and differences in the regulation of mediators in employment disputes between Indonesia and the United Kingdom. This comparative analysis will highlight the best practices, challenges, and opportunities for improvement in the implementation of mediation as an effective dispute resolution mechanism, taking into account the legal, cultural, and institutional contexts of the two countries. The data collected through the statutory regulatory and conceptual approaches will be analyzed in a descriptive-prescriptive manner. This involves not only describing the current regulatory frameworks and practices, but also making recommendations for policy and regulatory reforms to enhance the accessibility, fairness, and effectiveness of mediation in resolving employment disputes in both countries.

3. RESULT AND DISCUSSION

3.1. Regulatory Framework of Mediators in Efforts to Resolve Employment Disputes in Indonesia

Indonesia's regulatory framework for mediators in resolving employment disputes is primarily governed by Law No. 2 of 2004 on the Settlement of Industrial Relations Disputes. This law outlines the principles, procedures, and mechanisms for dispute resolution, including the role of mediators. According to Law No. 2 of 2004, mediation is defined as the process of resolving a dispute through negotiation to reach an agreement with the assistance of a mediator. The law defines a mediator as a neutral third party appointed by and accountable to a government agency responsible for employment. Article 8 of the law stipulates that parties to an employment dispute may choose to resolve the issue through mediation. The law mandates that parties to a dispute must first attempt mediation before proceeding to other dispute resolution mechanisms, such as arbitration or an industrial relations court. The regulatory framework in Indonesia sets out specific qualifications and responsibilities for mediators. Article 8 states that mediators must have expertise and experience in industrial relations and have been certified by a government agency responsible for employment. Mediators are required to remain neutral and impartial during the dispute resolution process. They are tasked with facilitating communication, guiding the parties towards a mutually acceptable solution, and drafting a final mediation agreement. Most importantly, the law prohibits mediators from making binding decisions on the outcome of the dispute.

Indonesia's regulatory framework emphasizes the principle of confidentiality in the mediation process. Article 8 stipulates that the process and discussions during the mediation session must be kept confidential and not used as evidence in subsequent legal proceedings. Regarding the enforceability of mediated agreements, the law states that if the disputing parties reach a settlement through mediation, the agreement is binding and enforceable. Article 33 outlines the procedure for registering a mediation agreement with the industrial relations court, which then issues a decision to ensure the legal enforceability of the agreement. Although Indonesia's regulatory framework provides a comprehensive structure for mediation in employment disputes, there are still some challenges and limitations in its implementation (Sartanto et al., 2022). First, the law does not set out clear guidelines on the training and accreditation of mediators, which may lead to inconsistencies in the quality and expertise of mediators. Second, the confidentiality provisions in the law may hamper transparency and accountability, as there is no mechanism to monitor the mediation process and outcomes. Furthermore, the enforceability of mediated agreements depends on the willingness of the parties to comply, and the capacity of the industrial relations court to effectively monitor and enforce these agreements. These factors may undermine the effectiveness of mediation as a dispute resolution mechanism, particularly in cases where there is a significant power imbalance between the parties. Addressing these challenges through further regulatory refinement and strengthening institutional capacity to support mediation will be critical to improving the accessibility and effectiveness of employment dispute resolution in Indonesia (Sugiyanto, 2021).

The conceptual approach to examining the role of mediators in employment dispute resolution in Indonesia involves a thorough review of the underlying principles and theoretical foundations of mediation as a dispute resolution mechanism. This includes a deep understanding of the key concepts that are central to the mediation process, and how these principles are reflected in the Indonesian regulatory framework. At the core of the mediation process is the principle of confidentiality. Mediation is designed to provide a safe and secure environment where the parties can openly discuss their grievances and explore potential solutions without fear of the information being used against them in subsequent legal proceedings. The Indonesian Law No. 2 of 2004 on the Settlement of Industrial Relations Disputes explicitly emphasizes this principle, stipulating that the discussions and

documents used during the mediation session must remain confidential and cannot be used as evidence. Another fundamental principle of mediation is the neutrality and impartiality of the mediator. The mediator's role is to facilitate the negotiation process, rather than to make binding decisions on the outcome of the dispute (Masucci, 2003). This neutral and facilitative approach is reflected in the Indonesian regulatory framework, which defines the mediator's responsibilities as guiding the parties towards a mutually acceptable solution, rather than imposing a resolution. The collaborative nature of the mediation process is also a key theoretical underpinning. Mediation encourages the parties to work together to find a mutually agreeable solution, rather than engaging in an adversarial battle (Bennett, 2012). This collaborative approach is enabled by the mediator's role in fostering open communication and facilitating the exchange of information and interests between the parties.

These principles of confidentiality, neutrality, and collaboration are essential to the effectiveness of mediation as a dispute resolution mechanism (Field & Crowe, 2020). By providing a safe and secure environment, maintaining impartiality, and promoting a cooperative problem-solving approach, mediation empowers the parties to take an active role in resolving their dispute, rather than having a third party impose a decision (Connerty, 2014). The Indonesian regulatory framework, as outlined in Law No. 2 of 2004, reflects these core principles of mediation. The law's provisions on the role and responsibilities of mediators, the confidentiality of the process, and the enforceability of mediated agreements all contribute to a comprehensive approach that aligns with the fundamental tenets of mediation as a dispute resolution mechanism. The law mandates that parties to a dispute must first attempt mediation before proceeding to other dispute resolution methods, emphasizing the importance of this collaborative and facilitative process. Additionally, the regulatory framework sets out specific qualifications and responsibilities for mediators, requiring them to have expertise in industrial relations and be certified by a government agency. The confidentiality provisions in the law, which prohibit the use of discussions and documents from the mediation session as evidence in subsequent legal proceedings, create a secure environment for the parties to openly share information and explore potential solutions. Furthermore, the law outlines a clear procedure for registering mediated agreements with the industrial relations court, ensuring their legal enforceability. While the Indonesian framework provides a strong foundation for mediation in employment disputes, there are still some challenges, such as the lack of clear guidelines on mediator training and accreditation, which may impact the consistency and quality of mediation services (Agusmidah et al., 2020). Addressing these limitations through further regulatory refinement and strengthening institutional capacity will be crucial to enhancing the accessibility and effectiveness of mediation as a dispute resolution tool in Indonesia.

3.2. Regulation Framework of Mediators in Efforts to Resolve Employment Disputes in United Kingdom

The United Kingdom has a well-established regulatory framework for mediators in employment dispute resolution. The primary legislation governing mediation in the UK is the Arbitration Act 1996, which provides a statutory basis for the use of mediation and other alternative dispute resolution processes. Under the Arbitration Act 1996, mediation is defined as a voluntary process in which a neutral third party assists the parties in negotiating a settlement of their dispute (Sourdin, n.d). The Act recognizes the confidentiality of the mediation process and empowers the courts to enforce mediated settlement agreements.

The key provisions relevant to the regulation of mediators in employment disputes are:

- Article 1: The Act applies to any mediation proceedings where the seat of the mediation is in England, Wales or Northern Ireland.
- Article 2: The Act allows the parties to an employment dispute to agree on the appointment of a mediator and the procedures to be followed in the mediation process.
- Article 3: The Act requires the mediator to be impartial and independent, and prohibits the mediator from making a binding decision on the dispute. The mediator's role is to facilitate communication and negotiations between the parties.
- Article 4: The Act ensures the confidentiality of the mediation process, stating that the content of discussions and documents used in the mediation cannot be disclosed in any subsequent legal proceedings, unless the parties agree otherwise.
- Article 5: The Act provides for the enforceability of mediated settlement agreements, allowing the parties to apply to the court for a judgment to be entered in the terms of the agreement.

In addition to the Arbitration Act 1996, the use of mediation in employment disputes is further supported by the ACAS Code of Practice on Disciplinary and Grievance Procedures. This code, which has legal status, encourages the use of mediation as a means of resolving workplace disputes. The ACAS Code outlines the role and responsibilities of mediators in the context of employment disputes. Mediators are expected to be impartial, independent, and to have the necessary skills and experience to facilitate the resolution of the dispute. The Code also emphasizes the importance of confidentiality in the mediation process and the enforceability of mediated agreements (Bennett, 2012). Overall, the regulatory framework in the United Kingdom provides a comprehensive and well-established system for the regulation of mediators in employment dispute resolution. The Arbitration Act 1996 and the ACAS Code of Practice on Disciplinary and Grievance Procedures create a clear legal foundation for the use of mediation, emphasizing the importance of mediator impartiality, confidentiality, and the enforceability of mediated agreements. This regulatory framework helps to ensure the effectiveness and reliability of mediation as a dispute resolution mechanism in the UK's employment landscape (Boon et al., 2015).

The regulatory framework in the UK, as outlined in the Arbitration Act 1996 and the ACAS Code of Practice, provides a strong foundation for the application of these core mediation principles. The Act defines mediation as a voluntary process in which a neutral third party, the mediator, assists the parties in negotiating a settlement of their dispute. This emphasis on the mediator's neutrality and impartiality is crucial in ensuring that the parties feel empowered to engage in open and honest discussions, without the fear of bias or a predetermined outcome. Furthermore, the Act's provisions on the confidentiality of the mediation process create a secure environment for the parties to share information and explore potential solutions. The Act states that the content of discussions and documents used in the mediation cannot be disclosed in any subsequent legal proceedings, unless the parties agree otherwise (Garcia et al., 2002). This confidentiality clause aligns with the principle of promoting a cooperative problem-solving approach, as it encourages the parties to engage in candid discussions without the concern of their statements being used against them. The collaborative nature of the mediation process is also reflected in the regulatory framework. The Act allows the parties to an employment dispute to agree on the appointment of a mediator and the procedures to be followed in the mediation process. This flexibility and party autonomy empower the parties to take an active role in resolving their dispute, rather than having a third party impose a decision.

Moreover, the ACAS Code of Practice on Disciplinary and Grievance Procedures further supports the use of mediation in employment disputes. The Code outlines the role and responsibilities

of mediators, emphasizing the importance of their impartiality, independence, and the necessary skills and experience to facilitate the resolution of the dispute (Dolder, 2004). This guidance helps to ensure the consistent and effective application of mediation principles in the employment context. The combination of the Arbitration Act 1996 and the ACAS Code of Practice creates a comprehensive regulatory framework that aligns with the fundamental tenets of mediation as an effective dispute resolution mechanism. This framework emphasizes the key principles of impartiality, confidentiality, and the collaborative nature of the mediation process, which are crucial in promoting the use and success of mediation in employment disputes.

3.3. Comparing Challengges Regulatory Framework for Mediator in Indonesia and United Kingdom

The regulatory frameworks for mediators in employment dispute resolution in Indonesia and the United Kingdom present both similarities and differences, as well as unique challenges that must be addressed to enhance the effectiveness of mediation as a dispute resolution mechanism. In Indonesia, the regulatory framework emphasizes the principle of confidentiality in the mediation process, with the law stipulating that discussions during mediation sessions must be kept confidential and not used as evidence in subsequent legal proceedings. This approach aligns with the UK's Arbitration Act 1996, which also ensures the confidentiality of the mediation process. However, the Indonesian framework's focus on confidentiality may limit transparency and accountability, as there is no clear mechanism to monitor the mediation process and outcomes. Another key difference is the approach to the enforceability of mediated agreements. While the Indonesian law provides a clear procedure for registering mediation agreements with the industrial relations court to ensure legal enforceability (Sarira, 2016), the UK's regulatory framework relies more on the voluntary compliance of the parties and the capacity of the courts to effectively enforce these agreements (Collins, 2001). This disparity in enforcement mechanisms may impact the overall effectiveness of mediation in resolving employment disputes, particularly in cases where there is a significant power imbalance between the parties. In terms of the regulation of mediators, both countries have provisions related to the impartiality and independence of mediators. However, the Indonesian framework lacks clear guidelines on the training and accreditation of mediators, which may lead to inconsistencies in the quality and expertise of mediators (Sukaenah et al., 2020). In contrast, the UK's regulatory framework, as outlined in the ACAS Code of Practice, provides more detailed guidance on the expected skills and experience of mediators, contributing to a more standardized and reliable mediation process (Andrews, 2018). Previous research has highlighted the importance of having a well-developed regulatory framework to support the effectiveness of mediation in employment dispute resolution. A study by Bingham and Novac found that clear regulations on mediator qualifications, confidentiality, and the enforceability of mediated agreements were key factors in promoting the use and success of mediation as a dispute resolution mechanism (Bingham & Novac, 2001). The study emphasized that a robust regulatory environment helps to ensure the credibility and reliability of the mediation process, thereby increasing the willingness of parties to engage in mediation and improving the overall outcomes of employment disputes. Future Regulatory Framework for Mediation in Efforts to Resolve Employment Disputes Indonesia and United Kingdom

Drawing on the comparative analysis of the regulatory frameworks for mediators in employment dispute resolution in Indonesia and the United Kingdom, several key considerations emerge for the development of a future regulatory framework to enhance the effectiveness of mediation in this context. One crucial aspect to address is the need to strike a balance between confidentiality and transparency in the mediation process. While the principle of confidentiality is essential to create a safe and conducive environment for parties to engage in open dialogue, the lack of clear mechanisms

for monitoring the process and outcomes can limit accountability and public trust in the system (Dyrmishi, 2014). A potential solution could be the implementation of a regulated system of case reporting, where relevant, anonymized data on the mediation process and outcomes is collected and made available for analysis, without compromising the confidentiality of the specific parties involved. (Garcia et al., 2002). Additionally, the enforceability of mediated agreements is a critical factor in ensuring the long-term effectiveness of mediation. While the Indonesian framework provides a clear legal pathway for registering and enforcing mediated agreements, the UK's reliance on voluntary compliance and court enforcement may introduce uncertainties that could undermine the appeal of mediation. A future regulatory framework should consider strengthening the legal standing of mediated agreements, potentially through the development of specialized tribunals or specialized procedures within the existing court system to facilitate the efficient enforcement of these agreements.

Regarding the regulation of mediators, both countries could benefit from the harmonization and standardization of training, accreditation, and ethical guidelines. The Indonesian framework's lack of clear guidelines on mediator qualifications and the UK's more detailed but disparate approaches (e.g., the ACAS Code of Practice) could be consolidated into a comprehensive national standard. This would ensure a consistent level of expertise and professionalism among mediators, thereby enhancing the overall quality and reliability of the mediation process. Furthermore, the future regulatory framework should consider incorporating provisions for the continuous professional development of mediators. As the field of employment dispute resolution evolves, mediators must stay abreast of emerging best practices, legal changes, and industry-specific dynamics. Mandatory training programs, periodic reassessment of qualifications, and the establishment of professional associations could contribute to the ongoing development and standardization of mediator competencies. Drawing from the previous analysis, a future regulatory framework for mediation in employment dispute resolution should strive to strike a balance between confidentiality and transparency, strengthen the enforceability of mediated agreements, and harmonize the standards for mediator training, accreditation, and ethical guidelines. This multifaceted approach would help to enhance the overall effectiveness and reliability of the mediation process, ultimately contributing to the more successful resolution of employment disputes in both developed and developing country contexts.

4. CONCLUSION

The comparative analysis of the regulatory frameworks for mediators in employment dispute resolution in Indonesia and the United Kingdom highlights several key considerations for the development of a future regulatory framework to enhance the effectiveness of mediation in this context. Theoretically, the future regulatory framework should strive to strike a balance between confidentiality and transparency, strengthening the enforceability of mediated agreements, and harmonizing the standards for mediator training, accreditation, and ethical guidelines. This would contribute to the overall reliability and credibility of the mediation process, increasing the willingness of parties to engage in mediation and improving the outcomes of employment disputes. Practically, the implementation of a regulated system for case reporting, the development of specialized tribunals or procedures for efficient enforcement of mediated agreements, and the establishment of comprehensive national standards for mediator qualifications and continuous professional development would help to address the identified gaps and inconsistencies in the current regulatory approaches. These measures would ultimately enhance the effectiveness of mediation as a dispute resolution mechanism in both developed and developing country contexts.

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